

Dear Commissioner Borg,

We write to you regarding the current public consultation on the reform of the EU's Common Fisheries Policy. With regards to your call for "a truly open, no-holds-barred debate with stakeholders, Member States and the general public",¹ We hope that our comments on the EU's Fisheries Policy and suggestions for its future reform will be welcome.

The news that the Fisheries policy is "a work in progress that has to adapt to changing biological and political circumstances"² is hopeful, and your comment that the current reform of the policy "will require the active participation of all those who may be affected by its outcome"³ is also encouraging.

One such group likely to be affected by the outcome of the reform is the Saharawi people have been adversely affected by the 2006 Europe-Morocco Framework Partnership Agreement, (FPA) which came into force in 2007. Indeed, you may recall a letter from the POLISARIO – the political representation of the Saharawi people - addressed to yourself before the signing of the FPA on 18th May 2005,⁴ in which their opposition to the aforementioned was expressed.

Western Sahara is a Non Self-Governing Territory – the last colony in Africa. In 1975, it was invaded by Morocco. Many Saharawis fled to the Algerian desert to avoid the napalm and white phosphorus of the Moroccan army. There, they remain, living as refugees over three decades later. The rest of their population, which did not flee in 1975, live under a brutal Moroccan occupation. They suffer serious affronts to their human rights, which have been documented by many International NGOs, including Amnesty International and Human Rights Watch.⁵

By claiming that the Western Sahara is part of its territory, Morocco ignores the 1975 International Court of Justice Advisory Opinion, the UN Charter and numerous UN Security Council and UN General Assembly Resolutions, which have all stressed the current international status of the Western Sahara as a Non Self-Governing Territory and the right of the Saharawi people to a self-determination referendum.

This is of course relevant to the Fisheries policy due to the 2007 EU-Morocco FPA, and the ambiguity over whether or not the waters of the Western Sahara would be included in the Agreement. This was of concern to many NGOs, Member States such as Sweden, Finland, the Netherlands and Ireland⁶, the

¹ *The Common Fisheries Policy: A User's Guide*, European Communities, Belgium, 2009, p. 36.

² Joe Borg, "Redefining the Common Fisheries Policy for the 21st century", *The Common Fisheries Policy: A User's Guide*, European Communities, Belgium, 2009, p. 4.

³ *Ibid.*, p.5.

⁴ Letter of the POLISARIO Representative to the EU Commissioner Mr Borg, Brussels, 18 May 2005.

⁵ See for example Human Rights Watch, *Human Rights in Western Sahara and in the Tindouf Refugee Camps*, New York, 2008, available at

<http://www.hrw.org/en/reports/2008/12/19/human-rights-western-sahara-and-tindouf-refugee-camps-0>, last accessed 9 November 2009.

⁶ Sweden voted against the FPA, Finland and the Netherlands issued statements and abstained,

Saharawi people, over 200 MEPs⁷ and members of the general public. We were concerned since entering into a trade deal with a power illegally occupying a Non Self-Governing Territory in order to benefit from the latter's natural resources is against international law. We cannot help but wonder why – given the political, legal and ethical sensitivity of the issue – the EU did not simply preclude Western Sahara from the Agreement; just as the United States government did when signing the US-Morocco Free Trade Agreement in 2004.⁸

Furthermore, the EU Parliament's Legal Service, when assessing the legitimacy of the agreement, suggested that the Community could eventually enter into consultations with a view to suspending the agreement, should its implementation by Morocco disregard the interests of the people of Western Sahara.⁹ We would therefore like to suggest that you review whether or not the 2007 EU-Morocco Agreement has benefitted the Saharawi people, and honour the opinion of your Legal Service by suspending the agreement, if it does indeed come to light that their interests have been ignored by Morocco. After all, as your User's Guide to the reform of the Fisheries Policy argues, it is necessary to "create a framework for the industry in which it pays to be responsible, rather than one where people can profit by ignoring the rules and putting themselves first, whatever the cost to others".¹⁰

We would also like to take this opportunity to remind you that on April 9th 2008, after 7 different written questions had been delivered to the European Commission, you finally confirmed that fishing had indeed taken place also in occupied Western Sahara during the calendar year of 2007, under the EU-Moroccan Fisheries Partnership Agreement.¹¹ The plunder of the natural resources of an Occupied Territory could have been avoided, if only the EU had clearly and transparently excluded Saharawi waters from the Agreement. In the light of this, we find the Commission's assertion that it "conducts its relations with third countries in total transparency"¹² hard to accept.

On the other hand, we wholeheartedly agree with the view put forward by the Commission in its Green Paper on the Reform of the Common Fisheries Policy that "external fisheries policies should better take into account in the food security strategies of third countries"¹³ (sic). For example, in the Saharawi

whilst Ireland voted for the FPA but issued a statement urging that the "Agreement is implemented to the benefit of all the people concerned and in accordance with the principles of international law."

⁷ 167 MEPs voted against the Agreement, whilst a further 79 abstained.

⁸ The 2004 US-Morocco Free Trade Agreement is available at http://www.moroccousafta.com/index_ang.htm, last accessed 9 November 2009.

⁹ Legal Opinion of the Legal Service of European Parliament, supra n. 50, para. 45.

¹⁰ *The Common Fisheries Policy: A User's Guide*, European Communities, Belgium, 2009, p. 36.

¹¹ Parliamentary Questions, Answer given by Mr Borg on behalf of the Commission, E-1073/2008, 9 April 2008, available at

<http://www.europarl.europa.eu/sides/getAllAnswers.do?reference=E-2008-1073&language=EN>, last accessed 9 November 2009.

¹² *The Common Fisheries Policy: A User's Guide*, European Communities, Belgium, 2009, p. 25.

¹³ Green Paper: Reform of the Common Fisheries Policy, European Communities, Belgium, 2009, p.19.

refugee camps, Algeria, acute malnutrition has reached dire levels due to insufficient levels of food aid.¹⁴ Yet, as the international Fish Elsewhere campaign (www.fishelsewhere.eu) pointed out, through the EU-Morocco FPA, more money (€144 million) is paid to Morocco to take Saharawi resources than is given in aid to Saharawi refugees.¹⁵

In the Green Paper on Common Fisheries policy, the Commission asks how the current architecture of its FPAs can be revisited in order to better meet the needs of its partners in the developing world. It asks how the EU can strengthen its role in promoting better governance of fisheries. It asks how the social benefits of fisheries can be enhanced in third countries. It asks how the FPAs can have a significant impact on development and on fighting poverty.¹⁶ In response, we would recommend that, when entering into Agreements where the natural resources of an illegally Occupied Territory are in danger of being plundered in contravention of international law, all measures are taken to avoid such an eventuality. Specifically, in all future FPAs between the EU and Morocco, we would urge that the waters of the Western Sahara are clearly and explicitly excluded. Anything less would unfortunately persuade us that the EU's apparent concern for fighting poverty, encouraging development, and promoting the rule of law with respect to the seas in third countries, is nothing more than lip service.

Yours sincerely,

Western Sahara Resource Watch

¹⁴ Office of the United Nations High Commissioner for Refugees, UNHCR-WFP team finds dire health conditions in Algerian refugee camps, 12 February 2007, available at <http://www.unhcr.org/news/NEWS/45d09ac14.html>, last accessed 28th September 2009.

¹⁵ Fish Elsewhere Campaign, The Agreement with Morocco is unethical, 30th January 2009, available at <http://www.fishelsewhere.eu/index.php?cat=149&art=0>, last accessed 11 November 2009.

¹⁶ *Green Paper: Reform of the Common Fisheries Policy*, European Communities, Belgium, 2009, see in particular pages 19-20.