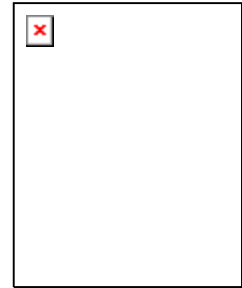


DR. CAROLINE LUCAS  
Green Party  
for the South East of England



Ben Bradshaw  
Minister for Nature Conservation and Fisheries  
DEFRA  
Nobel House  
17 Smith Square  
London SW1A 3JP

April 4<sup>th</sup> 2006

Dear Minister,

I am writing to you concerning the new Fisheries Partnership Agreement negotiated with Morocco and signed last summer, to ask you to take urgent action on the question of the waters of the Western Sahara.

As you will be aware the new Fisheries Partnership Agreement has generated considerable controversy, both in the European Parliament and among the Member States. Of particular concern to the Greens in the European Parliament is the possible inclusion in the terms of the agreement of the waters of the Western Sahara.

It is our position that such an inclusion would be contrary to the principles of international law. Essentially, our reasoning is the following.

1. The Western Sahara is considered by the United Nations to be a Non-Self-Governing Territory, but Morocco is not recognized by the UN as the administering Power, as both the Council and the Commission have admitted.
2. An opinion by UN Under-Secretary for Legal Affairs in 2002 considered the question of the legality of Morocco conducting exploration or exploitation of resources in the Western Sahara, in that case mineral resources. The opinion concluded "*if further exploration and exploitation activities were to proceed in disregard of the interests and wishes of the people of Western Sahara, they would be in violation of the principles of international law applicable to mineral resource activities in Non-Self-Governing Territories.*"
3. Polisario is the internationally recognized representative of the Saharawi people and, in that capacity, has explicitly and publicly condemned the inclusion of the waters off the Western Sahara in the Moroccan agreement. This has been done in letters to both Commissioner Borg and Prime Minister Tony Blair, in his capacity as President in Office of the Council.
4. Neither Morocco nor the European Union can thus claim that the agreement is in the interests and wishes of the people of the Western Sahara. This has been the justification used for allowing EU vessels to fish in the Western Sahara - that as long as Morocco

dedicates the financial contribution to the interest and welfare of the people of the Western Sahara, everything is legal.

5. The attitude of the EU seems to be that it is entirely up to Morocco to ensure that these commitments are fulfilled and that the EU has no responsibility whatsoever. That is false. Resolution III of the third Conference of the Law of the Sea, attached to the text of the Convention on the Law of the Sea, reads as follows: *"In the case of a territory whose people have not attained full independence or other self-governing status recognized by the United Nations, or a territory under colonial domination, provisions concerning rights and interests under the Convention [on the Law of the Sea] shall be implemented for the benefit of the people of the territory with a view to promoting their well-being and development"*. While Morocco has not ratified the Law of the Sea, the European Union has and so is bound by that provision. This is even mentioned in the preamble of the agreement: *"Having regard to the United Nations Convention on the Law of the Sea"*.
6. Article 11 of the EU Treaty (Section 1, third indent) explicitly obliges the EU to respect the UN Charter. Furthermore, in a recent judgement of 21 September 2005 (Case 306/01) the Court of First Instance has held that *"the Community may not infringe the obligations imposed on its Member States by the Charter of the United Nations or impede their performance and (...) in the exercise of its powers it is bound, by the very Treaty by which it was established to adopt all the measures necessary to enable its Member States to fulfil those obligations"*. It is thus a fiction to claim that the EU may shift its responsibilities to Morocco.
7. Experience gained from previous agreements with Morocco demonstrates that Morocco does not live up to this obligation under international law. There is thus no reason to assume that this time will be any different. In fact, recent reports from the area suggest that Morocco has not improved its treatment of the Saharawi.
8. The agreement states that Morocco will issue licences to fish in *"waters falling within the sovereignty or jurisdiction of the Kingdom of Morocco"*. Yet, to be best of our knowledge, Morocco has not laid an official claim to sovereignty or jurisdiction to the waters off the Western Sahara. Its domestic legislation promulgating their EEZ only includes waters to the north of 27°40' N. It is not clear upon what basis Morocco could issue licences for waters that they have not claimed in their domestic legislation.
9. If Morocco has not established a formal claim to the waters off the Western Sahara, by what legal right would they be able to act as a coastal state and ensure that the relevant fisheries conservation measures, and other applicable laws, would be respected? Even if Morocco attempted to act in an enforcement capacity, and arrested an EU-flagged vessel, could that be challenged under international law? Could an EU ship-owner request that its Member State take Morocco to the International Court?

Given all of the above, we consider any fishing by EU-flagged vessels to be contrary to the principles of international law.

There are several steps that we would urge you to take in COREPER and Council meetings.

The simplest, most effective and most comprehensive solution would be to amend the regulation that adopts the protocol so as to specifically exclude the waters of the Western Sahara, and draft text to accomplish this is appended to this letter. If there does not appear to be a qualified minority to ensure such an amendment, there are at least two other possibilities.

Member States could assume their full flag State responsibility individually and specify on the fishing licences of vessels flying their flag that they are not allowed to fish in the waters off the

Western Sahara. With the VMS systems that are required under the CFP, this would be an easy stricture to enforce.

Alternatively, Article 10 of the agreement establishes a Joint Committee to monitor the implementation of the terms of the agreement. The opinion of the European Parliament's Legal Service suggests that this Committee could be used to enter into bilateral consultations with the Moroccan authorities in case they manifestly disregard their obligations with respect to the Saharawi people, with the possibility of suspending the agreement.

Whilst we consider the inclusion of Saharan waters to be illegal, it is true that this provides a mechanism for a certain degree of monitoring and possible suspension of fishing activities. In the event that Council decides against the first alternative, as a minimum, Council and the Commission should make a clear commitment to use the mechanism of the Joint Committee to the fullest extent possible, including suspension if necessary.

I hope very much that you will use your influence to good effect in the forthcoming meetings by acting on these concerns, and look forward to hearing from you regarding your position on these matters.

Yours sincerely,

A handwritten signature in black ink that reads "Caroline Lucas". The signature is written in a cursive, flowing style.

Caroline Lucas - Green Party MEP for South East England.