

FROM CONCEPT TO DESIGN: CREATING AN INTERNATIONAL ENVIRONMENTAL OMBUDSPERSON

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Local Communities and Fishing Disputes in Saharan and Moroccan Waters: Opportunities for New Dispute Resolution Mechanisms

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I. INTRODUCTION

This case study examines the fisheries relations between the European Community (EC) and the Kingdom of Morocco, particularly as they concern access of Spanish fleets to Moroccan and Western Saharan marine living resources, the latter being under *de facto* control of Morocco. There are several conflicting interests at stake in the context of these relations, but the key problem relates to the *access to and control of scarce resources*, in our case, fisheries. The study highlights the interests of Spanish fleets, which have traditionally fished in Moroccan and Saharan waters, in continuing to do so; and the interest of the Government of Morocco in having greater control over national fisheries, sometimes to the detriment of Spain's historical fishing rights.

However, this case study presents a complex picture (which we shall refer to as “the Case”), where not only interests related to access to fisheries play a role. Several factors need to be taken into account to fully understand its intricacies, as well as the fairness of each actor's claims. Although the study does not focus on solving all the concerns at stake, but on extracting useful lessons for the hypothetical establishment of an ombudsperson, we should keep in mind some of the following considerations when assessing the Case:

- a) **environmental sustainability** of marine living resources, as these species are being currently fully to overexploited;
- b) **economics**, at both a macro level (for example, Morocco's economic development needs) and a micro level (for example, the fishing sector's state of generalized crisis due to a wide range of factors, including overfishing, tougher competition due to technological advances and the development of new fleets such as Morocco's);
- c) **politics**, as democratic deficits in some State's institutions, or the struggle of peoples for self-determination and sovereignty, color the perception of many issues at stake;
- d) **equity**, as in addition to examining each actor's legal rights, the functioning of extant mechanisms to address their needs, etc., we may need to address some aspects of the Case according to more subjective criteria, such as “fairness.”

In addition to these parameters, when examining this Case we need to take into account the broad spectrum of institutional and procedural arrangements in which all concerned actors interact. They range from local and non-governmental spheres to high-level international diplomacy. We may clarify from the outset that in this Case, mechanisms available for conflict prevention and conflict resolution are rich, rather well structured and detailed. It is precisely this high level of legal, institutional and procedural complexity that makes this study particularly interesting in the context of efforts to create an international environmental ombudsman. This study points to some of the failures and successes of highly developed legal, institutional and procedural systems and provides a “test” of sorts for some of the functions the “Ombudsperson” could consider carrying out. The study may point to whether certain initiatives are “good” or “bad” ideas, and can highlight the gaps to which an alternative institution could consider responding.

In the next section of the report, we provide a background description of the Case, focusing on a description of the key players and the key issues at stake, and in the third part we study the institutional and procedural framework available to actors with interests in the EC-Morocco fisheries relations. In the Conclusion, we make an assessment of the existing institutional and procedural gaps and consider how an alternative dispute resolution body could provide solutions to concerns which do not find adequate redress.

This case study has been developed in two stages: the first was based on desk-top research, which helped us identify the key players and the conflicting interests; the second aimed at gathering first-hand information from the key players through interviews and questionnaires, and has been helpful to appreciate their assessment of existing mechanisms (diplomatic, administrative and judicial) and to discuss whether they perceive the need for an alternative avenue of redress.

II. THE ARCHITECTURE OF THE CONFLICT: KEY ISSUES AND PLAYERS

1. BACKGROUND

1.1. Brief Description of the Case

Spanish vessels have historically fished in Moroccan and Saharan waters. Some, such as small-scale fishers from Andalusia and the Canary Islands, have been doing so for centuries. Others, such as the Spanish fleets from Galicia and from the Mediterranean, more developed and often highly industrialized, have been fishing in the area since the 1960s, when the Spanish fishing industry developed. But Morocco, also in the late 1960s and early 1970s, began to take greater control over its marine resources and introduced limitations to the access of the Spanish fleets. Restrictions on Spanish fleets increased after Morocco's occupation of the Western Sahara in 1975 and its appropriation of the Saharawi fishing grounds after Spain's withdrawal from its former colony in 1976. After the 1975 Green March, the Saharawi people were displaced to the Algerian desert where they have maintained a struggle for self-determination.

For the last twenty years, Morocco allowed Spaniards to fish in its waters but negotiations to conclude fishing agreements—carried out by the EC since Spain entered the Community in 1986--have become increasingly difficult. Among the factors which have made the bilateral relations more complex, we should highlight: a) the extension of Morocco's sovereign control over a 200 mile Exclusive Economic Zone (EEZ) in accordance with international law; b) the acceleration of the depletion of marine living resources in the Central Atlantic, which leads to tougher competition over scarce resources; and c) an increase in competitors to the Spanish fleets, due to the scarcity of fisheries and to the development of national fleets worldwide.

The latest fishery agreement, concluded with no consultation with the Saharawi people, was in 1995. According to some, it could be the last unless progress is made on other issues, such as the renegotiation of the Morocco Association Agreement with the EC (for a general description of Spain-Morocco fisheries relations see appendix 1).

1.2. Physical and Ecological Description of the Region

The North African littoral referred to in this study comprises 450 km of Moroccan coastline in the Mediterranean Sea and over 3,000 km of Moroccan and Saharan littoral in the Atlantic Ocean. The two areas present very different physical characteristics, but both have a large biological production. The Atlantic littoral, in particular, is one of the most productive areas in the world. The bulk of the fishery is conducted on the continental shelf, which is especially extensive in the Western Saharan coast (22,000 square miles, 94% suitable for trawling). Whilst in Moroccan waters there is a wealth of small pelagic fish - basically pilchard, horse mackerel and mackerel - and crustaceans, the Western Sahara shelf is specially rich in cephalopods, particularly in octopus. Small pelagic fish populations are very sensitive to natural fluctuations in the ecosystem. This natural variability in the size of their populations make overfishing particularly dangerous, since it may lead to the collapse of the resources (See Map 1).

2. ACTORS AND ISSUES

It is inevitable that the actors and their interests in the Case must be presented in a simplified manner, as the high number of potentially relevant issues and possible perspectives to approach them would make analysis unmanageable. For clarity, we have identified each of the main actors who have specific interests at stake, and have attempted to assign ONE key interest to every actor. Having “interests” clearly identified for each actor will be useful in assessing the effectiveness of mechanisms available to address them.

The main actors, and their key interests, are:

- a) *Spain*: Interested in having continued access to fisheries in Morocco, although it is generally concerned about coping with the crisis of the fishing sector at large;
- b) *European Community*: Same interests as Spain, although its motivations are less nationalistic, more focused on addressing the crisis of a productive sector in the EC, in the framework of the new Euro-Mediterranean policy launched in November 1995 at the Barcelona Summit;
- c) *Spanish small-scale fishermen*: Concerned about sustaining their livelihoods;
- d) *Spanish fishing industry*: Interested in having access to fisheries in Morocco, or somewhere else;
- e) *Morocco*: Key priority is economic development;
- f) *Morocco's artisanal fishers*: Concerned with sustaining and improving their livelihoods;
- g) *The Saharawi people*: Concerned about self-determination; and
- h) *The environment*: Main interest, if the fiction is permitted, is the conservation of resources.

2.1. Spain

As shown in the map below, Spain is a Southern European country neighboring Morocco. It has a population of nearly 40 million, a GDP of US \$565 billion (nearly 19 times that of Morocco), and one of the most extensive coastlines in Europe. Since 1978, it has been formally organized as a parliamentary monarchy, operating with full respect to democratic principles and

to human rights. In the last two decades, it has experienced accelerated economic development which has placed it in line with other European industrialized countries.

Spain is traditionally a fishing country. Currently, it has the largest fishing fleet in Europe and one of the 12 largest in the world. The fishing sector employs 75,000 people directly, and 425,000 in the processing industry. This represents 4.2% of the working population, although in coastal areas the proportion is evidently higher.ⁱ Fisheries in Spain are strongly rooted in the national socio-economic structure. Fish consumption is the highest in Europe and fishers have broad popular support, including extensive media coverage. Fisheries may be deemed to be a “national issue”, close to most citizens’ hearts.

The fishing sector, however, suffers from a generalized worldwide crisis. As a result of national incentives to shipbuilding and, as a result, to fishing over-capacity, fleets grew excessively. Previous rates of fish captures are no longer possible and most States with large fleets are undertaking a wide range of measures to “restructure” their fishing sectors. All States are struggling to keep their fishing sector active, and Spain, in this context, is an active fighter. When it entered the EEC, strong battles were fought by Spanish authorities to maintain preferential treatment in the Community for its fleets’ fishing rights. The Community has had to struggle to keep this nation’s interests satisfied while protecting the rights of other European fleets which would be damaged as a result of Spanish competition. With regard to access to fisheries in Moroccan and West Saharan waters, Spain has not only an economic interest, but also attends to powerful social pressures. The current fishing agreement is offering job opportunities for 7,000 Spanish fishermen and 18,800 land-based workers in Andalusia alone.

Spain is very interested in finding alternatives to address the industrial and social problems linked to the crisis of fisheries, while, at the same time, struggles to maintain the highest level of fishing activity of its fleets. Most national policies to address these problems are currently developed jointly with the EC, and we shall address them when discussing the Common Fisheries Policy.

2.2 The European Community

The EC plays an important role in this Case. Based on Art. 38 of the Treaty of the European Communities (TEC), which includes fisheries within the common agricultural market, and on regulatory and jurisprudential developments, the EC has construed its exclusive competence on fisheries, particularly since the 1970s. In 1976, the European Court of Justice (ECJ) established EC competence to assume international obligations regarding the preservation of marine resources and the determination and allocation of fishing quotas among Member States.ⁱⁱ Thus, its institutions regulate fisheries within the EU and in its external relations with other States. All negotiations regarding access of Spanish fleets to third countries are negotiated by the European Commission and agreements are signed by the Council of the European Community (for a description of the EC and its institutions see Appendix 2).

In 1983, the EC’s Common Fisheries Policy (CFP) was formally established, under the popular name of *Blue Europe*.ⁱⁱⁱ The CFP entails a complex regime which takes into account

problems linked to access to fisheries (due to changes introduced by the incorporation of new EC members and the loss of traditional fishing grounds abroad), the global decline in catches, and the overcapitalization of fleets. The CFP was designed initially as a 20-year program, but has been revised regularly in order to respond to the changing needs. Since 1992, the CFP priority has been to ensure supply to its fish market and industries (the largest fish market in the world). At the same time, however, aims to reduce pressure on its own stocks. One of its main priorities has been to ensure access of its fleets to third country resources, either by negotiating direct access or through joint ventures. The latter have become the favored option, pushed in the fisheries negotiations with Morocco and promoted in the fishing sector and the mass media.

EU interests, and particularly Spanish fishing interests in Morocco need to be understood in the context of complex bilateral relations, where several economic, social, and strategic interests are at stake. For example, Morocco is an important exporter of agricultural products into the EC but, at the same time, North African illegal emigration into the EC is one of the burning economic and security issues in Euro-Mediterranean relations.

2.3 The Spanish Fleets

Spanish fishing activities in Moroccan and West Saharan waters are by no means uniform, in terms of target species, fishing gear, or operators. Operators range from families owning relatively small crafts using artisanal fishing gear to capital-intensive companies running a number of industrial freezer trawlers. Due to geographical proximity to Spain, such diversity makes fisheries relations between the EC and Morocco unique when compared with other EC fishing activities in the waters of other third countries.

Spanish fishing in Moroccan and West Saharan waters involves several fishing sub-sectors. Such fishing actors can be identified according to their target species and their fishing capacity and gear, or to the fishing grounds allocated to them under the agreements. In some cases, such sub-sectors are localized in defined communities, fishing ports or regions, and they can be defined as fleets. However, other fleets, such as longliners, may involve several regions. Some harbors are "specialized" in terms of fleet, while others embrace different sectors. For general reference, seventy percent of fish caught by Spanish vessels is obtained as a result of international agreements which allow Spanish vessels to fish in other States' EEZs; 20% comes from fish caught within Spain's EEZ, and 10% from high seas fisheries.^{iv} In terms of fleet size, it is significant that 50% of total national fish production (in both national and international waters) is captured by only 7% of total Spanish vessels.

Any classification of the Spanish fleets is to a point arbitrary, as it involves analyzing a complex reality, but we may identify three main categories: small-scale, medium-scale and large-scale fleets. *Small-scale operators*: Consists of the Canary Islands artisanal fleet and tuna fishing boats. *Medium-scale fleets*: Include purse-seiners from Andalusia and long-liners fleet coming from both Andalusia and Galicia, as well as large purse-seiners based in Lanzarote, small trawlers based in Alacant and Andalusia, and two fleets of medium-sized trawlers based also in Alacant and in Cadiz and Huelva (Andalusia). *Large-scale fleets*: the only European freezer-trawler fleet currently operating under the fisheries agreement with Morocco targets cephalopods and is mainly based in the port of Las Palmas de Gran Canaria. This fleet is

organized under the umbrella of an effective lobby called ANACEF.

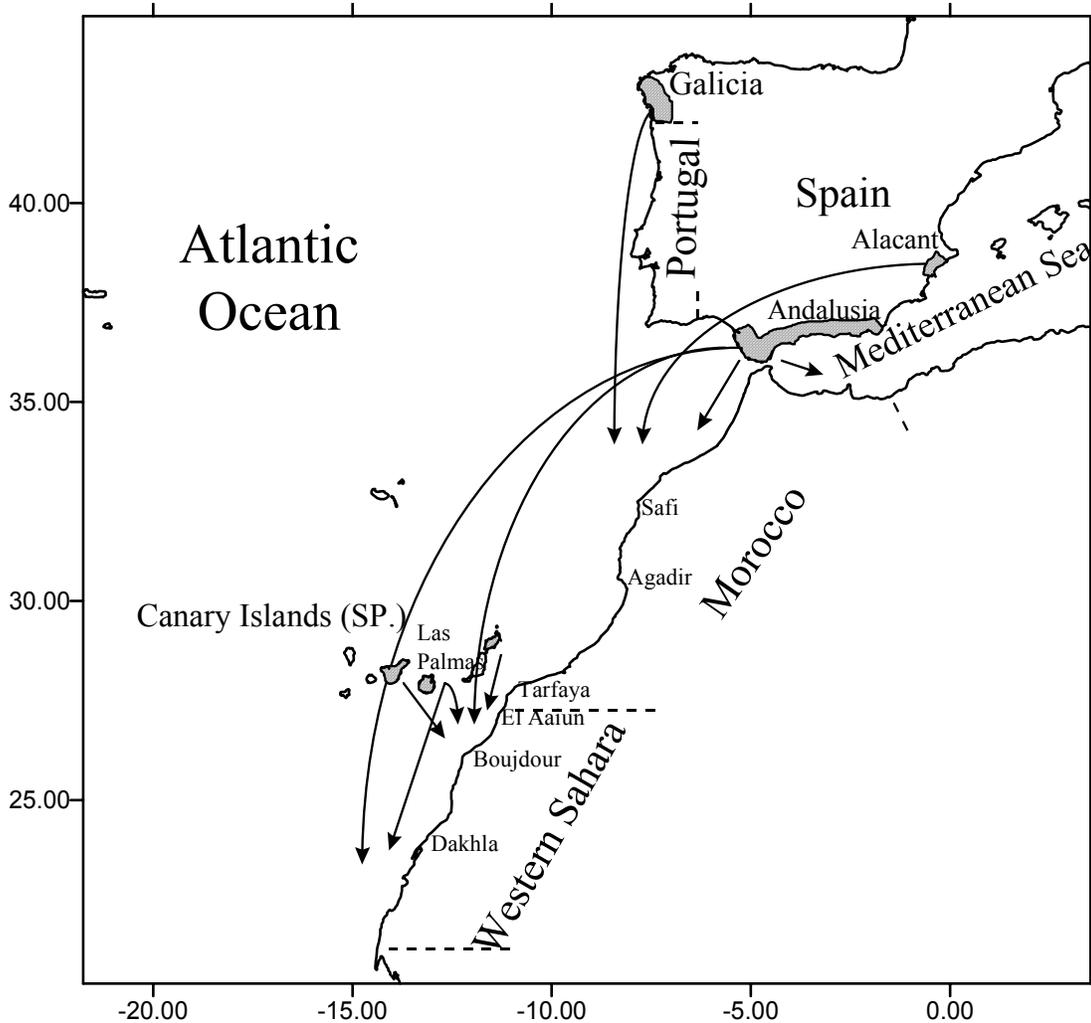
For the purposes of this study, we shall distinguish only two categories: small scale fleets, and medium- and large-scale fleets. All Spanish fleets have experienced diminishing fishing possibilities in Morocco and in the Western Sahara since the late 1960s. But small-scale fleets have had more difficulty than medium- and large-scale fleets in relocating given the size of vessels, gear and targeted species. According to a fishers' representative from Andalusia, in the 1980s Spain had 900 vessels in Morocco, while now it has about 480 (for a detailed description of the Spanish fishing fleets, see Appendix 3.)

The smaller-scale and part of the medium-scale fleets, such as the Canarian artisanals and the Andalusian purse seiners, have few alternative fishing grounds, as fisheries in the Spanish territorial sea are already overexploited or have been fished out (as it happened with anchovy in the Alboran Sea). These vessels are far too small to go to any other fishing ground in the North or in the South Atlantic, for example. The alternative of setting up joint ventures with Moroccan citizens is costly, and risky, for vessels which are generally family-owned. However, some small-scale fleet representatives consider that joint ventures with Moroccan vessels could be a good alternative to keep their jobs.^v Other sectors, such as some medium-size trawler operators from Andalusia, are more optimistic and still see some space for their operations off the Southwest coast of Spain, although it is an already heavily fished area.

The fleet which has suffered the largest cuts (particularly in the last agreement) has been the large-scale fleet. Large trawlers and fishing trawlers targeting cephalopods have been negatively affected by Morocco's interest in controlling its octopus and squid fisheries. These resources generate the highest economic returns from both domestic consumption and exports to Italy and Japan. Because of its negative experiences, ANACEF (the organization representing the Spanish cephalopod fleet) has not been enthusiastic about the alternative of exporting its vessels to Morocco and setting up joint ventures, and has focused its intensive lobby on maintaining high fishing possibilities for its vessels. Its campaign resulted in the EC granting licenses for 18 of its vessels under its last fishing agreement with Mauritania (which shares the same stocks with the Western Sahara). As a result, total fishing pressure on these resources continues to increase.

Despite negotiation difficulties with Morocco, the Spanish fishers organizations are not prepared to accept denial of access to Moroccan and Western Saharan waters. The Secretary-General of the Federation of Spanish fishers' organizations (*Federación Nacional de Cofradías de Pescadores*), which represents 60,000 fishers and 13,000 vessels, did not even *consider* that an agreement with Morocco would not be renewed, and thus refused to discuss the consequences of such a potential scenario.^{vi} Other representatives, however, make somewhat more realistic clarifications: A national trade union fisheries spokesperson believes that Morocco needs the financial compensation provided in the agreements with the EC. But he acknowledges that the next agreement will reduce the possibilities for the Spanish fleet in favor of Morocco's new fleets for cephalopods, freezer-trawlers and purse seiners.^{vii}

MAP 1



2.4 Morocco

Morocco is one of the most developed North African countries, with a GDP of US\$29.72 million. However, it has a 50% unemployment rate and sustains severe social, educational and health disparities among its population. It has a population of approximately 27 million, according to a census which includes the inhabitants of the Sahara. Its political regime is a parliamentary monarchy under Hassan II since 1961. Recent legislative elections in November 1997, which were to lead to a representative parliament, have been criticized by most progressive sectors as not being fully democratic.^{viii}

In Morocco, fishing was an exclusively artisanal activity up to the beginning of this century. In 1918, an incipient fishing fleet grouped around 20 motored vessels and 100 boats was born, with annual landings of 350 t.^{ix} From then on, the fleet has grown steadily. According to official Moroccan sources, the Moroccan fleet is currently made up of 3,068 fishing vessels, comprising 2,609 inshore and 459 offshore units.^x The former – which would be classified as small-scale or artisanal fleets -- target demersal and pelagic species, while the latter harvest mainly cephalopods, demersal finfish, hake, prawns and pelagic fish.^{xi}

Currently, the Kingdom of Morocco is the second largest African fish producer, and is the world's top producer and exporter of canned pilchard. In 1995, its fishery product exports reached US \$800 million (15% of national exports and 55% of food product exports), and the 281 processing companies of the country employed 45,000 workers. In fact, Morocco and Mauritania are the only Arab countries that fully exploit the fisheries in their EEZs, be it directly through their national fleets or by delegation of the harvesting activity to third countries' fleets through fishing agreements. In recent years, Chinese, Japanese and Russian fleets have become strong competitors to the EC in the Atlantic waters. Some "third-country" fisheries that Morocco could have assigned to Spain have been lost in favor of the Asian and Eastern European fleets.^{xii}

Agreements with the EC have proved fruitful to the development of Morocco's fishing sector. Morocco has used the financial compensation provided in exchange for fishing opportunities, for example, to improve its port infrastructure. With this initiative, it intends to facilitate the return of around 400 Moroccan fishing vessels, which previously had been landing their catches in the Canary Islands (mainly in the port of Las Palmas), and thereby encouraging the development of the local industry. Moroccan authorities also plan to build a new port in Boujdour (Western Sahara), along with 12 fishing villages, with the overall objective of relocating one third of the country's offshore fleet (more than 100 vessels) in Dakhla, as well as the canning industry in its surroundings. Moreover, large investments are foreseen to modernize the fleet (both offshore and inshore) and improve the canning industry to reach the standards requested by the EC in the bilateral agreements.

These measures, however, are being criticized by some observers. A Spanish trade union representative considers that in spite of the large amounts received through the bilateral agreements, Morocco has done nothing to improve social security and other conditions of national fishers, nor to sustainably manage its marine living resources, particularly cephalopods. This is regarded as a sign of Morocco's priority to satisfy political interests and foster national economic development, but not to promote an equitable distribution of economic benefits from fisheries.^{xiii}

The Moroccan government has established the goal for year 2000 of doubling to tripling total catches, creating 100,000 new jobs, and doubling national fish consumption.^{xiv} To accomplish such development objectives, Morocco will need to have full control of its harvesting activity soon. In fact, Morocco has repeatedly claimed that the Fishing Agreement now in force will not be renewed in 1999. This contrasts with Spanish fishers' perception that the agreement will be signed again.

Perspectives for future fisheries relations between Spain and Morocco may be determined

by success on two fronts: the design of new forms of bilateral partnership, such as joint ventures; and carrying out successful bilateral negotiations in other sectors, such as the European market for Moroccan agricultural products.^{xv} Both mechanisms would create benefits for both parties, but especially for Morocco. Joint ventures with Moroccan ship owners (in which the Moroccan partner must control more than 50% of the capital) have the advantage of allowing Morocco to account catches harvested by foreign vessels under Moroccan flags as national production, and thus help to balance trade. Of course, all these factors should be seen as conditioned by the results of the self-determination referendum for Western Sahara.

2.5 The Moroccan Fleets

In Morocco, owners of offshore vessels are well organized under the Moroccan Professional Association of Offshore Ship owners and obtain substantial benefits from their activities. The same is not the case for the inshore fleet, and even less so for the unregulated fleet of small boats (*pateras*), which consists mainly of small, old, ill-equipped boats, where fishers have very low revenues, reside in small, marginal communities, and have no effective means to voice their claims and concerns. The size of the regular inshore fleet is not optimal either: in January 1996 it was estimated that approximately 600 fishing units faced serious financial difficulties, mostly due to the presence of the Spanish fleet.

Surprisingly, the Spanish association ANACEF has denounced the activities of the 12,000 Moroccan *pateras*, most of which fish octopus with traps in the Atlantic Ocean. Spaniards criticize that this fleet generates unfair competition for the Spanish industrial fleet, and its negative effect on the cephalopod populations is felt from the Sahara up to the Gulf of Cadiz. According to Spanish sources, *pateras* would set three million traps every year, and their combined catches would be similar to those of the entire Spanish cephalopod fleet. Although information from Spain could be biased, Moroccan cephalopod ship owners have confirmed the existence of some irregularities regarding the fisheries and commercialization of cephalopods in Morocco. They recently acknowledged the existence of an organized mafia around fisheries and the illegal commercialization of cephalopods.

Finally, over the cliffs along the Western Saharan coast another -- very precarious -- fishing activity has developed. Fishermen, most of them resourceless Moroccan emigrants, catch finfish from the coast with a very long line because it is virtually impossible to access the beach from above the cliffs. It is a very dangerous activity, which takes place on rough cliffs often beaten by strong waves. The commercialization of this production is only possible due to vehicles that go over the coast and visit each of the fishermen *in situ*. Some of these fishermen are specialized in the collection of barnacles for the Spanish market.

The larger-scale offshore vessel owners account for 70% of the total value of national catches as a result of cephalopod fishing. This industry has attracted many interests and companies tied to the country's oligarchy, particularly the family of King Hassan II. The King is personally involved in the *Omnium Nord Africain*, a conglomerate which holds a privileged position in the fishing sector, among others. This sector has been able to lobby effectively to keep the European fleet out of the fishing grounds as much as possible (and this against ANACEF, the powerful Spanish cephalopod lobby).

2.6. The Saharawi People

The Saharawi coastal communities traditionally based their livelihoods on fisheries, and used to have large fish markets in the main Saharawi ports (El Aaiun, Dakhla). The Western Sahara, the homeland of the Saharawi people, was *de facto* transferred from Spain's colonial dominance to Morocco's control. Despite the 1975 International Court of Justice decision in favor of the Saharawi people undertaking a self-determination referendum, Morocco organized a march of 350,000 people into the Sahara known as the "Green March" -- to vindicate its claimed territorial rights. Spain officially withdrew from the area in 1976 and the Polisario Front simultaneously proclaimed the independence of the Saharawi Arab Democratic Republic (SADR), which has continued to exist in exile in the Algerian desert. After years of armed fighting and Moroccan repression, the UN created in 1990 the UN Mission for the Referendum in Western Sahara (MINURSO). Efforts have been channeled since then to facilitate such a referendum. According to the Denver Agreement reached in September 1997 under the UN mediator, Mr. Baker, the self-determination referendum will take place in December 1998. Nevertheless, the position of Morocco in this regard is unclear.

The Polisario Front does not acknowledge any right of Morocco over the natural resources of the Western Sahara and until the final outcome of this decolonization process, only recognizes Spain as the single colonial power with rights and responsibilities over the territory and natural resources. The Polisario Front's position is that the territory legally belongs to Spain. For the Polisario Front, the fishing agreements between the EC and Morocco do not have legal effect and are a violation of the fundamental rights of the Saharawi People.

The issue of legitimate sovereignty over Western Saharan fishing grounds has always been taboo for the Spanish authorities, particularly in the context of the agreements with Morocco. The fishing issue had led to serious confrontation between the Spanish government and the SADR authorities in the 1980s, when the Polisario Front machine-gunned a Spanish fishing vessel in the waters of Western Sahara to reaffirm Saharan sovereignty over the fishing ground. However, in moments of tension with Morocco, some Spanish political sectors have openly questioned the legitimacy of the fishing agreements with Morocco. For example, in September 1995 (when the Spanish fleet was in its home ports due to a stalemate in the agreement's renegotiation) the Government Commission of the Cabildo of Gran Canaria (Canary Islands) denounced the EC for negotiating fishing opportunities in a territory undergoing a decolonization process. Using this argument, deputies to the Canarian Parliament called for the exclusion of the "Southern Zone," as established in the Fishing Agreements with Morocco (between Cape Noun and the Mauritanian border), from the negotiations with this State.

2.7 The Environment

The environmental effects of fisheries on the Northwest African marine ecosystems were noticeable as soon as industrial fishing activities were introduced in the region. Demersal finfish were for many years the main fishing resource of the Saharan Bank. But as a result of intensive exploitation after the Second World War, a change in the dominant species in the ecosystem occurred, increasing the number of cephalopod populations at the expense of finfish. In the

1960s, the high cephalopod biomass caught the attention of the Spanish and Japanese fleets, which soon were followed by others from other countries.

According to relevant information from accredited sources, the health of some of the main species exploited in the region is seriously questioned. Reports from the Instituto Español de Oceanografía (IEO) conclude that octopus in the Saharan Bank, one of the most important target species in this fishing ground, is overexploited or fully exploited. Moreover, a 1994 report by the FAO-dependent Fishery Committee for the Eastern Central Atlantic (CECAF), concluded that hake was overexploited in Moroccan waters. Regarding cephalopods, CECAF insisted that octopus in the area of Dakhla (the area where the Spanish fleet operates) was overexploited or fully exploited. Another report, prepared by the Institut Scientifique des Peches Maritimes in Casablanca, in collaboration with its homologous in Tenerife, Spain, concluded that "measures should be undertaken to preserve the resources of the Saharan Bank", given that some of the species are overfished. It also affirms that in some areas the European fleet should reduce its catches up to 50%.^{xvi}

The evolution of fisheries in the area seems to confirm the delicate state of these resources. As a matter of fact, the catches of Moroccan cephalopod-targeting trawlers decreased 27% between 1995 and 1997, and forecasts for 1997 are even worse, according to studies confirmed by the EC Fisheries Commissioner. The establishment of an exceptional biological rest on the Spanish cephalopod-targeting fleet by the Joint Committee of the EC and Morocco during March and April 1997 is perhaps the best indicator of the crisis in the cephalopod population. This closed season, due to the bad state of the resources, comes in addition to the annual two-month long biological rest - September and October - foreseen in the Fishing Agreement for the European fleet. This measure affected 117 Spanish cephalopod-targeting vessels, which had to remain inactive.^{xvii}

III. INSTITUTIONAL AND PROCEDURAL RESPONSES TO KEY ISSUES IN THE CASE

In this chapter we shall review how each of the actors described above protect their interests in general, or *vis à vis* other specific players. We have not been able to obtain the same level of detailed information for all actors -- access to information is not always straightforward, but we can appreciate that the institutional and procedural mechanisms available are overall very elaborated. In the following sections we shall examine the relationships between the EC and Morocco and between Spain and the EC; observe how Spanish fishers organize and voice their concerns; consider how, in contrast, the interests of Moroccan artisanal fishers are totally underrepresented; address the high politicization of mechanisms available to the Saharawi people to channel their claims; and, finally, review the wide range of procedures and institutions in place to address the sustainable management of marine living resources, and point to their "underperformance".

1. ACCESS BY SPAIN TO MOROCCO'S FISHING GROUNDS

1.1. Rights of Access

The core of this Case concerns access to marine living resources under State sovereignty. From an international law perspective, the guiding norms and principles regulating this situation are clear and undisputed: the basic framework for the international regulation of fisheries is provided by the *1982 United Nations Convention on the Law of the Sea (UNCLOS)*, and, once it enters into force, also by the *1995 Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 Relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks*. The latter could be applicable to Morocco's fisheries straddling between its EEZ and the high seas or between EEZs. Morocco is extending the rights and obligations provided by UNCLOS to the waters off the Western Sahara, under the tacit approval of the European Community.

States' rights and obligations with regard to the conservation and management of living resources at sea is based on UNCLOS, which entered into force in 1994. Morocco, Spain and the EC are parties to it. National and EC legislation on the fisheries regimes is enacted in accordance with UNCLOS, particularly its Part V on the regime for the Exclusive Economic Zone (EEZ).

As established in UNCLOS, and widely accepted by State practice, coastal States have sovereign rights up to 200 nautical miles from the coastal baselines for the purposes of exploring and exploiting, conserving and managing the natural resources of the seas, as well as with regard to marine scientific research and the protection and preservation of the marine environment (Art. 56 UNCLOS). Foreign vessels enjoy freedom of navigation within other States' EEZs, but cannot exploit the living (and non-living) resources unless duly authorized by the coastal State to do so. Within 12 miles from the coast, in the territorial sea, States have full sovereign rights (Arts. 2, 3 UNCLOS). In the Atlantic coast, EC countries and Morocco have declared a 200 mile EEZ.

All States have the right to exploit the living resources in their EEZs up to their "optimum utilization", but, if they do not have the capacity to harvest the entire allowable catch, are *required* to give access to other States to the surplus of the allowable catch, pursuant to certain terms and conditions (Art. 62 UNCLOS). The coastal State -- for example Morocco, in our Case -- has complete discretion in determining the foreign States which shall have access to its EEZ. In accordance with UNCLOS, the coastal State needs to "take into account":

- the significance of the living resources of the area to its economy and other national interests;
- the special needs of land-locked and geographically disadvantaged States;
- the requirements of developing States in the subregion or region in harvesting part of the surplus;
- the need to minimize economic dislocation in States whose nationals have habitually fished in the zone or which have made substantial efforts in research and identification of stocks (Art. 62 UNCLOS).

To regulate access to EEZ resources, the coastal State can determine different cooperation arrangements, such as reciprocal exchange of fishing rights with foreign States, financial and technical compensation in exchange for fishing rights, joint ventures, etc. Nationals of other States fishing in the EEZ shall comply with the conservation measures and with the other terms and conditions established in the laws and regulations of the coastal State. Access depends on Morocco not identifying any other State which may have a greater need to access its resources than, for

example, Spain; but above all it depends on the effective negotiating skills of EC (and Spanish) delegates, in the context of broader economic and political bilateral relations.

Spanish governmental and non-governmental observers have stated that Moroccan representatives attending the fisheries negotiations are shrewd and experienced. On this issue, given the international competition over fisheries, Morocco is in a clear a win-win situation, where it can “sell” its rights to the highest bidder.

1.2 Conditions of Access under the Agreement

1.2.1 Access and Equity Conditions

The Agreement provides for fishing opportunities and for financial compensation and contributions for fishing in waters under Morocco’s control. The latter have been increasing gradually in consecutive agreements (see Table in Appendix 4).

In general, Community vessels are subject to hold a license issued by the Moroccan authorities. Licenses are issued subject to the payment of license fees and fishing fees by ship owners. The Delegation of the EC in Morocco is in charge of submitting the application forms to Morocco’s Ministry of Fisheries.^{xviii}

Ship owners holding licenses employ a certain number of Moroccan nationals on board their vessels. Under the 1988 agreement, vessels between 100-150 GRT had to employ two Moroccan nationals, while those over 150 GRT had to employ three. The 1992 agreement increased these figures.^{xix}

For the first time, the most recent agreement requires Community vessels to land catches in Moroccan ports. This is a means to improve the joint development of their respective fisheries sectors taking into account that it is very likely that the next agreement between the EC and Morocco will be based on the establishment of joint ventures. The agreement includes optional and compulsory landing of catches,^{xx} but vessels are encouraged to land their catch in Moroccan ports through discounts in their fishing fees.^{xxi}

1.2.2 Control and Monitoring Mechanisms

The Agreement provides for several mechanisms to control and monitor the activities carried out by EU fishers in Morocco’s waters. Among others, it requests vessels to keep a special logbook which needs to be updated regularly;^{xxii} provides for technical inspections,^{xxiii} radio notification,^{xxiv} inspection and control of fishing activities by any Moroccan official, and the presence of Moroccan scientific observers in certain EU vessels; and also establishes the mutual observation system for shore-based controls^{xxv} and the continuous satellite-tracking system.^{xxvi}

The conditions established in the EC-Morocco agreement offer Moroccan authorities strong mechanisms for monitoring the activities of the EC fleet, especially when compared with other agreements signed by the EC with, for example, ACP (Asian-Caribbean-Pacific) countries.

The existing cooperation regime for the monitoring of fishing activities by Community vessels assists both parties in keeping track of vessels and exchanging data about their operations. By providing such a high degree of detail in the regulations and facilitating several levels of inter-party communication, this regime turns out to be an effective mechanism to prevent disputes.

However, it is difficult to assess fully the enforcement rate of control systems, as both the EC (including the Spanish government) and Morocco are highly reluctant to facilitate information to the public. There is widespread lack of transparency regarding the follow-up (and negotiation) of the bilateral agreements, which appear to be extremely sensitive. Nevertheless, from an international legal perspective the inclusion of such control systems in the agreement reflects a significant advance.

1.2.3 Prevention and Settlement of Disputes

The 1988 Agreement established an important institutional arrangement, the EC-Morocco Joint Committee, to ensure the correct application of the agreements. The main function of this Committee is to supervise the implementation, interpretation and proper working of the agreement in force, and to settle disputes.

The Committee provides a space for parties in the agreement to meet regularly, at least once a year,^{xxvii} and operates principally as a monitoring body, although it could offer a diplomatic forum in which to resolve disputes. It is difficult to ascertain the details of its operations as the minutes of its meetings are confidential, according to EC sources, but from a brief interview with a Spanish official at the Ministry of Fisheries and Agriculture, it seems that the Joint Committee has never dealt with any specific dispute.

The Committee plays a relevant role in establishing the biological rests provided in the agreements, and it has extended them sometimes, when the sustainability of certain fisheries was at risk.^{xxviii} Such decisions, however, have not gone undisputed: Morocco unilaterally declared a new biological rest for cephalopods (octopus), and this announcement was severely criticized by the EC Fisheries Commissioner, as the decision corresponded to the Joint Committee. No further action was taken by either party in this regard.

There are some specific arrangements also set up in the case where boarding may be necessary. In case of any boarding of a Community fishing vessel operating in Morocco's fishing zone, the Ministry for Fisheries must inform the Delegation within 48 hours (in the 1992 Agreement it was within 24 hours), providing a brief report of the circumstances and reasons for boarding normally when fishermen do not comply with the conditions of the agreement. There are two possible ways to settle the boarding:

a) Administrative settlement: a fine is determined in accordance with Moroccan legislation. Once the obligations imposed by the administrative settlement procedure are completed on presentation of the receipt for the settlement, the vessel is released and its crew authorized to leave the port; or

b) Legal proceedings: when there is no administrative settlement and the matter is brought before a competent judicial body, the competent authorities determine a bond which is posted by the shipowner with a bank designated by the Moroccan authorities. The vessel and its crew can leave the

port when proof of the bond pending completion of legal proceedings is provided.

2. RELATIONS BETWEEN SPAIN AND THE EC ON FISHERIES

2.1 Fisheries Policy

The relations between Spain and the EC are strongly determined by the EC's Common Fisheries Policy (CFP) focuses on managing the marine resources (*Resources Policy*); controlling the commercialization of fish products (*Fish Market Policy*); and providing the necessary funds to carry out industry development projects and assist economic sectors in coping with crisis situations (*Structural Policy*). The latter, which is the key aspect in our Case, is concretized in the Financial Instrument for Fisheries Guidance (FIFG).^{xxix}

The content of these policies is determined by EC institutions. However, despite the exclusive competence of the Community over fisheries, Member States play a role in designing the content of EC decisions. First, there is permanent informal communication between national government representatives and the European Commission. For example, to design the next multi-year plan for structural funds for the period 2000-2006, negotiations began to take place in 1997 at the national and at the Community level. Problems already anticipated by governments are not only voiced in the context of the EC institutions, but are finding an echo even in the media. Secondly, decision-making mechanisms in the EC are clearly established. In fisheries policy, the European Commission, which is the EC's "administrative" body deemed to represent the interests of the Community and not necessarily of Member States, plays an important role. However, final decisions, including most EC legislation compulsory on States, are taken by the Council of Ministers, a body integrated by the competent Ministers from each Member State. A balance of interests between Member States and between Members and the Community is thus guaranteed. In addition, some control is also provided by the European Parliament (which adds an element of democracy into essentially undemocratic institutions) and, of course, by the European Court of Justice.

Spain is certainly interested in having the EC represent its national interests effectively, both within the EC and in its relations with third States. As the strongest fishing force in Europe, Spain has considerable leverage in Community negotiations: the fact that Spain receives the largest single allocation of structural funds, well ahead of other European States,^{xxx} is a good indication of its influence. Although some officers in the Spanish Fisheries Department say that "they never could have enough funds", they are generally pleased with the current situation. Most government fisheries officers consider that Europe generally defends Spain's fisheries interests satisfactorily. Fishers' organizations have different views on the role of the EC in defending their interests, but overall they are not too critical and some consider that it adequately represents their interests.

2.2 EC's Control Measures

Spanish vessels are under the control of EC authorities. For example, vessels fishing outside EU waters are also required to have an EC license and must comply with all EC legislation. Control is enforced directly by the European Commission or through the Member States.

3. CLAIMS FROM SMALL-SCALE AND FROM MEDIUM AND LARGE-SCALE SPANISH FLEETS

The situation of the medium-scale, and particularly the large-scale Spanish fishing industry differs significantly from that of the smaller-scale fleet. The large industry has the wealth and the political connections to defend its interests forcefully, as well as to cope better with the crisis in the fisheries sector. It is even likely that the increasing interdependence between the Moroccan and European economies will result in greater contacts between both industries, both at the harvesting level and in processing and marketing.

Small-scale fishers have fewer resources and options. Some of the fishing communities are highly dependent on the renewal of the agreement with Morocco and are very vocal about their needs to maintain access to those fishing grounds. When the renegotiation of the last agreement came to a halt in 1995, fishers and their organizations reacted forcefully and took strong measures on all fronts, including violent actions against Moroccan fish imports into Spain. The media covered their protests widely and the Spanish government pressured the EC institutions to defend their nationals' interests. During the time that fleets were inactive at home, fishers received a reasonable, although not high, subsidy from the EC.

In this section we will examine how the Spanish fishing sector is organized, the means it can use to voice its concerns, and the mechanisms available to offer redress for its concerns.

3.1 Forms of Organization

Fishers are traditionally well organized to defend their interests through the *Cofradías de Pescadores* and, to a lesser extent, through trade unions.

3.1.1 Cofradías de Pescadores

The *Cofradía de Pescadores* is a traditional institution which dates back to the 11th century, although it has adjusted to the changing times and effectively serves current needs. There are 225 *Cofradías* in Spain, with their own bylaws and representatives, which are organized locally, regionally and at the national level through Federations. The National Federation (*Federación Nacional de Cofradías de Pescadores*), representing all *Cofradías*, is a powerful and respected lobby mechanism, which gives a voice to the small and medium-scale fleets in Spain.

The National Federation also serves as a communication channel between the Spanish Administration and all the *Cofradías*. While in the past the relationship between the State Administration and the fishers' organizations had been very difficult, currently it is quite open and permanent communication channels are maintained.

Although *Cofradías* are generally satisfied with their access to government authorities and with their participation in decision-making processes, they lack access to some fora, particularly for small-scale fishers. They would like, for example, to attend the EC-Morocco

Joint Committee, and, although they have suggested several times to attend these meetings as observers, access has been denied. Nevertheless, every time the Joint Committee meets, the Spanish Administration informs and consults with the Federation. In order to be better prepared to follow the last EC-Morocco fisheries negotiations, the Federation decided to create a monitoring committee (*Comisión de Seguimiento*) comprised of one representative of each of the affected fishing communities (Galicia, Valencia, Andalusia and the Canary Islands), and of representatives of the National Federation. The Federation and the concerned Cofradías have direct contacts with Morocco's Administration and with some members of the fisheries sector.

Fishers' organizations are also consulted informally regarding the allocation of structural funds. For example, a Spanish officer in charge of the allocation of the FIFG indicated that the Spanish government is holding preliminary consultations with the sector on the next five-year structural fund plan being negotiated with the Commission. Although fishers do not participate formally in decision-making, they are regularly informed, *ex post*, about the periodical meetings held between the central government, the autonomous communities and the EC Commission on the allocation of funds.

3.1.2 *Trade Unions*

Spanish Trade Unions also represent the interest of fishers, particularly in the large-scale sector, as the Cofradías play a strong role in the small and medium-scale sector. Trade Unions negotiate the economic, social security and work conditions of fishers with the Administration through formal, periodical agreements, but do not have as strong an influence in the fishing sector as they have in other collectives.

3.2 **Avenues for Redress**

In addition to the participatory mechanisms described above, in case of any wrongdoing by the public administration, fishers have a wide range of mechanisms to refer to. They have administrative and judicial procedures before regional, national and EC bodies, and it is particularly interesting that, at the international level, private individuals are entitled to seek redress directly from the European Court of Justice against the action of an EC institution or their State. They can also refer to the European Ombudsman (see Appendix 2).

3.3 **Government Responses: Structural Assistance**

To attend to the needs of the Spanish fishing sector, one of the key and most effective responses offered by public authorities is financial assistance. As fleets see their fishing opportunities diminish, funds are provided for fishers to introduce changes to their economic activities to cope with the crisis in the sector.

3.3.1 *Financial Assistance Available*

As stated above, structural funds are provided by the EC under the CFP. There are no specific funds provided to compensate fishers for losses resulting from diminished access to

Moroccan and Western Saharan waters, but Spanish fishers do receive financial assistance under other Community programs which can help them address some of the problems faced. Whenever biological rests are established under the EC-Morocco regime, fishers and ship owners receive financial compensations for losses they may incur. Governments also provide direct assistance in the framework of these Community programs.

Before the CFP's revision in 1992, structural assistance was provided by the EEC on a somewhat *ad hoc* basis.^{xxx1} But in 1993, the structural elements of the fisheries policy were completely modified to better coordinate this policy with other Community activities and take into account the serious imbalance between the number of vessels and the resources available (Commission 1994, p. 21). In addition to the FIFG, there are three other programs aimed at providing assistance to the EU's fishing sector:

- *Multi-annual Guidance Programs*: aimed at restructuring and modernizing fishing fleets, particularly reducing ship tonnage and power;
- Socio-economic measures: areas depending on fishing can benefit from aid from the *European Regional Development Fund (ERDF)* and the *European Social Fund (ESF)*. The ERDF can assist in co-funding programs to develop basic infrastructure to make the region more attractive to new business; provide services to the industry, such as in marketing; or develop the tourist industry. The ESF can fund training courses of persons unemployed or close to becoming unemployed or provide economic incentives for entrepreneurial initiatives in other sectors,^{xxxii} and
- The *PESCA* initiative, a smaller fund which complements the other programs. It is aimed at assisting the fishing sector in overcoming the negative socioeconomic effects of the current crisis and diversifying economic activity in the affected coastal areas.

3.3.2 *Distribution Criteria*

Structural funds are distributed taking into account each European region's level of economic development. The most depressed areas -- which according to the EC's criteria are those with a GDP per capita below 75% of the Community average -- receive the largest portion of EC and national funds. In Spain, Galicia, the Canary Islands and Andalusia are among the Autonomous Communities receiving the largest amounts of assistance.

With the exception of the PESCA initiative, Spain's central government determines how much each region gets based on predetermined criteria and, to an extent, also on each Autonomous government's skilled negotiation. The structural funds system entails complex management also at the national level. There is regular communication between the Ministries which manage different funds (Economy, Agriculture and Fisheries, Labor) and there is a specialized committee (*Comisión de Seguimiento*) which meets at least twice a year to assess how funds are spent. Representatives from Autonomous Governments also attend the meetings, and they are consulted formally and informally about the distribution criteria. Overall, regional governments are not dissatisfied with the level of communication with the central administration. There is constant and fluent contact.

3.3.3 *Distribution of Structural Assistance*

Although EC structural funds are given to the Spanish central government, most of them are

distributed through regional governments. Only funds which are to be applied to initiatives with an “international element” (such as temporary associations or joint ventures with foreign fleets) are managed by the central government. According to a regional government representative, some funds also remain under central control to address “unexpected” situations.

With regard to regional governments, each Autonomous Community has implemented EC legislation (through a Spanish regulation) to allocate structural funds. Such regional norms are reviewed by the EC Commission itself. Thus, there is close control of national actors by the EC institutions. One regional administration complained of the Spanish government taking a long time to implement EC legislation on the structural funds, but it seems that, once the system “got started”, its implementation became fairly uncontroversial, albeit complex. The regional administrations communicate with the central government about the distribution of funds in “real time”; computers are connected and the Ministry of Agriculture and Fisheries is immediately informed of any fund allocation and other developments.

Funds are generally to be requested by the interested fishers. Processes to assign funds do not take long, and they do not normally generate any problem with the petitioner. Allocation criteria are clear. Moreover, according to regional administrations, there are very few complaints regarding the allocation procedure.

Local administrations do not play a role in the allocation and distribution of structural assistance, with the exception of the PESCO initiative, in which they may manage some projects.

3.3.4 *Control*

Allocation of funds is controlled first by the regional controllers, immediately thereafter by the central government, and finally by the European Commission. The EC supervises these activities through monitoring commissions (where, as said above, regional, central and Community representatives meet regularly), but also through the EC Commission’s regular fiscalization activities. Commission representatives may even inspect beneficiaries of structural assistance, and have applied sanctions to the Spanish government when management has been inappropriate.

4. CLAIMS FROM ARTISANAL AND SMALL-SCALE MOROCCAN FISHERS

It has been difficult to gather first-hand information about the specific situation of small-scale fishers in Morocco. Moroccan trade unions have not replied to our requests and we have been unable to identify specific fishers organizations at a local or regional level. From the little information available, however, we gather that local fishing communities in Morocco are not as well organized as fishers in Spain. It is also apparent that small-scale fishers use technologies significantly less advanced than their counterparts in Spain and, thus, could be more efficient and also more selective in their fisheries if they upgraded their infrastructure. However, these sectors are not receiving any of the benefits of the development of the national fishing industry at large and many fishers work and live under very precarious conditions.

5. THE RIGHTS OF THE SAHARAWI PEOPLE

The Saharawi people are involved in a decolonization process under United Nations supervision, which should soon end up with a self-determination referendum. This process has two possible outcomes: if it leads to the effective independence of the Western Sahara, with full sovereign rights over territory and natural resources, the SADR, after ratifying UNCLOS, would apply its provisions as any other coastal State, and would take the place of Morocco with regard to its fisheries agreements with the EC regarding the Western Saharan fishing grounds. The other possible outcome of the self-determination referendum would be the integration of the Western Saharan territory under Moroccan sovereignty. If that were case, the rights and obligations provided under UNCLOS would fall upon Morocco.

The process for the Saharawi people to access self-determination are clearly laid out and undisputed under international law. A UN-supported process is the most appropriate mechanism for the case, considering that difficulties are not legal, but of a political nature: disputes regarding access of the Western Sahara to independence can only be resolved at the highest level of international diplomacy and require some form of independent but highly authoritative monitoring which only the UN (or a selected group of powerful sponsoring States) could provide.

However, in order to make this international process advance, pressure needs to be placed on decision-makers. Pressure should come, first of all, from governments; but as many of them do not demonstrate high sensitivity to the issue, *public* pressure should also be placed on them. It is revealing that, for example, although the Polisario Front has officially contacted the European Commission and the European Parliament to express its position, it has not received any form of support from these institutions (with the exception of some solidarity statements by individual Members of the European Parliament). In 1995, the Polisario Front asked the Spanish government to refrain from acknowledging in the fishing treaty Morocco's rights to Saharan territorial waters prior to the self-determination referendum. In the meanwhile, it offered the possibility for the European fishing fleet to operate in Western Sahara waters and for profits to accumulate until the proclamation of the referendum results. Again, their proposal was not positively received by the Spanish authorities.

Although there is substantial media and literature coverage on the situation of the Western Sahara, it does not appear to be sufficient to support the effective defense of the Saharawi interests. Additional poignant mechanisms to raise awareness worldwide could accelerate the process already in place. This could translate into more circulation of information; more direct actions to force governments or private corporations with interests in Morocco to take the Western Sahara situation into account; and more complaints placed before international bodies such as the UN Commission on Human Rights.

6. THE CONSERVATION OF MARINE LIVING RESOURCES

An essential element of this Case is the deterioration and depletion of populations of marine living resources. If resources were not scarce, access to them would be significantly less controversial. Fisheries continue to diminish and we may ask ourselves: who watches over the conservation of marine species? We can identify several actors with such responsibility.

6.1 States

According to international law, the coastal, sovereign State has a general obligation to ensure that the sustainability of marine living resources within its EEZ is not endangered by over-exploitation. To this end, UNCLOS establishes that the coastal State can determine the allowable catch of EEZ resources, provided fish populations are maintained at levels which can produce the maximum sustainable yield (MSY). The concept of MSY, however, has been criticized by scientists as being inaccurate to guarantee the sustainable exploitation of fisheries. Moreover, the obligation to produce the MSY is qualified, under UNCLOS, by other factors^{xxxiii} which could permit the coastal State to exploit its resources above the MSY. Foreign fleets authorized to fish in an other country's waters are obliged to comply with the coastal State fisheries management provisions.

When fisheries straddle between two EEZs or between an EEZ and the high seas, States are under a stronger obligation to cooperate. In addition, all States have a general obligation to take all measures necessary to guarantee the conservation of marine living resources, both unilaterally and in cooperation with other States.^{xxxiv}

With regard to straddling and highly migratory fish stocks, UNCLOS encourages regional cooperation to this end.^{xxxv} Although not yet in force, the 1995 *Agreement on Straddling and Highly Migratory Fish Stocks* has strengthened the duty of States to cooperate through international agreements and organizations and has introduced stronger conservation obligations, particularly the precautionary principle.^{xxxvi}

All parties involved in the Case are abiding with international law, particularly through the EC-Morocco agreements which are an example of international cooperation in the management and conservation of marine living resources.

6.2 International Organizations

The Food and Agriculture Organization (FAO) plays an important role in fostering regional cooperation for the conservation and management of fisheries through, for example, the establishment of regional fisheries agreements and institutions, such as the Fishery Committee for the Eastern Central Atlantic (CECAF). The FAO also contributes to the development of international law on fisheries through the promotion of international fisheries agreements and voluntary codes of conduct (see the Code of Conduct for Responsible Fisheries), and provides policy and technical assistance, particularly through its Committee on Fisheries, which oversees the implementation of the Organization's programs.^{xxxvii} The FAO plays a relevant role in providing technical support to its members.^{xxxviii} Both the EC and Morocco are members of the FAO.

According to some observers, the main problem with the FAO, however, is the lack of sufficient financial resources to provide meaningful technical assistance. In addition, some environmental groups accuse the FAO of sometimes supporting fisheries (and agricultural) programs which are not sustainable.

6.3 Regional arrangements

Two mechanisms apply to the region: the above-mentioned CEEAF, in the Eastern Central Atlantic, and the International Convention for the Conservation of Atlantic Tunas, which entered into force in 1969.^{xxxix} We shall focus on the former for the purposes of this Case.

The Fishery Committee for the Eastern Central Atlantic (CEEAF) was established by an FAO Resolution in 1967 with the objective of promoting programs of development for the rational utilization of fishery resources, assisting in establishing the basis for regulatory measures, and encouraging training.^{xl} Morocco, Spain and the EC are members of this Committee.

Despite having wide ranging objectives,^{xli} CEEAF is a rather weak mechanism which has performed limited research and advisory functions, recommending at times certain limits to fish catches or to fish sizes to its members.^{xlii} Other regional bodies established by the FAO have stronger management mandates and enforcement mechanisms but, to date, none have exercised proper fisheries management functions, such as limitation of access, allocation of effort or catch quotas, monitoring, dispute settlement, etc. (FAO COFI/97/4, para. 10).

At present, CEEAF – like other regimes under the aegis of the FAO -- has seen its capacity decrease over the last decades, mainly due to lack of financial resources. The FAO has been unable to maintain its level of financial and technical support for these bodies, and extra-budgetary funds have also declined. In addition, members with marginal interest in the work of the Committee do not attend regularly, creating problems of quorum and weakening its decision-making power (FAO COFI/97/4, paras. 15-19). A sign of the poor performance of these bodies is that regular sessions of CEEAF have been held at long intervals, between two (as determined by the Statutes) and four years (FAO COFI/97/4, note 11).

To solve some of the problems faced by CEEAF and other regional bodies, the FAO Committee on Fisheries has suggested that regional mechanisms should reduce their area of competence, become financially less dependent on the FAO, reform their constitutional basis under provisions that allow them greater decision-making powers, and achieve greater administrative and financial autonomy. Within the means available, the FAO could provide regional bodies with technical and scientific support in research, fishery analysis and management advice (FAO COFI/97/4, para. 28). CEEAF is currently revising its structure and role, although for some years experts have called for its strengthening, particularly of its Subcommittee on Management. CEEAF's essential roles would involve: acting as a forum, coordination, regional technical support, research and analysis, and promotion of efforts to control fishing (CEEAF 1984, p. 14-15).

6.4 The EC's Policy on Conservation of Marine Living Resources

The EC plays an important role with regard to the sustainable management of marine living resources, as it establishes and implements conservation measures over all EU fleets, regardless of whether they are within or outside Community waters. In the context of the Morocco-EC fisheries agreements, and in addition to Morocco's controls, the EC oversees that Spanish vessels comply not only with EC law but also with the content of the agreements.

The EC's Common Fisheries Policy has gradually taken more account of the need to increase regulation and control over the minimum size of fisheries, fishing seasons and areas, total

allowable catches (TACs), fishing gear, etc. The Community has several control mechanisms, from direct inspection of vessels by EC officials, to requirements for those involved in different stages of the fishing industry process to provide information regularly on their activities.

The EC also introduces environmental considerations in its structural funds programs. For example, just some months ago it requested Spanish authorities to invite representatives from the Ministry of the Environment to the periodical fisheries structural funds monitoring meetings. According to a Ministry officer, the Community is rather “nagging” with environmental requirements.

Despite the high sensitivity of EC institutions to the need to manage marine living resources sustainably, the Community does not fulfil its highest possible standard of environmental conservation. For example, the process of determining total allowable catches is strongly tainted by political considerations which lead the EC to establish TACs or fishing capacity at levels significantly higher than those recommended by scientific bodies. We should recall that such decisions are adopted by the Council of Ministers, which defend their national interests. In addition, fishers exceed these already high levels determined by the Council.

IV. CONCLUSION

In the Conclusion we review the mechanisms available to address the interests at stake in the Case, identify the institutional and procedural gaps, and assess which of these needs could be addressed by an international ombudsperson and how such an institution could go about addressing them.

1. INSTITUTIONAL AND PROCEDURAL MECHANISMS: SOLUTIONS AND GAPS

In section 2, we assigned one main “interest” to each of the most relevant actors in the Case and analyzed the problems they face and the solutions they seek to address their concerns. We observed that several of the problems receive adequate treatment, or that, even if the remedy is sometimes insufficient, it is of the right kind.

Spain, the EC, and Morocco are quite satisfactorily dealing with the European need to maintain access for its fleets to Moroccan and Western Saharan fishing grounds and with Morocco’s interests in obtaining the maximum benefits for it. Relationships between Spain and the EC institutions are sophisticated and EC-Moroccan negotiations proceed on fair terms, where both parties have bargaining power. The day-to-day follow-up of the fishing agreement is done effectively through the EC-Morocco Joint Committee. The only shortcoming relates to the lack of adequate transparency regarding fisheries negotiations and some aspects of national and Community fisheries policy. How confidential should diplomatic negotiations be? Should secrecy be directly proportional to the sensitivity of the issues being discussed? In any event, while researchers missed having more information available, Spanish fishers did not. The actors who clearly need more information to press their concerns -- on all matters, not only regarding the agreements -- are the artisanal and small-scale Moroccan fishers.

Small-scale Spanish fishers are rather well represented, although they lack the clout of the large industry. Their relationship with the administration presents an interesting case where there are no “formal” procedures to communicate with government or to participate in decision-making, but where, in practice, there is good communication and acceptable input in significant policy decisions. Fishers’ representatives are experienced, and the organizations are efficient and open regarding facilitating information. Professionals are satisfied with the activities their organizations carry out to defend their interests, and with their influence on Spanish authorities. They think that they are the best suited to represent the interests of the fishing community and would not accept any external mediator to intervene in an attempt to defend their interests. The only clear complaint from some of the organizations directly affected by the EC-Morocco negotiations is that they would like to participate in the Agreement’s Joint Committee. It is likely that if the *Cofradías* would want to push this issue they could be successful in the end. They do not need any additional assistance to pursue this goal.

The issue of the Western Sahara is dealt with appropriately at the UN level. It should be supported, however, by campaigns to raise awareness on the Saharawi plight for self-determination and to place pressure on decision-makers, particularly in Morocco, Spain and the EU, in our Case.

The two most prejudiced interests in the Case are the needs of the artisanal fishing communities of Morocco and the environmental concerns. Moroccan small-scale fishers suffer from a wide-range of problems linked to underdevelopment, which can be solved mainly by having them receive some of the benefits of national economic development. Some initiatives, such as the construction of port facilities or fish processing industries in Morocco could help to improve the situation in some areas, but more will have to be done. One of the most helpful solutions for these communities is capacity building. Fishers need to be aware of their rights, their prospects for development, the terms of the agreements with the EC and, above all, how to organize and voice their claims. They also need to be prepared to understand the need to fish sustainably and, at the same time, to be competitive. To this end, adequate information is of the essence. There are examples in other, less developed West African countries of local fishing communities setting up influential organizations at the national level and also in relations with international actors such as the EC. However, to facilitate such processes, it is necessary for a State to offer democratic and fair institutions and mechanisms. This relates to both granting effective civil rights and to fighting corruption and the unequal distribution of wealth.

With regard to the environment, our study shows that there is a wide range of measures in place which could ensure a more sustainable exploitation of marine living resources. However, the main difficulty still remains not with the design but with the implementation of mechanisms, particularly, with the criteria used to determine the specific environmental objectives to which the mechanisms will have to respond. For example, EC and Morocco’s TACs, minimum size of captures or fishing gear are determined under criteria which are strongly politicized and sometimes disregard scientific recommendations. In turn, given the problem of scientific uncertainty and the inadequate level of resources allocated to research, scientific recommendations may sometimes lead to negative environmental consequences.

Regardless of these considerations, which basically describe a situation in which decision-

makers choose not to give equal value to ecological and to socio-economic factors, our study indicates that, while it is necessary that there be a broad spectrum of mechanisms, it is crucial that effective local and regional institutions be in place. There are already *ad hoc* and regional regimes established for our Case area, some of which are quite effective, such as the EC-Morocco agreements which have extensive monitoring and enforcement measures. However, at the regional level, the CECAF is not providing adequate support. Experts agree that no other body should take its place, but it should become more powerful and effective. To become so, however, an injection of financial resources is necessary.

Finally, there is also a role for scientists and environmental activists in monitoring the activities of the various international and domestic bodies responsible for protecting the marine environment and exploiting its resources sustainably. While there are a number of “watchdogs” at the international level and, to some extent, also in Spain and in Brussels, there are no such active environmental organizations in Morocco. In addition, more attention from the environmental and scientific community could be drawn to the East Central Atlantic, where the fishing industry is developing rapidly.

We have observed that actors in the Case have a good number of mechanisms in place to address their multiple concerns, from using diplomatic negotiations extensively to entering into international agreements and setting up permanent international bodies for decision-making and control, from creating non-governmental organizations and enjoying direct dialogue with public administration, to using direct actions and protests. We have seen too that most parties enjoy access to jurisdictional redress, as well as to subsidies and economic compensation for losses incurred as a result, not only of government decisions, but also of an economic crisis of greater proportions. However, we have also identified some areas where institutional and procedural mechanisms for preventing or resolving problems are inadequate or unavailable. The main gaps are:

- the need for capacity building for fishing communities and for environmental organizations in Morocco;
- the need to raise awareness on some issues such as the self-determination process in the Western Sahara, the precarious state of some local fishing communities in Morocco, or the exploitation of the marine living resources in the East Central Atlantic; and
- the need to develop an effective regional mechanism to ensure the conservation and sustainable exploitation of marine living resources in the East Central Atlantic.

2. THE ROLE FOR AN OMBUDSPERSON

Who would be capable of addressing such needs? How would a new institution, such as an ombudsperson, go about providing effective solutions?

2.1 Capacity Building

The rights of small-scale fisherfolk are likely to be overlooked or even openly violated unless fishers themselves fight for their protection. The role of an international body such as an ombudsperson would not be to assume the role of spokesperson for these communities, but to provide fishing communities with tools to develop their own political organization. Such a capacity-

building function could include facilitating networking among communities, supporting trade unions, providing information on fundraising, promoting exchanges for training and other activities between fishing communities in different countries, and facilitating their access to relevant international fora where they could voice their concerns (such as the International Labour Organization). The same function could be performed with regard to the incipient Moroccan environmental movement.

2.2 Awareness Raising

While it is essential that the most concerned actors be capable of defending their interests effectively, external support to their efforts is most necessary. In the case of the Saharawi people, greater pressure from the international community would most likely accelerate their journey towards self-determination. In the case of artisanal fishing communities in Morocco, raising awareness nationally and internationally of their needs would be an effective complement to the fishers' own efforts to become better organized. Where there is a democratic deficit, where civil rights may not always be effectively exercised, support from third parties is essential. Circulating information is key when seeking support from others; establishing networks to this end may be one of the pillars of any effective conflict prevention and conflict resolution mechanism.

2.3 Regional Environmental Management

When there is a strong social component, as in this Case, there is a risk that the state of the marine environment may be overlooked in the intent to satisfy the interests of the different parties involved. In our Case, an ombudsperson should ensure that the sustainable management of marine ecosystems is considered a priority; in all cases, such an institution should be particularly sensitive to environmental concerns, as they may not be adequately represented unless linked to the interests of a specific human group.

In order to protect the marine living resources in Morocco and in the Western Sahara, some adaptative management system should be established, based on regular assessments of the biological state of the resources and on a precautionary approach. But would an ombudsperson be the one responsible for setting such a system in place? International law -- but also fishers, scientists and decision-makers -- argue that fisheries management be carried out at a level closest to where the resources and their users are found. A regional approach -- which takes into account migratory patterns, etc. -- is the best avenue to manage marine species sustainably; moreover, such management requires a high level of expertise (and also sufficient financial resources) for it to be effective.

No single, new international body could provide adequate assistance in this regard; the only meaningful -- and much needed -- form of support would come through strengthening the regional bodies, making them more open to all non-governmental sectors concerned -- so they may watch over government's decision-making criteria (and eventually *participate* in the adoption of the decisions), and raising awareness and building capacity.

Thus, how would an ombudsperson carry out such awareness-raising and capacity-building? Because of both the diversity and the complexity of the tasks that need to be undertaken to address

any given problem, and the necessary authority that such an institution should have in performing its tasks, it seems unlikely that a single institution would be able to fulfil such role. Moreover, in our Case, having the ombudsperson perform mediator functions either was perceived to be unnecessary or was plainly undesired. As was suggested also by some of our interviewees, the ombudsperson function would make more sense as a facilitator, which would offer a forum for weaker actors to voice their concerns, would channel claims or questions to appropriate bodies, and would bring together different organizations (including grassroots, environmental, human rights and development NGOs, trade unions, etc.) to address the needs identified. Having such network, working perhaps as a “clearinghouse”, would not only resolve the need to provide many highly specialized skills, but would also help to overturn the current tendency in international fora to bypass or even exclude NGOs in the measure that their positions are uncomfortable to governments.

Two key questions, however, remain: 1) How may a *new* network operate differently and provide better assistance than the hundreds of networks which are already in place? 2) How can the essential need for financial support for any such new institution or network be resolved, when the lack thereof is precisely why valuable existing institutions have been rendered ineffective? The ability to answer these questions will determine whether the idea of an international ombudsperson can move from concept to reality.

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APPENDICES

Appendix 1

Evolution of fisheries relations between Spain and Morocco

Artisanal Canarian fisheries close to Africa date from the 15th century, time when some of these islands were conquered. It is also likely that local fisheries in Andalusia would have reached the North of Morocco centuries ago. However, more intensive industrial fishing activity did not arrive until the First World War, when Spain took advantage of the war and post-war periods to increase its markets in Europe.

But the capitalist growth of the fisheries sector in Spain really began in 1961, encouraged by the "Law on the Protection and Renovation of the Fishing Fleet." It promoted shipyard activity and provided economic incentives which made ownership of fishing vessels a highly profitable business which attracted high investments.

The waters around the Iberian Peninsula had insufficient resources to support such a large and rapidly-expanding fleet. For that reason, vessels were built specifically for distant waters. At no stage during this fleet build-up were the long-term biological or socio-economic implications taken into account.

Even before the international tide of unilateral declarations of exclusive fishing zones in the mid 1970s -- which led to the establishment of the Exclusive Economic Zone (EEZ) regime in the United Nations Convention on the Law of the Sea (UNCLOS) in 1982 -- Spain had negotiated with Morocco a first agreement on access of its fishing fleet to the latter's resources. The failure of the Fez Agreement (signed in 1969 and denounced in 1972) was somehow premonitory of the difficulties regarding access of the Spanish fleet to Morocco's fishing resources. Such difficulties were to increase after the "Green March", when Morocco invaded Western Sahara forcing the withdrawal of Spain from a territory which had been under different forms of Spanish dominance since the Berlin Conference in 1885. Even if the Moroccan intervention was against international law -- the International Court of Justice did not acknowledge any traditional right of Morocco over the Saharan territory -- and in spite of the conflict being still unresolved, Spain and the European Community have since acknowledged Morocco's jurisdiction over the marine living resources of Western Sahara and thus negotiated with that Kingdom the access to those fishing grounds.

It was not until 1977 that a second agreement was reached between the two neighboring countries. From today's perspective, its most relevant characteristic is that it included the "Morrocanization" of nearly 50% of some segments of the Spanish fleet through its transfer to Morocco-based joint ventures.^{xliiii} Although the 1977 agreement never entered into force (since the Moroccan Parliament never ratified it), it introduced the idea of the creation of joint ventures. This was to be one of the main strategies of Spain to face the sudden interruption of its access to the many of the fishing grounds it exploited -- and quite often overexploited -- in three Oceans. Not always successfully, though: according to ANACEF, of the 34 vessels they had transferred to Morocco since 1979, only one remained active in 1994.

Other agreements were signed between Spain and Morocco in the following years: two

Protocols to the first agreement in 1979 and 1981, which established temporary access to fisheries in exchange for financial compensation and training to Morocco. The 1983 agreement reduced further the fishing possibilities for Spain and set up a Joint Committee to deal with any matter related to the enforcement of the agreement.

When Spain entered the European Economic Community (EEC) in 1986, the Community took charge of negotiations regarding access by the Spanish fishing fleet to waters beyond its territory, within the framework of the Common Fisheries Policy (CFP). Agreements between Morocco and the EEC, and later the EC (after the 1992 Maastricht Treaty) continued in the following years. The first agreement covered the period 1988-1992, and the second was in force between 1992 and 1995.

The history of fishing agreements with Morocco has resulted in a progressive decrease of Spanish fisheries in the area. This constant decrease of fishing opportunities in Moroccan waters has been an increasing source of tension among the different fleets. High noon was reached, however, in May 1995, when Morocco unilaterally denounced the existing agreement one year before it was due to expire. As a result, 750 vessels from the EC (mostly Spanish) were left inactive. Spanish fishermen organized demonstrations in all affected regions, and called for a boycott of Moroccan exports to Europe. They even acted violently on some occasions.

The conclusion of a new treaty was conditioned to reaching agreement on the agricultural chapter of the Association agreement between the EC and Morocco which was being negotiated at the time. Finally, the agreement on cooperation in the sea fisheries sector was signed in November 1995, and activity began again in December. This agreement is currently in force until November 1999.

Appendix 2

The European Community and its Institutions

The European Community

The European Community is an international integration organization which, together with the European Coal and Steel Community and the European Atomic Energy Community, is part of the European Union established in 1992. The European Community, formerly called European Economic Community, was created by the Treaty of Rome in 1957 (TEC), and its constitutive treaty has been successively amended by other treaties, most notably by the Treaty of the European Union of 1992 ("TEU" or "Maastricht Treaty") and the Treaty of Amsterdam of 1997.

As established in Art. 2 of the TEC, the objectives of the EC are to contribute, through the establishment of a common market and an economic and monetary union and the exercise of the EC's common policies or actions to a harmonious and balanced development of economic activity in the Community, to a sustainable and non-inflationary development respectful of the environment, to a high level of employment, to an increase in the quality of living, and to the solidarity among States members, among others. According to Art. 38 TEC, fisheries are regarded as part of the "agricultural products" produced and traded in the common market.

The European Institutions

The European Communities present a comprehensive institutional structure with bodies competent to exercise legislative, executive and jurisdictional functions. All European institutions are involved, at different levels, in the regulation of the European fisheries policy and of the fisheries agreements with non-Community countries.

The Council

The Council of the EC is an intergovernmental body where the interests of Member States are directly represented. It is often referred to also as the Council of Ministers, as it is integrated by each Member State's Minister of Foreign Affairs, or by the 15 States' ministers with competence to discuss a sectoral issue, such as fisheries. The presidency of the Council rotates every six months among all Member States.

The Council takes the final decision on most EC legislation, holds the initiative to open negotiations and to conclude agreements with foreign countries and ratifies treaties. In EC matters, the Council represents the Community before international organizations. It has also shared competences with the European Parliament with regard to the approval of the Community budget.

The Commission

The European Commission is the institution that represents the common interest of the Community. Its commissioners are appointed by the Governments of Member States, but do not act

in representation of the States of their nationality. The main functions of the Commission are to oversee compliance with EC law by other EC institutions and by Member States (control), formulate proposals for new EC policies and legal measures (legislative initiative), and implement EC law (executive power). The Commission is also responsible for negotiating international agreements with third States, after being duly authorized by the EC Council.

The Commission provides the administrative machinery to the EC, which is organized around twenty Directorates General based in Brussels, with a total staff of over 10,000. Directorates General range from External Relations (DG I), or Financial Control (DG XX), to Environment (DG XI) and Agriculture and Fisheries (DG XIV).

The European Parliament

The European Parliament (EP) is intended to represent the peoples of the Member States and strives to add to the democratization of the EC regime. The EP is integrated by representatives directly elected by EC nationals. Each State has allocated a certain number of parliamentarians, who are grouped according to their political affiliation, not their country of origin.

The EP has gradually obtained larger competences, particularly for legislative and political control of the Council and the Commission, and regarding the approval of the EC budget. The EP has gained also a more important role in agreements between the EC and third countries or international organizations: the EP is regularly informed about the course of diplomatic negotiations, and needs to be consulted before the conclusion of most agreements, although its opinion is not binding upon the Council. Since the Maastricht Treaty, the EP can veto the conclusion of agreements such as those signed with Morocco, as they are not regarded as simple “commercial” treaties, but “cooperation” agreements.^{xliv}

The European Court of Justice

The Court of Justice of the European Communities (ECJ) is an independent jurisdictional body in charge of ensuring that EC law is enforced by the Community institutions and by Member States, and that the rights of individuals are protected from infringements. The ECJ plays an important role in the development of community law through its interpretative functions.

All EC nationals may institute proceedings before the Court against a decision addressed to that person or against a decision which, although in the form of another legal act, is of direct and individual concern to the former (Art. 173). Individuals and private entities may also present their claims to the Court of First Instance, which assists the ECJ (Art. 168A).

National courts have a key function in the enforcement of EC law. They are entitled -- and obliged when there is no further appeal in national courts -- to request preliminary rulings to the ECJ to clarify the interpretation of EC law or assess the validity of acts of the Community institutions (Art. 177).

Court of Auditors

The Maastricht Treaty has promoted this body, which does not operate as a jurisdictional

body but more as a control commission, to become an EC institution. It is in charge of examining the revenue and expenditure accounts of the Communities. It assesses not only the legality of the accounts, but also guarantees their "good financial management" (Arts. 188A-188C TEC).

The Ombudsman

Since 1992, the European Communities have had an ombudsman to monitor the activities of all Community institutions and bodies, except the ECJ and the Court of First Instance. The ombudsperson can receive claims from all citizens *and residents* in the EU -- directly or through a member of the EP, but he or she can also initiate his/her own investigations. The Communities Ombudsperson is appointed by the EP, and submits his/her annual report also to the Parliament. It is, however, a completely independent body, which does not receive any instructions from any Community body (Art. 138E TEC).

The ombudsperson and his/her staff can carry out all appropriate investigations, informing both the petitioner(s) and the concerned authorities about the action being taken. Officers from EC bodies and representatives from Member States are obliged to provide all information necessary to clarify the potentially wrong action by the administrative authorities. Procedures initiated by the Ombudsperson are confidential, and documents from Member States need to be provided with such States' authorization. If the Ombudsperson were not to receive adequate assistance in her/his investigations, she/he shall inform the EP. In addition to submitting an annual report, the Ombudsperson can make all recommendations he/she deems appropriate, after having submitted his/her draft recommendations to the concerned body, and the latter having submitted a report in reply.^{xlv}

Appendix 3

The Spanish Fleets

Small-scale fleets

- The Canary islands artisanal fleet. With its origins in the 15th century, this is the most ancient of the Spanish fisheries in the area, and has traditionally targeted sparids, serranids and meagres. In 1995, the fleet was made up of 62 vessels, with an average capacity of 57 GRT. However, the last agreement between the EU and Morocco allows only for 46 of such vessels to operate. Each vessel may employ around 10-12 people. These vessels are based mainly in Arrecife and Puerto del Rosario in Lanzarote, Santa Cruz in Tenerife and Puerto de la Luz in Gran Canaria. Current agreements limit the activity of this fleet to the South of Cape Noun and to the use of lines and traps. The fleet targets a wide spectrum of species including sparids and crustaceans such as lobsters. Since the Canary Island's fishing grounds are of limited potential (due to their biological isolation and the absolute lack of a continental shelf), this fleet does not have any alternative fishing ground.

- The purse seiner fleet. Based in Andalucia, mainly in Barbate, operates in the North of Cape Noun and in the Mediterranean Sea. After the collapse of the anchovy fishery of the Alborán Sea in the mid-eighties, its main target species are pilchard (70%), anchovy and mackerel. In 1995, this fleet was made up of 36 vessels, with an average capacity of 58 GRT, and total employment in the fleet was approximately 680 people. The agreement now in force, however, allows for the activity of only 26 of these vessels.

- The longliner fleets. The main fleet is based in Santa Eugenia de Ribeira and La Guardia, in Galicia; others are placed in Tarifa and Algeciras, in Andalucia. Altogether, in 1995 there were 172 of these vessels active in Moroccan fishing grounds, with an average capacity of 60 GRT. The current EU-Morocco agreement in force will allow 140 of these vessels to fish in 1998. Although these fleets are referred to as "longliners" under the agreements, in fact they also use other gears such as trammel nets. Its main targets are European hake (*Merluccius merluccius*) and Senegalese or Black hake (*Merluccius senegalensis*), which account for up to 90% of their catches. Other fisheries are couch sea bream, black-spotted sea bream, and sword fish. Under the current fishing agreement, their activity is limited to the North of Cape Noun.

- Tuna fishing vessels. The Canary Islands (Lanzarote and Tenerife) and Algeciras (Andalucia) are the base of tuna fleets using trollers, lines and life-bait that summed 28 fishing vessels in 1995. The new agreement allows for 27 vessels.

Medium-scale fleets:

- The *Sardinales*. This quite large purse seiners fleet, with an average capacity of 409 GRT, and based in Arrecife, in Lanzarote, comprised 11 vessels in 1996. The fleet targets pilchard in the waters of Western Sahara, and supplies local canneries in Arrecife. Its dependence on the access to these fishing grounds, the world's richest in pilchard, is absolute. This fleet might increase in the future, as the current agreement allows for 26 vessels in this fishery from the 1st of January 1997 to its end.

- Small trawlers. A fleet of small trawlers, with an average capacity of 82 GRT, specialized in either European and Senegalese hake or in shrimp fisheries until the last

agreement. It can now fish any of these species to the North of Cape Noun. The fleet is based in Santa Pola and Altea (Alacant) and in several harbors of Andalucia. Other target species include Norway lobster.

- Medium-sized trawlers. There are two different fleets of medium-sized trawlers. The first one targets the Senegalese hake resource ("merluza negra") at the South of Cape Noun, and is based in Cádiz and Huelva. In 1995, the fleet was made up of 25 vessels with an average capacity of 238 GRT. The new agreement allows for 11 of these vessels, which must be included in an official census.

The second of these fleets is based mainly in Campello (Alacant) and Cádiz (Andalucía) and targets cephalopods to the South of Cape Noun. This fleet shares the resource with the freezing trawlers fleet that will be discussed below.

Large-scale fleets:

- The only European freezer-trawler fleet that works under agreement with Morocco targets cephalopods (mainly octopus, but also squid and cuttlefish) in the waters of the Western Sahara (104 vessels in 1997) and in the rest of the Saharan bank (other 30 vessels). Most of this fleet is based in the port of Las Palmas de Gran Canaria, and is organized under the umbrella of the lobby group ANACEF (Asociación Nacional de Arrastreros de Cefalópodos). The remainder is based in Cádiz.

Altogether, in 1995 there were 151 trawlers and freezer trawlers fishing for cephalopods in the Saharian Bank. However, according to the current agreement, there will be 86 of these vessels allowed in 1999.

Appendix 4

Table. Financial Compensation and Financial Contributions

<i>'88 Agreement</i>	<i>281,5 Million ECU</i>
<i>Financial Compensation</i>	272
<i>Scientific and Technological Programs</i>	6
<i>Complement for Educational Grants</i>	3.5
<hr/>	
<i>'92 Agreement</i>	<i>408,4 Million ECU</i>
<i>Financial Compensation</i>	360
<i>Special Programs and Activities</i>	30.4
<i>Scientific and Technological Programs</i>	7
<i>Vessels Repairment and Training</i>	2
<i>Educational Grants</i>	7
<i>Marine Training</i>	2
<hr/>	
<i>'95 Agreement</i>	<i>500 Million ECU</i>
<i>Financial Compensation</i>	355
<i>Financial Contribution for Sustainable Management of Morocco Fisheries Sector</i>	121
<i>Scientific Research</i>	16
<i>Training Schemes</i>	7.6
<i>Seminars</i>	0.4

Appendix 5

List of contacts. (Persons who have been interviewed or have responded to questionnaires)

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ⁱⁱⁱ See Regulation 170/83, 25 January 1983, OJ 27.1.83, L 24/1 (establishing a Community regime for the conservation and management of fisheries); Regulation 171/83, 25 January 1983, OJ 1983, L 24/14 (establishing certain technical conservation measures).

^{iv} Pampillón Olmedo, Rafael, *above*, 20-22.

^v Questionnaire to Cofradía de Pescadores del Puerto de Santa María (Andalusia), December 1997. See Appendix 5.

^{vi} Interview with Mr. José Manuel Gonzalez Gil de Bernabé, Secretary-General, Federación Nacional de Cofradías de Pescadores, November 1997. See Appendix 5.

^{vii} Interview with Mr. Jesús Cuesta, Fisheries officer, Comisiones Obreras, November 1997. See Appendix 5.

^{viii} There is only one Parliamentary Chamber, where not all members of parliament are democratically elected: a third of the Chamber is indirectly elected by a restrictive electoral college comprised of members of the local governments and representatives of enterprises and trade unions. Under the 1992 Constitution, the King has executive powers, and, for example, directly appoints the Prime Minister, the Foreign Affairs, Home Affairs, and Justice Ministers. The parliament is dominated by pro-governmental political parties.

^{ix} According to the FAO, Moroccan landings in 1995 reached 846,200 t, with pilchard accounting for 67% (570,914 t). As a whole, the catches of small pelagics (pilchard, horse mackerel, mackerel and anchovy) accounted for 70.6% of total catches. Cephalopods, mainly caught in Saharan waters, came next in importance, with octopus being the top species (57,834 t). Total cephalopods catches (octopus, cuttlefish and squid) amounted to 10% of the volume of the total catch.

^x Official FAO statistics do not substantially differ from those mentioned above: 2,986 decked vessels in 1992 (820 trawlers, 395 purse seiners and 1036 longliners). The same source indicates that, in 1985, there were 8,076 undecked vessels, 7,330 of which did not have a motor.

^{xi} Currently, the Moroccan artisanal fleet operates less than 6 miles off the coast, the inshore fleet less than 10, and both the offshore Moroccan and the foreign fleets fish between 12 and 200 miles from the coast. Besides these, several sources mention an artisanal fleet that operates in very precarious conditions and targets cephalopods, mainly octopus. The size of this fleet, which is known as *pateras*, seems to be between 3,000 and 12,000 boats.

^{xii} Seventy out of the 285 Moroccan cephalopod fishing vessels are of Chinese origin. In 1995, Morocco renewed its fishing agreements with Russia and Japan. The agreement with Russia allows this country to keep in the area four industrial purse seiners targeting mackerel and horse mackerel, which “land” their catches in the giant factory vessel *Vostok*, 225 m long. Currently Russia intends to have Morocco allowing the entry of up to 12 giant, 100 m long trawlers, to the fishing grounds it controls. Also, Polish companies recently have obtained licenses to fish in those waters.

^{xiii} Interview with Mr. Cuesta. See above.

^{xiv} It is intending to catch between 1.5 and 2.5 million t, when in 1995 it landed 852,000 t; and increasing national consumption to 17.5 kg per person and year, when in 1995 per-capita consumption was only of 7.5 kg per person and year, a consumption level much lower than that of many African countries of the region.

^{xv} With regard to the EC-Morocco commercial relations, the African country can use the halt in European fisheries as a negotiating tool in its attempts to reach a favorable Association Agreement with the EC, as it did in 1995. The last agreement favored Moroccan agriculture and canneries, including an increase in the contingents and a decrease in entry prices into the EC for agricultural products, and a progressive decrease in tariffs on pilchard conserves, which would reach total liberalization in 1999. Diplomats and government representatives involved in fisheries negotiations acknowledge that renewal of the Fisheries Agreement in 1999 is closely tied to the exportation of Moroccan tomatoes to the EC. Morocco’s menaces to not renew the Fisheries Agreement are interpreted as pressures on the EC at a moment in which its authorities are negotiating an association agreement with Egypt, a large tomato producer and Morocco’s possible competitor in the European market.

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^{xviii} The shipowner must include in the application a certified copy of the tonnage certificate expressed in GRT (gross registered tonnage) and a certified color photograph showing a side view of the vessel in its current state.

Under the last agreement it is required to notify any change in GRT or in the structure or external appearance of the vessel.

^{xix} Under the current agreement this obligation comprises: one seaman-fisherman on vessels between 50 and 80 GRT; two on vessels between 80 and 100 GRT; three on vessels between 100 and 130 GRT; four on vessels between 130 and 150 GRT; five on vessels between 150 and 180 GRT; six on vessels of 250 GRT or more.

^{xx} Fishing vessels of all categories may land their catches at a Moroccan port. The shipowners must notify their intention of landing catches when applying for quarterly licences. The number of Community fishing vessels classed as cephalopod vessels required to land their catches in a Moroccan port is 12 for the second year of the agreement, 15 for the third year, and 25 for the fourth year.

^{xxi} Community vessels landing catches in a Moroccan port are exempted from all taxes or charges having equivalent effect other than port charges and costs which are applied to Moroccan vessels on the same conditions. Fisheries products qualify for economic customs procedures in accordance with the relevant Moroccan legislation and are therefore exempted from all custom duties or charges having equivalent effect on entry into a Moroccan port or on export, and shall be regarded as goods in "temporary transit".

^{xxii} The shipowners submit a copy of the logbook to the national competent authorities which forward the copies to the EC Delegation, which is responsible for submitting them to the Morocco Ministry before the end of the third month of each quarter. Under the 1988 agreement it was for vessels of 100 GRT or more. The masters of vessels holding licences for the fishing of highly migratory species must keep a logbook conforming to the International Commission for the Conservation of Atlantic Tuna model.

^{xxiii} Once a year and after any alteration in tonnage or fishing gear, any vessel authorized to fish must, at the request of the Moroccan authorities, undergo a technical inspection in one of the ports selected by the shipowner.

^{xxiv} Captains of Community vessels, except those of less than 50 GRT must notify their entry into and exit from Morocco's fishing zone, and the amount of catch held on board at that time, to the radio station of the Ministry.

^{xxv} Its objectives are to attend the controls, including landing controls, and inspections carried out by the national inspection authorities in order to ensure compliance with the provisions of the agreement. This program is being implemented in the ports of Las Palmas and Agadir.

^{xxvi} The Contracting Parties agreed to implement a private satellite-tracking project for Community vessels while the implementation of a national satellite-monitoring system for fishing vessels operating in Morocco's zone is pending. The Joint Committee decided to set up a working group to design this system.

^{xxvii} Parties meet alternatively in Morocco and in the Community, and can meet extraordinarily at the request of either of the Contracting Parties. The EC Member States are invited to the Joint Committee meetings. Spain always sends officials to attend the meetings.

^{xxviii} The Joint Committee decided in its meetings celebrated on December 12 and 13, 1996 and on January 6 to 9 to extend the biological rest for cephalopods and black hake provided in the agreement for September and October, to March and April. This information is mentioned in a Spanish Ministerial Order of March 20, 1997 which calls for financial aid to vessels affected by the biological rest extension (BOE N 72, 25.03.97).

^{xxix} See Council Regulation 2080/93, 20 July 1993, laying down provisions for implementing Regulation 2052/88 as regards the financial instrument of fisheries guidance, OJ L 193/1. See also Commission Regulation 1796/95, 25 July 1995, laying down detailed rules for the implementation of assistance granted by the FIFG for schemes defined by Regulation 3699/93, OJ L 174/11.

^{xxx} For the period 1994-99, Spain has received the largest single allocation of structural funds (2,786.10 million ecu), followed by Germany (2,241.70 million ecu), *Commission 1996 I*, p. 25. Similarly, with regard to the PESCA initiative, Spain also receives the largest portion of assistance (45.60 million ecu for 1994-99), followed by the UK and Italy.

^{xxxi} See Council Regulations 2141/70, 20 October 1970, OJ 1970 L 236/5; 101/76, 19 January 1976, OJ 1976 L 20/19. See also Regulations 2908/83 and 2909/83 on the restructuring and development of fisheries and aquaculture, and Directive 83/515.

^{xxxii} The EC has provided additional funds to cover some unattended constituencies, such as fishing crews affected by fleet restructuring measures. See Regulation 2719/95, 25 November 1995.

^{xxxiii} "The needs of coastal fishing communities," "the special requirements of developing States," or "fishing patterns" and "the interdependence of stocks" (Art. 61).

^{xxxiv} UNCLOS, Articles 117-119.

^{xxxv} UNCLOS, Articles 63, 64, 66, 67.

^{xxxvi} Art. 6.

^{xxxvii} On the implementation of the Major Programme on Fisheries, a Medium-Term Plan and the general Program of

Work and Budget, see, e.g., Committee on Fisheries, Twenty-second Session, 17-20 March 1997, Doc. COFI/97/6, reproduced in <http://www.fao.org/unfao/bodies/cofi/cofi22/w3953e.htm>.

^{xxxviii} For example, the FAO has assisted Morocco to review its fisheries policy, and has provided specific assistance to representatives of the Moroccan fishing industry on the handling of small pelagic species in chilled or refrigerated sea water on an industrial scale through a study tour in Denmark. See Programme 2.3: Review of Programme 1994-96, Medium-Term Plan 1998-2003 and Programme of Work and Budget 1998-99, COFI/97/6, paras. 21, 28.

^{xxxix} 673 UNTS 63; 6 ILM 293.

^{xl} See FAO Council Resolution 1/48, 12-23 June 1967 promulgating the Statutes of the CECAF. Rules of Procedure were adopted in March 1969 by the CECAF and confirmed by the FAO in 1975.

^{xli} The purpose of the Committee is to review the state of resources; collect and disseminate scientific information and data; coordinate training activities; assist Members in formulating programmes to achieve objectives; cooperate with other institutions; develop fishing industry, among others. See *Directory of FAO Statutory Bodies and Panels of Experts*, August 1996.

^{xlii} For example, at the December 1995 CECAF session the parties agreed to carry out research on fishing effort in the region, establishing a working group to assess vessels' length under the Compliance Agreement. See *La Agricultura y la Pesca Españolas*, Ministerio de Agricultura, Pesca y Alimentación, 1995.

^{xliii} Up to 40% of the *sardinal* fleet and 50% for the trawlers targeting cephalopods.

^{xliv} The EP can veto the conclusion of association agreements since 1986, and, since 1993, date of entry into force of the TEU, of cooperation agreements which set up a specific institutional framework, and agreements which have important budgetary implications (Arts. 228, 238 TEC). Instead, the EP is not required to become involved in the conclusion of commercial agreements based on Art. 113, which are the most frequent agreements.

^{xlv} See Decision of the European Parliament of 9 March 1994 on the Statute of the Ombudsman and on the General conditions, OJEC L 113, 4 May 1994.