Western Sahara: the EU Should Reconsider Its Fisheries Agreement with Morocco

In his latest report on the situation concerning Western Sahara, dated 10 April 2014, the Secretary-General of the United Nations observes that, in the light of the presence of Western Sahara on the list of Non-Self-Governing Territories since 1963, the efforts of the United Nations, through the work of his Personal Envoy, his Special Representative and the United Nations Mission for the Referendum in Western Sahara (MINURSO), will remain highly relevant until its final status is established. If no progress occurs before April 2015, the Secretary-General believes that the time will have come to engage the members of the Council in a comprehensive review of the framework that it provided for the negotiating process in April 2007.

Against this background the Security Council must now address the question of providing for the self-determination of the people of Western Sahara. In an article entitled "The Responsibility of the UN Security Council in the Case of Western Sahara", published in the Winter 2015 Issue of the *International Judicial Monitor*, I have discussed some of the issues that the Council must consider in that context.

One specific issue is the question of the natural resources of Western Sahara, among them the fisheries. A very serious matter here is the fisheries agreement between the EU and Morocco which also applies to Western Sahara. This agreement does not contain one word – apart from a cryptic "sovereignty or jurisdiction" in Article 2 (a) – about the fact that Morocco's 'jurisdiction' in the waters of Western Sahara is limited by the international rules on self-determination. Instead the agreement and its protocols are replete with references to the "Moroccan fishing zones".

To be legal, an agreement of this nature would have to contain an explicit reference to the fishing zone off the coast of Western Sahara, defined by coordinates. The regime for issuing fishing licences within this zone would have to be completely separate from the regime that applies in the Moroccan fishing zone. Furthermore, the revenues generated by the licences in the zone of Western Sahara would have to be delivered not to Morocco's public treasury or equivalent but to a separate account that can be audited independently by representatives of the people of Western Sahara so that they can ascertain that the revenues are used solely in accordance with the needs and interests of their people.

Against this background, I have suggested that the Council should examine the legality of the EU-Morocco fisheries agreement. The appropriate way to receive an authoritative answer to this question is for the Council to request the International Court of Justice to give an advisory opinion on the question in accordance with article 96 of the UN Charter. In case the Council is unable to unite behind such action, the General Assembly could take the initiative.

In my view, under the present circumstances, the EU should immediately reconsider its decision to conclude the fisheries agreement with Morocco. An additional reason to do so is the following quote from a speech to the Nation by King Mohammed VI of Morocco on 6 November 2014:

"We say 'No' to the attempt to change the nature of this regional conflict and to present it as a decolonization issue. Morocco is in its Sahara and never was an occupying power or an administrative power. In fact, it exercises its sovereignty over its territory;"

As I have explained in the aforementioned article, the speech of the King is at variance with the Security Council's resolution of 29 April 2014 relating to Western Sahara and the 1975 Western Sahara Advisory Opinion by the International Court of Justice.

It should be self-evident that the EU – of all – must support the United Nations in its efforts to find a solution to the question of Western Sahara in accordance with international law. To assist Morocco in exploiting the natural resources of Western Sahara constitutes an impediment to these efforts.

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