

**Andrew Duff**

MEMBER OF THE EUROPEAN PARLIAMENT

Mr Jerzy Buzek MEP
President of the European Parliament
1047 Brussels

4 March 2011

Dear President, *Dear Jerzy.*

EU-Morocco Fisheries Agreement

The first Protocol to the Fisheries Partnership Agreement expired on 28 February 2011. As we know, there are legal complications which prevent the European Commission from being able to seek a negotiating mandate for its renewal.

The Commission acknowledges that the application of the Agreement extends to the waters off the coast of Western Sahara, where the Exclusive Economic Zone of the Saharawi Arab Democratic Republic applies, and that there are special legal conditions which attach to EU fishing in this zone. So the Commission has sought only a one year temporary extension to allow 'time to conclude negotiations on a revised protocol *with appropriate guarantees*'.

The Commission's mandate for this negotiation was approved by a slim majority in the Council on 21 February. However, several member states are clearly dismayed at the apparent failure of the Commission to provide data on the benefits of the Agreement to Western Sahara, and retain concerns that the EU is not in compliance with international law in renewing the agreement, even on a temporary basis. Nevertheless, a new text was initialled on 25 February, allowing provisional application of the new Protocol from 28 February.

I do not believe on the evidence I have that the new arrangements satisfy the legal concerns that were made by Parliament's Legal Service in their opinion of 13 July 2009. The Legal Service attached due weight to the views the UN Legal Counsel addressed to the Security Council, notably that the people of Western Sahara must be consulted and give their prior consent to the exploitation of the natural resources of their own Non-Self-Governing Territory of Western Sahara.

As we know, such an obligation falls not only on Morocco but also on the EU as the primary beneficiary of the FPA and its Protocol.

Under the terms of Article 218(6) TFEU the new agreement needs the consent of the European Parliament before it can enter into force. **Because of the undoubted legal uncertainty regarding this agreement, I write to request formally that you as President of the Parliament acting under Rule 128 of our Rules of Procedure initiate proceedings before the Court of Justice under the terms of Article 218(11) to obtain from the Court an opinion as to whether the envisaged agreement is compatible with the Union's Treaty obligations to uphold international law.**

Please let me know if you require any further information at this stage.

with best wishes.

I am sincerely,

Andrew Duff

ANDREW DUFF