

The future of Fisheries Partnership Agreements in the context of the Common Fisheries Policy reform

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Introduction

Almost since their inception, at the end of the 70's, fisheries "cash for access"¹ agreements, and later on, fisheries partnership agreements (FPAs), have attracted criticism. If some attempts have been made to address such criticisms through the Fisheries Partnership Agreements (FPAs), the basis for the agreements have remained the same for the EU: the need to secure long term access to third countries fish resources and to maintain its fleet presence in third countries and international waters, paving the way to the failure of this policy to contribute to sustainable fisheries.

However, it needs to be recognised that FPAs have been a unique experience at the global level, to try and reconcile often conflicting interests. In our view, there is however a need for a fundamental change of the guiding principles and framework for EU fisheries relations with developing countries, which would give priority to good governance, environmental sustainability whilst providing an enabling environment for developing countries' fishing sectors, particularly the small scale fishing communities. In doing so, there needs to be a careful assessment of the past experience to see how to organise concretely, and for the benefit of developing countries fisheries, the transition towards this new, more sustainable model.

FPAs are failing to deliver sustainable fisheries. Why?

There are currently 15 Fisheries Partnership Agreements in force between the EU and developing countries. With notable exceptions, such as Mauritania – the biggest FPA -, they are tuna agreements, and their duration is generally between four and six years. To be noted here is the fact that, compared to the number of past access agreements, the number of FPAs has decreased, and several important partners, such as Senegal or Angola, have declined the EU offer to renew a Fisheries Partnership Agreement. This raises questions: contrary to fisheries access agreements, FPAs are supposed to promote responsible and sustainable fisheries, aims shared by most developing coastal countries. So, why are some of these countries declining the EU offer of working together towards a joint objective?

Part of the answer may be the lack of trust. Despite the EC's best efforts to improve the content of the agreements (introducing exclusivity and social clauses, increasing support to research, MCS, etc), the basis of the Fisheries Partnership Agreements has

¹ Often referred to as 'pay, fish and go' agreements

remained the same as for the former access agreements: trying to secure long term access to third countries fish resources and maintain the European fleet's presence in third countries and international waters. In the implementation of the agreements, this is shown particularly by the fact that the main determining factor of the financial contribution provided by the EU remains the level and conditions of EU fleets access² to developing countries resources , - rather than the developmental needs of the third countries. This linkage between 'access to resources' and 'support to sustainable fisheries' will always be an obstacle to a real partnership³, and to achieving responsible and sustainable fisheries.

Another part of the answer may be an issue of credibility of the EU. The EU is often perceived as '*not doing what it says, and not saying what it does*'. In particular, the fact that the EU has not addressed some crucial issues internally, such as the over-capacity of its own fleets, and yet advocates for sustainable fisheries elsewhere, is often referred to. Efforts have been made in the last years to correct such perceptions, namely through the new regulation on IUU fishing and the Control regulation, which apply to EU fleets and EU nationals. Some efforts have also been made to improve access to information, like making available to the public the protocols of agreements or the proceedings of the Fisheries Agreements' joint committees. But a lot remains to be done to improve EU's credibility on the international scene.

Finally, the fact that Fisheries Partnership Agreements negotiations are still surrounded by secrecy may be one reason why FPAs continue to attract an important dose of criticism from developing countries and EU civil society and fishing sector. Evaluations of FPAs, costs and benefits of FPAs for the EU tax payers, are information that still remains unavailable to the public. The participation of EU and developing countries civil society in the negotiation is nil, and the participation of the developing country fishing sector is cosmetic. This also raises issues about the general lack of transparency afflicting the management of developing country fisheries, particularly the way access to resources is allocated, and the lack of space given to public debate.

How could these issues be addressed through the Common Fisheries Policy reform?

The process of reform of the Common Fisheries Policy (CFP), to be achieved end of 2012, will also address the external dimension of the CFP, including fisheries partnership agreements. There is therefore an opportunity for EU stakeholders, and the European Parliament, to open up a debate and voice their ideas about how our future relations with developing countries should change, in order for the EU to contribute meaningfully to sustainable fisheries.

² *This linkage is a condition imposed by the Court of Auditors, if they are commercial agreements, to ensure "value for money". Re-defining the objective of FPAs would remove this condition.*

³ *A notable exception is the case of the latest EU-Mauritania protocol, where, for the first time, a diminution of EU access to over-exploited resources has been registered, which was not linked to a diminution of the financial contribution.*

The first step should be to ***change the objective of the external dimension of the CFP***, including FPAs: the objective should be to contribute to the establishment of responsible and sustainable fisheries, NOT to secure long term access to third countries fish resources and maintain the European fleet's presence in third countries and international waters.

In practice, such change could manifest itself by replacing *Fisheries Partnership Agreements* by a *Framework for Fisheries Governance*, with the objective of establishing a dialogue on how the EU can contribute to fulfil the third country's priorities for the sustainable development of its fisheries sector, in terms of fisheries management, but also in terms of food security, support for integrated coastal communities development, adding value processing, regional / international trade operations, etc⁴.

Through this dialogue, the EU should promote ***transparency and stakeholders' participation***, recognised as two crucial aspects of responsible and sustainable fisheries by the FAO Code of Conduct for Responsible fisheries. This means also making some crucial information available to the public⁵, to allow an informed stakeholders' participation. It should be noted here that developing countries stakeholders, particularly fishing communities and NGOs, have been demanding full transparency about the way access is allocated to the various users of their countries fish resources, including to foreign fishing fleets such as the EU, China, Korea, etc. The EU should support such demands. It needs also to be acknowledged that the EU has taken some important steps to improve participation of stakeholders through the creation of the Regional Advisory Committees.

Mechanisms should be designed so that necessary ***funding*** can be mobilised in order to achieve objectives jointly decided through this framework, from various EU sources. To that effect, it should be made possible to mobilise various EU sources, including development funds – this supposes a good coordination between the various EU services dealing with third countries fisheries issues (DG Sanco, Europe aid, DG Dev, DG Trade, etc) and also a coordination with EU member States fisheries development programmes in these countries/regions.

Access costs to third countries waters within these governance frameworks should be fully paid by EU boat owners. It should be considered that EU boat owners fishing under such governance frameworks would be supported through the creation, in the third country concerned, of a favourable environment for responsible fishers activities (legal certainty, reinforcement of MCS, research, infrastructures, etc).

Conditionalities for access by EU vessels through these governance frameworks should also be stricter: access for boats of EU origin should be restricted to those operators who can demonstrate that their operations fit with sustainable fisheries

⁴ *The resolution of the first meeting of ACP Ministers in charge of Fisheries, held in Brussels from June 2 -5 2009, provides some indications about what ACP priorities are for the development of their fishing sector*
http://www.acpsec.org/en/fisheries/resolution_fisheries_16-06-09_e.pdf

⁵ *Such as evaluations of agreements, value of catches made by EU operators, subsidies received by operators fishing outside EU waters, etc*

development criteria (use of selective gears, record of compliance by vessels both inside and outside EU waters, number and quality of jobs created, fish destined for human consumption, etc) and where there is no competition (for resources, fishing zones, markets, etc) with the local small scale sector, which should be given priority access in line with the FAO Code of Conduct for Responsible Fisheries.

Positive steps have been taken in the past within FPAs, to make them more in line with sustainable development and these should remain part of the governance agreements. The *clause of exclusivity* should remain, so to ensure that EU-flagged boats fishing in the zone should operate under the FA. Concerning *the social clause*, there should be an evaluation of the implementation of this clause, in order to assess whether the objective of fair treatment for third countries workers on board EU vessels, in lines with ILO recommendations, has been achieved, and, if not, how it could be improved. The possibilities offered by a more systematic use of new information technologies, such as electronic logbooks, should be extended

Good governance in EU relations with developing countries implies a move towards *regionalisation* of our relations. This is particularly important for research and MCS, as well as access to resources. This can be achieved either through regional cooperation (for surveillance, research, laboratories for testing food safety, etc) or through harmonisation (access conditions to resources). Such regionalisation should be achieved through a process of harmonisation of conditions (access, investments, etc) at regional level, with a bilateral implementation (the model that was proposed by ESA for the EPA negotiations).

Vessels of EU origin are also active *in developing countries with which there is no agreement* (or no agreement protocol in force). In such cases, the EU should propose to these countries the signing of a governance agreement, or, if this is not possible, the EU should look at ways by which such vessels and operators from EU origin can be given similar treatment than under governance agreements. To that end, international references, such as the OECD guidelines for investments by multinationals, that promote good governance, transparency, etc could be of interest.

Some specific issues

The case of tuna

Most current FPAs are tuna agreements. These tuna agreements can not be reformed without looking at Regional Fisheries Management organisations (RFMOs) which covers fishing in the high seas, and how the EU intervenes in these.

The main challenge for RFMOs will be to establish a new basis for the equitable allocation of access to diminishing fish (tuna) resources. Increasingly, developing States claim their right to exploit fish stocks under the management responsibility of RFMOs, while many fish stocks are showing signs of overexploitation. The fact is that no new entrants can be accommodated, and overcapacity cannot be solved, without current fishing players, such as the EU, giving up part of their share and down sizing their fleets capacity.

The best way to develop high seas sustainable fisheries would be to set up and implement catch limits, technical measures and criteria for access reflecting environmental and social concerns, and to reserve a share of the catches for coastal developing states, in order to give them the space to develop whilst ensuring the sustainability of the exploitation.

In that sense, we agree with the Long Distance RAC that "it is necessary to find a balance between all the actors involved, and that access to tuna fisheries should be analyzed through a system of transparent and non-discriminatory criteria determining the responsible aspirations of stakeholders such as history of compliance, employment created/working conditions, environmental impact, etc".

Some experiences, particularly in the Pacific (Parties to the Nauru agreement, FFA, WCPFC) show that it is possible for developing countries to develop synergies amongst themselves, and with appropriate technical support, to progressively become active and responsible players in RFMOs. The EU should support such regional dynamics, through the various tools at its disposal (EPAs, FPAs, Development cooperation) as a way to improve the efficiency of RFMOs to develop sustainable fisheries.

The necessary reduction in fishing capacity within RFMOs in many ways reflects the discussion in the Green Paper and the CFP reform. In the Green paper, for instance, the Commission questions the utility of the continued use of relative stability, considering that it can contribute to over-exploitation. If the EU is to be consistent, this is the position that it will be advocating in international and regional fora. That will lead to obvious implications for the reduction of EU fleets in certain fisheries managed by RFMOs.

The need for EU investments in developing countries sustainable fisheries⁶

Developing countries need investments in their fisheries to safeguard the future contribution of their fisheries sector to poverty alleviation and food security. Investment is also needed to improve the management of natural fish stocks (research, training, capacity building, etc) and to enhance fish trade in domestic, regional and global markets.

Lessons should be drawn from the past experience of EU investments, in areas such as investments in fishing capacity (including ***transfer of vessels***, or joint ventures) and onshore processing investments, such as tuna processing facilities.

In the past, investments linked to the transfer of EU fishing capacity have been a failure – they haven't brought to the receiving developing countries expected social and economic benefits⁷ and they rather aggravated the state of over-exploitation of

⁶ See *Trade Negotiations insights, Vol 5, Nr 4, ACP-EU Fisheries relations: Who will pay, who will benefit?*

http://ictsd.net/downloads/tmi/tmi_en_5-4.pdf

⁷ *Etude de Bilan des sociétés mixtes dans le contexte des interventions structurelles dans le domaine de la pêche* <http://ec.europa.eu/fisheries/publications/bilansm.pdf>

resources, increasing also the competition with the local small scale fisheries sector (in West Africa for example). As a rule, support to EU investments in developing countries fisheries should exclude the transfer of fishing capacity,

Another area where there have been important EU investments in developing countries fisheries is *onshore investments for processing facilities*, particularly in the tuna sector. A 2009 briefing⁸ highlights that the rationale behind this was, on the side of the developing country, to create jobs and ‘spin-off’ economic benefits such as investments in port and transport infrastructure and new businesses related to the tuna processing investments.

Using this rationale, several ACP countries have secured onshore processing facilities in their countries, often by promising valuable fishing licenses in exchange. However, there have been some concerns expressed that onshore investments have been secured without fully assessing the net benefits of the projects relative to the stresses that they stand to place on tuna resources and local communities and environments. There is concern that governments are granting fishing licenses based on promised facilities that might never materialise to the extent promised and that plans do not include comprehensive analyses of resource sustainability or the net socio-economic returns that the plants will gather. The briefing also mentions that conflicts between communities and the processing facilities have arisen (disputes over working conditions, land rights and pollution). Such conflicts not only have the potential to negatively impact the long term success of the investments, but also call into question the overall net benefits of onshore investment without ensuring socio-economic ‘returns’.

Economic Partnership Agreements (and interim EPAs) also include provisions on investment that could be used to secure EU investment to improve their fish-landing, hygiene, transport, and processing infrastructures. At the same time there is a need for caution: the promotion of EU investments should not be at the expense of local small and medium scale enterprises, labor standards, quality of life, and the local environment. That’s a reason why all provisions related to fisheries should be under a specific chapter, to ensure coherence between resources conservation, labor conditions, etc and investments criteria.

Therefore, even for investments that, a priori correspond to the needs of developing countries (job creation in particular) there is a need to set up mechanisms to fully assess the net costs and benefits of such projects. This includes:

- developing a methodology for avoiding overcapacity in the fishing and processing sectors,
- developing accountability measures for investors to ensure that facilities deliver promised benefits,
- assessing how such developments will impact local coastal communities,
- developing mechanisms to avoid and mitigate conflicts before they arise and assessing levels of benefits to processing facility workers

⁸ FFA *Fisheries Trade News*, July 2009 http://www.ffa.int/trade_news

Processing fish is not always adding value to it

Fish is highly perishable by nature: as soon as it comes out of the water, it starts losing value. The best strategy to preserve its economic value and its desirability on international markets, particularly if the fish caught is of high quality, will not always be through processing, where even the smallest handling operation represents a risk of spoiling it.

Rather, it is wise to deal with it rapidly whilst maintaining the cold chain as long as possible. The perishable nature of fish has therefore implications for how fishery benefits are generated from international fish trade and how they are distributed to the developing countries society.

Support to Small scale fisheries

Developing countries small scale fishing communities are increasingly recognised for their contribution to the implementation of responsible fisheries:

- their role as providers of protein rich food for the poor is crucial, particularly in the current context of food scarcity;
- the fishing methods used, as well as the small size of fishing units, requires comparatively less fossil energy (fuel) than bigger industrial fishing units;
- Developing countries small scale fishermen tend to use less destructive and unselective fishing gears⁹;
- small scale fishing communities constitutes the social fabric of coastal populations in many developing countries, providing a way of life and livelihoods for thousands of people, men and women.

Developing countries small scale fisheries organisations voiced specific demands concerning the relations with foreign fishing countries such as the EU, particularly in the Civil Society declaration at the occasion of the FAO Conference on small scale fisheries in Bangkok (2008) and in the West African fishing organisations joint position on FPAs (December 2008). Their demands include:

Access to resources, fishing possibilities and duration

- The ex ante/ex post evaluations undertaken by the European Commission should be made publicly available. These evaluations should not only provide information on the state of the fish resources, eco-systems, and their state of exploitation but also on the value of EU fleet catches
- Coastal demersal stocks must be reserved for national fisheries, notably the artisanal fisheries sector.

⁹ See various papers, including: *Small-scale fisheries perspectives on an eco-system based approach to fisheries management*, S. Mathew 2001 <ftp://ftp.fao.org/fi/document/reykjavik/pdf/04Mathew.pdf> and *The Blessing of the Commons: Small scale fisheries, Community property rights and coastal natural assets*, J. Kurien, 2003 http://www.cds.edu/download_files/349.pdf

- A fisheries partnership agreement with the European Union must not allow European boats to access overexploited stocks, in any way whatsoever, including through the transfer of vessels or the establishment of joint enterprises, including through the framework of an Economic Partnership Agreement, through the investments provisions;
- Vessels that can harm the ecosystem through the use of excessive engine power must be prohibited. The use of gears by European boats that are non-selective and that have a detrimental impact on the environment should be prohibited.
- There should be increased support for efficient research, and MCS activities, particularly in the coastal zone. All MCS tools should be explored for cost efficiency, including initiatives such as participative surveillance
- Evaluations should be scheduled during the course of agreements in order to review their terms and to ensure that they comply with the third country fishery development plans.

Financial compensation – Lack of transparency

The financial compensation in future partnership agreements must be invested in sector development activities, in particular: research, surveillance, training, infrastructure, development of artisanal and coastal communities , processing and adding value to fisheries products etc.

The main problem today is lack of transparency. There is a total lack of transparency both in selection of priority areas to be supported by the financial compensation and in the use of the compensation monies. Conditions for total transparency need to be put in place for fishery partnership agreements, both in terms of drawing up plans for the use of the financial compensation and in the way these amounts are subsequently spent. Transparency and provision of information must not only be for the benefit of the professionals but also for informing public opinion.

Landings

- All catches must be landed in developing countries ports;
- In order to improve benefits from the agreement, provisions should be reinforced within the agreement for financing port facilities, post harvest processing and transport facilities;

Forming joint enterprises

The agreement must favour the formation of joint enterprises for processing and value-adding activities. Joint enterprises that could result in overfishing and destruction of our stocks and our marine environment should not be allowed.

Observers on board

Often the observers are not taken on board and their independence vis-à-vis ship-owners is not guaranteed. The partnership agreements must include means for funding training and appropriate remuneration for observers. The agreements could also provide the basis for initiating a discussion on how to ensure that corruption and cronyism between observers and ship-owners is avoided.

For more information

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