Folketingets Europaudvalg

Den
J.nr.: 40
FVM 342

Folketingets Europaudvalg har i skrivelse af 7. februar 2006 udbedt sig besvarelsen af følgende spørgsmål (B 25 - spørgsmål 2):

Spørgsmål 2:
"Vil ministeren venligst kommentere vedlagte brev til EU's fiskerikommissær fra POLISARIO (Frente Popular para la Liberacion de Saguia el Hamra y Rio de Oro) af 18. maj 2005."

Svar:
Henvendelsen er udtryk for det forhold, at Vestsaharas fremtidige tilhørsforhold er uafklaret. Marokko gør krav på området, og POLISARIO kæmper for selvstændighed for Vestsahara.

I forbindelse med 1991-våbenhvilen mellem Marokko og POLISARIO oprettedes FN's Mission til Vestsahara (MINURSO). Missionens primære opgave er at observere våbenhvilen samt forberede en folkeafstemning om områdets fremtid. På grund af uoverensstemmelser mellem konfliktens parter har det ikke været muligt endnu at færdiggøre forberedelsen af folkeafstemningen. Danmark og de øvrige EU-lande støtter FN's bestræbelser på at få afsluttet konflikten.

Under førstebehandlingen af B 25 blev der redegjort nøje for de grundlæggende folkeretlige principper af sagen. Der blev redegjort for Marokkos status som de facto administrerende myndighed i forhold til Vestsahara, der fortsat har status som et ikke-selvstyrende område. Endvidere blev der givet en beskrivelse af principperne om, at en administrerende myndigheds udnyttelse af naturressourcerne i et ikke-selvstyrende område er lovlig, såfremt det sker under hensyntagen til behov, interesser og fordele for det pågældende områdes befolkning. Den vægt, hvormed man fra EU's side har været opmærksom på at sikre, at fiskeriaftalen med Marokko ikke præjudicerer Vestsaharas fremtidige status, og at den er i overensstemmelse med folkeretten, herunder at den kommer lokalbefolkningen til gode, blev understreget.

Kommissær Borg har i et svar til Fødevareministeren den 14. februar 2006 redegjort for aftalens overensstemmelse med ovennævnte folkeretlige principper. Kopi af brevet vedlægges til udvalgets orientering.

JOE BORG
MEMBER OF THE EUROPEAN COMMISSION

Brussels, 14 02 2006
CAB/D(2006) 44

Dear Minister,

Thank you for your letter of 17 January 2006.

The issue of the international status of the Western Sahara has featured on several occasions within the context of the new Fisheries Partnership Agreement to be concluded between the EC and Morocco. This issue has been raised, both during the discussion on the negotiating directives in the Council, as well as during the negotiations themselves.

I can assure you that the Commission was aware of the pertinence and sensitivity of the issue of the Western Sahara while preparing its position for the negotiations of the Fisheries Partnership Agreement with Morocco. In fact my Services thoroughly analysed this issue and held consultations with our legal experts in order to ensure that the agreement with Morocco would be concluded in conformity with international law and as such would not, in any way, prejudice the issue relating to the international status of the Western Sahara. The Commission position with regard to this problem was clear from the very beginning and was explicitly expressed to Member States on several occasions.

The Fisheries Partnership Agreement with Morocco (initialled on 28 July 2005) sets fishing possibilities for Community vessels in the Moroccan fishing zone or, as defined in article 2 of the agreement, "in the waters over which the Kingdom of Morocco has sovereignty or jurisdiction". According to the provisions of the agreement it is up to the Moroccan authorities to define the fishing zones on the basis of which fishing licences will be issued. Community vessels operating in the waters which are geographically in front of the Western Sahara, as was the case under the previous agreements, will be authorised to do so on the basis of the fishing licences issued by the Moroccan authorities.

This principle has been confirmed by the European Court of Justice (ECJ) in the case Oditra AAE (case T-572/93 of 6 July 1995). In this case, which refers to fishing activities of Community vessels in an area in dispute between Guinea-Bissau and Senegal, the ECJ stated the following:

"The Council and the Commission could not have asked for the zone in dispute to be excluded from those agreements without taking a position on matters forming part of the internal affairs of non-member States. If the Community opposed the claims of the States concerning the zones over which they claim to have jurisdiction or opposed the exercise of that jurisdiction when a dispute exists, those non-member countries would very probably refuse to conclude such agreements with the Community. Moreover, if the Community asked for zones

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to which other States lay claim to be excluded, that move would certainly be interpreted as interference by the Community in those disputes. The exclusion of such zones at the Community' s request would also have the effect of weakening the claim of the non-member State in question to have the right to exercise such jurisdiction. The fact that such disputes are submitted to arbitration or are the subject of legal proceedings strengthens that argument, since, where proceedings are pending before the ICJ, it is not appropriate for the Community to take a position on disputes between non-member States."

The Community approach is in conformity with international law and with the opinion of the legal adviser to the UN (of 29 January 2002). According to this legal opinion, although "Morocco ... is not listed as the administering power of the territory in the United Nations list of Non-Self-Governing Territories ..." (pt. 7), specific agreements can be concluded with the Kingdom of Morocco concerning the exploitation of the natural resources of the Western Sahara. Considering that Morocco is the "de facto" administrative authority of the Western Sahara, it is the obligation of the Moroccan side to take all appropriate measures to assure the full application of the Fisheries Partnership Agreement in accordance with the obligations of international law that require the agreement to be applied for the benefit of the local people.

Moreover, the agreement itself provides for certain benefits directed at the local population. With regard to the industrial pelagic fishery, which focuses on stock C, the agreement foresees the obligation to land 25% of captures in local ports. The main purpose of this provision is to contribute to a better supply of pelagic fish to the local processing industry, which in recent years has suffered irregular and short supplies of raw material. Additional economic incentives are foreseen to encourage pelagic vessels to land an even larger part of their catches (more than the obligatory 25% of catches) in local ports. The obligation to land 25 % of catches in local ports will also benefit and make more attractive the use of port services and infrastructures in the south. It will therefore provide for additional earnings and thereby contribute to the development of the southern ports.

The agreement also provides additional support for the development of coastal areas through the following financial measures:

- It earmarks an amount of at least €4.75 million per year for the modernisation and upgrading of the coastal fleet.
- It also specifies that a part of the financial contribution should be used, among others, for the restructuring of small-scale fishing, training and the support of professional organisations.

I hope these clarifications are sufficient to meet your concerns regarding the Fisheries Partnership Agreement with Morocco and the related questions of international law.

Yours sincerely,