International Seminar

ACP/EU Fisheries Relations: towards mutual benefits
CTA/Commonwealth Secretariat

7-9 April 2003

ACP Secretariat, Brussels, Belgium

Fisheries agreements and access rights

With reference to the various situations in West Africa

by
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This article is based on evaluations of international agreements and on earlier papers (Catanzano et al., 1999, Catanzano, 2000 and Catanzano et al., 2001 et 2002). It aims to open avenues of thought and lead to proposals for improving regional, national and European public policies.

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I. INTRODUCTION

Fisheries agreements were born of changes in international law[1] (*See:* Annex 1) and are part of the extended history of international relations between countries of the South and European countries. They underscore the special strategy adopted by European countries in fishery production. Certain producer countries preferred withdrawing from negotiations on the right of access to fishery resources to focus their strategies on access to the landed products, and consolidated their negotiations through bilateral cooperation aimed at both supplying equipment (nets, motors, small equipment, etc.) and offering facilities for research in order to evaluate and keep track of the resources (oceanographic vessels, support programmes for stock evaluation). This strategy clearly illustrates Japan's strategy in Africa (Cape Verde, Guinea-Conakry, Morocco, Mauritania, Senegal, etc.) and allows Japan to secure its supply in products for the domestic market, to export its fishery equipment and to keep an eagle's eye—through scientific cooperation—on the state of the fishery resources available in the major maritime regions, allthewhile avoiding problems of resource access conflict. This strategy is especially interesting to study because it comes after a phase of fighting for direct access to fishery resource (which is no longer the case, except for tuna).

For certain European countries, agreements perpetuate situations that existed before the creation of the EEZ (Exclusive Economic Zone). Both for the EU and for most of the third countries that signed the agreements, this reflects the public authorities' inertia in regulating the fishery sector.

In West Africa, especially in places where fishing has reached alarming levels (mainly for the demersal species), sometimes due to national exploitation, fishery agreements aggravate the non-sustainable factors in this activity. This is especially due to the fact that exploitation is not covered by national management programmes, when such programmes exist.

There are many explanations for these situations, especially the decision-makers' lack of interest in policies designed to prevent the squandering of the fish stock, and in establishing regulations on access rights. This is the situation for artisanal fishing in countries with a strong tradition in fishing (Senegal), but it also applies to industrial fishing if we look at the ineffectiveness of policies to control fishing capacity and effort both in Europe and Africa.

The substantial general criticism launched at the fisheries agreement provoked the European institutions into repeatedly claiming the legitimacy of the CFAs as sources of: development aid, cooperation, and partnership, but actually these agreements are a commercial act to acquire user rights to renewable natural resources.

Reality shows that neither the negotiation procedures, nor the format changed the line of discourse, critiques and assessments directed at the agreements.

Because of refusal to look at the problem in commercial terms, no solutions have been implemented. Even worse, defenders of an approach based on sustainable development and good governance, who are constantly demanding non-commercial agreements, are nurturing the third country governments' non-economic view of fishery resources management and an ambiguous idea of the role that the fisheries sector plays in African economic development.

[1] The CFAs were officially born through a Council resolution of 3 November 1976 to have the Community create a fishing zone that extends up to 200 nautical miles offshore from the North Atlantic and the North Sea. (O.G. C105 of 07.05.1981).

I.1. ACCESS TO RESOURCES

The history of fisheries is marked by conflicts between international migrations and efforts to demarcate exclusive zones. As for industrial fishing in former times, in West Africa now, artisanal fleets have to cope with constraints like the ones imposed by national boundaries (limited access, capacity caps, payment for access rights).

Foreign fleets stay in territorial waters by the free choice of the states, but also because of shortcomings in public policies on the fishery resources and the overarching importance of short-term economic considerations. This is sometimes the result of a misunderstanding of income from the fisheries sector, as if it could be calculated simply in terms of European financial compensation. In the absence of any systematic regulations on access rights, the power play is won by Europe through the stakes of direct public revenue as other national power play is exercised through discretionary mechanisms.

In West Africa the lack of both public and private policies and institutions is sadly aggravated by growing scarcity of fishery resources (*See:* results of SIAP symposium, Dakar, 2002). The NGOs and the civil society are striving more and more to have policies revised, but not always on the basis of relevant analyses or expertise adapted to the fisheries sector (*See: UNEP and ENDA, 2001*).

The fact that the access regulation sections of public policies in the sub-region are generally weak (*See: Catanzano and Samb, 2000*) does not fully explain the continued presence of foreign vessels in national waters. On this subject, agreements are not indulgent about the weakness of public policies and institutions of the fisheries sector.

There are various types of access rights that can be used to castigate the activities of foreign vessels and companies (but, from the socio-economic angle this barely affects benefits from the fisheries sector to national development).

- Individual rights are allocated directly to foreign private operators without state intermediation, through case by case licence delivery mechanisms**,** with or without a change of flag. Private (foreign and national) operators may strike a deal to take advantage of weaknesses in the access regulation systems or to avoid the national preference mechanisms (frontman system for flags of convenience). Needs for greater investment capacity or technical capacity often explain the allocation of rights to private foreign companies and serve as indirect entry points into the national fisheries industry.

- Individual rights are allocated to private operators through commercial or reciprocity conventions and agreements between states. This is the configuration used as the basis of the Common Fisheries Policy for EU waters, and fits in with a "regional" policy for fisheries or a specific international policy for specific resources, *e.g.* large pelagic fish or whales. These policies find support in international institutions that set out regulatory measure (*e.g.* ICCAT). Rights allocated through inter-state agreements in West Africa are indicative of a political determination to gradually harmonise access conditions and, at the same time, compensate for the low capacity of each national sector, especially in industrial fishing. Since conditions of access for

artisanal fishing are even more poorly regulated, these agreements contribute to developing overcapacity within the West African coastal states themselves. In the past, artisanal fishing vessels enjoyed free mobility, but now national authorities of the coastal countries are challenging and denouncing this mobility as can be seen through conflicts between Senegal and Mauritania, Guinea-Conakry, Cape Verde, Ghana, etc.

- Negotiated rights for communities of states (*e.g.* the so-called European agreements *See:* Annex 2) for whom negotiations are carried out under the ægis of an international institution responsible for representing the interests of the economic operators of the members states of an international community.

Today most criticism (NGO, WWF, professional institutions for artisanal fisheries) is waged against agreements signed by the EU[2]. Since they are not the result of concerted negotiations among countries of the sub-region, and since the power play is considered unfavourable for the African countries, these agreements, to many observers, look like nothing more than opportunities to export the overcapacity of European fisheries.

I. 2. THE ECONOMIC PARADOX OF THE UNITED NATIONS CONVENTION ON THE LAW OF THE SEA

From a strictly economic point of view, the "surplus" principle underpinning the Law of the Sea, as compared to fishing rights granted to foreign vessels, makes it impossible to play on the law of comparative advantages. This shows the non-economic, or at least the non-commercial vision of both fish resources and, especially, the fishery sector (*See: Cunningham, 2002*).

Things looks even more obvious when considering countries with little or marginal traditions of fishing or consumption of products of the sea, *e.g.* countries like Mauritania, where only a few specific products of the sea are consumed. It is interesting to note that this paradox amplifies certain hesitations during the present negotiations and, more important, makes public decision-makers continue to err at negotiations.

Shying away from comparative advantages, (even if relative) in the sectoral development approach means considering the resources first and foremost, and, apparently essentially (if not exclusively) as resources that should contribute directly to satisfying the food needs of the coastal countries, regardless of nature, national dietary preferences or potential for fetching good prices on international markets.

No thought is given to the question of whether it is more relevant, or *a fortiori* more efficient to exploit fish resources or have it done for you. The general view is that the states have a major interest in developing their fishing sector because of the direct importance for the population while the real question is whether, commercially speaking, because of the terms of trade, the fisheries rent, and natural uncertainty connected to the fishery sector it would be worthwhile giving access by contract. In this scenario, the cost of research, and the cost of surveillance and monitoring that contribute to securing the terms of trade must be factored in.

In this concept of fisheries agreements, the role of fishing in overall economic development is revisited. The EU is not demanding this change of perception, as can be seen by its attachment to the fisheries agreement which is a mix of development aid (modestly called "partnership" these

[2] Community Fisheries Agreements (CFAs) refer to agreements between the EC and a third country. They aim to define the level of, and use and allocation conditions for access rights to fishery resources in the EEZ of the signatory third country.

days) and trade in use rights, a mix that can be seen as collusion between the national interests of certain member states and the global interests of the EU. The result is the absence of a truly EU strategy (supplylines to European markets, development of an export market for fishery technology, scientific cooperation).

In most situations, and notably in Senegal, part of these resources are used to satisfy the direct food needs of the national and African populations. Artisanal fishing is (would be more accurate to say "was") a strong national skill in a context where economic opportunities were rare (few job- and revenue-generating activities on the coast plus threats to agricultural activities).

Fishing was also important in structure the society and its culture. The basis of development must be strengthened before any changes can be made in the analysis of comparative advantages, *e.g.* creation of new opportunities and improvement of public policy on fisheries rent. The fisheries sector, thus, is dependent on major institutional reforms that seem well beyond the limited vision of technical line ministries. If they do occur, it is often at the instigation of the ministries of finance and economic affairs.

In the case of resources that are increasingly intended exclusively for the international market, and that strongly impact the structure and logic of even "traditional" national fisheries, this commercial logic is refuted. Since artisanal fishing is contributing more and more to the external market, the contribution of national fishery resources to direct food needs of the national populations is declining strongly as fishing rights are negotiated by countries of the south without reference to commercial logic; foreign fleets fish in national waters, while national artisanal fisherman exploit the waters of the neighbouring countries.

Actually, the countries of the South are making their home fleets bear the brunt of spatial constraints imposed through new international and national legislation, while the countries of the North, in the name of development aid strategies, continue to negotiate access rights.

This paradox is referred to in fisheries agreements because of the difficulty in promoting the idea of a commercial agreement based on a genuine analysis of comparative advantages, regardless of the nature of the fishery resources covered by these agreements, *i.e.* small pelagics for the local markets or large pelagics and demersals for the European and Asian markets.

II. SEEN FROM THE AFRICAN SIDE: FACTORS THAT CAN EXPLAIN THE CFAS

Political factors play a major role in the CFA development process and are compounded by the recent emergence of sectoral policies and special administrations for fishery in the countries of the South. This is making the States aware of the potential for fish resources in their waters but, paradoxically, the economic potential (and especially the idea of fisheries rent) does not appear in public strategies. The line ministries focus on immediate income that can be obtained from CFAs rather than on development policies designed for sustainable use of the resource. This is especially regrettable since the two strategies are not necessarily mutually exclusive.

Historical bonds and the continued presence of European fleets in national waters provide a natural basis for the CFAs, which, ultimately, will be based on economic factors. By replacing bilateral agreements between EU members states and countries of the South, the CFAs significantly increase government revenue in foreign currency *(See: Annex 3)* and offer certain guarantees for international relations that go well beyond the fisheries sector.

The contents of the CFAs are more than commercial. EU international policy can use them as a channel of communication and actions for development aid. This also weighs on national decisions, beyond consideration of the fisheries sector alone.

Revenue generated by the CFAs inevitably creates a phenomenon of attachment (even, gradually, dependence) of varying strength in each of the CFA signatory countries. What the CFAs contribute to the national budget gives a first impression: over 15% for Mauritania and under 2% for Senegal. In this context sectoral questions can become of lesser importance in decision-making.

African countries, and more specifically the members of the Fisheries Sub-Regional Commission (FSRC) now have overlapping, as yet, uncoordinated sectoral policies. This situation is not very old and has mainly been caused by international politics. The special nature of the fisheries sector, that, for a long time, was limited to coastal fishing or, at least essentially artisanal type fishing also affects the situation. National laisser-faire easily accepts the many social regulations that exist at the local community level, *e.g.* Senegalese artisanal fishing is not subjected to many rules (no control of access), while, gradually, pirogues, on an international course, have trouble obtaining fishing rights in neighbouring countries and are obliged to pay licence fees. In Mauritania, the massive development of artisanal fisheries soon made it necessary to introduce access regulations (which are still symbolic). In Morocco, the development of fishing in the south and the decision to forego a CFA actually made it more urgent than ever to limit catches of species of major commercial value.

Fishing traditions in certain countries have not led to the development of industrial fleets and, when proven necessary, foreign operators have come in. At present there are very few countries that, technically speaking, can claim to fully exploit their national fishery potential (Morocco is the most advanced), using all of the resource-rich areas within their EEZ, both in coastal waters and in deepwater, and also in the high seas for the large pelagics. This is explained largely by technical, economic and commercial reasons.

Certain countries now can choose between allocating fishing rights to foreign operators or developing their national fleets. For several countries to band together to deal with this question would be of special interest and would also open the way to new possibilities in certain fields. When various options become possible, the question of agreements is revisited not only because of professional claims by national stakeholders competing with foreign operators but also because of the State's strategic interests. The issue then is to make an accurate assessment of the changes and constraints connected to each of the two possibilities, *i.e.* agreements or national exploitation.

III. INDUCED EFFECTS OF CFAS IN AFRICA

Effects of CFAs are usually evaluated in terms of revenue or public cost, employment or added value, and effects on the resources (*See: Bonfil et al., 1998, Catanzano et al., 1999*). Alongside these quantitative effects, there are qualitative effects, that are just as important (*See: Catanzano, 2000*).

III.1. QUALITATIVE EFFECTS OF CFAS IN AFRICAN COUNTRIES

Although the CFAs may not be the sole impetus, mention should be made of the "theoretical positive effects" they should have because of related financial flows, *e.g.*:

- means to monitor fishery activities;
- means for safety at sea;
- research resources for the fishery sector;
- national institutional and administrative capacities;
- the position of the sector in the national economy thanks to foreign currency revenue for the state;
- the transfer of technology and know-how in the fisheries sector;
- plans to harmonise fishery regulations.

Alongside the "theoretical positive effects" we have the real negative effects stemming from the agreements, *e.g.*

- increases in fishing capacity and effort;
- increases in risk of overfishing;
- development of competition and conflict in fishing zones;
- increases in commercial competition on export markets;
- emphasis on incoherence between national territorial development plans and discourse;
- greater complexity in the organisation of the fishery sector because of the existence of foreign fleets;
- continued application of unclear procedures for allocating fishing rights because of international pressure and competition and because the territorial development systems are not well adapted (definition of types of concessionary access rights to possible resources, absence of standard rules for all actors);
- increased dependence of line ministries and specialised research on foreign donors (because of revenue connected to the CFAs).

As concerns the consequences for the future of the resources, the CFAs have not persuaded or at least prompted the countries of the South to work out the principles for the development of their fishery sector within their own context in a manner that views the potential volume of rights that could be allocated to foreign fleets as one of the real stakes. This can be explained by both political and technical reasons. Signs of the economic paradox found in the United Nations Convention on the Law of the Sea (*See: par. 1.2*) can also be found in this situation.

Political reasons: because this approach could have run counter to sectoral policy statements which usually advocate development of the national capacities to the detriment of (and despite the rights negotiated thereafter!) or feigning ignorance of possible concessions for foreign fleets and the immediate economic benefits derived from these agreements. This supports the diagnosis of the fact that neither the notion of rent nor the concept of access regulation appear in the logic of public policy.

Technical reasons: because the state of knowledge of the resources and their dynamics still today holds back real possibilities for planning regulatory systems based on quotas (restricted factors or volumes of production, or the use of a coherent fiscal policy) and thus, on rights allocations.

Furthermore, the CFAs have not managed to accelerate rapprochement between coastal and neighbouring states in order to develop a concerted approach in negotiations with European

bodies and other potential partners, although relations that were unfavourable to their interests should have encouraged them along this path. This said, they are moving in the right direction.

III.2. - CFAs, EQUITY AND DISTORTED COMPETITION

Competition between national and community activities were formerly felt (*e.g*. Morocco) or are still being felt because of CFAs with Mauritania, Senegal and other African countries south of Senegal. The nature, level and context of competition in these situations are not the same.

From a formal standpoint, the situation governed by CFAs for nationals and Europeans can be deemed equitable since a non discrimination clause has been written into 'obligations of private operators'. Economically and from the point of view of the private operators, equity is challenged because of the distortion caused by CFP support to fishery activities.

Competition between Community and national fleets may stem from conflicts that exist between the various components of the national fleets (between industrial and artisanal fishing, for instance, or between fishing for on-board freezing or cold storage). In these situations, the technical definition of fishing zone rarely alleviates conflict between fleets although—and this is fundamental—it prevents conflicts from growing worse when vessels encounter each other in the zone. Reserving zones for certain uses does not avoid competition for targeted resources or for similar markets. Nonetheless, in some cases the differences in the size of the operators is beneficial to the whole sub-sector and can be beneficial to markets for artisanal fishing products slated for export.

The CFAs are part of the CFP and, hence, certain advantages granted to the fishermen operating under a CFA can be "justified" by virtue of the equity sought with fishermen working in European waters or even on the basis of European principles such as intersectoral (agriculture/fishery) equity.

This partly explains certain European positions towards subsidies. But in the case of the CFAs, more than elsewhere, benefits for private Community operators further distort competition, *e.g.* in international relations when there is direct competition between third country fleets and Community fleets (subsidies for investments or modernisation, structural subsidies, compensation for non-fishing days, price subsidies).

An economic approach to access regulations would eliminate these factors of distortion or have them included in the access price. Further, this approach would indicate the real resource access price by having other phases of the EU policy cover actions to support development in the countries of the South or incentive measures for investments in partnerships. This distinction could be a salvation for efforts to deliver veritable fisheries regulation policies in the countries of the South as well as in the EU.

IV. THE QUESTION OF ACCESS TO THE FISHERIES SECTOR AND THE RELATION WITH THE CFAs

Although lack of means for surveillance, research and industry are often very touching, the question of access is the main weakness in ACP development policies. Clearly, European

fisheries do not lack necessary means, but they also suffer from the problem of access regulations, which leads to well known consequences, *i.e.* overcapacity and overfishing.

All this can be traced to the lingering confusion between, on the one hand, adjustment in fishing efforts and the panoply of technical measures thereby justified and, on the other, access regulation which touches on the fundamental problems of the fishery sector, as evidenced in theory on fisheries for more than the last 50 years.

IV.1. THE DIAGNOSIS

Without access regulation, it will be difficult to efficiently adjust the fishing effort and capacity, and it woud be impossible to make progress on the road to sustainable development of the resource. Without this regulation, the sector cannot contribute to the national economies of the developing countries.

In this situation, however, development actions backed by aid or cooperation funds can help the sector progress for instance through assistance in developing compliance with food safety standards, increased numbers of jobs, improving navigating conditions and safety at sea, increasing yields of fishing units, capitalising output, modernising fishing units, curbing illegal fishing. But this only lasts a certain length of time because of constraints imposed by natural, varying, yield levels. A more serious problem is that development actions that precede effective regulation of access accelerate mechanisms that increase the fishing effort and increase capacities (*See: Catanzano et Samb, 2000*).

Through this unregulated sectoral development, the ACP states consume their own budgetary resources. The fishery-generated rent is squandered and lies outside the national economy[3], hence the fishery sector does not really contribute to developing the country. Public efforts are essentially keyed to settling conflicts caused by tension linked to resources, markets, or coastal communities. Paradoxically, in a context of inefficient management, the funds earmarked for development actions accelerate the sector's movement to social and financial dead-ends. Development-oriented actions are monopolised by a handful of strong operators ("segments", factories, tinning plants, industry, etc.) who eventually oblige national economies and public authorities to continue investing public funds in solving or avoiding conflicts that are internally stoked by the absence of a satisfactory answer to the problem of access rights.

It is at this stage that the political importance of the sector outweighs the technical and financial side of relations and responsibilities between the public sector economy and the private sector economy (*e.g.* funds invested regularly in the tuna industry in Senegal and somewhat in Mauritania, investments in installations on land that—in the absence of controlled access—contribute to increasing the fishing effort).

Risks connected to access rights based on individual quotas for given capacities and catches often block public decisions. These risks become an everyday reality in the fisheries sector

[3] Actually the question of access is not tackled or treated better in EU fisheries; debates on conflicts, quota administration problems, overcapacity, and the survival of direct and indirect subsidy systems are all indicators of recurrent problems in the European sector. There are not many countries that have dealt with this problem fully and squarely (New Zealand, some fisheries in Iceland, USA, Canada). Some countries are making progress in their search for solutions needed prior to development actions (Morocco, Mauritania for cephalopod fishing, Madagascar for shrimp fishing, Senegal through its work on concessionary access rights).

where a handful of operators negatively influence public decisions directly and push public authorities into a social containment policy to stem conflicts caused by resource scarcity (modestly still called social peace bought with public funds).

The logic of the national economy as a whole only applies marginally to the fishery sector which seems, at best, to being consuming its own resources (squandering the rent) and, at worst, which, unfortunately, is usually the case, to be consuming external public resources (aid, tax exemption for trade and product processing, direct subsidies for production inputs, non payment of social welfare charges, fines for violations of fishery laws, etc.).

Ministries of finance and economic affairs of certain countries are more openly expressing their concern about the investment of public funds in a sector that, for instance, does not pay taxes. Certain changes can be expected in the near future in, *e.g.* Morocco, Mauritania and Senegal.

Paradoxically, certain donors are still not conversant with the economic and financial advantages that can be expected if the access regulation question is settled. Everything seems to suggest that the fishery sector cannot contribute to poverty reduction by adding to public sector revenue. This same observation also, clearly applies to many situations in Europe.

IV.2. USING CFAS TO SETTLE THE ACCESS PROBLEM

Defining and implementing mechanisms for granting concessionary access rights that should settle the economic question are being designed and implemented in certain countries, *e.g.* Morocco, Senegal, Mauritania.

The following questions are being asked:

- How can the CFAs be used as a model or some bases to help implement necessary reforms in access regulations?

- How will the form of CFAs and the accompanying procedures have to be revised to fit in with new public regulations?

In most national situations we saw that, especially in West Africa, the CFAs were a starting point for thought and discussion on the type of concessionary access rights that would be established and would meet the needs of all parties in the national fishery sector (*See: Catanzano, 2003*, *Programme sur les concessions de droits d'accès au Sénégal*).

From a technical and theoretical point of view (a word of warning: this does not augur well for the future), one might say that CFAs explicitly contain:

- the necessary reference to respect for international law and conventions;
- firm recognition of public responsibility by identifying a representative of the "owners" of the national resources (signature of the Minister of Fisheries);
- appointment of a line institution for a relatively homogeneous group of operators (EU);
- legal, social and technical designation and skills of operators who receive access rights (ship owners, fishing units);
- designation of fishing areas, gear and techniques authorised in the CFA;

- targeted species and related technical measures;
- price of access;
- obligatory declarations as input for monitoring production;
- implications, procedures and sanctions in case of non-respect for protocols.

These points could be used as a sort of basic reference for defining access rights for national operators in countries of the South. Certain limits might be mentioned, *e.g.* these protocols do not set a limit to fishing capacity and effort.

The volume mentioned above only refers to the number of fishing units with, at best, a volume of GRT. This reference is not complete enough to settle the problem of controlling the fishing effort, which is the element of the CFA that causes the greatest harm to the fishery resources.

Similarly, certain agreements have lately been accepting the idea of "carried over effort" if fishing rights are not used up during a certain time period of the agreement (from one year to the next, for instance, in the case of CFAs with Senegal). This is contrary to state regulations and could lead to an accumulation of capacity and effort to be used freely by operators who have access rights in various national EEZs in the sub-region.

Despite their flaws, in the countries of the South, the CFAs are the most complete contracts for allocating concessionary use right currently available.

Several recommendations could be addressed to countries of the South that want to correct shortcomings in the implementation of the agreements and, at the same time, correct shortcomings in the own public fisheries policy. Even better, they could refer to the CFP guidance statement and help the European institutions and members states which do not agree with the descriptions, form, contents and goals of the CFAs. Promoting the following actions would be beneficial:

1) Define the principles for access regulation and apply them to the whole fishery sector, including the traditional fishermen. Access regulation should include a clear and precise definition of the status of the beneficiary of the concessionary rights, in compliance with international law and conventions. The State can work on this through professional and/or territorial institutions, and by referring to criteria for quotas for fishing capacity (number of units, gear, fishermen, power of fishing boat, effort expressed in number of outing days, etc.), for catches (according to how quotas are used: group, community, individual) and for territoriality (which has already been applied in fishery regulations.

2) Consider the possibility of granting concessionary access rights to foreign operators, on the basis of calculated comparative advantages. Give priority to this economic calculation without, *a priori*, including discriminating technical requirements because they further complicate the means and methods used in monitoring and control. Furthermore, in the long-term, they can weigh on national finances and cause problems in case of conflict (the opposite of benefits expected from fiscal revenue). This is the case with the present CFAs. Every time heavier technical requirements are imposed on foreigners, the coastal state has to invest and operate additional costly control equipment. CFA surveillance budgets, in the best of cases, only cover the cost of these specific control measures. In so far as possible regulations on general

technical requirements should be harmonised; discriminatory treatment should be reflected in the access price (for various operators) in order to make up for distortions in competition, caused by European subsidies, and to ensure priority, as stated in national policy, for preferred segments of the fishery sector, *e.g.* artisanal fishing, with sound development controls and territorial planning.

3) Work on designing development plans based on mechanisms for concessionary use rights without discriminatory technical criteria. If necessary and if national policy so allows, these rights should be available to international candidates (depending on the potentials of the fish stocks and the national fishery capacity). The procedure should be transparent (code of conduct and international law). This approach may need arbitration from neutral institutions without market interests. Clarification is also needed for the question of hierarchy between public and technical treatment of the fishery sector (non-discriminating development plants) and politico-economic treatment considering the stakes of international cooperation and trade (discrimination clause compliant with the rules of global trade in situations where competition is distorted or national economies are highly dependent on a sector). This solution would not affect adjustments in fishing capacities and efforts, or the intrinsic capacities of the national resources.

4) Deal with the question of obligatory landings, and how this can contribute to solving the problem of monitoring (considering the type of quotas selected in the definition of concessionary rights). Also deal with impacts of CFAs on the territory and on the development of the country once constraints relating to the acceptance and safety of the vessels and their products have been overcome. Similarly the question of observers can be linked to the idea above in an effort to avoid ill-chosen surveillance measures which could involve mechanisms that are not effective (lack of effectiveness of controllers boarding vessels, consumption of public funds, less confidence in the national control systems, discrimination against operators, etc.).

5) Draw on expectations set out in European policy that wants to decrease public funding and increase payments for private access rights allthewhile seeking partnerships to define actions that could facilitate private investment in fields that add value to and market the resources of Africa. These actions are in keeping with the reforms expected from the CFP because of fishing overcapacity, and the regulation of public expenditure in keeping with European trade interests (supplying consumer markets), etc.

6) Use questions about CFAs to consider ways to bring about greater rapprochement, in other words, ways to harmonise conditions of access to fishery resources through research at the maritime sub-regional level (SRFC for instance) which could ensure coherence between access regulation and management plan and, hence, between access regulation policy and CFA. The aim here is to use mechanisms for subsidiarity between sub-regional institutions and States as well as to benefit from collective advantages derived from harmonising and pooling means for monitoring, evaluating and controlling the fishery sector.

The aforementioned few actions, combined, perhaps, with others, would enable the countries of the South to make up for the negative effects caused by absence of access regulation. These countries could gradually revive their fishery economies and pave the way to true partnership agreements with foreign operators, agreements that respect national priorities as well as conventions and laws on fishery resources. Although the list is not complete, these actions seem high priority, especially since they would give a rightful place to the stakes of the sector in both the countries of the South and, paradoxically, the EU countries.

V. CONCLUSION: WORK AT THE MULTI-COUNTRY LEVEL

When European institutions took over bilateral trade inherited together with its past practices, the result was the CFAs. In other words, these agreement did not come out of a recent, spontaneous initiative by the European Community.

Passing from national negotiations to European negotiations is increasing access costs (even if the inclusion of development cooperation and aid make it difficult to compare these costs), is leading to the centralisation of principles on rights negotiations, and a mixture of contents for the agreements which include various facets of the European policy, as was noted above.

At the West Africa sub-regional level, the CFAs are to be seen as a single dossier that supports the use of current coordinated actions and will open other possibilities for partnerships, in particular in order to:

- improve knowledge of the state and dynamics of the resources;
- harmonise principles on resource development and current regulations;
- define principles for granting concessions and allocating rights to foreign fleets;
- define ways and means to control and monitor the use of these rights and resources;
- define the terms of trade and contractual arrangements;
- define principles on selected and applied tariffs;
- manage rights and changes in these rights on the basis of natural and/or economic and commercial variations.

Actions will only be acceptable if they generate significantly more benefit for each country, as well as benefit for the group of countries, of such scope as to encourage stronger cooperation (and cover the costs of all or part of such cooperation).

There is no denying, however, that the current individual, short-term financial advantages still exceed the financial benefits that could be obtained from collective or block negotiations. But the political and technical basis of the system could generate medium-term collective and individual benefits, since resource conservation and efficient management in the sub-region could reverse the *a priori* negative relationship, *e.g.* by establishing a mutually acceptable principle that involves all the states in the sub-region and thus, unlike the situation facing independent strategies, overcomes any risk of collapse. The challenge is to remember that income from concessionary rights is to be redistributed at the sub-regional level.

With time, other advantages could be derived from various factors such as:

- better integration of regional development projects for productive sub-sectors that gradually, perhaps, could replace the foreign fleets, *e.g.* pelagic fisheries to supply sub-regional or African markets or species like the cephalopod to supply foreign markets, or large pelagics for future regional markets;
- a quicker reduction in costs for controlling and monitoring activities within the zone, on the basis of a regional EEZ;
- improvement in principles for recovering payment of penalties for activities carried out illegally;
- concerted decisions on fishery rights offers in keeping with the state of the resource.

In most of the countries with large fishery sectors in the sub-region, there are real possibilities for increasing revenue from fisheries agreements because of short-term European constraints, namely, stringent regulations on fishing capacities, strong dependence of European regions especially Spain and France, little opportunity for transferring fishing capacity to other foreign maritime zones, etc.

To make a quantitative assessment of these margins would require a thorough understanding of what would happen if the agreements were not concluded. The point of balance is hard to measure because of the mixed content of current CFAs (commercial part and political part from development cooperation) and contract conditions, which are still accepted but which might be revised if tariff conditions change.

In the CFAs, for instance, there is no clause that seeks to oblige signatory states to limit the allocation of rights to foreigners and thus freeze the global authorised fishing capacity within the EEZ for the duration of the CFA. This could become a requirement when the assessment of the resources are more seriously used in defining the volume of rights that can be allocated and the technical procedure for allocating them. Other requirements connected to transparency could also be elaborated and included in negotiated contracts.

The fact that this situation is being studied by a group of countries in the same maritime region, which thus, vis-à-vis the markets, have common resources, be they shared or simply similar, will improve the chances to accurately assess potential tariff thresholds and will lead to better coherence between access regulation mechanisms and development policies in countries of the South.

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Annex no. 1 - The deal of justice

History from the middle of the 20th century questioned the legal order governing the principle of freedom of the seas and access to resources. It was punctuated by periods of respite, like the respite offered by the four Geneva conventions of 1958[4], and periods of dire crises caused by the propagation of national laws extending national fishing zones, and fishery incidents in these zones. Protests to the New International Economic Order (NIEO) of the early 1970s came at a period of searching for permanent sovereignty over natural resources. Paradoxically, this movement was rarely accompanied by statements on coherent public policies for natural resources management. The third U. N. Conference on the Law of the Sea, 1973, launched a major operation[5] that lasted until 1982. Soon thereafter the concept of EEZ (Exclusive Economic Zone) took over. As of 1976, this idea was to change fisheries world-wide[6]. The EEZ was to contribute to completely overhauling conditions of access to waters hitherto open and to the high seas for a distance that could go as far as 200 nautical miles.

The 1992 United National Conference on the Environment, in particular its "Agenda 21" treated other effects linked to the declared interest of the international community to ensure the conservation and optimal utilisation of living resources in the seas[7]. As of the early 1980s most of the countries concerned by the fisheries agreements joined the forerunner states and demarcated their EEZs. Access conditions became increasingly strict even though the conditions for the application of Chapter V of the Convention are not always respected or feasible, for both material and political reasons. It is taking time for many developing countries to establish the necessary institutions and find the technical wherewithal to implement their rights and duties[8]. The FAO Code of Conduct was approved in the 1990s and provides support for the international movement current underway[9].

For economic reasons, the developing countries do not have the means yet to monitor and control the effective application of Articles 61-64 of the Convention. Despite national intentions, often reaffirmed in the 1980s, and despite the economic stakes connected to fishery resources, access rights for foreign fleets are often granted under conditions that are far from the theoretical and logical lines set out in the Convention.

[4] Entered in force on 30 September 1962 and 20 March 1966. For further information see *Notes et études documentaires N° 4703-4704* of 28 January 1983, Documentation Française.
[5] As a matter of interest but without going into details on the many superlatives that were used in speaking about this huge undertaking for international law, remember that it took 9 years of work and 11 sessions. This broke the record in numbers of participating and signatory states.
[6] Part V of the Convention on the Exclusive Economic Zone.
[7] Articles 61 to 64 on, respectively, "the conservation of living resources", "the exploitation of living resources", "shared stocks" and "highly migratory fish stocks" set out in the basic principles concerning (i) the definition of the objectives and the means for resource management, (ii) the conditions in which each state, according to its national policy, shall take responsibility for allocating access rights to its resources, (iii) the obligations of each state in monitoring and controlling the future of its resources.
[8] An illustration of changes that occurred during this period: a maritime fisheries ministry was created in Morocco in 1980 and a new fisheries policy was published in Mauritania in 1979.
[9] Code of Conduct for Responsible Fisheries, FAO. Rome 1995.

Annex no. 2 - Community Fisheries Agreements (CFAs)

A Council resolution of 3 November 1976 had the Community create a fishing zone that extends 200 nautical miles offshore from the North Atlantic and the North Sea. Measures to protect the interests of the Community were established that required CFAs to define:

- conditions for exchanging access rights (reciprocity) for shared or straddling zones or stocks, or,
- conditions for purchasing access rights in the case of totally independent exploitation zones (EEZ of third countries *sensu stricto*).

The CFAs implement the principles of the United Nations Convention on the Law of the Sea, particularly Part V on the concept of the EEZ[10]. The CFAs are accountable to and constitute part of the Common Fisheries Policy.

The existence of CFAs does not prohibit conclusion of parallel private agreements. If such agreements are concluded, the signatories forego rights to CFAs and any accompanying Community financing. Community resources and responsibility are not engaged in the event of private agreements. The CFAs do not form a homogeneous category of agreements. Modes of compensation may differ. Furthermore, the conditions of application of each CFA refer to a special protocol that is not in keeping with future developments desired by certain non-governmental institutions (*See:* WWF, 2001).

For third countries that wish to contract out an important part of resource exploitation in their EEZ, without reciprocal access rights, the CFAs are based on the payment of financial counterparts by the Community and the shipowners who enjoy these access rights. All the CFAs with African countries, countries in the Indian Ocean and Greenland fall into this category. In this situation, the main aim of the agreement is to authorise fishing rights (for a certain number of units or a certain GRT[11]), on the basis of certain fishing practices, resources or zones within the EEZ of third countries. An ancillary part of the CFAs is composed of grants for support actions, *i.e.* cooperation and contributions to set up public services specifically for the fisheries sector (research, training, management).

[10] In analysing the CFAs, the relevant articles are 61, 62, 63 and 64 of the Convention on the conservation and use of living resources and the special situation concerning straddling and highly migratory fish stocks. Coastal states have sovereign rights over the fishery resources in their EEZ but are obliged to ensure rational resource management and control implementation of related measures. Each coastal state must have preliminary evaluations of resources in its EEZ and its own fishing capacity. Any remainder must be made available to third countries, under conditions decided exclusively by the coastal state.

[11] The following chapters give details on conditions for licensing and the applicable tariff and control principles which depend on the nature of the CFA (tuna boat or mixed).

Annex no. 3 - CFAs, global costs, trends

During the ten years following the 1977 agreement with the United States, both the number of CFAs and fishing opportunities granted to Community fishermen grew rapidly (Senegal 1979, Guinea-Bissau 1980, Norway, Sweden, Faroe Islands in 1981, Canada, 1982, Guinea-Conakry, 1983, United States, 1984, Seychelles, 1984). The CFAs had to be expanded when Spain and Portugal joined. During this phase, regularisation of earlier practices allowed distant fleets to continue their activities in newly created EEZs.

Over thirty agreements were signed. More than half were with countries of Africa and the Indian Ocean. The end of the 1990s marked a turning point in the CFA policy when the fisheries agreement with Morocco expired and the "second generation agreements" failed[12].

The Community budget for CFAs rose from 5 M€ in 1981 to 38 M€ in 1987 and then 163 M€ in 1990, and reached 205 M€ in 1993 and close to 300 M€ in 1997 (before termination of the agreement with Morocco). During the 1993-1997 period, Community funds worth 1,053 M€ were used for CFAs. Private contributions, that are to be added to this revenue for third countries, represented on average 18% of the counterpart payments. In the 1998 budget, close to 5% of the total sum earmarked for Community external actions was used for CFAs[13].

Alongside this rise in costs, during the last few years certain CFAs have become less inclusive, because of factors that are more or less dependent on the preferences and interests of the member states or third states: yield drops for certain CFAs, less use of authorised rights, development of national or third country fleets, rebalancing of costs to compensate negotiated rights, etc.

[12] The so-called second generation CFAs, of which Argentina is the best example, are based on incentives to create joint enterprises that could develop their activities in the EEZ of third countries, and are assured of receiving a quota for species stipulated in the Agreement.
[13] When comparing this percentage with the percentage represented in the 1998 budget by the Financial Instrument for Fisheries Guidance, in relation to the total Community structural funds (1.36%), we see the considerable relative weight of international interventions in fisheries.