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# The EU – Africa fisheries agreements: Good governance?

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# List of abbreviations

| CFP   | Common Fisheries Policy                                 |
|-------|---|
| EU    | European Union  |
| EEZ   | Exclusive Economic Zones                                |
| FAO   | Food and Agriculture Organisation of the United Nations |
| IMP   | Integrated Maritime Policy                              |
| NGO   | Non-governmental organization                           |
| OECD  | Organisation for Economic Co-operation and Development  |
| TFEU  | Treaty of the Functioning of the European Union         |
| TEU   | Treaty of the European Union                            |
| UNCLS | United Nations Convention on the Law of the Sea         |

## Introduction

- I. In 2007, the EU established the IMP, that pursues a coherent approach to the maritime issues. The IMP goal was to coordinate different policies, comprehending topics that crosscut various areas of study.
- II. The Blue Growth strategy has one main objective: to give long term support to the marine and maritime sectors, through a holistic and comprehensive approach.
- III. The livelihood within the EU is inherently connected to the seas and oceans. They constitute a cornerstone of the European economy, namely throughout the areas of fisheries, tourism, energy, transport and many others.
- IV. The competitiveness of these areas is dependent on the sustainable use of resources. Therefore, the governance of oceans and seas constitutes a challenge faced on a global level, including by the EU. Moreover, the saturation of coastal areas, climate change and population growth constitute factors that aggravate the defying nature of this topic.
- V. Specifically, the fisheries are extremely important to the maintenance of food supply to the EU population. However, the EU waters are not enough, being currently overexploited. Baring this in mind, my analysis will focus on a specific aspect of the external dimension of the EU-CFP: the 'Sustainable Fisheries Partnership Agreements', an essential tool to the EU to preserve its fisheries industries, its oceans and seas sustainability and its population food security.

### **1. The Common Fisheries Policy**

- VI. The TEU and the TFEU establish a unique legal order, integrated and imposed to each Member-State legal system. Thus, prevails the general principle of the primacy of the EU Law, prior to the domestic jurisdictions<sup>1</sup>.
- VII. Therefore, the EU has exclusive competence on the conservation and maritime living resources, under the scope of the CFP (Articles 3°n°1 d), 38° and 43° n°2 TFEU).
- VIII. The CFP is a set of standards that regulates the conservation and management of stocks in the EU waters (of the Member-States). As well, it also regulates the fishing vessels that sail in waters under the jurisdiction of third States and on the high seas, while flying the flag of a Member State.
  - IX. The CFP was created in 1970, through two Council Regulations that laid down the bases for a common fishing industry structural policy and a common market organization of the fishery products. The purpose of its creation was the management of water as a common resource, giving all EU fishing fleets equal access to EU waters and fishing grounds, allowing for a fair competition.
  - X. In 2009, the European Commission launched a public debate regarding the management of EU fisheries, and consequently, what needed to be changed on the CFP.
  - XI. The Commission acknowledged that fisheries are essential to supply food to the EU population and to support the livelihood of EU coastal areas. On the other hand, it stated that the EU stocks have been overfished and the fishing fleets were too large for the available resources (EC, 2009 p.5). Therefore, the discussion was based on how to reformulate the CFP, combining those two aspects and the climate change.

<sup>&</sup>lt;sup>1</sup> The principle was embodied by the 1964 European Court of Justice famous decision: Case 6/64 Costa v. ENEL [1964] ECR 585.

- XII. The CFP was not working economically, politically and environmentally. As said by the Commission, it needed a more comprehensive approach to the maritime topics, like already advocated by the IMP, in 2007 (EC, 2009 p.5).
- XIII. The result of this debate was the Regulation 2013/1380 of the Council and the European Parliament, being the CFP framework since 2014 until today. The CFP main goals are to secure the sustainability of fishing in all its dimensions and to establish a fair and dynamic industry.
- XIV. The CFP is divided into four policy areas. The first is the fisheries management, which focus on the preservation of stocks, to ensure its viability in the long term. The CFP aims to achieve it through the concept of 'maximum sustainable yield'. The second area is the market and trade policies, that sets common marketing and competition rules, linked to other EU legislation regarding health, consumer information and safety. The third is structural funding. Finally, the fourth is the external policy, meaning the relationship of the EU with Third States and International Organizations (Barnes et al., 2020 p. 6).

# 2. The External Dimension of the Common Fisheries Policy

#### 2.1. General remarks

- XV. The external policy is as important as all the other areas of the CFP. The EU is the biggest single market for fisheries products in the world (EU, 2020). Within the Member States, exist 82,700 fishing vessels. However, more than 20% of EU fishing happens outside its waters. Therefore, the EU has many interests in global fisheries governance (2020, p.7).
- XVI. The CFP Regulation is very clear regarding its objectives: to ensure the sustainable exploration, management and conservation of the marine resources, the EU pursues its foreign policy by respecting the international obligations, the strategic objectives and the principle of good governance Article 28°.
- XVII. So, how does the EU accomplish the CFP through its foreign policy?
- XVIII. Multilaterally, the EU ratified in 1998 the 1982 UNCLS. In 2003, ratified the 1995 United Nations Fish Stocks Agreement. As well, it represents the Member-States in the Committee of Fisheries of FAO.
  - XIX. Bilaterally, since the 1980's, the EU has negotiated bilateral agreements regarding fisheries. These are based on the UNCLOS, which establishes the Exclusive Economic Zone (ZEE): legal sovereignty for coastal states over living marine resources in maritime zones within 200 nautical miles from their baselines.
  - XX. As an international organization, the EU has the exclusivity of the power to establish relations with third countries, on behalf of the Member-States, regarding matters over which enjoys competence (Article 3° n°2 TFEU). As mentioned previously in this analysis, the fisheries are sole competency of the EU.
  - XXI. Some of these agreements were celebrated with neighbor countries from the North of Europe: Faroe Islands, Iceland and Norway. Their scope is the exchange of fishing rights and mechanisms of shared stocks.

XXII. Another type of agreements is the now called 'Sustainable Fisheries Partnership Agreements'. These are celebrated with developing countries, that allow the EU to fish in their EEZ. The EU not only pays for these fishing rights, but also gives financial contributions for the capacity-building of the local population, in order to better manage fisheries.

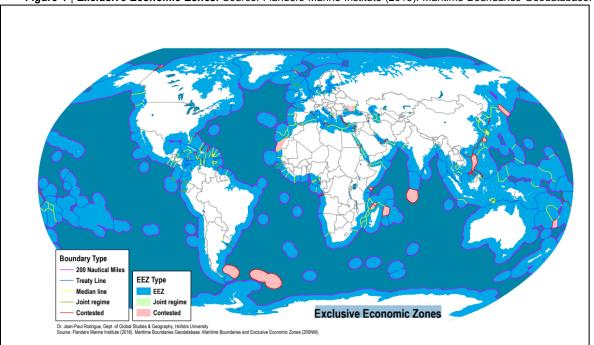
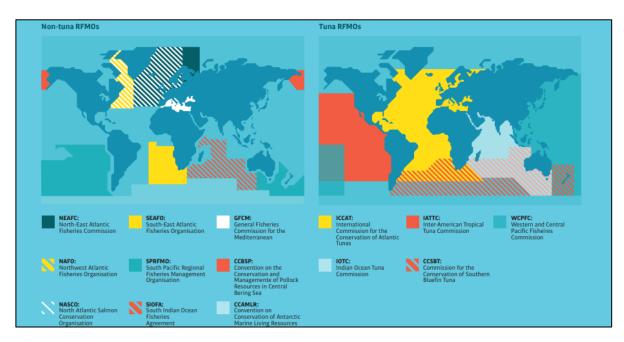


Figure 1 | Exclusive Economic Zones. Source: Flanders Marine Institute (2018). Maritime Boundaries Geodatabase:

Maritime Boundaries and Exclusive Economic Zones (200NM), version 10. Available at: <u>https://transportgeography.org/?page\_id=3962</u> [Last access: 10<sup>th</sup> June 2020.



**Figure 2** | *The International Dimension of the EU Common Fisheries Policy.* Source: European Commission, European Union (2015). Available at: <u>https://ec.europa.eu/fisheries/sites/fisheries/files/docs/body/2015-cfp-international\_en.pdf</u> [Last access: 10<sup>th</sup> June 2020]

#### 2.2 The Sustainable Fisheries Partnership Agreements

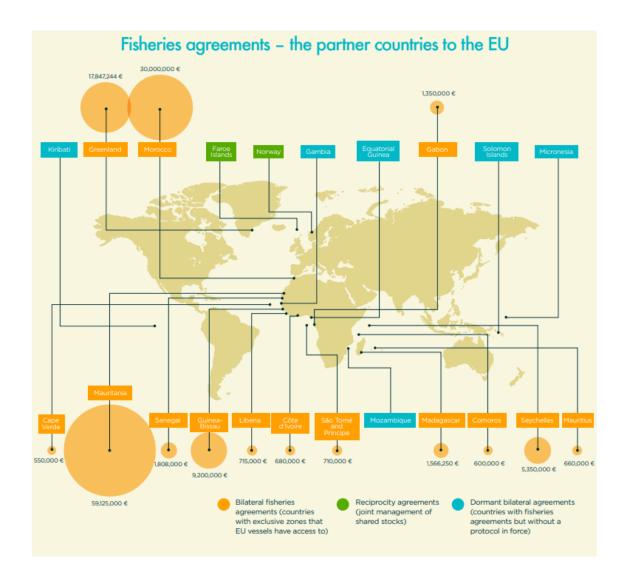
- XV. As I explained in a previous point of this analysis, the CFP is managed by the Commission, which means the institution also concludes and supervises the Sustainable Fisheries Partnership Agreements - Article 218 of the TFEU.
- XVI. Their focus are the fisheries, but they also comprehend resources conservation and environmental sustainability, which results in the fact that all of them have nowadays a Human Rights clause. The Commission mission is to work for the transparency of the shaping and implementation of the agreements.
- XVII. Most of the times, the scope of the Sustainable Fisheries Partnership Agreements is tuna fishing, covering in specific cases other fish species. As previously said, they include the access to the ZEE of the third State and support and know-how to the sustainable development of the local fisheries industry, including financial aid.
- XVIII. Throughout the years, the Sustainable Fisheries Partnership Agreements have been a target of many criticism. The EU was blamed for prioritizing the financial aspects of the agreements, rather than sustainability (Barnes et al., 2020 p. 9). The vulnerability of these countries makes them to easily accept the intrusion of "third" fishing vessels.
  - XIX. Other critics were made regarding the European Commission behavior towards the "value for money", by orienting its policies to the maximum catch volumes in return of the lowest compensation possible, which doesn't respect the UNCLOS (CTA, 2014 p. 4).
  - XX. Beyond the financial point of view, it is also often pointed to the EU the lack of transparency during the process of forming this kind of agreements, but also during its implementation. All these critics are specially highlighted when talking about the Sustainable Fisheries Partnerships Agreements with African countries.

XXI. Therefore, it is important to question how are the Sustainable Fisheries Partnerships Agreements in Africa and how do they respect the principle of good governance, knowing it includes the sustainability development? Is there a better balance between economic and environmental objectives?

# 4. The Sustainable Fisheries Partnership Agreements with Africa

- XXII. Currently, there are eleven Sustainable Fisheries Partnership Agreements in Africa: Cabo Verde, Côte d'Ivoire, Gambia, Guinea Bissau, Liberia, Mauritania, Mauritius, Morocco, Sao Tomé e Principe, Senegal, Seychelles.
- XXIII. The EU signed Agreements with Gabon, Madagascar, Mozambique and Equatorial Guinea. However, they are not being implemented by the States. This is results in the fact that EU vessels don't sail in their waters.
- XXIV. In 2015, some of these agreements represented the following financial amounts (EC, 2015):
  - Morocco, 30 million euros;
  - Gabon, 1,4 million euros;
  - Cape Verde, 550 thousand euros;
  - Mauritania, 59 million euros;
  - Senegal, 1,8 million euros;
  - Guinea Bissau, 9,2 million euros;
  - Liberia, 715 thousand euros;
  - Côte d'Ivoire, 680 thousand euros;
  - São Tomé e Príncipe, 710 thousand euros;
  - Madagascar, 1,6 million euros;
  - Seychelles, 5,4 million euros;
  - Mauritius, 660 thousand euros.
- XXII. Regarding these data, the Atlantic coastline countries are the main EU partners on fisheries. Even though fish contributes to the food security of 200 million people in

the African continent, this number belongs mostly to the areas of West and the Gulf of Guinea in Central Africa (Okafor-Yarwood, 2020 p. 1).



**Figure 3** | *The EU Sustainable Fisheries Partnership Agreements*. Source: European Commission, European Union (2015). Available at: <u>https://ec.europa.eu/fisheries/publications/eu-sfpas-sustainable-fisheries-partnership-agreements\_en</u> [Last access: 10<sup>th</sup> June 2020]

- XXIII. On the other hand, many say that the ability of the fishing sector to contribute to the livelihood of the population is at stake because of unsustainable practices of overfishing. Here it is also included the development of national economies of those countries (Okafor-Yarwood, 2020 p. 1).
- XXIV. The lack of harmonization is pointed out as one of the biggest flaws. This debate emerged during the negotiations of the partnership with Mauritania. For example,

sharks were not considered in the mentioned agreement, but in the one with Madagascar they are taken into consideration (CTA, 2014 p. 5).

- XXV. Without diminishing the bilateral nature of these partnerships, especially regarding the local needs of each country, in my opinion they should be discussed with a regional view, not only from the EU side but also from the African side. I believe in this because, as stressed by many authors, these countries, especially from Western Africa, have common problems, such as piracy and illegal and unreported fisheries (CTA, 2014 p. 5).
- XXVI. However, it should also be pointed out the fact that with the current design of international fisheries policies, accountability is now shared by all the stakeholders: flag countries and coastal countries. Regarding this last group, Article 61 n°1 of the UNCLS states that they should ensure the maintenance of living resources of their ZEE, through proper conservation and management. Therefore, these countries should make sure their waters aren't being overexploited. To this end, not only them but also international organizations (where the EU is included) should cooperate to this end.
- XXVII. Authors believe it is possible to criticize both sides in this matter. Most countries in West Africa use the Sustainable Fisheries Partnership Agreements as a tool to simply generate income from their fisheries resources. These countries are accused of a short-term economic and environmental outlook (Okafor-Yarwood, 2020 p. 2). They get support for these actions on the Article 62 n°2 of the UNCLS.
- XXVIII. Alternatively, the EU deserves critics regarding the duplicity of criteria. Even though it acknowledges the premises of the UNCLOS on the sustainable management of marine resources, it uses these partnerships to restore the EU fishing stocks. In the EU waters, the international organization seeks to preserve marine resources but, abroad, in third countries waters, most of the times, it fishes beyond the capacity.
  - XXIX. The same authors state that this is a reflex of the opportunistic nature of the CFP by referring to the fact that one of the aims of the policy is to help the recovery of the

EU own waters, achieving it by fishing in these countries waters (Okafor-Yarwood, 2020 p. 2).

- XXX. Regarding Western African countries, these authors accuse the EU of a selective application of its regulations. Specifically, regarding Guinea-Bissau and Liberia as examples, they state the EU contribution to those governments is not comparable to the benefit of private EU fishing companies operating in those waters (Okafor-Yarwood, 2020 p. 8).
- XXXI. They also stand out the global label EU gives to the CFP, while ignoring the weak marine governance of these countries as they don't receive any sanction or ban. The EU has not been operating and completely following the values that it claims the CFP represents.
- XXXII. Despite these authors claims, officially the EU stands for the transparency and compliance of the Sustainable Fisheries Partnership Agreements. It is stressed that they are concluded by the EU, made public and scrutinized by public institutions and civil society. As well, it states that the CFP is consistent with other EU policies, such as trade, development, environment and general political relations with third countries.
- XXXIII. The EU is aware of the fragilities of the Sustainable Fisheries Partnership Agreements and its State partners. These countries still lack institutional and scientific capacity to control and monitor activities in their EEZ. This also means lack of proper data. Besides what was said already in this analysis, the fact is the EU is working to contribute to capacity-building initiatives, such as training inspectors from Western Africa, under the auspices of the European Development Fund (Aranda, 2019 p. 14).
- XXXIV. Therefore, the main question is: Is this good governance, like stated in Article 3 of the CFP? Is it possible to state that there are double standards?

#### 5. Good Governance?

- XXXV. The Article 3 of the CFP, in accordance to the Article 28 of the same regulation, states that these policies are guided by the principle of the good governance.
- XXXVI. The EU densifies it by stating that it defines its policies through regional, national and local levels, considering the specifications of its region. The principle is said to defend a long-term view, by ensuring economic viability to the CFP. Last, it states that all interest parts are considered in the decision making processes of the CFP, through a coherent relation with other European policies and by respecting the principle of transparency.
- XXXVII. Considering what was analyzed in a previous point of this paper, it is clear the reality is far from what the EU stresses in the Article 3 of the CFP regulation. Therefore, what is failing regarding good governance practices in the formulation and application of the Sustainable Fisheries Partnership Agreements.
- XXXVIII. The importance of the concept of good governance has been growing throughout the years. As a first argument to this discussion, as stated by Slocum-Bradley, whether the outcomes of good governance, are mainly sustainable development, are explicit or implicit or the mere use of the concept of good governance is already an act in itself (2010 p. 37).
  - XXXIX. By this, it becomes slightly senseless to try to understand if the EU is making good of bad governance. It is however very important to understand how the EU applicates this concept and what are the outcomes, when one is talking about the Sustainable Fisheries Partnership Agreements.
    - XL. The EU cooperation for development is guided by governance that consists mostly in result-oriented policies. The EU governance is manifested through additional

practices, which includes determination of priority areas and recipients to benefit from financial assistance, as well negotiation strategies, such as stipulations for the configuration of negotiation partners and linking financial perspectives with certain policy orientations (Slocum-Bradley et al., 2010 p. 37).

- XLI. The same authors state that the EU tries to impose its philosophy of governing, under the concept of good governance. Specially regarding the "Governance Action Plans", the EU assesses each country profile, while those states are encouraged to provide relevant and credible information that shows their commitment to reform. The financial aspect of these is a curious one, due to the fact the EU determines unilaterally the amount of the tranche of the incentive (Slocum-Bradley et al., 2010 p. 38).
- XLII. Considering what was stated in the third point of this paper, regarding accountability, these authors stated, and I agree, that the EU fails by distinguish between good and democratic governance. It frames a list of various priorities that, if achieved, those countries attained a fulfilled governance. Those are mere imposed social norms, without sometimes considering human rights (Slocum-Bradley et al., 2010 p. 38-40).
- XLIII. On the other hand, there are authors that argue that the Sustainable Fisheries Partnership Agreements are shaped by normative and geopolitical interests. The first ones are not related to economic and commercial costs and benefits, but to the environmental sustainability and the aim for development in Third countries. The second ones are strategic goals to enhance the EU presence and power within the region where those countries are located, in this case, Africa (Zimmerman, 2017 p. 137).
- XLIV. Zimmerman stresses the normative interests are more powerful due to the increasing concerns of the EU regarding the diffusion of decision-making during the various stages of the negotiations processes. In his opinion, it has constrained some commercial interests to the expense of diffuse normative interests (2017 p. 137).

- XLV. The same author allocates it to the multitude of actors of the EU within the decisionmaking process. The Sustainable Fisheries Partnership Agreements are negotiated by the Commission and mandated by the Council. The Directorate General with competence to this matter is the DG Mare. The "Guardian of the Treaties", during this process, consults all the implied stakeholders, including the fishing industry and Member States Representatives. It also relies on scientific and scholars' work.
- XLVI. During this process, the European Parliament must agree with any changes or agreements decided. These subjects are discussed in plenary and, before that, in the European Parliament Fisheries Committee.
- XLVII. Considering the example of Morocco (the country with the Sustainable Fisheries Partnership Agreement with great financial weight), the EU has been negotiating fisheries agreements since 1988. However, the current Partnership, negotiated in 2014, was the most controversial one so far. The European Parliament used its powers given by the Treaty of Lisbon, rejecting the deal between the Moroccan Kingdom and the Commission because of its Human Rights implications, specially taking into account the occupation of Western Sahara.
- XLVIII. In the previous agreements with Morocco, prior to the Treaty of Lisbon, the European Parliament was only consulted. Therefore, it was clear the commercial motivations from both sides. These agreements included the Western Saharan territories, making countries like Sweden, NGO's and the political community, claim the implicit recognition of the sovereignty of the Kingdom of Morocco over that territory. The Western Sahara has a 1,100 km coastline, and due to the fact fisheries are not a key part of the Saharawis culture, it has many marine and energetic resources. Therefore, it is very important to the Moroccan Kingdom, whose EEZ is already very saturated.
  - XLIX. As stressed by Zimmerman, this case illustrates the weight of the normative interests of the European Parliament, even when confronted with the lobbying of the fishing industry and some Member States, including Portugal, Spain and France (2017, p.146).

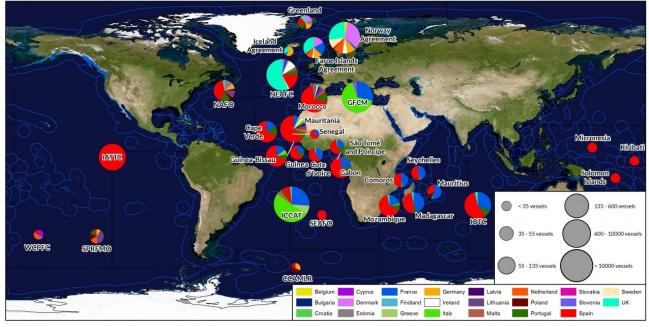


Figure 4 | "Map showing where EU vessels have been authorised to fish under the Fishing Authorisation Regulation between 2008 and 2015. In total, over 22,000 individual EU vessels received FAR authorisations during this period. (Excludes private agreements)" Source: "Who Fishes Far" (2015). Available at: http://www.whofishesfar.org/case-studies/new-data-on-european-union-external-fishing-fleet-more-transparency-in-world-fisheries [Last access: 10<sup>th</sup> June 2020]

- L. In my opinion, agreeing with the cited author, I believe this is another example of the inseparable concepts of good and democratic governance, even though in this case they weren't totally fulfilled. It also proves that the powers given to the European Parliament in the Treaty of Lisbon constitute a balanced way of accountability, being a demonstration of the EU conscience of good governance.
- LI. Another example is Mauritania. The Agreement dates from 2006 and lasted until 2012, when it was prorogated for six more years. However, in 2011 a European Parliament resolution demanded that the EU fleet should only target the surplus of fish- the sustainable quantity above the level which could be reached by Mauritanian fishers. The Mauritanian government demanded higher access fees to their EEZ, more employment opportunities to their citizens and the enlargement of no-go zones for EU ships.

- LII. The Mauritanian demands gained the support of many NGO's. Spain, whose fisheries rely on these partnerships, was openly against. Most countries, who also depend of it, due to the pressure of national NGO'S supported the agreement, that ended up approved in 2013. However, until today, its commercial viability is at question.
- LIII. Therefore, besides the critics analyzed above, the concept of good governance is integrated within the external dimension of the EU CFP. This is the result of a political conscience of the EU, regarding its global role within the fisheries and ocean governance.
- LIV. Since 2016, the Commission has been developing an agenda on International Ocean Governance. The main goal is to strengthen the regional and global role in the management of oceans and make them more safe, secure, clean and sustainable. The resilience and productivity are also two aspects the EU stands out. Therefore, the EU aims to reduce or alleviate the human pressures on oceans, creating conditions for blue economy and growth.
- LV. This is a result of the 2030 Agenda for the Sustainable Development Goals, specially the Goal n°14, that establishes the conservation and sustainability of oceans and marine resources.
- LVI. It is also important to state that the OECD estimates that oceans-based industries constitute a Gross Domestic Product of 1,3 trillion euros and that, by 2050, the world population will increase to around 9-10 billion people. Therefore, the pressure over the oceans and its resources will be most likely even higher than nowadays. Consequently, actions to improve oceans governance and the countries' capacity, especially developing ones, in order to create a solid framework of sustainable fisheries, and other oceans industries are of paramount importance.

### Conclusions

LVII. The main conclusion of this analysis is the necessity of a regional approach to the Sustainable Fisheries Partnership Agreements in Africa. Without it, it will be very

difficult to create an appropriate framework, with rules capable of ensure a sustainable exploitation of the marine resources. Only this will contribute to an International Ocean Governance in full action.

- LVIII. The EU plays a decisive role in International Ocean Governance. This is indivisible of the democratic and human rights related values of the EU. Therefore, it is required a more holistic and comprehensive approach to the formulation and implementation of Sustainable Fisheries Partnership Agreements in Africa.
  - LIX. Consequently, the EU should not view these partnerships as an end in itself: acquiring fish without compromising European stocks. Instead, it should face them as a tool for capacity building of developing States and, most of all, a way to contribute for a solid world fisheries system.

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