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## **Constitutional Aspects Concerning Subsidies Granted by the European Union**

Drawing on the Example of the Fisheries Partnership  
Agreement between the European Union and Mozambique

## Diplomarbeit

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### **Abstract:**

This thesis analyzes Fisheries Partnership Agreements (FPAs) from a legal point of view. Focus is put on constitutional issues that need to be considered when analyzing the legality of FPAs. It is argued that the EU has the competency to conclude FPAs with third countries in the fishery sector. Apart from that, FPAs also comply with EU subsidy law.

After having outlined the legal framework within which FPAs are concluded, one specific agreement is analyzed: The FPA between the EU and the Republic of Mozambique. Several concerns, such as unsustainable exploitation of resources, lack of monitoring, control and surveillance, absence of economic development in the host country, poor financial compensation and food insecurity are discussed.

The empirical investigation leads to the conclusion that there are considerable deficiencies in the FPA's implementation. This circumstance has direct effect on the previously identified concerns with the agreement. The finding of the thesis is that it is not the FPA's provisions, which lead to the previously mentioned concerns, but a lack of the agreement's full implementation. This is due to a reluctance of the European fleet to comply with the agreement's provisions as well as insufficient enforcement thereof.

### **Schlagwörter:**

Fisheries Partnership Agreement, FPA, Mozambique, Constitutional Issues, Common Fisheries Policy, EU Subsidy Law, Sustainability, Overexploitation, MCS, Fairness of Price, Economic Development, Implementation, Indian Ocean.

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## Abbreviations

CFP	Common Fisheries Policy
CMO	Common Market Organization
DG	Directorate General
EAGGF	European Agricultural Guarantee and Guidance Fund
EC	European Community
ECJ	European Court of Justice
EEC	European Economic Community
EEF	European Fisheries Fund
EEZ	Exclusive Economic Zone
ERUF	European Regional Development Fund
ESF	European Social Fund
EU	European Union
EUCFR	European Union Charter of Fundamental Rights
FMC	Fishing monitoring centre
FPA	Fisheries partnership agreement
IOC	Indian Ocean Commission
IOTC	Indian Ocean Tuna Commission
IUU	Illegal, unregulated and undocumented
IIP	Mozambican Institute of Fisheries Research
MSY	Maximum Sustainable Yield
NGO	Non governmental organization
SADC	South African Development Community
TAC	Total allowable catch
TFEU	Treaty on the Functioning of the European Union
UNCLOS	United Nations Conventions on the Law of the Sea

# 1. Introduction

## 1.1. Research Questions

The first fisheries agreement between the European Union (EU)<sup>1</sup> and the Republic of Mozambique<sup>2</sup> came into force in 1987. It granted fishing rights of shrimp and tuna to the Community in exchange for financial compensation. 15 years, one agreement and three protocols later, criticism of these agreements has not ended. Whatsoever, a new fisheries partnership agreement (FPA) was concluded in 2006.

This thesis will bring the FPA between the EU and Mozambique into relation with constitutional aspects of the European Union. In addition to that, the FPA's concerns and its implementation will be analyzed. Following questions will be answered:

1. What constitutional issues have to be considered when analyzing the legality of FPAs?

In order to answer this question, two more specific issues will be raised: What competencies does the EU have in the fishery sector? Is the financial support from the EU in the form of FPAs against EU subsidy law?

2. What are the concerns with the FPA between the EU and Mozambique?
3. Are there deficiencies in the FPA's implementation? If so, do they serve as an explanation for the above-mentioned concerns?

The following figure gives an overview of the research questions and its interrelation.



Figure 1: Research Questions.

<sup>1</sup> Back then: European Economic Community.

<sup>2</sup> Back then: People's Republic of Mozambique.

## **1.2. Research Approach**

The starting point of this thesis is the elaboration of constitutional aspects that need to be considered when discussing EU subsidies in general and more specifically subsidies in the fisheries sector.

When the European Economic Community (EEC) was established in 1957, the EU was resourced with the power to implement a common fisheries policy. Apart from that, it produced a set of rules concerning the prohibition of subsidies and exceptions thereof. The legislative acts in the common fisheries policy as well as the subsidies policy serve as a legal basis to claim that the EU is allowed to grant subsidies in the fishery sector - including FPAs.

However, this thesis not only aims at analyzing the legality of FPAs in general, but also at discussing the political as well as economic rationality of the agreement between the EU and Mozambique. Since there has been a lot of criticism concerning FPAs, the appropriateness of the FPA concluded with Mozambique must be questioned. In doing so, economic, social and environmental consequences will be discussed.

Having analyzed the agreement on the one hand and its consequences on the other hand, it will be asked how they are related to each other. Are there any deficiencies in the agreement's implementation that entail the identified concerns? In order to answer that question, senior managers of different stakeholders of the FPA will be interviewed.

## **1.3. Structure of the Thesis**

After this introduction, a legal analysis of the FPA between the EU and Mozambique will be conducted in chapters two, three, four and five.

In doing so, the second chapter will deal with the question, why there is talk of 'economic constitution' in relation to EU legislation. In order to be able to answer this question, a definition of economic constitution needs to be supplied.

The third chapter will discuss the competences of the EU in the fishery sector. A historical analysis of legislative acts at EU level will give an overview of the development of the Common Fisheries Policy (CFP). Building upon this historical context, the legislative basis of the current CFP (which constituted the framework for the conclusion of the FPA between the EU and Mozambique) will be laid out. After the illustration of the legislative background, the CFP itself will be discussed.

Having mapped the terrain of the EU in the fisheries policy, chapter four will deal with the question whether subsidies in the fishery industry are allowed in the EU. In doing so, an overview of the prohibiting rules concerning subsidies *in* the EU (esp. Art 107 TFEU) is given. This is followed by the proposition that subsidies *by* the EU cannot be subsumed under these norms. However, they have to be in line with other rules of the European constitution (esp. rule of equality). Having argued that subsidies *by* the EU are allowed as a matter of principle, financial support by the EU will be exhibited. Following the discussion in chapter three on the competences of the EU in the fishing industry, it is straightforward that subsidies in this field are part of the union's scope of functions.

Finally, the FPA between the EU and Mozambique itself, which constitutes a subsidy by the EU in the framework of the CFP, will be analyzed. In doing so, the agreement itself will be looked at in a first step. In a second step, the protocol to the agreement, which was renewed in 2012, will be exhibited. The logic along which the FPA will be analyzed is as follows: Financial contribution, sustainability in the fishery sector, scientific cooperation and economic development.

After this legal analysis, the FPA's concerns will be discussed in chapter six. These include sustainability, maritime surveillance, economic development and fairness of the financial compensation.

The last part of the thesis is dedicated to the analysis of the FPA's implementation. The agreement not only holds obligatory provisions, but several abstract ones as well. Hence, chapter seven aims at identifying which provisions and to what extent the agreement's provisions are implemented. In order to reach that goal, an empirical investigation will be conducted. Interviews with experts from different backgrounds will shed light on the level of the agreement's implementation.

The following figure gives an overview of the structure of the thesis.

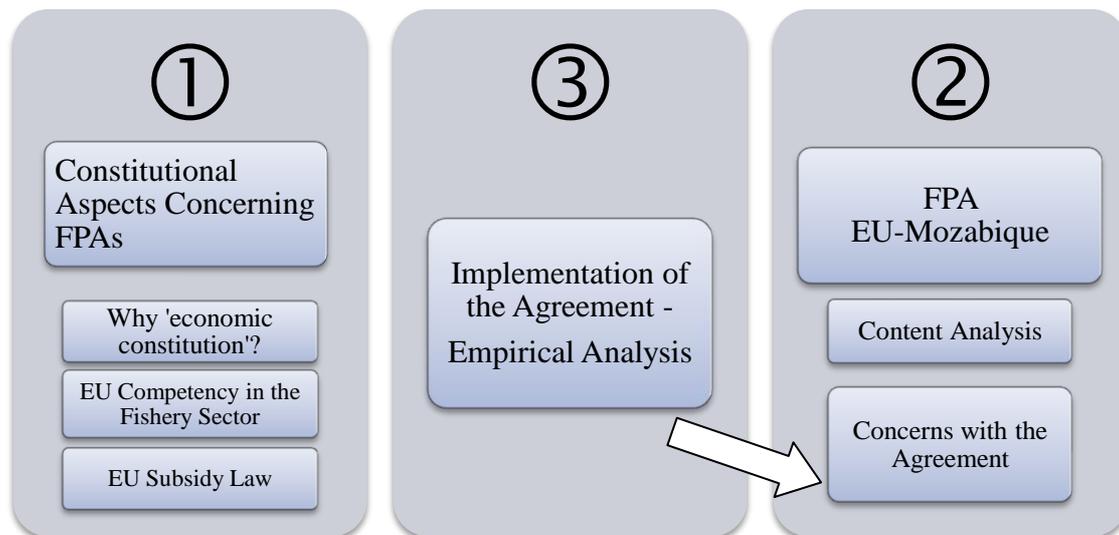


Figure 2: Structure of the Thesis.

The last chapter will draw a conclusion of the previous chapters including a personal assessment of the author concerning the rationality of the FPA in question.

## 2. The European Constitution

### 2.1. Why is there a European Constitution?

As can be derived from the title of the thesis already, constitutional issues concerning EU subsidies – more particularly concerning FPAs – shall be analyzed. Before going into the actual analysis one important question must be answered first and foremost: Why is there talk of *constitutional* issues? We do not have a European state that would allow for the conclusion of a constitution in the traditional sense. Nevertheless, it is more and more commonly recognized that a constitution at the European level has been established.<sup>3</sup> This assumption's underlying arguments will be depicted in the following.

<sup>3</sup> Müller T., Der europäische Verfassungsverbund. Geben, Nehmen und Tauschen im europäischen Mehrebenensystem, in Gimesi/Hanselitsch (ed.), Geben, Nehmen Tauschen (2010) 137.

In recent times, the term constitution has dissolved from the state as such and is now also applicable for international and supranational constitutions.<sup>4</sup> As a result, it is straightforward to consider the European legislation (especially primary law) as a European constitution – even though from a political point of view it might not be advantageous to use that term.<sup>5</sup> It is thus straightforward that – albeit the absence of an official signing of a ‘constitution’ by member states – European law is decisive for member states’ national economic law for the following reasons:

- Direct effect; (unmittelbare Geltung)
- Immediate applicability; (unmittelbare Anwendbarkeit)
- Precedence of European law; (Anwendungsvorrang)
- Compulsory interpretation in line with EU law; (unionsrechtskonforme Auslegung)
- Assertion of individual rights; (Verbürgung von subjektiven Rechten)
- Enforcement of European law by the European Court of Justice (ECJ). (Durchsetzung des Unionsrechts durch EuGH)<sup>6</sup>

Based on that one might conclude that European law that precedes national law should be ranked as constitutional law. However, this is too narrowly considered, as it would take a toll on the term constitution and dilute the existing hierarchy of norms. Hence, a distinction must be clearly drawn between primary and secondary law.<sup>7</sup>

For the purpose of this thesis, the consideration of certain secondary legislative acts is necessary. This is due to the fact that also secondary law is perceived as constitutional law from the perspective of member states’ legislative systems.<sup>8</sup> As a consequence, secondary law will be included in the analysis when constitutional aspects concerning EU subsidies - in the form of FPAs - will be discussed.

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<sup>4</sup> *Peters A.*, Grundlage europäischer Konstitutionalisierung: Die Entkopplung von Verfassung und Staat, in Liebert/Falke/Maurer (ed.), Postnational Constitutionalisation in the New Europe (2006) 21.

<sup>5</sup> *Müller T.*, Vorbemerkungen zur Wettbewerbsverfassung – Begriff, System, Kernfragen - , in FS Günter H. Roth (2011) 499 (506).

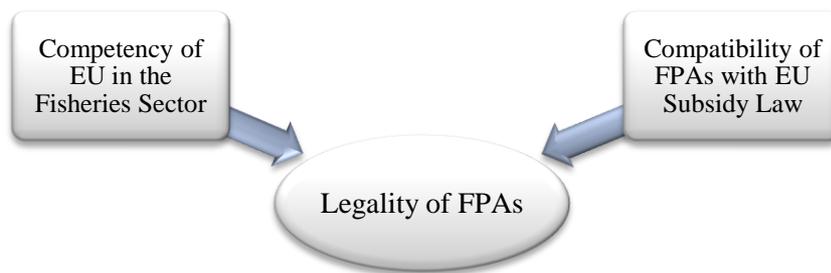
<sup>6</sup> *Wimmer N. and Müller T.*, Wirtschaftsrecht. International – Europäisch – National (2012) 122.

<sup>7</sup> *Müller T.*, Vorbemerkungen zur Wettbewerbsverfassung 507.

<sup>8</sup> *Müller T.*, Vorbemerkungen zur Wettbewerbsverfassung 507.

## 2.2. Outline

In the context of this work, constitutional issues that must be discussed are twofold: On the one hand, the competency of the EU in the fisheries sector must be investigated to find out whether the conclusion of FPAs is within the EU's scope of control. On the other hand, the compatibility of FPAs with EU law on subsidies must be elaborated.



**Figure 3: Constitutional Issues Concerning FPAs.**

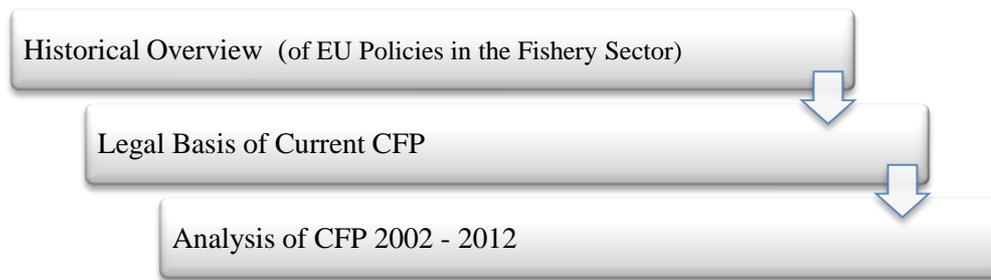
Primary law provides clear rules for the prohibition of subsidies and exemptions thereof. However, EU primary law has, ever since the EC's founding, only very broadly defined the role of the EU in the fisheries sector. Whatsoever, regulations adopted by the Council have greatly shaped the member states' fisheries policies. Thus, constitutional questions in relation to the EU fisheries policy would not be exhaustively discussed, if the discussion were limited to primary law exclusively.

The consecutive chapter will debate whether FPAs can be subsumed under the fisheries policy that the EU is resourced to conduct. In doing so, primary as well as secondary law will be looked at. After that, a discussion will follow whether FPAs are compatible with European subsidy law.

## 3. Competency of the EU in the Fishery Sector

### 3.1. Introduction

This chapter aims at illustrating the competency of the EU in the fishery sector. The different steps taken in order to do so are exhibited in Figure 4.



**Figure 4: Outline of Chapter 3.**

In chapter 3.2., a historical overview of EU policies in the fisheries sector will be given. In doing so, primary law, hence the Treaty of Rome, as well as secondary law, including several regulations, will be discussed. The analysis will be limited to framework regulations, as any other approach would go beyond the scope of this thesis.

This historical overview constitutes the groundwork to exhibit the legal basis of the current CFP-regulation, which will be illustrated in chapter 3.3.

After having claimed that the EU had the competency to adopt the CFP that is currently in force, chapter 3.4 will discuss the nature of the CFP, which is in force today.

## **3.2. History**

### **3.2.1. Treaty of Rome**

The European fisheries policy was initiated in 1957 in the Treaty of Rome, which had established the EEC. Art 38 had specified that fishery products would be included in the common market rules for agricultural products, suggesting that ‘agricultural products’ not only refer to the products of the soil and stock farming, but also ‘[...] to fisheries and products of first-stage processing directly related to these products.’

Art 40 further specified that the national market organisations for the products of fisheries should be replaced by one of the following forms of common organisation:

- Common rules on competition;
- Compulsory coordination of the various national market organisations;
- A European market organisation.

The EEC Treaty was also the source which attributed the Commission the task to propose measures – apart from the replacement of the national market organisations – in order to attain the following objectives:<sup>9</sup>

- An increase in *‘agricultural productivity by promoting technical progress and by ensuring the rational development of agricultural production and the optimum utilisation of the factors of production, in particular labour;*
- *thus to ensure a fair standard of living for the agricultural community, in particular by increasing the individual earnings of persons engaged in agriculture;*
- *to stabilise markets;*
- *to assure the availability of supplies;*
- *to ensure that supplies reach consumers at reasonable prices.’*<sup>10</sup>

More precisely, the measures, which the Commission was supposed to include in their proposal, were in the field of *‘effective coordination of efforts in the spheres of vocational training, of research and of the dissemination of agricultural knowledge [...] and joint measures to promote consumption of certain products.’*<sup>11</sup>

### **3.2.2. Regulations 2141/70 and 2142/70**

However, it was not until 1970 that the European Community adopted two rules, which created fishery-specific measures.

1. Council Regulation 2141/70:

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<sup>9</sup> Treaty of Rome: Article 39.

<sup>10</sup> Treaty of Rome: Article 49.

<sup>11</sup> Treaty of Rome: Article 41.

In adopting this regulation, the Council created a common structural policy for the community fishery industry. In addition to that, it granted the member states – under certain circumstances – equal access to each other's waters<sup>12</sup>.

2. Council Regulation 2142/70:

This consecutive regulation provided for the common organisation of the market for fishery products.<sup>13</sup>

Despite the significant level of Europeanization of the fisheries policy in 1970, the negotiations for accession of the United Kingdom, Ireland and Denmark were accompanied by a move away from free access to common fishing grounds. The 1972 Act of Accession authorized the member states to establish an exclusive coastal zone of 12 sea miles, which were reserved for the countries' own fleets.<sup>14</sup> These exclusive fishing zones have been upheld ever since.<sup>15</sup>

In the context of international developments in the law of sea, the 'new' member states pushed for a further extension of their exclusive fishing rights. It was thus in 1976, that the Council adopted a resolution that declared the extension of the limits of the member states' fishing zones to 200 miles<sup>16</sup> – in line with other countries such as Mexico, Iceland, the United States, Canada and Norway.<sup>17</sup> These extended fishing zones are internationally referred to as Exclusive Economic Zones (EEZs) and were enshrined on an international level in 1982, in the United Nations Convention on the Law of the Sea (UNCLOS). In practice, the establishment of the 200-mile EEZ formed one single zone under EEC management<sup>18</sup> - even though the earlier introduced 12-mile zone was still being upheld, granting exclusive rights to the coastal member state's fisheries.

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<sup>12</sup> *Lequesne C.*, The politics of fisheries in the European Union (2004) 12.

<sup>13</sup> *Simmonds K.R.*, External Relations Power of the EEC: A Recent Ruling of the European Court, The International and Comparative Law Quarterly, Volume 26 (1977) 208 (208).

<sup>14</sup> Kingdom of Belgium - Foreign Affairs, Foreign Trade and Development Cooperation (online).

<sup>15</sup> Apart from the establishment of a 12-mile zone, there was another development, which undermined the principle of freedom of access in EU waters: A decision by the ECJ in July 1976 provided for the possibility to limit the principle of freedom of access in European Union waters (Source: Centre Virtuel de la Connaissance sur l'Europe (online source)) – under the prerequisite that the limited access was aimed at the conservation of the sea (Source: *Simmonds K.R.*, The International and Comparative Law Quarterly, Volume 26 (1977) 208).

<sup>16</sup> Council Resolution of 3 November 1976 on certain external aspects of the creation of a 200-mile fishing zone in the Community with effect from 1 January 1977.

<sup>17</sup> Europedia (online source).

<sup>18</sup> *Kwiatkowska B.*, The 200 Mile Exclusive Economic Zone in the New Law of the Sea (1989) 59.

It was thus the official extension of the member states' EEZs that considerably increased the EECs management zone. This in turn created special challenges to the Community – management of resources had to be put on a new level.

### 3.2.3. Regulation 170/83

It is straightforward that new legislation had to be adopted in order to overcome these challenges. After several years of negotiations, regulation 170/83 was adopted in 1983. It established a Community system for the conservation and management of fishery resources.

This cornerstone regulation in the fisheries policy had three important components:<sup>19</sup>

1. Reinforcement of the EEC's commitment to EEZs;<sup>20</sup>
2. Introduction of conservation management measures<sup>21</sup>:
  - System of total allowable catches (TACs) and quotas;
  - Zones where fishing of certain species is either limited or restricted to certain periods, types of vessel, fishing gear or certain end-uses;
  - Rules concerning fishing gear;
  - Minimum size or weight for each species, as well as a volume for each catch;
3. Formulation of the concept of relative stability<sup>22</sup>:

This concept states that member states' historic levels of fishing determine their future share of total catch quota.

This principle must be seen from a critical perspective though, because it is often being seen as a main reason for the '*horse trading of fishing quotas*'<sup>23, 24</sup>.

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<sup>19</sup> European Parliament Fact Sheets.

<sup>20</sup> Regulation 170/83: Preamble.

<sup>21</sup> Regulation 170/83: Articles 2 and 3

<sup>22</sup> Regulation 170/83: Article 4

<sup>23</sup> Gardiner B., EU Fisheries Policy: The Relative Insanity of 'Relative Stability' (2011) (online source).

<sup>24</sup> According to these critics, countries agree upon a certain voting pattern, more specifically, upon the increase in annual total allowable catches. All countries participating benefit in the way that the limits for species that are important to them, are being continuously eased. Fleet overcapacity, short-term

### 3.2.4. Regulation 3760/92

After a review report by the Commission's Directorate General (DG) for Fisheries in 1991, the Council adopted Regulation 3760/92. This regulation took account of the fact that the EEC's fleet capacity had changed due to events such as (a) the withdrawal of Greenland from the community in 1985 (after a referendum on the membership in 1982), (b) the accession of Portugal and Spain in 1968, (c) and the reunification of Germany in 1990, thus the expansion of the community area to the former DDR and all of Berlin.

While the old regulation was being transferred to a large part, there were some important changes, particularly in the field of the conservation and protection of resources. More specifically, the regulation aimed at establishing *'[...] a framework for the regulation of access, management and monitoring of exploitation activities, as well as the requisite means and procedures.'*<sup>25</sup> As a result, the most important changes that regulation 3760/92 brought about were the following:

- Conservation measures:  
A limitation of exploitation rates and time spent at sea; fixation of the number and type of fishing vessels authorized to fish; and the establishment of incentives, including those of an economic nature, to promote more selective fishing;<sup>26</sup>
- Introduction of the Community licensing system:  
A compulsory introduction of national fishing licence systems; requirement for all Community fishing vessels to have a fishing licence; the establishment of a Community system by 1995<sup>27</sup>, creating rules for the minimum information to be contained in fishing licences;<sup>28</sup>
- A new Community control system;<sup>29</sup>

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decision-making and ecologically damaging practices are cited as consequences of the concept. (Source: *Gardiner B.*, EU Fisheries Policy: The Relative Insanity of 'Relative Stability' (2011) (online source)).

<sup>25</sup> Regulation 3760/92: Article 2.

<sup>26</sup> Regulation 3760/92: Article 4.

<sup>27</sup> Regulations 3690/93 and 1627/94 specified rules for the Community licences system.

<sup>28</sup> Regulation 3760/92: Article 5.

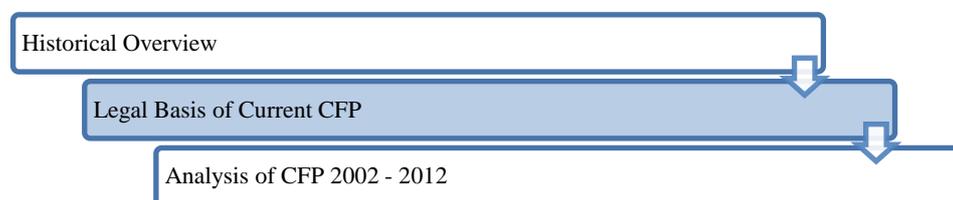
<sup>29</sup> Regulation 3760/92: Article 12.

As has been the case with previous regulations establishing the CFP, regulation 3760/92 provided for a review of the situation of the fishing sector. It specified that *‘[b]y 31 December 2001 at the latest, the Commission shall present to the European Parliament and the Council a report on the fisheries situation in the Community and, in particular, on the economic and social situation of coastal regions, on the state of the resources and their expected development, and on the implementation of this Regulation. On the basis of that report, the Council, acting in accordance with the procedure laid down in Article 43 of the Treaty [still Treaty of Rome], shall decide, before 31 December 2002, on any necessary adjustments to be made [...]’*<sup>30</sup> This provision was the starting point for regulation 2371/2002, which established the CFP that is in force today.

### 3.3. Competency of the EU for the Adoption of the CFP

#### 3.3.1. Introduction

As can be concluded from the previous chapter, the Common Fisheries Policy, which is in force today, is a result of a continuous development and of an adoption of reforms over time. As the aim of the previous chapter was to set forth the historical development of the CFP, it is the task of this chapter to exhibit the legal basis of the current CFP. As can be depicted from Figure 5, this is the second step of the EU fisheries policy’s analysis.



**Figure 5: Outline of Chapter 3.**

This is a necessary step in analyzing the legality of FPAs, because – as will be shown

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<sup>30</sup> Regulation 3760/92: Article 14.

in the chapter 4 – this regulation is an important tier that enables the EU to conclude agreements with third countries in the fisheries sector.

Hence, the sources of competence that underlay the adoption of the CFP 2002-2012 will be illustrated in this chapter. The consecutive chapter will then present the regulation itself to elaborate whether FPAs are provided for in the CFP.

### **3.3.2. Legislative Basis of the current CFP**

The origins of regulation 2371/2002, which determines the CFP between 2002 and 2012, lie in the Treaty of Amsterdam. It gave the European Community (EC) the power to adopt legislation in the policy area of agriculture and fisheries.

Art 37 of the Treaty of Amsterdam specified that two years after the coming into force of the treaty, hence by 01.01.2001, the European Commission should submit a proposal for the implementation of a common agricultural policy (common agricultural policy implying CFP) after having consulted the Economic and Social Committee. Provision on the objectives of the CFP and the common market organisation were still the same in the Treaty of Amsterdam as in the Treaty establishing the European Economic Community. Evidently, these provisions had been transferred from the Treaty of Rome to the Treaty of Maastricht to the Treaty of Amsterdam.

According to the provisions of the Treaty of Amsterdam, it was in the power of the Council to issue regulations, directives or decisions, based on a qualified majority.<sup>31</sup> Back then, the European Parliament was attributed only a minor role in the legislative process in policies concerning agriculture and fisheries. Art 37 required the Council to consult the European Parliament before adopting legislation. However, in this consultation procedure, the Council was not bound by the Parliament's position. As a

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<sup>31</sup> Since the coming into force of the Treaty on European Union and the Treaty on the Functioning of the European Union, this decision procedure has changed considerably. Art 43 of the Treaty of Lisbon specifies that the European Parliament and the Council based on the ordinary legislative procedure shall adopt legislation to ensure that the CFP pursues the objectives outlined in Art 39. This means that a proposal from the Commission is amended and adopted jointly by the Council and the Parliament. Obviously, the political leverage of the European Parliament has increased significantly.

consequence, it was more or less the Council who held the power to shape the CFP – based on the proposal from the Commission, possessing the right of initiative.

Based on the above-mentioned articles and the involved procedures of legislation, the CFP that is in place today was adopted in 2002. In the following chapter, regulation 2371/2002, which shapes the fisheries policies in European member states ever since its adoption, will be analyzed.

### **3.4. CFP 2002 – 2012**

#### **3.4.1. The groundwork for the CFP**

The starting point of the CFP, which was created by means of regulation 2371/2002 was the Commission's *Green paper on the Future of the Common Fisheries Policy*,<sup>32</sup> which had been released in 2001 already. The reason for the creation of this green paper was a former regulation which had specified that the Commission should present a report on the fisheries situation to the European Parliament and the Council, until the end of 2001.<sup>33</sup>

In this paper, the Commission formulated the basic principles that the CFP should be based on. Moreover, it analyzed the state of the fisheries, the social and economic situation in European coastal countries as well as the ecological dimension of the industry. Most importantly, the European Commission had argued for the need to reform the CFP that was in place at that time (regulation 3760/92), which resulted in the adoption of a new legislative act - regulation 2371/2002.

#### **3.4.2. Content of Regulation 2371/2002**

The CFP has a broad field of application. In order to render its analysis more comprehensible, the policy will be described dividing it into its five main aspects:

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<sup>32</sup> Green paper on the Future of the CFP.

<sup>33</sup> Regulation 3760/92: Article 14.

- Resource conservation policy
- Structural policy
- Common organisation of markets
- Foreign policy in the fishery sector
- Monitoring and inspection policy

This classification is primarily based on regulation 2371/2002; however, there are some additional regulations, which complement this cornerstone act. In the following, the main areas of the CFP will be looked at in more detail.

1. Resource conservation policy:

The resource conservation policy's aim is to manage the resources sustainably. There are two broad fields of action that can be distinguished: Firstly, the setting of annual limits of catches by species and fishing area by the Council, which are known as Total Allowable Catches (TACs). Therewith closely connected is the system of quotas, which allocates the TACs between the member states. These quotas are being distributed among the member states according to the concept of Relative Stability, which has already been explained in chapter 3.1.3.<sup>34</sup>

Secondly, a bunch of regulations that have been adopted since the 1980s sets standards for net mesh size, the size of catches and vessel power.<sup>35</sup>

2. Structural policy:

The structural policy is supposed to help to attain the CFP objectives. It sets re-distributional measures to restructure the fisheries sector. This policy has undergone considerable change though. Whereas back in the 1970s, the structural policy solely aimed at *modernizing* the Community fleet, starting in 1983, it has also intended to *reduce* the fleet's capacity.<sup>36</sup> The means by which such re-distributional measures are being taken is the European Fisheries Fund (EFF), which was introduced on 1 January 2007, and

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<sup>34</sup> Regulation 2371/2002: Article 20.

<sup>35</sup> *Lequesne C.*, Politics of fisheries EU 16-17.

<sup>36</sup> *Lequesne C.*, Politics of fisheries EU 17.

replaced the Financial Instrument for Fisheries Guidance (FIFG). The EFF will be analyzed in more detail in chapter 4.3.2.

3. Common organisation of markets (CMO):

The original legislative act for the establishment of the common organisation of markets in fishery and aquaculture products was regulation 3759/92, adopted by the Council in December 1992. Having often been criticized for its destruction and waste of a limited natural resource, it was displaced by regulation 104/2000. This succession regulation on the common organisation of the markets in fishery and aquaculture products provided for four basic mechanisms in the Community market: (a) common market standards, (b) producer organizations, (c) common price systems, (c) system of trade with third countries.<sup>37</sup>

One feature of the CMO that is highly criticized is the possibility of national producer organizations to purchase fishery products, when the minimum price, which is set by the Commission, is reached. Fishermen receive an indemnity by the producer organizations, which in turn are compensated by the EU. Fishery products that are withdrawn from the market in the just outlined manner are very often destroyed.<sup>38</sup> This highly criticized policy is being explained by the need to ensure a certain degree of price stability and the need for fair prices to producers.<sup>39</sup>

4. Foreign policy in the fishery sector:

The foreign policy in the fishery sector consists of two main components: (a) the conclusion of fisheries agreements with third countries, and (b) the participation in multilateral agreements aiming at the conservation of stocks outside the EEZs, on the high seas.

5. Monitoring and inspection policy:

The legislative system concerning the control of the implementation of the fishery policy is very complex and has been amended continuously over time.

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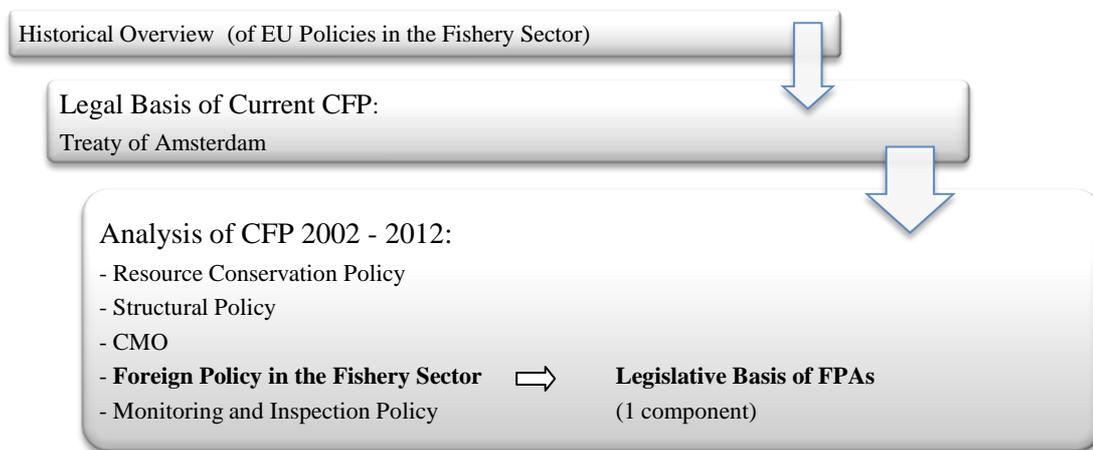
<sup>37</sup> *Markus T.*, Promotion and Management of Marine Fisheries in the European Community, in Winter (ed.), *Towards Sustainable Fisheries Law: A Comparative Analysis* (2009) 253 (256 ff).

<sup>38</sup> *Lequesne C.*, *Politics of fisheries EU*. 18.

<sup>39</sup> Kingdom of Belgium – Foreign Affairs, *Foreign Trade and Development Cooperation* (online source).

The latest regulation was adopted in 2009, which established a Community control system for ensuring compliance with the rules of the common fisheries policy.<sup>40</sup> Despite this recent amendment, the main responsibility to control is still inherent to the member states. However, the European Commission has considerable rights to ‘[...] *evaluate and control the application of the rules of the Common Fisheries Policy by Member States, [...]*’<sup>41</sup> which are defined in Art 27 of Regulation 1224/2009.

From the analysis in this chapter it follows that (in terms of its competency in the fishery sector) the EU is allowed to conclude FPAs. This circumstance is based on the Treaty of Amsterdam, as well as the CFP’s provisions on foreign policy in the fishery sector. The relation can be depicted in Figure 6.



**Figure 6: Result of the Analysis of EU Fisheries Policies.**

Regulation 2371/2002 also defined that the CFP was supposed to be reviewed and amended after 10 years. This reform process is currently under progress. However, its outcome is not crucial for this thesis’ research question – even though the reforms’ significance can only be underlined. The reason for that is the FPA between the EU and Mozambique was concluded in November 2007. This is why analyzing the constitutional issues of that agreement implies an analysis of the applicable legal framework at those times.

<sup>40</sup> Regulation 1224/2009: Article 27.

<sup>41</sup> Regulation 1224/2009: Article 27.

## **4. Subsidies Granted by the EU in the Framework of the Economic Constitution**

### **4.1. Introduction**

The previous chapters have underlined that the EU has the competency to conclude FPAs with third countries. However, this does not implicitly mean that FPAs are in accordance with other European law, such as EU subsidy law.

The fishing rights that are bought through FPAs are being paid for from the EU budget. Instead of passing on the cost to the European fishing industry, which actually makes use of these fishing rights, the financial burden is carried by the EU. Hence, FPAs constitute an indirect subsidy.

In the following, an overview of different kinds of subsidies will be given in order to be able to correctly classify FPAs. In doing so, the difference between prohibited subsidies *in* the EU as well as exceptions thereof, and permitted subsidies *by* the EU will be illustrated. After that, a closer look on the scale of subsidies in the fishing industry will be taken.

### **4.2. Subsidies in the EU**

#### **4.2.1. Terminology of subsidy in EU legislation**

In general subsidies are considered as incompatible with the internal market. In the Treaty on the Functioning of the European Union, a subsidy is defined as ‘[...] *any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States [...]*’<sup>42</sup>.

It can be deduced that a subsidy has five essential characteristics: The aid must

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<sup>42</sup> Treaty on the Functioning of the European Union: Article 107 (1).

- a) be granted by a **member state or through State resources**;
- b) **distort or threaten to distort competition**;
- c) **favour** undertakings or the production of certain goods;
- d) favour **certain** undertakings or the production of certain goods;
- e) **affect trade** between member states.<sup>43</sup>

The term subsidy is defined quite broadly, indeed. Nevertheless, there are exceptions to the incompatibility of subsidies with the internal market, which will be looked at in the following.

#### 4.2.2. Exceptions to the interdiction of subsidies

The TFEU (as have its preceding treaties) allows for three such exceptions to the general principle of the incompatibility of subsidies. These can be distinguished as follows: Compelling exceptions, admissible exceptions (which allows the commission to adopt block exemption regulations<sup>44</sup>), and services of general economic interest<sup>45</sup>. It is important to keep in mind that there are exceptions to the general principle of incompatibility of subsidies. These exceptions also apply in the fisheries industry, especially in the form of block exemptions. More specifically, the regulation on the application of ex-Art 87 and 88 of the Treaty (back then<sup>46</sup>: Treaty of Nice; corresponds to Art 107 and 108 TFEU) to State aid to small and medium-sized enterprises active in the production, processing and marketing of fisheries products.<sup>47</sup>

Whatsoever, these exceptions do not directly affect this thesis' research question. As a consequence, they will not be discussed in more detail here. The reason for the irrelevance of these exceptions is the differentiation between subsidies *in* and *by* the EU, which will be explained in the following chapter.

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<sup>43</sup> *Wimmer N. and Müller T.*, *Wirtschaftsrecht* 351.

<sup>44</sup> Council Regulation 994/98.

<sup>45</sup> Treaty on the Functioning of the European Union: Article 106, 107 (2).

<sup>46</sup> At the time of the conclusion of the FPA between the EU and Mozambique.

<sup>47</sup> Commission Regulation 736/2008.

After having illustrated the characteristics of what is defined as subsidy in EU law, as well as having roughly outlined the exceptions from the principle of subsidy-incompatibility with the internal market, one question remains: Are FPAs, thus subsidies granted *by* the EU, prohibited?

### **4.3. Subsidies granted by the EU: not within the scope of Article 107 TFEU**

As has been mentioned in the previous chapter, a block exemption regulation for fisheries is in force. Still, the consideration of this block exemption regulation is not even necessary since Art 107 TFEU is not applicable to subsidies granted by the EU.

Only *state* aid that can be classified as subsidy, according to the definition in Art 107 TFEU, can be incompatible with the internal market. Such being the case, it is straightforward to examine whether all characteristics of a subsidy are fulfilled. Art 107 TFEU defines that a subsidy is, first and foremost, ‘[...] *any aid granted by a Member State or through State resources [...]*’.<sup>48</sup> The wording by itself excludes the application of this article on EU subsidies, since the characteristics of a subsidy are cumulative. As a consequence, aid granted by the EU, from the EU budget, is no ‘subsidy’ as such.<sup>49</sup>

Nevertheless, EU subsidies are subject to other clauses of the TFEU (Art 8, 18, 40(2) and 157),<sup>50</sup> TEU (Art 2 and 3(3))<sup>51</sup> and the European Union Charter of Fundamental Rights (EUCFR), especially the principle of equality;<sup>52</sup> also statutory provisions of international law might apply.<sup>53</sup>

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<sup>48</sup> Treaty on the Functioning of the European Union: Article 107 (1).

<sup>49</sup> *Wimmer N. and Müller T.*, *Wirtschaftsrecht*, recital 761.

<sup>50</sup> *Tovey G.*, *European Union Law. General Principles of EU Law* (2010) 5.

<sup>51</sup> *Tovey G.*, *European Union Law* 5.

<sup>52</sup> European Union Charter of Fundamental Rights (EUCFR): Article 20.

<sup>53</sup> *Wimmer N. and Müller T.*, *Wirtschaftsrecht* 350.

#### **4.4. EU - Subsidies in Fishing Sector**

After having laid out the difference between EU subsidies and subsidies in the EU (granted by national states), a closer look will be taken on subsidies in the fishing sector.

National-level aid in the fishing industry is estimated at € 444 million per year. Apart from that, subsidies granted by the EU include market support (€ 24 million), structural aid (€ 290 million), fisheries partnership agreements (€ 26 million<sup>54</sup>), as well as administration, control and enforcement, management, international fisheries and law of the sea (€ 104 million). However, these estimates do not include subsidies in the form of lost revenues by the governments due to fuel tax exemptions (€ 1,5 billion).<sup>55</sup> As a result, the fishing sector is subsidized with about € 2 billion a year.<sup>56</sup>

In the following, the four forms of subsidies (a) market support, (b) structural aid, (c) fisheries partnership agreements and (d) administration, control and enforcement, management, international fisheries and law of the sea will be discussed; special attention will be paid to fisheries partnership agreements.

##### **4.4.1. Market Support**

The Common Market Organization (CMO) provides for a mechanism that subsidizes fishermen of the EU, namely the Community price support mechanism to fishing and aquaculture products. It is similar to the price support mechanism that applies to some agricultural products. When the price of fish falls lower than the price guide fixed by European fishery ministers annually, producer organisations (privately constituted organisations) purchase the products. The products are either completely withdrawn from the market, or withdrawn with the intention to put it back on the market at a later point of time – after having been stocked or processed. The EU, more precisely the

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<sup>54</sup> as of 29.12.2012 according to European Commission (online source).

<sup>55</sup> Ocean2012, Reforming EU Fisheries Subsidies (2011) 2 (online source).

<sup>56</sup> These figures refer to 2009.

European Agricultural Guarantee and Guidance Fund (EAGGF) Guarantee section, refunds the Producer Organizations for their activities.<sup>57</sup>

#### **4.4.2. Structural Aid**

Subsidies that constitute structural aid can be distinguished according to the fund that allocates the money:

- European Fisheries Fund (EFF):  
As has been laid out by the Court of Auditors, the main instrument is the EFF. It replaced the FIG in 2007 and allocated € 395 million in 2010.<sup>58</sup> For the period between 2007 and 2013, the amount of € 2,85 billion is available for commitments from the EFF.<sup>59</sup>
- Community financial measures for the implementation of the common fisheries policy, and in the area of the Law of the Sea<sup>60</sup>
- European Regional Development Fund (ERDF)<sup>61</sup>
- European Social Fund (ESF)<sup>62</sup>

#### **4.4.3. International Fisheries Agreements**

The EU finances several international fisheries agreements with countries outside the EU, which constitute an important share of subsidies for the fishing industry. At the moment, there are 11 agreements in force.<sup>63</sup>

The reason for the emergence of fisheries agreements with third countries is threefold: Firstly, due to the establishment of exclusive economic zones, fishing opportunities of the EU declined dramatically. Secondly, stocks in the European waters declined significantly. Thirdly, the overcapacity of the European fishing fleet further

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<sup>57</sup> *Lequesne C.*, Politics of fisheries EU 91.

<sup>58</sup> Court of Auditors, Annual report concerning the financial year 2010 (2011) (online source).

<sup>59</sup> Council Regulation 1198/2006.

<sup>60</sup> Council Regulation 861/2006.

<sup>61</sup> Regulation (EC) 1080/2006.

<sup>62</sup> Regulation (EC) 1081/2006.

<sup>63</sup> as of 29.12.2012 according to European Commission (online source).

aggravated the just mentioned issues.<sup>64</sup> It was hence the combination of these developments that exerted considerable pressure and induced the conclusion of fisheries agreements with third countries.

Today, one can distinguish between three different kinds of fisheries partnership agreements:

1. Reciprocal agreements:

Reciprocal agreements allow for an exchange of fishing opportunities and a coordination of the exploitation of stocks, and are common within the North Sea and northeast Atlantic. The EU has concluded this type of agreement with Norway, the Faeroes and Iceland.

2. Agreements involving financial compensation:

This kind of agreements is often referred to as ‘Southern Agreements’, as they are usually concluded with African countries and countries bordering the Indian Ocean (an exception being Greenland). The difference between the Northern and Southern agreements is the financial compensation. Countries, granting the EU fishing rights in terms of number of vessels or tons fished, are getting paid in return.

When looking at these ‘Southern agreements’ one can draw a distinction between agreements that are restricted to catching tuna (Cape Verde, Comoros, Côte d’Ivoire, Madagascar, Mozambique, São Tomé and Príncipe, and Seychelles) and so-called mixed agreements (Greenland).<sup>65</sup>

3. Second generation agreements:

This third form of fisheries partnership agreements was only concluded with Argentina. In return for the access to EU vessels in Argentinean waters, joint European-Argentinean ventures, supported from the EU budget, were set up. The shortcoming in terms of overcapacity of this kind of agreement were immense and led to near collapse of hake fisheries in Argentina; the agreement has therefore been discontinued.<sup>66</sup>

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<sup>64</sup> Porter G., *The Euro-African Fishing Agreements: Subsidizing Overfishing in African Waters* (1997)

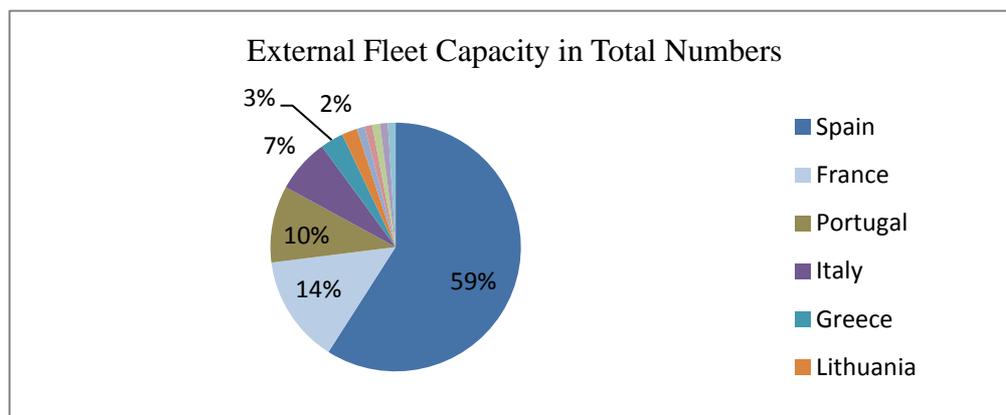
2.

<sup>65</sup> as of 29.12.2012 according to European Commission (online source).

<sup>66</sup> Mwikya S.M., *Fisheries Access Agreements: Trade and Development Issues* (2006) 6.

The fish caught under these agreements contributes to an estimated 21% of the community's total catches for human consumption. However, looking at the number of vessels, the external fleet capacity appears negligible. The Commission produced a list of 718 vessels fishing outside the EU waters compared to 88.600 vessels of the fleet fishing in European waters. Whatsoever, the external fleet concentrates 24% of the capacity in terms of gross tonnage of the entire Community. This can be explained by the bigger size of the external fleets' vessels, their greater displacement and their higher power. In some member states, such as in Spain or Lithuania, the relative size of the external fleet is particularly high (49% and 70% in terms of tonnage).<sup>67</sup>

The 11 bilateral fishing agreements are being paid for by the EU budget. The ship owners pay additional charges to the contracting states, depending on the amount of tons caught, which are comparatively low. The classification of FPAs as EU subsidies is thus straightforward. Most benefits go to Spanish vessels, its fleet constituting 59% of the total external fishing fleet, followed by France, 14%, and Portugal, 10%, as pointed out by the following figure.



Source: COM final report: Study on the European External Fleet, 2008.

From that it follows that the importance of fisheries partnership agreements is considerable, as it also constitutes a means of maintaining the European fleet overcapacity.

<sup>67</sup> COM final report: Study on the European External Fleet, 2008.

## 4.5. Summary

The last few chapters have served to lay the foundation for a holistic analysis of the constitutional issues concerning the FPA between the EU and Mozambique. Having explained the reason why there is talk of *constitutional* issues, these issues were discussed thereafter. First of all, the questions why and to which extent the EU has the competency to adopt policies in the fishery sector, were posed. The outcome was that ever since the conclusion of the Treaty of Rome, the European legislative bodies have had the power to shape the fishing sector in certain policy areas. In the next step, regulation 2371/2002 was analyzed. The reason for that was threefold: Firstly, this regulation was enacted based on the provisions in the Treaty law. Secondly, it is the framework regulation for the current CFP. Thirdly, it is necessary to look at the regulation's provisions with regard to the foreign policy in the fishery sector, in order to be able to illustrate the whole legal framework for the FPA between the EU and Mozambique.

After this analysis of the EU's competency in the fishing sector, the compatibility of EU subsidy law and FPAs was discussed. In doing so, a differentiation of subsidies had to be made in order to correctly classify these agreements. Having found out that FPAs are not against Union law, the scope of EU subsidies for international fisheries agreements was exhibited. Recalling the structure of the thesis, it can be concluded that step 1 has been completed.

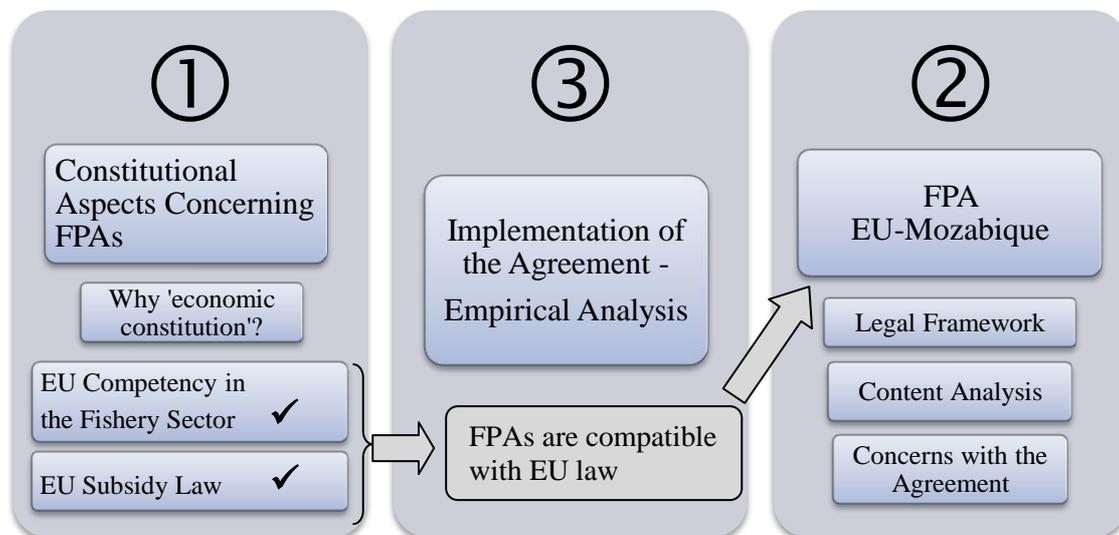


Figure 7: Structure of the Thesis.

Following the findings of the last chapters, it is now possible to properly analyze the legality of the FPA between the EU and Mozambique (as indicated by the grey arrows in Figure 7). Throughout the analysis, two previously reached results must be accounted for: Firstly, the EU has the competency to conclude international fishery agreements. Secondly, these agreements are compatible with EU subsidy law. Keeping that in mind, the starting point of the following chapter's analysis is an illustration of the legal framework of the specific FPA in question. Thereafter, the agreement itself will be laid out, which will be followed by a discussion on the agreement's consequences for Mozambique.

## **5. Agreement with Mozambique**

### **5.1. Legal Framework for the Bilateral Agreement between the EU and Mozambique**

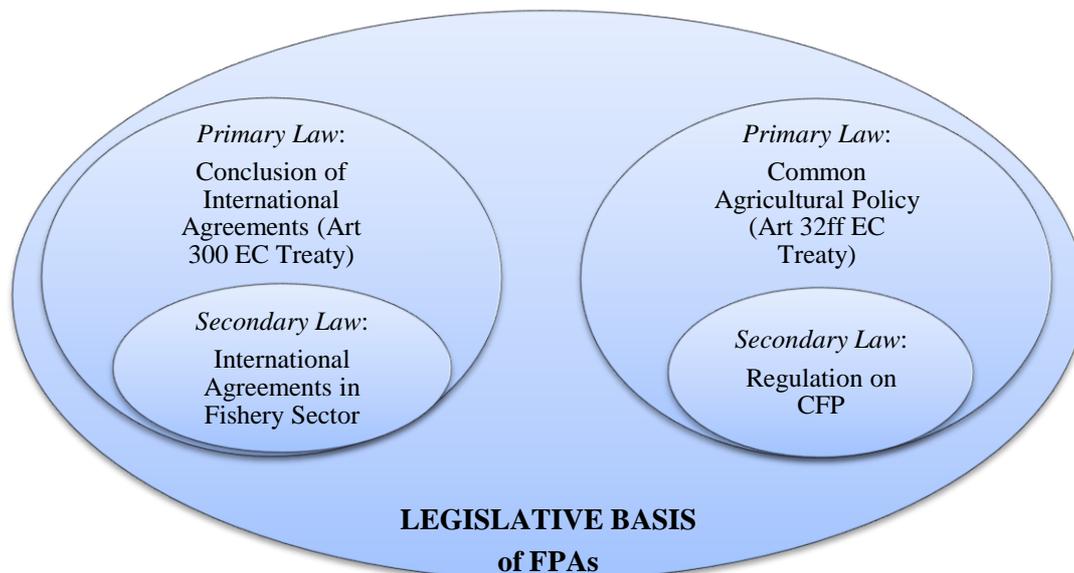
The legal framework for the conclusion of FPAs with third countries is initially based on Art 228 of the Treaty of Rome (Art 300 EC Treaty; Art 216 to 218 TFEU, but different now), which specified the procedure of concluding international agreements between the EC and third countries, in a general context. The fishery-specific legislative act followed in 1976, when the European Foreign Ministers adopted a resolution that resourced the EC to conduct foreign policy in the fishery sector. The resolution specified that '*[...] by means of any appropriate Community agreements, [...] Community fishermen obtain fishing rights in the waters of third countries [...]*'.<sup>68</sup>

As a consequence, the following legislative acts constitute the legal groundwork for the conclusion of the FPA between the EU and Mozambique back in 2007 (summarized in Figure 9):

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<sup>68</sup> Council Resolution of 3 November 1976 on certain external aspects of the creation of a 200-mile fishing zone in the Community with effect from 1 January 1977.

- Art 300 EC Treaty (ex-Art 228 Treaty of Rome);
- The just mentioned regulation on international agreements in the fishery sector;<sup>69</sup>
- Art 32ff EC Treaty – especially Art 37 (ex-Art 38ff Treaty of Rome, which were already discussed in chapter 3.1.1.);
- Regulation on the CFP (discussed in chapter 3.3.2.).



**Figure 8: Legislative Basis of FPAs.**

This legal situation allowed for the conclusion of the FPA between the EU and the Republic of Mozambique. By means of regulation 1446/2007 on the conclusion of the FPA, the already initialled agreement was approved.<sup>70</sup>

Having elaborated the legal framework that allowed for the conclusion of the FPA

<sup>69</sup> Council Resolution of 3 November 1976

<sup>70</sup> Council Regulation (EC) No 1446/2007: Article 1.

between the EU and Mozambique, as well as its actual transition into EU law, it is now reasonable to take a closer look at the agreement itself.

## **5.2. Analysis of the FPA between the EU and Mozambique**

### **5.2.1. Introduction**

The aim of this chapter is to analyze the FPA between the EU and Mozambique. In doing so, the agreement, which came into force on 1.1.2007, will be closely looked at. Integral part of the actual agreement is its protocol, annex and appendices.<sup>71</sup> As a consequence, these legislative acts will be considered in the analysis as well. Since the protocol was renewed in 2011, attention will be paid to this more recent one. In the end, the distribution of fishing rights within the EU will be laid out.

### **5.2.2. The Agreement of 2007**

The Fisheries Partnership Agreement between the EU and Mozambique was initialled on 21.12.2006 and replaced another agreement that had been in force since 2004.<sup>72</sup> The current FPA came into force on 1.1.2007, including its protocol, annex and appendices. The duration of its application was agreed upon for five years. However, Art 11 of the FPA already specified that the agreement '*shall be tacitly renewed*'.

The content of the agreement will not be reproduced one to one. Especially with regard to the empirical analysis in chapter 7, it is more worthwhile to illustrate the provisions of the agreement along the following lines:

- Financial Contribution
- Sustainability in the fishery sector
- Scientific cooperation
- Economic development

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<sup>71</sup> FPA: Article 14.

<sup>72</sup> IP/06/1898 (online source).

## Financial Contribution

The FPA lays out that the financial contribution by the EU is based on two elements. The first one is a compensation for the alienated fishing rights. The second element of the financial contribution is earmarked for the promotion of responsible and sustainable fishing policies in Mozambican waters.<sup>73</sup> The exact amount of money due is specified in the protocol and will be illustrated in the consecutive chapter.

## Sustainability in the Fishery Sector

In the FPA, Mozambique and the EU commit themselves to promote sustainable fishery policies. This commitment can be traced in several parts of the agreement:

- Art 3(1) lays out the principles and objectives underlying the implementation of the FPA. It specifies that *‘The Parties hereby undertake to promote responsible fishing in Mozambican waters as provided for in FAO’s Code of Conduct for Responsible Fishing [...].’* The 3<sup>rd</sup> paragraph determines that the two parties undertake to ensure that the agreement is implemented while respecting the state of fish stocks.
- Art 4(2) determines that both parties *‘[...] undertake to consult one another [...] to ensure the management and conservation of living resources in the Indian Ocean [...].’*
- As specified in Art 4(3), the EU and Mozambique shall *‘[...] jointly adopt conservation measures for sustainable management of fish stocks affecting the activities of Community vessels.’*
- Art 7(3b) allows for a reduction in the fishing opportunities granted to the EU, if this is necessary for the conservation and sustainable exploitation of resources. However, this can only be done on the basis of mutual agreement.
- Art 12 states that the application of the FPA may *‘[...] be terminated by either Party in the event of degradation of the stocks concerned, the discovery of a reduced level of exploitation of the fishing opportunities granted to Community vessels, [...].’*

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<sup>73</sup> FPA 2007: Article 7.

### Scientific cooperation

The agreement imposes several tasks to the EU as well as the Republic of Mozambique that require scientific cooperation:

- The EU and Mozambique '*[...] shall endeavour to monitor the evolution of resources in Mozambique's fishing zone.*'<sup>74</sup>
- As illustrated earlier, both parties '*[...] undertake to consult one another [...] to ensure the management and conservation of living resources in the Indian Ocean [...].*'<sup>75</sup>
- Conservation measures shall be jointly adopted – on the basis of consultation.<sup>76</sup>
- '*[E]xchange of information on fishing techniques and gear, preservation methods and the industrial processing of fisheries products.*' shall be promoted.

In order to meet these tasks, the FPA has provided for two institutions. Firstly, scientific working groups, which are supposed to fulfil cooperation purposes.<sup>77</sup> Secondly, the FPA has introduced a Joint Committee. This is the framework within which the two parties are expected to consult each other and adopt, for example, conservation measures.

Apart from the responsibilities in terms of scientific cooperation, the Joint Committee has a big scope of functions including: (a) monitoring the performance, interpretation and application of the agreement; (b) defining the annual and multiannual programme; (c) evaluating the implementation of the agreement; (d) establishing a basis for fishery-specific interests; (e) settling of disputes relevant to the agreement; (f) reassessing the level of fishing opportunities and, where applicable, the financial contribution.<sup>78</sup> Following from this huge field of activities, it is straightforward that this Committee can be attributed a crucial role in the application of the agreement.

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<sup>74</sup> FPA: Article 4(1).

<sup>75</sup> FPA: Article 4(2).

<sup>76</sup> FPA: Article 4(3).

<sup>77</sup> FPA: Article 4(2).

<sup>78</sup> FPA: Article 9(1).

## Economic development

Art 8 of the FPA includes provisions that aim at the promotion of economic development. The agreement determines that the parties:

- *‘[...] shall encourage economic, scientific and technical cooperation in the fisheries sector and related sectors.’<sup>79</sup>*
- *‘[...] shall endeavour to create conditions favourable to the promotion of relations between their enterprises [...].’<sup>80</sup>*
- *‘[...] undertake to implement a plan and actions between Mozambican and Community operators aimed at promoting fish landing from Community vessels in Mozambique.’<sup>81</sup>*
- *‘[...] shall encourage [...] the setting-up of joint enterprises in their mutual interest.’<sup>82</sup>*

After the illustration of the agreement itself, it is necessary to look at its protocol’s provisions.

### **5.2.3. The New Protocol**

As already pointed out, the protocol and its annex constitute an integral part of the actual FPA. The first protocol was in force for five years, which means that it expired on 31.12.2011. Hence, the old protocol had to be renewed.<sup>83</sup> This renewal process as well as the provisions of the new protocol and its annex will be exhibited in this chapter.

The two parties initialled the new protocol on 2.6.2011.<sup>84</sup> The protocol already specified that it should be applied provisionally from the date of its signature,

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<sup>79</sup> FPA: Article 8(1).

<sup>80</sup> FPA: Article 8(3).

<sup>81</sup> FPA: Article 8(4).

<sup>82</sup> FPA: Article 8(5).

<sup>83</sup> From now on, if not otherwise indicated, protocol refers to one currently in force.

<sup>84</sup> Council Decision 2012/306/EU: Preamble.

1.1.2012 at its earliest.<sup>85</sup> As a result, the protocol was already being applied provisionally, when the Council adopted Decision 2012/91/EU in January 2012, which authorized the signing of the protocol on behalf of the Union.<sup>86</sup> However, it was not until June 2012 that the procedures for the protocol's conclusion were completed. This was done through the adoption of Council Decision 2012/306/EU, which officially approved the protocol.<sup>87</sup>

The content of the protocol *setting out the fishing opportunities and the financial contribution provided for by the FPA between the EU and Mozambique* will now be exhibited. It stands to reason to analyze the protocol according to the categorization in the previous chapter. However, one component (economic development) is not further specified in the protocol and will therefore be neglected at this point.<sup>88</sup> On the contrary, two other components must be added to the protocol's analysis: period of application & fishing opportunities, as well as *new* fishing opportunities.

#### Period of Application & Fishing Opportunities

Art 1 of the protocol lays out that the fishing opportunities are granted for a period of three years and comprise 17 highly migratory species, as listed in United Nations Conventions on the Law of the Sea (UNCLOS).<sup>89</sup> What is new, compared to the previous protocol, is the requirement that vessels fishing under EU flag must not only have a fishing license in accordance with this protocol but must also be listed under the IOTC Record of Authorised Vessels.<sup>90</sup>

#### Financial Contribution

As pointed out in the previous chapter, Art 7 of the agreement determines that the financial contribution by the EU consists of two elements. Firstly, a financial compensation for the fishing rights; Art 2 of the protocol specifies that this

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<sup>85</sup> Protocol: Article 15.

<sup>86</sup> Council Decision 2012/91/EU: Article 1.

<sup>87</sup> Council Decision 2012/306/EU: Article 1.

<sup>88</sup> Except of a provision about the signing-on of Mozambican qualifies seamen. Chapter IX (1) of the annex to the protocol requires one Mozambican seaman for tuna seiners and two seamen for longliners.

<sup>89</sup> UNCLOS: Annex 1.

<sup>90</sup> IOTC: Indian Ocean Tuna Commission (online source).

compensation amounts to € 520 000 for 8 000 tons per year. The second element is a payment for the promotion of responsible and sustainable fishing policies in Mozambican waters.<sup>91</sup> As a result, € 460 000 are paid annually for the support and implementation of the sectoral fisheries and maritime<sup>92</sup> policy.<sup>93</sup> The total financial contribution therefore amounts to € 980 000 per year.

### Sustainability in the Fishery Sector

In terms of sustainability in the fishery sector, there are not many specifications in the protocol. The general provision in the agreement that *'The parties [...] undertake to promote sustainable fishing in Mozambican waters [...]'* stays more or less the same.

Furthermore, in the FPA there is talk about the possibility of reducing the fishing opportunities granted to the EU by mutual agreement, for the purpose of managing stocks. This must be based on the best scientific advice.<sup>94</sup> The protocol now lays out what is considered best scientific advice: It is recommendations and resolutions either of the Indian Ocean Tuna Commission (IOTC) or the scientific working group.<sup>95</sup>

Apart from that there is only one more clause in the annex to the protocol, which can be categorized as having a positive effect on sustainability. Chapter 5, about landings and transshipments, lays out that *'EU vessels landing in Mozambique port shall endeavour to make their by-catch available to the local processing companies at the local market price.'*<sup>96</sup>

However, one part of the protocol provides for more precise norms concerning the role of the Joint Committee in promoting sustainability in the fisheries sector. Art 3(1) lays out that the Joint Committee shall agree on a multiannual sectoral programme, which includes: guidelines for using the € 460 000 per year; objectives in terms of responsible fishing and sustainable fisheries; criteria and procedures for evaluating the results obtained. Furthermore, Art 8 of the protocol specifies that the Joint Committee will analyze sectoral policy support results, which are being assessed by the

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<sup>91</sup> FPA: Article 7(1b).

<sup>92</sup> The term *maritime policy* has been added since the protocol's renewal – its significance cannot be deduced from the wording alone whatsoever.

<sup>93</sup> Protocol: Article 2.

<sup>94</sup> FPA: Article 7(3b).

<sup>95</sup> Protocol: Article 5(1).

<sup>96</sup> Annex to protocol: Chapter V.

government of Mozambique. Moreover, the protocol determines that *'[.] if the performance is found to be materially inconsistent with the budgeted programme, the European Commission may suspend, totally or partially, the payment of the specific contribution [...].'*<sup>97</sup>

### Scientific Cooperation

As was the case for the provisions regarding the promotion of sustainability, the protocol does not provide for many specifications concerning scientific cooperation between the EU and Mozambique either. Art 4(1) of the agreement was transferred to the protocol one to one.<sup>98</sup> Art 4(3) determines that the parties shall 'endeavour' to respect the results of the consultation and cooperation processes referred to in the agreement.<sup>99</sup> Beside that, the protocol specifies in Art 4(3) and 4(4) that the IOTC is considered 'the international organisation concerned', as stated in the FPA.<sup>100</sup> Still, the protocol does not give clear objectives or obligations regarding scientific cooperation.

### New Fishing Opportunities

Art 6 of the protocol allows for the exploitation of new fishing opportunities (not included in Art 1 of the protocol), if the EU and Mozambique agree on the conditions for such fishing. This means that both parties must concur with amendments to this protocol and the annex thereto that might become necessary.<sup>101</sup> In case that this experimental fishing – which should be encouraged by both parties<sup>102</sup> - brings positive results, fishing rights may be granted to the EU until the expiration of the protocol.<sup>103</sup>

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<sup>97</sup> Protocol: Article 8(2).

<sup>98</sup> Protocol: Article 4(2).

<sup>99</sup> FPA: Article 4(2).

<sup>100</sup> FPA: Article 4(2).

<sup>101</sup> Protocol: Article 6(1).

<sup>102</sup> Protocol: Article 6(2).

<sup>103</sup> Protocol: Article 6(4).

#### 5.2.4. Issues that must be challenged

The previous two chapters have served to illustrate the FPA's content, including its protocol and annex. However, this illustration was to some extent restricted to the analysis of the provision – no interpretation has been conducted so far. Since the aim of this thesis not only is the reproduction of regulations, a short discussion of the FPA's provisions is indispensable. Two issues stand out:

##### 1. Loose Commitment to Sustainability, Scientific Cooperation and Economic Development

Admittedly, the FPA between the EU and Mozambique includes several clauses that seem to provide a sustainable approach towards fishery policies, effective scientific cooperation and a commitment to economic development in Mozambique. Yet, if looked at the wordings of the provisions in the just mentioned contexts, one must state that the agreement misses obligatory regulations.

Thus, the FPA determines that the EU and Mozambique

- *'[...] shall **endeavour** to monitor the evolution of resources in Mozambique's fishing zone,'*<sup>104</sup>
- *'[...] shall **encourage** economic, scientific and technical cooperation in the fisheries sector and related sectors.'*<sup>105</sup>
- *'[...] shall undertake to consult one another [...] to ensure the management and conservation of living resources in the Indian Ocean [...].'*<sup>106</sup> but shall only **endeavour** to respect the results of these consultation and cooperation processes.<sup>107</sup>
- *'[...] shall **endeavour** to create conditions favourable to the promotion of relations between their enterprises [...].'*<sup>108</sup>
- *'[...] shall **encourage** [...] the setting-up of joint enterprises in their mutual interest.'*<sup>109</sup>

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<sup>104</sup> FPA: Article 4(1).

<sup>105</sup> FPA: Article 8(1).

<sup>106</sup> FPA: Article 4(2).

<sup>107</sup> Protocol: Article 4(3).

<sup>108</sup> FPA: Article 8(3).

<sup>109</sup> FPA: Article 8(5).

- ‘The owners of EU vessels shall *endeavour* to sign on additional Mozambican seamen.’<sup>110</sup>
- ‘EU vessels landing in Mozambique port shall *endeavour* to make their by-catch available to the local processing companies at the local market price.’<sup>111 112</sup>

## 2. New Fishing Opportunities – What Legality?

According to the protocol, it is permitted to exploit new fishing opportunities, on the basis of mutual agreement between the EU and Mozambique. If the outcome of that exploitation is positive, fishing rights may be granted to the EU until the expiration of the protocol.<sup>113</sup>

The legality of this provision must be challenged. Who is allowed to take the decision about the exploitation of new fishing opportunities? What legislative acts is this competency based on?

The protocol only lays out that ‘[...] the Parties shall consult each other before any possible authorisation [...] and [...] agree on the conditions for such fishing [...]’.<sup>114</sup> The protocol does not clearly indicate, what level of consent is required. Is it enough if the Joint Committee agrees?

Furthermore, the protocol specifies that if the results are deemed positive,<sup>115</sup> ‘[...] the Government of Mozambique may allocate fishing possibilities of the new species to the European Union fleet until the expiration of this Protocol.’<sup>116</sup> This provision allows for a considerable amendment of the actual protocol – without fulfilling the requirements that would usually come therewith. Hence, neither the Council nor the European Parliament has to approve to a substantial extension of the protocol. One might also raise the question, whether this ‘extended’ protocol could even be classified as an additional, separate bilateral agreement.

<sup>110</sup> Annex to Protocol: Chapter IX(1)

<sup>111</sup> Annex to protocol: Chapter V.

<sup>112</sup> This provision, neglecting the word ‘endeavour’ is questionable already, since no EU vessels ever use Mozambican ports. For more detail see chapter 6.4.

<sup>113</sup> Protocol: Article 6.

<sup>114</sup> Protocol: Article 6(1).

<sup>115</sup> How is ‘positive results’ defined? No definition can be found in the relevant legislative acts.

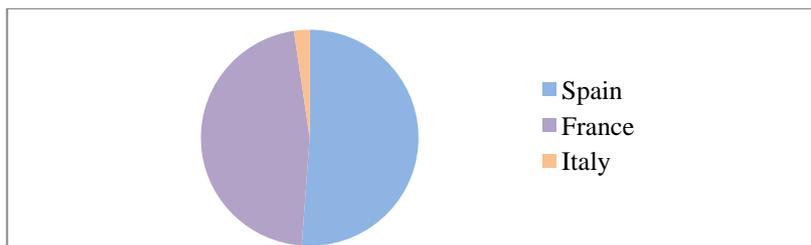
<sup>116</sup> Protocol: Article 6(4).

The conducted analysis of the FPA between the EU and Mozambique, including the protocol and the annexes thereto, has served to get a profound knowledge of the rights and obligations of both parties. In order to thoroughly complete the picture of the FPA in question, it is necessary to point out how the fishing rights bought from Mozambique are distributed within the EU.

### 5.2.5. Distribution of Fishing Rights

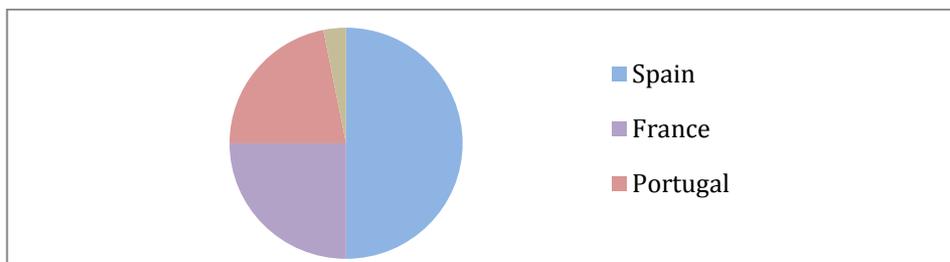
Based on regulation 134/2012 the fishing opportunities are allocated as follows:<sup>117</sup>

Spain is allowed to operate 22 tuna purse seiners, France 20 and Italy is permitted to operate 1 vessel, as pointed out in the following figure.



**Figure 9: Distribution of Tuna Purse Seiners.**

In terms of surface long liners, the total allowable number of vessels, 32, is distributed as follows: Spain 16, France 8, Portugal 7 and United Kingdom 1 vessel, as depicted in Figure 10.



**Figure 10: Distribution of Surface Long Liners.**

<sup>117</sup> Regulation 134/2012: Article 1.

The process how EU vessels can get an authorization for fishing activities within the framework of the agreements is statutory in regulation 1006/2008. Whatsoever, for the purpose of illustrating the distribution of fishing rights in the EU, it is not conducive to discuss that regulation in more detail.

What is important, on the contrary, is the evaluation of the economic, social and environmental consequences of the FPA for Mozambique. Therefore, the next chapter is dedicated to elaboration thereof.

## **6. Concerns with the FPA between the EU and Mozambique**

### **6.1. Introduction**

As already pointed out in the introduction, the aim of this thesis is not only to discuss constitutional issues of FPAs, but to look at the agreements' consequences as well. This work focuses on the FPA between the EU and Mozambique. Consequently, after having analyzed the content of the actual agreement and its protocol in the previous chapter, this part of the thesis will exhibit the possible concerns with the agreement for Mozambique.

The fundamental problem that underlies FPAs is the fact that '*[...] fish resources are exploited by economic interests outside of the country, [...]*'.<sup>118</sup> As a result, several concerns might appear. These include: unsustainable exploitation of resources, lack of monitoring, control and surveillance (MCS), absence of economic development in the host country, poor financial compensation and food insecurity.<sup>119</sup> Following, these concerns will be related to FPAs in general and to the case of the Republic of Mozambique more specifically.

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<sup>118</sup> *Fisheries Secretariat*, Harmful Subsidies (online source).

<sup>119</sup> *DFID and MRAG*, Fisheries and Access Agreements (online source).

## 6.2. Sustainable development

### 6.2.1. Outline

One issue that is often discussed when FPAs are being debated is the (un)sustainable exploitation of resources. In the case of Mozambique, there are four factors underlying this concern:

- Lack of scientific data:

FPAs are mostly concluded with developing countries, which lack adequate knowledge of the state of their fish stocks.<sup>120</sup>

- Bycatch:

Bycatch is not usually included in the calculations of the vessels' total catches. Hence, bycatch can be considerably high, without being accounted for in terms of a maximum catch limit – with negative consequences on the ecosystem.

- Dependency on financial compensation:

Due to a possible dependency of developing countries on the financial compensation for the fishing rights, resources might be overexploited.<sup>121</sup>

- Lack of MCS capabilities:

The lack of these capabilities gives room for IUU (illegal, unreported and unregulated) fishing.

These four issues will now be discussed, drawing the example of the agreement with the Republic of Mozambique.

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<sup>120</sup> *DFID and MRAG* (online source).

<sup>121</sup> *DFID and MRAG* (online source).

## 6.2.2. Lack of Scientific Data

The sustainable management of resources obviously necessitates knowledge about the state of the resources. However, for the state of Mozambique, it seems impossible to provide an accurate assessment of the fish stock of tuna and tuna-like species (these are the species targeted by EU vessels) off the Mozambican coast. This is true for the following two reasons. Firstly, research on coral reefs in Mozambique has been historically scarce. Due to the inconsistency of available data, it is difficult to effectively compare results over time.<sup>122</sup> Secondly, EU vessels target a complex<sup>123</sup> and highly migratory species, which makes it literally impossible for a single state to conduct scientific research thereof.

Thus, in the case of Mozambique, it is the Indian Ocean Tuna Commission that has the means to conduct this kind of scientific research (as well as managing the resource).<sup>124</sup> Following from that, one has to draw upon data available from the Indian Ocean Tuna Commission (IOTC) in order to get an idea of the state of the fish stock off Mozambique's coast. In the following, the IOTC data on the fish stocks that are most important to the EU vessels will be exhibited briefly. However, it must be noted that these data only represent the best available scientific estimates.<sup>125</sup>

The species targeted by the purse seiners are skipjack and yellowfin tuna (representing almost 90 % of their catches) as well as the bigeye tuna. EU long liners target swordfish.<sup>126</sup> According to yet another source, swordfish represent 56,3% of surface long liner catchers. Blue shark catches make up 17,6%; Tunas nei 12,8% and Shortfin mako 5,6% of total catches.<sup>127</sup> The state stock of these just mentioned species will now be illustrated.

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<sup>122</sup> Coastal Zone Management Unit of MICOA and Sida-SAREC Regional Coral Reef Program, National Coral Reef Management Program I (NCRMP): Mozambique, Discussion Document (online source).

<sup>123</sup> *IOTC-2010-WPTT-46*, Effects of environmental factors on catch rates of FAD-associated yellowfin (*Thunnus albacares*) and skipjack (*Katsuwonus pelamis*) tunas in the western Indian Ocean (2010) 1.

<sup>124</sup> *Orr P. et al.*, A report review of Third Country Agreements. EU FP7 project n°212188 TXOTX, Deliverable 2.4 (2010) 150ff (online source).

<sup>125</sup> *Miyake M. et al.*, Recent developments in the tuna industry: stocks, fisheries, management, processing, trade and markets. FAO Fisheries and Aquaculture Technical Paper. No. 543 (2010) 11.

<sup>126</sup> *Reiss, Denis.* e-mail.

<sup>127</sup> *Oceanic Développement and Megapesca*, Ex-post Evaluation of the current protocol to the fisheries partnership agreement between the European Union and Mozambique and analysis of the impact of the future protocol on sustainability, including ex-ante evaluation. Final Report 2011 (2012) 97.

## Yellowfin tuna:

An IOTC working paper of 2010 estimates that since the 1980s, yellowfin tuna has declined rapidly. The impact of fisheries has resulted in a 60-70% reduction in biomass. Furthermore, it states that exploitation rates are at historically high levels and that Maximum Sustainable Yield (MSY) is exceeded regularly.<sup>128 129</sup> However, one year later, the report of the IOTC's Scientific Committee suggests that the stock of yellowfin tuna is not overfished and that overfishing is not occurring at the moment either.<sup>130</sup> The reason for the different result is the application of a different stock assessment model.

The fact that the results of two different papers by the IOTC in two consecutive years differ to such an extent raises profound questions concerning the accuracy of data. This becomes especially true if one looks at the possible effects of these differing stock assessments: The working paper of 2010 estimates that the MSY is between 212.000 and 255.000 tons, whereas the 2011 report suggest that MSY is between 290.000 and 435.000 tons. From that it follows that even by taking a conservative approach in using the 2011 results (MSY=290.000 tons), according to the other model, overexploitation of the yellowfin tuna resources would take place at a considerable level: If suggested that MSY were at the upper end (MSY=255.000 tons), by catching 290.000 tons, overfishing would happen at a rate of 13,7%. Taking a more negative approach, thus suggesting that MSY was set at 435.000 tons, while MSY was really at 212.000 tons, that percentage would increase to about 105% - which would constitute overfishing at a rate double of what would be sustainable.

Following from the just conducted calculations, inaccurate stock assessments of the IOTC can easily lead to a considerable overexploitation of resources. Thus, two crucially different results as those provided in 2010 and 2011 are of big concern.

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<sup>128</sup> 'Recently' referring to 2008 and 2009. 2009 being the most recent year that the IOTC provided data concerning yellowfin tuna. The MSY is estimated to be between 212 000 and 255 000 tons, the actual catch was exceeding that amount between 2008 and 2009 - averaging about 298 000 tons. During 2003 and 2006, annual catches reached a peak of about 500 000 tons.

<sup>129</sup> *IOTC-2010-WPTT-23*, Stock assessment of yellowfin tuna in the Indian Ocean using MULTIFAN-CL, (2010) 18.

<sup>130</sup> *IOTC-SC14 2011*. Report of the Fourteenth Session of the IOTC Scientific Committee (2011) 107.

### Skipjack tuna:

Similarly to the bigeye tuna, the stock of skipjack tuna appears not to be overfished; neither is overfishing occurring currently. Furthermore, the IOTC report specifies that if the recent declines in effort continue, and catch remains substantially below the estimated MSY, urgent management measures are not required.<sup>131</sup> However, according to information from Océanic Développement and Megapesca, skipjack catches cannot be expected to continue indefinitely - despite its resilience to overfishing.<sup>132</sup>

### Bigeye tuna:

The IOTC's assessment of the stock of the bigeye tuna suggests that it is stable at the moment. The recent declines in longline as well as purse seiner efforts have lowered the pressure on the Indian Ocean bigeye tuna stock.<sup>133</sup>

### Swordfish:

The assessment of the IOTC suggests that exploitation of swordfish is at a level that does not pressure the species. The risk of exceeding MSY by 2019 is quite small, if fishing efforts are further reduced or maintained at the same level.<sup>134</sup> However, according to the Working Party on Billfish of the IOTC the stock structure of the Indian Ocean swordfish resource is under investigation, but currently uncertain. The southwestern region is of particular concern, as stocks there seem to be more depleted than in other regions.<sup>135</sup>

### Blue shark and shortfin mako:

According to a report by Oceanic Développement and Megapesca that draws upon data from the IOTC, blue shark and shortfin mako are secondary targets by the EU surface long liners – even though their status is uncertain due to poor and unreliable

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<sup>131</sup> *IOTC-SC14 2011* (2011) 97.

<sup>132</sup> *Oceanic Développement and Megapesca*, Final Report 2011 (2012) 35.

<sup>133</sup> *IOTC-SC14 2011* (2011) 87.

<sup>134</sup> *IOTC-SC14 2011* (2011) 148.

<sup>135</sup> *IOTC-SC14 2011* (2011) 35.

catch reporting. Following from the IUCN analysis of these pelagic sharks' stock, the blue shark is 'near threatened' at global level; the shortfin mako 'vulnerable' at global level. The European vessels' catches of these two shark species constitute 2,4%, respectively 5,2% of total catches in the Indian Ocean and might therefore have contributed to its unsustainable exploitation.<sup>136</sup>

It can be concluded that in the territory of the Indian Ocean, yellowfin tuna is overexploited and its stock under pressure. On the contrary, bigeye as well as skipjack tuna and swordfish do not appear to be overfished. There is not enough data to make any valid statements about the stock condition of sharks, but they are known to be sensitive to excessive levels of exploitation. Also, fishery statistics are not accurate enough to assess the impact of catches of juveniles on the tuna stocks.<sup>137</sup>

If looked at the South western Indian Ocean, one must state that swordfish might be overexploited as well. Also, the Scientific Committee of the IOTC pointed out that *'[...] the southwest region should continue to be analysed as a special resource, as it appears to be highly depleted compared to the Indian Ocean as a whole.'*<sup>138</sup> Unfortunately, data on that specific area is available only very limitedly. This raises the question how valid and accurate data provided by the IOTC on the Indian Ocean as a whole really is for the specific case of Mozambique.

### **6.2.3. Bycatch**

Another issue that must be raised when discussing the (un)sustainable exploitation of resources is bycatch. It is straightforward that bycatch has a negative effect on the marine ecosystem. The marine animals mostly in danger of accidentally being caught by tuna fishing vessels are small tuna, seabirds, turtles and sharks.<sup>139</sup>

Unfortunately, no valid statement can be made about the scale of bycatch of European vessels in Mozambican waters. There is only little data publicly available. Even though the IOTC has established a Working Party on Ecosystems and Bycatch in

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<sup>136</sup> *Oceanic Développement and Megapesca*, Final Report 2011 (2012) 106.

<sup>137</sup> *IOTC-SC14 2011* (2011) 36.

<sup>138</sup> *IOTC-SC14 2011* (2011) 35.

<sup>139</sup> *Oceanic Développement and Megapesca*, Final Report 2011 (2012) 85ff.

2005, there is still a lack of data collection and reporting, which poses limits to the estimation of bycatch and its effects on the ecosystem.<sup>140</sup>

Only a study by Oceanic Développement and Megapesca gives a vague idea about the scope of bycatch and discards. For purse seiners the percentage of bycatch was estimated at about 3,5%; for surface long liners the rate is supposed to be higher, but was not indicated in that report.<sup>141</sup> However, these estimations are based on IOTC WPEBs. If the IOTC itself admits that there is a lack of data collection and reporting, it is highly questionable whether estimates based on available data from IOTC can be considered reliable.

#### **6.2.4. Link between Fishing Rights and Compensation**

Obviously, the selling of fishing rights and the payments for these rights are interrelated. However, between the trading partners, there might be an imbalance of power. Thus, if the country that sells its resources is highly dependent on the financial compensation, there might be a reluctance to limit fishing rights – even if the level of exploitation is not sustainable.<sup>142</sup>

As a consequence, the question arises whether Mozambique could cope with a reduction in revenue, due to a reduction of fishing rights / the suspension / the termination of the agreement. All these scenarios are provided for in the FPA.<sup>143</sup> However – is it realistic that any of them would occur in order to ensure sustainable exploitation of resources?

Mozambique receives € 980.000 of the EU annually, if the 8.000 tons per year are being fully made use of.<sup>144</sup> In addition to the financial compensation from the EU budget, EU vessels have to pay € 35 per ton caught.<sup>145</sup> Hence, the total amount that Mozambique receives for selling its fishing rights is € 1,26 million per year or € 157,5

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<sup>140</sup> *Oceanic Développement and Megapesca*, Final Report 2011 (2012) 87.

<sup>141</sup> *Oceanic Développement and Megapesca*, Final Report 2011 (2012) 84.

<sup>142</sup> *DFID and MRAG* (online source).

<sup>143</sup> FPA: Articles 7(3b), 13, 12.

<sup>144</sup> However, the 8 000 tonnes are not a limit, but a reference tonnage. The agreement allows in Art 7(3c) to increase the level of exploitation.

<sup>145</sup> Calculations based on the provisions in Appendix 2 of the protocol. €35 is also used by the EC: *European Commission, Mozambique - Fisheries partnership agreement* (2012) (online source).

per ton. In terms of GDP, this income only constitutes 0.0052% of GDP (if 8.000 tons are caught), which appears negligible.<sup>146</sup>

Contrary to that, the percentage of overall government revenue from received from the EU compared to all fishing license fees might lead to the assumption that the financial compensation by the EU is important to Mozambique. The payments by the EU amount to about 30%.<sup>147</sup>

Anyways, a statement regarding the degree of Mozambique's dependency on the money from the EU is difficult to make, based solely on the just mentioned figures. History, however, has shown that the money might be of great importance to the country. Even though there were considerable deficiencies regarding EU vessels' reporting of catches,<sup>148</sup> Mozambique did not suspend the agreement – notwithstanding that this non-compliance with the agreement would have allowed for a suspension thereof.<sup>149</sup> Accordingly, the obligations on the part of the EU were not properly enforced.

This leads to the next concern with FPAs: The inability of host countries to effectively monitor and enforce existing fishery policies, due to a lack of MCS capabilities.

### **6.2.5. Lack of Monitoring, Control and Surveillance (MCS) Capabilities**

The lack of capabilities to effectively monitor, control and survey fishing activities off the coast is an abundant problem in Mozambique – and obviously directly connected to the issue of unsustainable exploitation of fish stock. Two aspects need to be looked at distinctively with regard to the FPA in question: The monitoring of fishing activities of licensed EU vessels on the one hand, and maritime surveillance in general on the other hand.

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<sup>146</sup> GDP (2011 est.) according to *CIA World Factbook*, Mozambique (online source).

<sup>147</sup> Estimates based on data from: *FAO, FID/CP/MOZ, National Fishery Sector Overview – The Republic of Mozambique* (2007) 8 (online source).

<sup>148</sup> *Orr P. et al.*, A report review of Third Country Agreements. EU FP7 project n°212188 TXOTX, Deliverable 2.4 (2010) 150 (online source).

<sup>149</sup> FPA: Article 13; Protocol: Article 9.

### Monitoring of EU vessels

Under the previous protocol, there were several issues with regard to the monitoring of EU vessels. This was due to unfulfilled reporting obligations. A report of the Fisheries Research network specified that ‘[...] *there has been very limited compliance with any of the reporting obligations from the EU fleet.*’<sup>150</sup>

It can be said that effective monitoring of licensed EU vessels is theoretically provided for in the new protocol:

- The contract provides for observers of the government of Mozambique who are allowed to go on board EU vessels.<sup>151</sup>
- A satellite monitoring system has been implemented. EU vessels are obliged to send their position to the fishing monitoring centre (FMC) of their flag states,<sup>152</sup> which have to transfer the position to the FMC of Mozambique.<sup>153</sup>
- Provisions on reporting of catches, which is a key aspect of compliance within the fisheries agreement, have been renewed. Hence, the exchange of data is now being done electronically.<sup>154</sup>

Unfortunately, due to a lack of publicly accessible information, no statement can be made at that point, whether the provisions of the new protocol have been applied satisfactorily.

### Maritime surveillance

In any case, the surveillance of Mozambique is far from effective. The country lacks the resources to survey its territory;<sup>155</sup> currently, only three vessels carry out the patrol of the 2.770 km coastline.<sup>156</sup> As a consequence, IUU activities are considered to happen at a considerably big scale.

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<sup>150</sup> Orr P. et al., A report review of Third Country Agreements. EU FP7 project n°212188 TXOTX, Deliverable 2.4 (2010) 150 (online source).

<sup>151</sup> Annex to protocol: Chapter VI (3).

<sup>152</sup> Annex to protocol: Chapter VII(1).

<sup>153</sup> Annex to protocol: Chapter VII(3).

<sup>154</sup> Protocol: Article 12.

<sup>155</sup> *Green Times*, Illegal fishing in Mozambican waters robs people (online source).

<sup>156</sup> *Hub M.*, Illegal Fishing in Mozambique leads to annual losses of US\$35 million (2010) (online source).

So far, it has been illustrated that the combination of a lack of scientific data, bycatch, and a potential dependency of the host country on the financial compensation, are very likely to lead to sustainability issues in the fishery sector. The absence of efficient maritime surveillance further aggravates that problem and overexploitation of resources becomes even more likely. Though, if not backed from an environmental point of view, maybe the FPA in question has considerable economic advantages for Mozambique? Perhaps the agreement pushes the country's economic development? These questions will be answered in the consecutive chapter.

### **6.3. FPA = Economic Development?**

Proponents of FPAs often claim that the agreements help host countries to develop economic capacities. This can take two different forms:

- 1.) Capacity building that allows the host country to develop its own fleet;
- 2.) Realization of economic benefits through value-added activities.<sup>157</sup>

Whether or not, and to what extent the FPA between the EU and Mozambique has generated such economic development will now be discussed.

#### Development of own fleet?

In Mozambique, the raised prospect to build the capacity to develop its own fleet is not applicable. Even though the first fisheries agreement concluded between the EU and Mozambique dates back to 1987,<sup>158</sup> the country still does not have a distant water fleet (as of December 2011).<sup>159</sup> This circumstance supports opponents of FPAs who claim that the agreements '*[...] can serve to distract attention away from developing such systems [explanatory remark: own fleet], by ensuring foreign payments*

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<sup>157</sup> DFID and MRAG (online source).

<sup>158</sup> European Commission, Mozambique - Fisheries partnership agreement (2012) (online source).

<sup>159</sup> IOTC-2011-SC14-NR30, Mozambique National Report (2011) 5ff.

*irrespective of management quality or the state of the resource.*<sup>160</sup> From what was analyzed in chapter 5, it can be stated that in the case of the FPA between the EU and Mozambique, payments are not being performed irrespective of management quality or the state of the fish stocks. However, it is true that the incapability of Mozambique to develop its own fleet has not attracted attention.

### Benefits through value-added activities?

A possible advantage for the FPA's host countries can be the opportunity to draw economic rents from foreign fleets. Unfortunately, such benefits can only rarely be secured by developing countries due to chronic weaknesses in their management systems (lack of necessary port as well as processing infrastructure).<sup>161</sup> This is also true for Mozambique:

- The Mozambique National Report published by the Mozambican Institute of Fisheries Research (IIP) claims that tuna and tuna-like fisheries only employ foreign labour.<sup>162</sup> The requirement of the FPA with the EU to employ at least one local seaman per long liner and two locals per purse seiner<sup>163</sup> can be neglected.<sup>164</sup>
- Furthermore, the report specifies that '*The catches [explanatory remark: of the DWFs] are conserved on board and transferred to cargo reefer ships or unloaded at foreign ports, mainly Seychelles, Madagascar, Mauritius and South Africa. The tuna fleet never calls to a Mozambican port for landing catches in Mozambique [...].*<sup>165</sup> The FPA with the EU prohibits transshipments at the sea.<sup>166</sup> Whatsoever, landing of catch from EU vessels in Mozambique is not taking place. This can be explained by the fact that the landing conditions at Mozambican ports are still poor due to a lack of ice and cold storage facilities and limited knowledge of good processing

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<sup>160</sup> DFID and MRAG (online source).

<sup>161</sup> DFID and MRAG (online source).

<sup>162</sup> IOTC-2011-SC14-NR30, Mozambique National Report (2011) 2.

<sup>163</sup> Annex to protocol: Chapter IX (1).

<sup>164</sup> Especially considered the low penalty of €30 per seaman per day, according to Protocol: Annex Chapter IX(1).

<sup>165</sup> IOTC-2011-SC14-NR30, Mozambique National Report (2011) 2.

<sup>166</sup> Annex to protocol: Chapter V.

practices.<sup>167</sup>

Thus, in the case of Mozambique it can be concluded that due to the absence of its own distance water fleet, the lucrative oceanic fisheries (compared to less lucrative coastal fisheries) are harvested exclusively by distant-water fleets from foreign countries.<sup>168</sup> In addition to that, hoped economic development (employment opportunities in the fishery industry and the build-up of a processing industry) as a result of the agreement, has failed to appear. From that it follows that the only real benefit that Mozambique can generate from the agreement are the annual financial payments.

Having the absence of economic development in the light of the agreement in mind, another concern of FPAs, namely the fairness of the financial compensation for the fishing rights will now be discussed.

#### **6.4. Fairness of Price**

One important point of criticism concerning FPAs is the claim that host countries often do not get a fair compensation for the fishing rights. This is attributed to substantially inferior negotiating powers compared to the EU. That in turn is also the reason for a large variation in the financial compensation paid by the EU for similar agreements and the proof that it is usually difficult for individual ACP countries to successfully negotiate fair compensation.<sup>169</sup>

In the specific case of Mozambique, the fairness of the price paid for the fishing rights must be questioned as well. As already pointed out in chapter 5.2.3., the annual total financial contribution from the EU amounts to € 980.000 (€ 520.000 + € 460.000) for 8.000 tons, which is equal to 122,5 €/ton or 0,1225 €/kg (or € 65/ton + € 460.000). In addition to that, European vessel operators have to pay € 35 per ton. Thus, if the 8.000 tons are caught, the overall payment Mozambique receives for a ton of caught tuna (and tuna-like species) amounts to € 157,5. If the 8.000 tons are not caught, it can be

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<sup>167</sup> FAO, National Fishery Sector Overview – The Republic of Mozambique (2007) 11 (online source).

<sup>168</sup> *Shotton R.*, Review of the State of World Marine Fishery Resources (2005) 93.

<sup>169</sup> *Mwikya S.M.*, Fisheries Access Agreements 6.

stated that Mozambique receives an overall € 100/ton, plus € 460.000.

Since the aim is to make a statement concerning the fairness of the financial compensation paid to Mozambique, one must look at the generated added value (wages and profits) by the European fleet. If looked at the year 2010, one can state that the European fleet generated an added value of nearly € 3,8 million.<sup>170</sup> Considering the fact that in 2010 about 4.820 tons were caught,<sup>171</sup> the cost of investment that would have incurred to the EU and the fleet operators under the provisions of the current agreement (in 2010 the old protocol was still in force) would have amounted to € 942.000 (€ 482.000 + € 460.000). This means that the outcome in terms of generated value is four times the investment.

Another strong indicator for the high return on investment for European fleet operators is the ratio of their access costs to the value of catch generated by the agreement. Was the percentage of access fees in relation to the value of catch 11,7% in 2007, had it decreased to 2,6% in 2010.<sup>172</sup>

## 6.5. Food Security

Another concern with FPAs is its effects on host countries' food security. This can be due to reduced local fish supplies or increased local prices.<sup>173</sup>

Even though this issue might apply to many host countries, this is not the case for Mozambique. Indeed, due to the overexploitation of fishery resources, the catches of local fishermen decrease continuously, generating a strain on food security.<sup>174</sup> In spite of the severity of the situation, this problem is not connected to the FPA in question. The shallow coastal waters have been severely overfished and in coastal areas most species are considered fully or overexploited. This is due to the fact that fish worth \$ 96,6 million is exported,<sup>175</sup> representing about 5% of the GDP and 43% of exports.<sup>176</sup>

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<sup>170</sup> *Oceanic Développement and Megapesca*, Final Report 2011 (2012) 101.

<sup>171</sup> *Oceanic Développement and Megapesca*, Final Report 2011 (2012) 96.

<sup>172</sup> *Oceanic Développement and Megapesca*, Final Report 2011 (2012) 99.

<sup>173</sup> *DFID and MRAG* (online source).

<sup>174</sup> WWF: Lund U., Fish and fishermen live a life on the edge (online source).

<sup>175</sup> *Global Fish Alliance*, The Importance of Capture Fisheries in Food Security in Mozambique (online source).

From that it follows that Mozambique is largely dependent on the revenue from these exports.

However, the FPA between the EU and Mozambique provides for fishing opportunities of deep water species. As a consequence, the fishing zones are essentially different and European fishing vessels cannot be held responsible for the overfishing of coastal areas.

## 7. Empirical Analysis

### 7.1. Introduction

As has been illustrated in the last chapter, there are several concerns with the FPA between the EU and Mozambique. The reason for those can be twofold: the concerns with the agreement arise albeit its correct implementation. The other possibility is that reality looks different than the agreement suggests; Thus the agreement is either not correctly implemented, or it is not implemented to its full extent (many provisions are not compulsory). Consequently, the aim of this chapter is to verify whether the agreement itself is the reason for existing concerns with the FPA, or deficiencies in its implementation (illustrated in Figure 11). Hence, the empirical analysis should answer the question to what extent the provisions of the agreement are translated into reality.

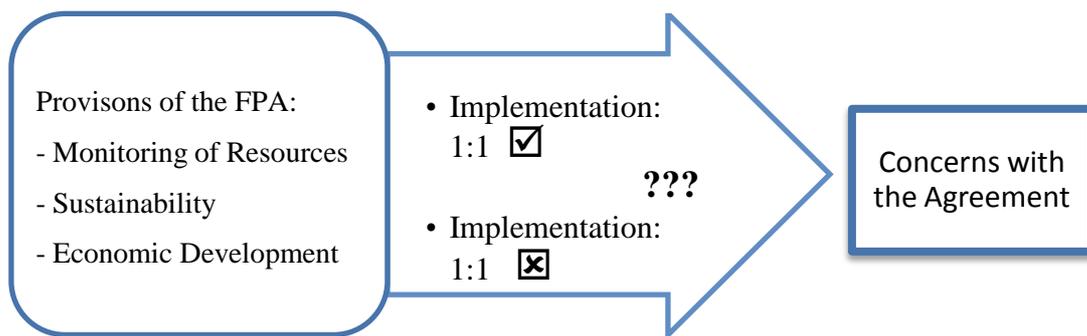


Figure 11: Illustration of Empirical Analysis.

<sup>176</sup> Mbendi, Marine Fishing in Mozambique – Overview (2012) (online source).

## 7.2. Methodology

As already pointed out, the implementation of the provisions that could possibly be connected with the concerns of the agreement will be analyzed. These are provisions relating to monitoring of resources, sustainability and economic development.<sup>177</sup>

The analysis is done based on the method of expert interviews. Interviews were conducted with various stakeholders of the agreement in senior positions from the EU, the government of Mozambique, an advisor of the Mozambican government, the IOTC and NGOs. Only the inclusion of opinions from different backgrounds allowed for an objective and holistic picture of the agreement's implementation. The interview partners are exhibited in Appendix I.

Six interviews could be conducted in person. Regarding the information of the two informants (IOTC, Delegation of the EU in Mauritius) the author was restricted to information via e-mail. The informants were not able to conduct an interview via Skype due to the bad internet connection in the Seychelles (IOTC) and Mauritius (EU Delegation).

## 7.3. Focus of the Empirical Analysis

### 7.3.1. Monitoring

As illustrated in chapter 6, monitoring and thus generating scientific knowledge is a prerequisite for the sustainable management of resources. The FPA specifies that *'[d]uring the period covered by this Agreement, the Community and the Mozambican authorities shall endeavour to monitor the evolution of resources [remark: in Art 4(2) of the Protocol: 'state of fishery resources'] in Mozambique's fishing zone.'*<sup>178</sup>

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<sup>177</sup> The concern regarding unfair financial compensation could be listed here as well. However, it does not make sense to include it in the empirical analysis, since the implementation (the actual payment) must not be questioned.

<sup>178</sup> FPA: Article 4(1).

Such being the case, the empirical analysis will be aimed at identifying the monitoring efforts of the EU and the Republic of Mozambique.

### 7.3.2. Sustainability

In the FPA, Mozambique and the EU commit themselves to promote sustainable fisheries policies. This commitment can be traced in several parts of the agreement:

*‘The Parties hereby undertake to promote responsible fishing in Mozambican waters as provided for in FAO’s Code of Conduct for Responsible Fishing [...].’<sup>179</sup>*

*‘The Parties hereby undertake to ensure that this Agreement is implemented in accordance with the principles of good economic and social governance, respecting the state of fish stocks.’<sup>180</sup>*

*‘The Parties undertake to consult one another [...] to ensure the management and conservation of living resources in the Indian Ocean and to cooperate in the relevant scientific research.’<sup>181</sup> Furthermore, ‘[t]he two Parties, [...] shall [...] jointly adopt conservation measures for sustainable management of fish stocks affecting the activities of Community vessels’<sup>182</sup>*

*‘Both Parties shall endeavour to respect the resolutions and recommendations of the Indian Ocean Tuna Commission (IOTC) and, the advice of the joint scientific working group [...], regarding conservation and responsible management of fisheries.’ In addition to that, ‘[...] the two Parties may consult each other within the Joint Committee and, where necessary, agree on the measures to ensure sustainable management of Mozambique’ fisheries resources.’*

As can be depicted from Figure 12, consultation and adoption of possibly necessary conservation measures are demanded by the agreement. However, only insofar, as it concerns territories in which EU vessels are operating. On the contrary to that,

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<sup>179</sup> FPA: Article 3(1).

<sup>180</sup> FPA: Article 3(3).

<sup>181</sup> FPA: Article 4(2).

<sup>182</sup> FPA: Article 4(3).

provisions regarding the whole EEZ of Mozambique are not obligatory. The parties *shall endeavour* to respect resolutions and recommendations from scientific committees, and *may* consult each other and agree on measures to ensure sustainable management of resources. All actions should be conducted while promoting responsible fishing and respecting the state of fish stocks.

The empirical investigation shall help to find out to what extent the compulsory tasks are being fulfilled – compared to the more or less voluntary ones.

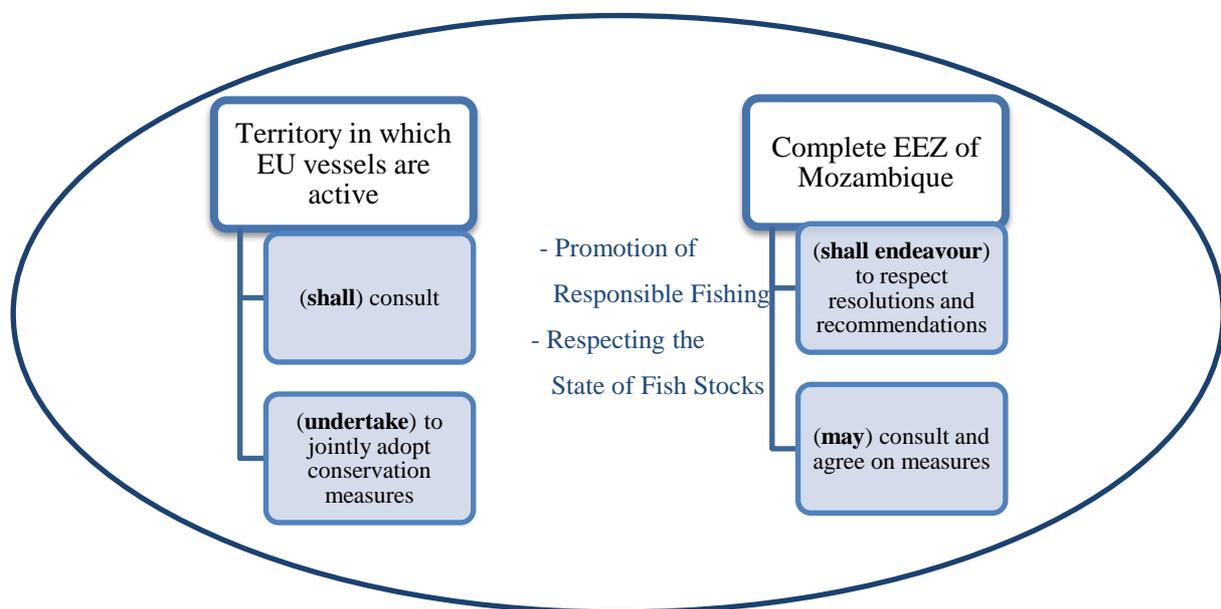


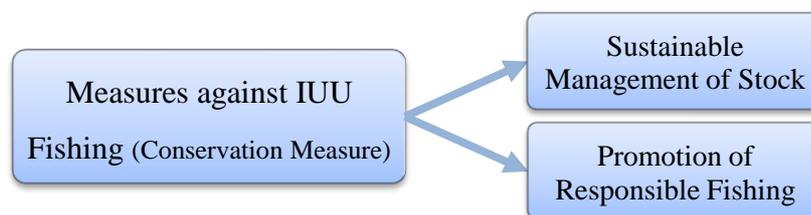
Figure 12: Provisions Concerning Sustainability.

Apart from this more general approach to test for the EU’s contribution to sustainability in the fisheries sector, the empirical analysis should also shed light on the efforts to combat IUU fishing. As a matter of fact, there is no specific provision in the FPA that would oblige the EU to survey Mozambique’s EEZ or to build the country’s capacity to conduct MCS activities itself. Following from that one can argue that the fight against IUU fishing is not within the scope of the FPA and is thus a problem which Mozambique has to tackle on its own. Whatsoever, from a legal point of view, the agreement includes two provisions that would definitely justify the EU’s engagement in the fight against IUU fishing:

The agreement states that *[t]he two Parties, [...] shall [...] jointly adopt conservation measures for sustainable management of fish stocks.*<sup>183</sup> Furthermore, it specifies that both parties *‘[...] undertake to promote responsible fishing in Mozambican waters as provided for in FAO’s Code of Conduct for Responsible Fishing [...]’*<sup>184</sup>

A successful fight against IUU fishing is indirectly related to the sustainable management of fish stock, which is the objective of Art 4(3) FPA. In order to reach this objective, the agreement provides for the adoption of conservation measures. Hence, measures to tackle IUU fishing (thus contributing to the sustainable management of fish stock) could be subsumed under the conservation measure of Art 4(3) FPA.

In addition to that it can be stated that IUU fishing is definitely an irresponsible exploitation of resources. Since the agreement demands the promotion of responsible fishing in Mozambican waters, a decrease of IUU fishing – due to measures taken against it – would be in line with the contract. These relationships are illustrated in Figure 13.



**Figure 13: Outcome of Measures against IUU Fishing.**

From that it follows that the legal framework would allow for the EU’s engagement in tackling the problem of IUU fishing in Mozambican waters. Nevertheless, the agreement’s provisions do not oblige the EU to do so. As a consequence, it can be stated that it is a question of political will – rather than a legal obligation – to engage in the fight against IUU fishing. Thus, whether or not (and if so to what extent) the EU is involved in overcoming this challenge will be answered in the empirical analysis.

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<sup>183</sup> FPA: Article 4(3).

<sup>184</sup> FPA: Article 3(1).

### 7.3.3. Economic Development

The third aspect that will be examined in terms of its level of implementation is the promotion of economic development. In this context, the following provisions are of relevance:

*‘The Parties shall endeavour to create conditions favourable to the promotion of relations between their enterprises [...].’<sup>185</sup>*

*‘The Parties undertake to implement a plan and actions between Mozambican and Community operators aimed at promoting fish landing from Community vessels in Mozambique.’<sup>186</sup> Moreover, ‘[t]he Parties shall encourage, in particular, the setting-up of joint enterprises in their mutual interest.’<sup>187</sup>*

## 7.4. Results

### 7.4.1. Monitoring

The first part of the empirical analysis aimed at elaborating to what extent the EU and Mozambique are *monitoring the evolution of resources*, as provided for in Art 4(1) of the FPA.

Regarding the monitoring of resources, the IOTC is attributed a crucial role by all stakeholders - the EU, the government of Mozambique as well as NGOs. This can be attributed to the fact that EU vessels’ targets are highly migratory species. Thus, there is the need for a transnational assessment of resources – conducted by the IOTC. The EU as well as the Republic of Mozambique, are members of that organization.<sup>188</sup> From that it follows that both parties do contribute to monitor the evolution of resources – and therefore comply with the FPA.

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<sup>185</sup> FPA: Article 8(3).

<sup>186</sup> FPA: Article 8(4).

<sup>187</sup> FPA: Article 8(5).

<sup>188</sup> The Republic of Mozambique has only become a full contracting member at the beginning of 2012.

Whatsoever, concerns were raised whether the efforts via the IOTC are enough to monitor the evolution of resources.

Ms. Dengo pointed out that very little were done to monitor tuna and tuna-like species. Furthermore, she said that they ‘(...) *do not have elements to make an assessment of the environmental impact* [explanatory remark: of the FPA](...). *We don’t know how much is in our water.*’ According to information from WWF, ‘*Information about the stock and what is available is missing.*’ Mr. Giroux from the IOTC pointed out that the EU is only partially compliant with the IOTC data reporting requirements.<sup>189</sup>

On the contrary, Mr. Reiss from the Delegation of the European Union in Mauritius indicated that ‘*The EU significantly contributed to the accuracy and certainty of the predicting stock evaluation models, when funding a tuna tagging programme delivering nowadays excellent results for the research and confirming the hypothesis of a single stock shared amongst the whole region.*’

Apart from the controversially discussed question whether the monitoring efforts through the IOTC are sufficient or not, there is one issue that definitely undermines the IOTC’s accuracy of stock assessment: Assumed misreporting of catch by European vessels and the absence of a validation of catch reports. The connection between the misreporting and the IOTC’s assessment of resources is as follows:

The IOTC assesses the state of stock based on data about catch efforts and actual catch. Consequently, it is straightforward that the IOTC depends on accurate data concerning the above mentioned variables. All informants from the Mozambican government, including their advisor, were very concerned with the catch reports supplied by the European fleet:

Ms. Dengo said: ‘*We are member of IOTC since this year. And we get information from this organization. According to the database from IOTC the catches from our waters is very, very far above what we get from the logbooks.*’

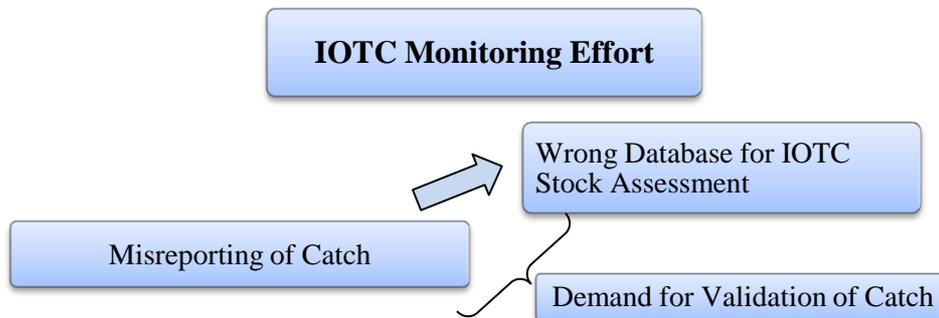
‘*They are not declaring what they catch in our water. That we are 100% sure. Because the IOTC estimates that about 20.000 tons of tuna within Mozambique water. But our logbook, they don’t even fish 10.000.*’

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<sup>189</sup> see also: *IOTC-2012-CoC09-CR06\_Rev2[E]*: IOTC Compliance Report for: European Union, (2012) 5.

Mr. Castiano, when talking about the number of licensed EU vessels and the 8.000 tons that they are allowed to catch, said about the agreement: *‘It’s open for cheat. For not reporting. So they can fish and not report to you. And then what is next. You’ll never find that they fished more than they should. So if they underreport, it’s not a problem.’*

As already pointed out, the accurate information of catch of the European fleet is not only important for the calculation of financial compensation, but also for the accurate assessment of the state of stock by the IOTC – which is the most important institution for the monitoring of the evolution of stock. As a consequence, the Mozambican government is very eager to tackle the assumed misreporting of catch by the European vessels. It reckons that the validation of catch – with the participation of the Mozambican national research institute IIP – would allow for more transparency concerning the actual amount of fish caught by the European fleet. The connection between misreporting of catch and the undermining of IOTC stock assessment as well as the quest for a validation of catch is pointed out in Figure 14.



**Figure 14: Relationship between Misreporting of Catch and IOTC stock assessment.**

In the interviews, the current absence of the IIP in the process of catch validation was indicated as a major issue. A very interesting detail is that representatives from the EU as well as from the government of Mozambique stated that the IIP’s participation in the validation of catch was obligatory. They either pointed out that the IIP’s inclusion in the validation of catch was agreed upon in the protocol or in one of the JC meetings. However, documents from the JC which would have indicated such an agreement were not provided to the author. The old protocol did mention the validation of catch, but did not state that the Mozambican IIP is allowed to participate

in that process.<sup>190</sup> The new protocol does name the IIP in the context of the transmission of fishing logbooks,<sup>191</sup> but a specific provision concerning the validation of catch is missing. Anyways, there is talk of a confirmation of catch reporting, conducted by the scientific institutes, which includes the IIP.<sup>192</sup> As a consequence, one could assume that this confirmation of catch reporting must be based on a validation of catch. Since the EU as well as the Mozambican Ministry of Fisheries acknowledge the legal obligation to conduct a validation of catch in which the IIP is entitled to participate, this circumstance will not further be questioned.

Ms. Dengo claimed that *'The European Union knows that [explanatory remark: knows that underreporting of catch is happening]. (...) and they don't accept the joint validation of catch.'*

Mr. Castiano indicated that *'Mozambique was not involved in such exercise to see how much catch was. [explanatory remark: validation of catch] (...) What is absolutely unfair.'*

Mr. Brito from the IIP pointed out: *'According to the protocol, we should get this catch logbook first and then we as institutes validate these numbers with our counterparts in the countries that provide most of the vessels. Because they are doing the same process (...). So we should find a moment to come together and compare the values. That's called catch validation. (...) That's a very important process that is not happening.'*

Furthermore, he said: *'We have this issue that vessels sometimes give different numbers. One number to their country, one number to us. That's what people suspect, you know? (...) That's why we want to sit down and validate, technically speaking, check. And that's not being done and is a big issue. It's something that the official channels are aware of. Ours and the European Union. And it's to them to solve it anyways.'*

Even Ms. Fernandes from the European Delegation in Mozambique indicated that *'The IIP should be present! In the validation! When this information goes to Paris or*

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<sup>190</sup> Annex to protocol (1.1.2007 – 31.12.2011): Chapter III (2).

<sup>191</sup> Annex to protocol: Chapter IV (3).

<sup>192</sup> Annex to protocol: Chapter IV (4).

*Madrid, the IIP representatives have also to be there! To ensure that what they are doing there is really correct.’ Furthermore, Ms. Fernandes indicated that ‘(...) we [explanatory remark: Mozambique] don’t know anything! (...) And it’s not a problem of the Commission. Because the Commission wants the IIP to participate. Because it is part of the protocol. But the others are just delaying things! The others are the French, the Spanish and the Portuguese. (...) And now the Commission sent a letter to these institutes, we haven’t had no reply yet.’*

From that it follows that the statement of Mr. Brito concerning the official channels’ awareness of the lack of catch validation can be supported. Whatsoever, there is obviously a lack of enforcement.

The concern about the absence of validation of catch seems to be very high. Ms. Dengo announced that Mozambique ‘[...] just sent the European Commission a notification that we cannot continue like this our cooperation. If our research institutions cannot validate the catches, for us there is no need to continue with this relationship.’

No valid statement can be made at that point, whether the validation of catch will take place after the end of this fishing season. While Mr. Castiano gave the information that this will be the case, Mrs. Dengo said that the EU would not confirm any dates for the validation of catch and was denying the provision. Also Mr. Brito indicated that the European national research institutes were reluctant to cooperate and even Ms. Fernandes pointed out that the problem of validation of catch has not been solved yet.

#### **7.4.2. Sustainability**

The first question that was raised in chapter 7.3.2. regarding the promotion of sustainability was: To what extent are the compulsory tasks being fulfilled – compared to the voluntary ones?

It can be stated that the € 460 000 that Mozambique receives annually for the

promotion of responsible and sustainable fishing policies in Mozambican waters is being used for projects affecting the whole EEZ. The money is spent on statistics collection for the artisanal fisheries, the stock evaluation of shrimps, small pelagics and demersal species and the implementation of management measures. Thus, in regard to the destination of that earmarked money, compulsory as well as voluntary tasks are being fulfilled. This conclusion can be drawn after having received a document from the Delegation of the European Union which can be found in Appendix II. In this context, representatives from the EU as well as from the Republic of Mozambique indicated that recommendations and resolutions of the IOTC were respected.

Apart from that, it is of interest how the stakeholders evaluate the overall role of the EU in the promotion of sustainability in the fisheries sector. On the question to what extent the EU promotes sustainability in the fisheries sector the representative of WWF answered: *'I think its pretence. I think it sounds really nice. But I think they are not actually doing it.'*

Mr. Brito said: *'(..) well sometimes it's easy to give money and say 'I'm contributing to sustainability'. But if you look at the actions that are followed. May not be what can be called that. If they are not complying with basic things like giving the statistics that are correct or that are up to date. Ah, how come you can claim that you are doing things for sustainability?*

*What I'm trying to say if you are a father and you are giving money to your kid you will not achieve your role of being a good father just because of giving money.'*

Mr. Castiano does not think that the FPA contributes to sustainability in the fisheries sector: *'That money [explanatory remark: € 460 000 earmarked for sustainability] is peanuts. It's really peanuts. It's not significant where we can say okay with this money we can do this or that. We cannot have big ambitions with that money, you know.'*

In addition to that he pointed out: *'35 € for the catch - What is that? We think that all these provisions do not play for the sustainability of the fisheries. Because this kind of figures (...) they know I can fish more and they pay 35 €. And then they go the market and sell one ton by \$ 2.000.'*

Besides he asked: *‘Is it sustainability to have a Spanish vessel in 3 hours [explanatory remark: catch] 61 tons? And then to not pay? And not paying for the fine?’*

However, Mr. Balidy from the Ministry of Environment had a different point of view: *‘Oh yes, I think the European Union is very, very interested for sustainability in fisheries in Mozambique.’*

He indicated that because of the pressure of the EU on the government of Mozambique, a law was passed that made unsustainable fishing techniques in the shrimp industry illegal. Apart from that, parts of Sofala Banks was recently declared to become a marine protected area (MPA), even though it is an important area for the fisheries. According to Mr. Balidy, it is financial support as well as political pressure exposed by the EU that made this MPA possible.

The following figure summarizes the results in terms the EU’s engagement in the promotion of sustainability in the fisheries sector – via the € 460 000 annually, as well as the overall stakeholders’ notions of the EU’s role in the promotion of sustainability.

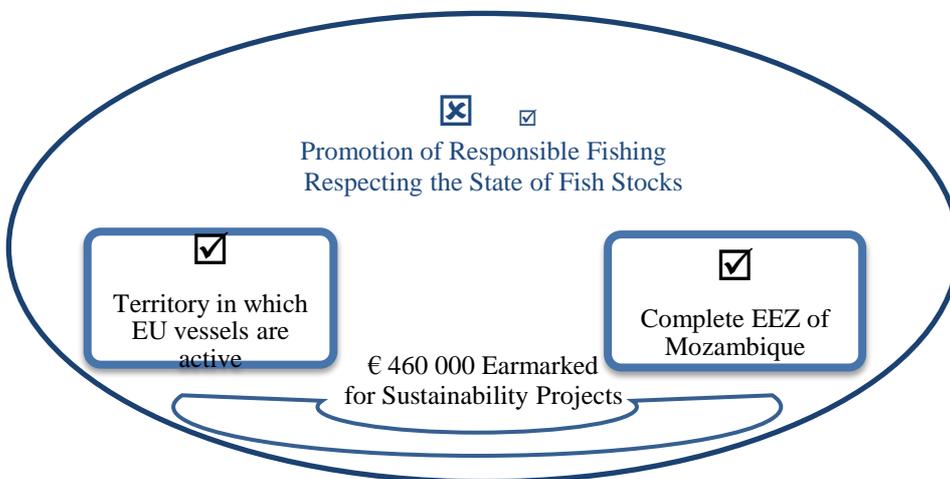


Figure 15: Results of the First Question Regarding Sustainability.

Apart from answering the questions what the earmarked money for the promotion of sustainability is used for, and what the overall notion of the EU’s commitment to sustainability is, the aim of the empirical analysis was also to shed light on the EU’s efforts to combat IUU fishing.

First and foremost, it must be stated that if the assumptions of EU vessels' misreporting of catch hold true, the EU itself is engaging in IUU activities and is therefore negatively affecting the sustainable exploitation of resources.

Apart from that, there is general agreement that the EU's efforts to combat illegal fishing in Mozambican waters is very low or even completely absent. There was discontent whether it is unlicensed fishing vessels or misreporting of catch that poses the bigger challenge. Anyways, the big scope of IUU fishing in Mozambique's EEZ was acknowledged by all interviewees, except of one (Ms. Dengo).

Mr. Castiano argued: *'We estimate that we are losing almost \$ 35, \$ 38 million due to illegal activities. (...) But it's more from underreporting. Most IUU activity in Mozambique is underreporting.'*

He also indicated that the Republic of Mozambique did a joint patrol with Greenpeace. Not a single unlicensed vessel was caught, which led Mr. Castiano to the conclusion that *'We did our homework.'*

One way in which the EU is involved in the fight against IUU fishing is through the Indian Ocean Commission (IOC), because some of its projects are funded by EU. As Ms. Fernandes from the Delegation of the European Union in Mozambique indicated, the IOC is conducting joint surveillances and joint controls, but since Mozambique is not a member of the organization, it cannot benefit from it.

Another channel through which the EU combats IUU fishing is through ACP II. However, Mr. Flewwelling mentioned that *'ACP II is designed to help developing countries strengthen their monitoring control and surveillance. Okay. Everybody signed onto it. And then the EU changed the goal post. They changed the rules. And they said: If you've got a fisheries partnership agreement with us, you're not able to participate for [explanatory note: to benefit from] any of the projects, funding, or support under ACP II, which is supposed to strengthen MCS system. Then they said, under the fisheries partnership agreements you have other sources of money from us. The problem is, the fisheries partnership agreements had all been signed. And the money received from the EU had already been assigned. Not to MCS, but to other development aspects.'*

Mrs. Fernandes indicated that through EU support, the IOC built a regional MCS coordination center in Mozambique. She said that it is still very recent and thus very primary, but the EU paid for it.

Following from the above, the only means by which Mozambique benefits from the EU's engagement in the fight against IUU fishing is through the MCS coordination center. The country does not benefit from other measures to combat IUU taken through the IOC or ACP II. On the contrary, the EU itself might even engage in IUU activities. As a result, the assessment of the EU's involvement in the combat against IUU is considerably poor.

### **7.4.3. Economic Development**

The third aspect that the empirical analysis investigates is the FPA's contribution to economic development in Mozambique. It must be stated that nobody of the interview partners saw such an economic development happening. The only exception was Mr. Balidy, who associated economic development with EU funded projects in the frame of € 460.000 annually. Everybody else criticized the lack of economic development related to the FPA with Mozambique:

Ms. Fernandes from the Delegation of the European Union in Mozambique indicated that negotiations of the current protocol had been very tough, due to requirements from Mozambique concerning provisions regarding its economic development. The country had asked for the European vessels to come to Mozambican ports for inspection purposes. She also explained that representatives of the European fishing fleet had strongly opposed this demand. They argued that they would face increased costs due to additional logistics.

Mr. Castiano from the Ministry of Fisheries stated that the consent to oblige 1/3 of European vessels to come to Mozambican ports every year (all other countries come to the port with the whole fleet according to Mr. Flewwelling) had given rise to the hope that some landing would take place in the country. However, this is not the case.

Ms. Fernandes pointed out that logistics for landings of European vessels were already in place. In the Seychelles, for a example, there was a factory for tuna canning. She also mentioned that from an economic point of view, it was not profitable for a fleet to land catches in every country. She admitted that economic development as a benefit from the FPA is not happening. Ms. Fernandes indicated that long liners, instead of going to Durban, South Africa, could land their catch in Maputo instead – which would even be closer in certain times during the year when fishing takes place very close to Maputo. She also stated that there was no plan or actions between Mozambican and Community operators that would promote fish landing from European vessels in Mozambique.

Angelica Dengo criticized that the European fleet *'(..) doesn't even land the bycatch to promote the processing in our country to promote employment and all this. So everything is offshore activity. But there is no impact on Mozambique.'* Furthermore, she insisted that not a single Mozambican was employed on European vessels, even though the protocol requires that. The EU fleet pays a fine instead. *'But this is not how the relationship should be. We want to see our national people working in the industry.'*, Ms. Dengo argued.

Mr. Castiano even said that *'We are not going to allow (..) vessels [remark: only] to come and fish. We are going to allow vessels to come and fish as well as to land. Here in this port from Mozambique. So I don't see this kind of agreement with a long living time. Yeah. Unless if we really come and change the provisions of the agreement. Now this agreement benefits only to the EU.'*

#### 7.4.4. Summary of Results

The following figure summarizes the results from the empirical analysis.

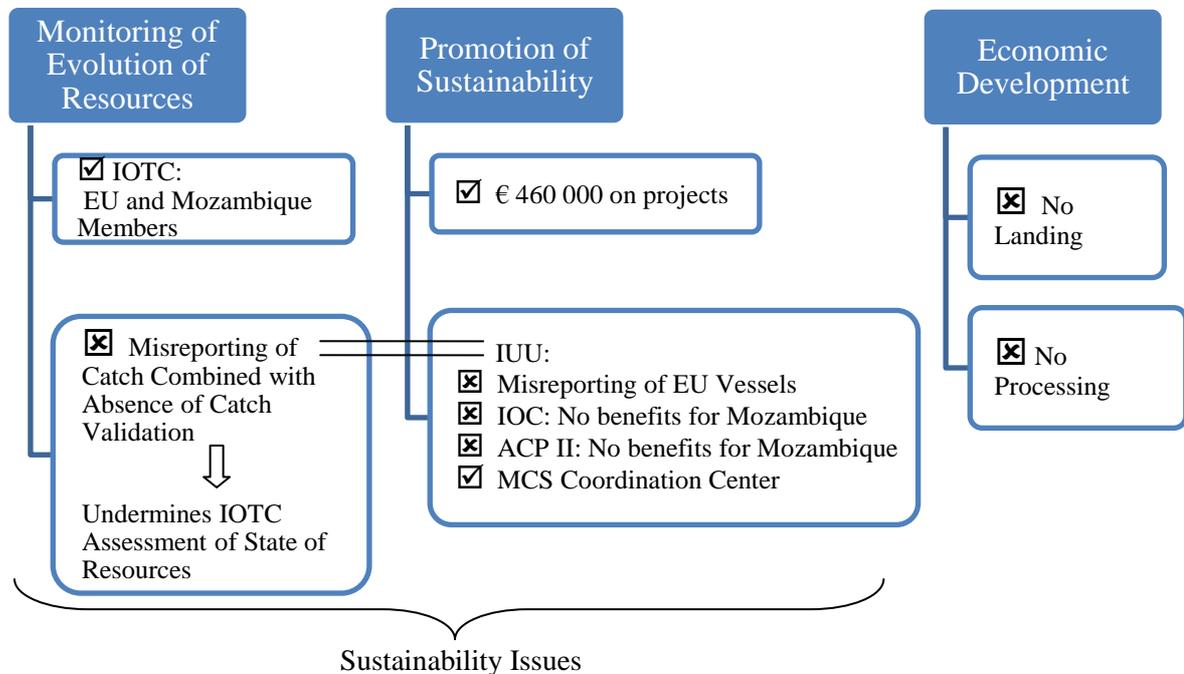


Figure 16: Summary of the Empirical Analysis' Results.

Concerning the provision that requires the EU and Mozambique to monitor the evolution of resources, it can be said that both parties are members of the IOTC. This could lead to the assumption that the obligations that come with the FPA concerning the monitoring of resources are being fulfilled. Whether or not the data generated by the IOTC is enough in order to take appropriate measures for the management of stock cannot be answered. However, a measure that is definitely underlying the IOTC's ability to make an accurate assessment of the state of stock, namely the correct reporting of catch, does not seem to be accomplished by European vessels. If the assumption of underreporting by the European fleet holds true, it has negative consequences on sustainability in two ways: Firstly, the IOTC might propose recommendations that do not actually reflect the real state of stock. Secondly, misreporting is one form of IUU fishing, which could result in the overexploitation of resources.

Obviously, monitoring of resources and the promotion of sustainability are interconnected, especially with regard to misreporting of catch and therefore IUU. The empirical analysis however also shed light onto the fact that the EU is not doing a lot to combat IUU fishing activities – in the EEZ of Mozambique. Even though the EU is an important donor for projects through the IOC and ACP II, Mozambique does not directly benefit from it – apart from the MCS coordination center, which has just been founded.

In terms of the FPA's effects on economic development in Mozambique, the empirical analysis unveiled its complete absence. The Mozambican government as well as the EU stated the absence of landings and processing in Mozambican ports.

## **7.5. Discussion**

The final aim of the empirical analysis was to investigate whether the existing concerns with the FPA, as pointed out in chapter 6, are due to deficiencies in the agreement's implementation or whether the concerns exist albeit the FPA's correct implementation. Hence, in a first step it will be looked at the provisions that were tested in the empirical analysis. Are the concerns with the agreement a result of the agreement's correct implementation? If not, the question will be raised whether it is deficiencies in the implementation of certain provisions that bring about concerns with the agreement.

In order to be able to conduct, if necessary, both steps, the analysis will be restricted to the provisions that were tested for in the empirical analysis: Provisions concerning the monitoring of resources in Mozambique's fishing zone, the promotion of sustainability in the fishery sector, as well as the economic development of Mozambique.

The first two aspects, namely monitoring and promotion of sustainability, are highly interconnected, as the results of the empirical analysis suggest. Hence, the implementation of the provisions of these two thematic fields as well as its consequences, will be discussed jointly.

### Monitoring of evolution of resources and promotion of sustainability

The parts of the agreement that are related to the monitoring of evolution of stock and to the promotion of sustainability were enumerated in chapter 7.3.1. and 7.3.2.. Regarding the monitoring of resources it must be said that the correct implementation of the agreement would probably allow for effective monitoring. The agreement does not limit the parties to any measures. This is why the necessary steps could be taken to allow the IOCT to fulfil its mandate. The word ‘probably’ needs to be added though, since historical data on stock resources is scarce, which poses a challenge to the monitoring. Anyways, this is a problem not only inherent to Mozambique, but one that exists in other countries as well.

However, the monitoring efforts are seemingly undermined by the EU fleets’ supposed misreporting of catch. This is definitely an infringement to the agreement. The provisions concerning catch reporting were initially not even accounted for in the analysis on the monitoring of resources. It was taken for granted that these basic obligations are being fulfilled. Anyways, this is, according to the results of the empirical analysis, not the case. It must be stated that the misreporting could lead to a wrong assessment of the state of stock by the IOTC. Thus, a lack of the provisions’ implementation might result in a **lack of accurate scientific data**.

The fact that there is room for misreporting of catch already indicates that there is a lack of MCS capacities in Mozambique, which has been confirmed by the interview partners.

However, the question must be raised: Does the agreement itself pose restrictions on Mozambique’s ability to build these capacities? The answer can only be: No, the agreement definitely would allow to help Mozambique build its MCS capabilities. To some extent, Mozambique has already improved in that respect. A vessel monitoring system has been operational since the beginning of this year, according to the Ministry of Fisheries. Though, there are still deficiencies, as the assumed misreporting of catch by EU vessels suggests. The agreement’s provisions would allow the EU to engage in the fight against IUU, as has been argued in chapter 7.3.2.. The empirical analysis, on the contrary, suggests that such efforts are more or less absent.

The consequences of that might be (besides the EU fleets' effect of misreporting on the IOTC stock assessment) the overexploitation of resources as well as issues concerning bycatch. Vessels engaging in IUU fishing activities are not controlled for in terms of how much and what kind of bycatch they have. Thus, the overall concern with the absence of the EU's engagement for MCS capabilities in Mozambique is the issue of sustainable development of resources.

In this context, it is not a infringement to the agreement that explains the lack of MCS capabilities and thus issues of bycatch and overexploitation of resources, but the extent of certain provisions' implementation. If the commitment to combat IUU in Mozambican waters would really be an honest one, the agreement would allow to do so. Hence, the concerns regarding the lack of MCS capabilities, **bycatch and overexploitation of resources**, are due to the interpretation of the agreement. These findings are summarized in Figure 17.

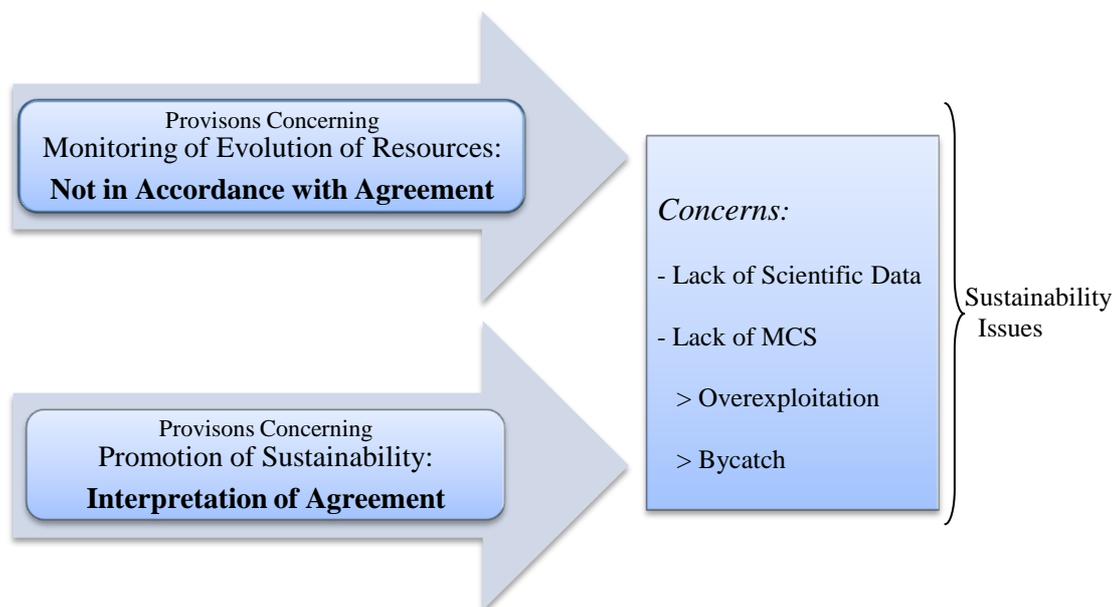


Figure 17: Relationship between Provisions' Implementation and Concerns with the Agreement (Regarding Monitoring and Sustainability).

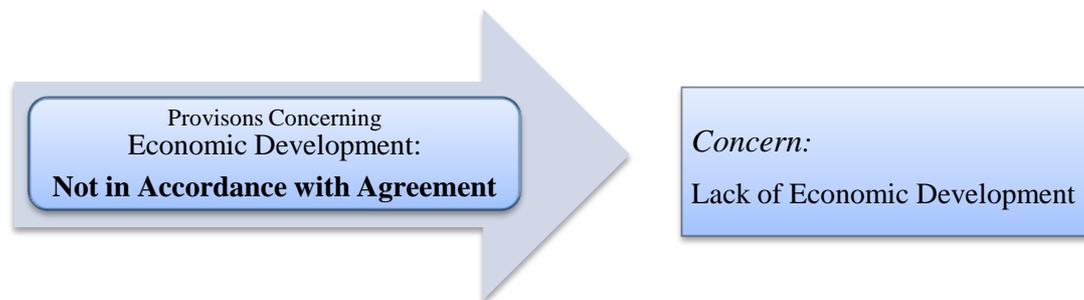
### Economic development

In terms of economic development for Mozambique, one could claim that the FPA could have positive effects. Conditions favourable to the promotion of relations between Mozambican and European enterprises do suggest so. So does the provision

that demands the implementation of a plan and actions aimed at promoting fish landing from in Mozambique.

It is probably impossible to measure whether favourable conditions for the promotion of relations have been created. Anyways, the results of the empirical analysis do not suggest so. There was no indication that this would be the case.

On the contrary, distinguished statements can be made in terms of promotion of fish landing from European vessels in Mozambique. Both parties indicated that such a development was absent – as is a plan to improve the situation. The relationship between the implementation of the agreement’s provision and the FPA’s concerns are summarized in the following figure.



**Figure 18: Relationship between Provisions’ Implementation and Concerns with the Agreement (Regarding Economic Development).**

## **7.6. Limitations and Future Research**

This thesis’ analysis has several limitations:

- It was not possible to conduct interviews with EU vessel operators, nor with the Spanish, French or Portuguese national fisheries research institutes. This would have been necessary to include their point of view as well. Maybe that would have made it possible to elaborate what forces are responsible for the issues that exist with the implementation of the FPA.
- Due to a lack of transparency, decisions agreed upon in the Joint Committee meetings were not accessible. However, the JC is attributed an important role regarding the implementation of the agreement. Ms. Fernandes provided some

information, after having asked for permission to do so from Brussels. Nevertheless, several documents could not be accessed. Besides, there might have been documents of relevance for this thesis' analysis that the author could not even ask for – due to a lack of knowledge what is being negotiated and discussed in these JC meetings.

- An issue that is of great importance to Mozambique, but has not been addressed in this thesis, is the boundary issue. The designated fishing areas set out in the protocol do not exactly correspond to the claimed EEZ of Mozambique. The conflict has been resolved through an amendment of the protocol on 25.06.2012.<sup>193</sup> Unfortunately, this amendment is not publicly accessible, since it was decided upon in one of the JC meetings.

However, the reason why this subject was not looked at in this work is that its focus was the analysis of the agreement's implementation. The aim of this thesis was not to discuss the legality of a provision that was agreed upon by both parties. Whatsoever, the significance of this boundary issue must not be neglected: It has consequences on the financial compensation (catches were historically higher than what was reported, meaning lower fees for what was actually caught by European vessels) and on the future allocation of fishing quotas by the IOTC (one criteria according to which the IOTC will allocate fishing quotas in the future is historical catches).

Fields of future research:

- Bad governance of information:

It must be pointed out that the governance of information concerning the state of stock is considerably poor. When asked for the information that existed regarding the state of stock of tuna and tuna-like species, the Department of International Cooperation also claimed not to be in possession of that kind of information. The EU indicated that the IIP would be the institution having access. The IIP however said the only information they have is the assessment of the IOCT. The IOTC's assessment is publicly available. In case that more

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<sup>193</sup> Peter Flewwelling: Interview.

specific information on tuna and tuna-like species exist, it was not made accessible to the author.

For further research it would thus be interesting why there is such bad governance of information. In a second step, solutions might be detected in order to improve communication between the different stakeholders – which would allow for a smoother exchange of information.

- Fairness of price:

Concerns were raised throughout the empirical analysis regarding the fairness of the financial compensation paid by the EU. Though, the fairness of price was not included in the empirical analysis' focus. Anyways, it would be interesting to compare the EU's financial compensation with those of other countries and to look more closely at the value chain of European vessel operators.

- Dependency of Mozambique from the EU:

When discussing the link between fishing rights and the financial compensation paid by the EU, it was only looked at the EU's direct payments under the FPA. However, the empirical analysis unveiled that this is too narrow an approach. The importance of EU funding in general for the overall budget of Mozambique is outstanding. This aspect should be closely analyzed by itself. Based on that, a holistic analysis of Mozambique's dependency on European payments should be conducted.

## **8. Conclusion**

The EU and Mozambique have a long history of relations, one aspect of it being fisheries access/partnership agreements. These FPAs have been criticized recently. This thesis investigated the concerns with the agreement for the specific case of Mozambique and analyzed to what extent the FPA's provisions must be held accountable.

The outcome of the empirical analysis suggests that there are huge concerns with the FPA currently in force. There is resentment on the side of Mozambique that cannot be ignored. The European fleet's reluctance to comply with the provisions of the agreement upsets government officials considerably. This non-compliance with several provisions of the FPA as well as a general feeling that the EU does not approach Mozambique as a partner – as the fisheries 'partnership' approach suggests – even leads the Mozambican side to consider the termination of the agreement.

However, it must be said that the FPA's provisions themselves would not necessarily lead to concerns such as unsustainable exploitation of resources or the lack of economic development. It could not be elaborated, which forces lead to an implementation of the FPA in such a way that its stated objectives are considerably undermined. Whether it is the EU, the industry, specific companies or other forces that result in the current situation can unfortunately not be answered.

Howsoever, it seems like a complete ban on FPAs is not goal oriented. Mozambique would most likely sell the fishing rights anyways, whether to the EU or somebody else. The advantage of being a contracting party of Mozambique is the possibility to positively influence the country's development. Obviously, this necessitates the honest will to do so. The author is thus convinced that, in order to be able to conclude a future FPA between the EU and Mozambique that benefits both sides, several issues must be addressed beforehand:

1. Developing countries need to collaborate in order to increase their negotiating power. Only if they are well coordinated, will they have a more equitable position in future negotiations. Such a balance of power is, in the opinion of the author, absolutely indispensable for a fair outcome of the negotiations.

Ideally, developing countries should even conclude single multilateral regional agreements, because this would further enhance their negotiating power.<sup>194</sup> In the case of Mozambique, a cooperation in the Western Indian Ocean with those countries that sell fishing rights to the EU, thus Mauritius, Seychelles, Comoros and Madagascar, would most likely establish a more balanced basis for negotiations.

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<sup>194</sup> *LeManachF et al.*, Who gets what? Developing a more equitable framework for EU fishing agreements. *Marine Policy* (2012) (online source).

2. The reasons and the forces that are responsible for the current undermining of these FPA's provisions need to be found. This is a necessary step in tackling the problems of the current agreement and also in preventing the same problems from arising again.
3. Awareness of the deficiencies of this FPA's implementation as well as the resulting concerns must be raised. This should put pressure on the parties involved, to really apply a partnership approach in the negotiations.

Based on this changed starting point, a new generation of agreements should take foothold. A framework for FPAs, which the author would consider as such a 'new generation agreement' was proposed by Le Manach et al. It suggests reasonably set quotas, fees that are indexed to the landed value of catches and costs borne by the benefiting industries (instead of European taxpayers).<sup>195</sup> This would bring an end to indirect subsidies for European vessels through FPAs, financed by the EU budget. That in turn would decrease the EU's support for fishing overcapacities and thus the overexploitation of resources.

Anyways, Le Manach et al. do support financial assistance of the EU for the development of Mozambican fisheries. Nevertheless, these payments constitute institutional development aid. As such, it should not be confound with access fees for resources – but should be granted independently from fisheries agreements.<sup>196</sup>

This approach can only be supported by the author of this thesis. Development assistance should still be granted; but it should be separated from what FPAs really are: *economic* contracts that trade access to fishery resources for money. As a consequence, both terms – development assistance and the trade of fishing rights – would be more transparent and more honest. If the EU decides to support Mozambique financially in developing sustainable fisheries, it should be done independently from the conclusion of an access agreement.

Inspired by the article of Le Manach et al., the author would even go one step further: The European vessel operators should not only pay the full amount of license fees, but should also be held accountable for external costs that are currently paid for by the

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<sup>195</sup> *LeManachF et al.*, Who gets what? (2012) (online source).

<sup>196</sup> *LeManachF et al.*, Who gets what? (2012).

EU or Mozambique. These costs must be assumed as general costs of fishing, which are, on the one hand, costs for the effective monitoring of the evolution of resources and, on the other hand, costs that Mozambique incurs from controlling the European fleet: inspector and observer salaries. The latter, however, necessitates that the whole European fleet comes to Mozambican ports after entering and before leaving Mozambique's EEZ. This must be strongly recommended as it is the only possibility to effectively control the fishing activities of the European fleet.

With a change of the initial situation (collaboration of developing countries to increase their negotiating power, detection of the reasons for the current problems with the agreement, raised awareness of implementation deficiencies) and the just illustrated concept of new generation FPAs, (reasonably set quotas, fees that are indexed to the landed value of catches and costs that are borne by the benefiting industries to its full extent) the EU would most likely get closer to the CFPs goal of really contributing to the development of sustainable fisheries – not just in Europe, but around the world.<sup>197</sup> Also, it would more likely lead to developing countries benefiting from the agreements, instead of private EU entities.

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## Appendices

### Appendix I: List of Interview Partners

<b>Name</b>	<b>Institution</b>	<b>Department</b>	<b>Position</b>
Angelica Dengo	Ministry of Fisheries	Department for International Cooperation	Chief of Department for International Cooperation
Atanásio Brito	Ministry of Fisheries	National Fisheries Research Institute	National Deputy director / Chief scientist
Denis Reiss	Delegation of the European Union to Mauritius		In charge of 'Fisheries'
Florian Giroux	IOTC		Fishery Officer
Henriques Jacinto Balidy	Ministry of Environment	Centre for Sustainable Development of Coastal Zones (CDS Zonas Costeiras)	Header of Repartition of Documentation and Information
Manuel Castiano	Ministry of Fisheries	Directorate of Fisheries Enforcement	Director of Fisheries Surveillance
Maria Imelda Fernandes	Delegation of the European Union in Mozambique	Agriculture and Rural Development Sector	Fisheries
Maria Rodriguez	WWF		
Peter Flewwelling	Ministry of Fisheries	Dirrecao de fiscalizcao da pesca	Monitoring, Control and Surveillance Advisor / Assessor MCS

Appendix II: List of Projects Conducted with the € 460.000 (Promotion of Sustainability in the Fisheries Sector)

BEI GEDRUCKTER VERSION EINGEFÜGT

## TRANSKRIPTE

Maria Imelda Fernandes

tuna resources ask her, I couldn't find the information, you said you could help me go to the fishery institute

C: (...) may I ask you to briefly describe your job and your responsibilities in terms of the FPA?

M: it is like this. we are only a kind of mailbox. because brussel is the chef the field. it's what we call chef de field. Brussels is responsible for the whole package the FPA. so what we do here in the delegation is the connection between Brussels and the government of Mozambique. we cannot have any decisions. everything we receive from the government we have to send to Brussels. and also the opposite. because if they want to talk to Mozambique, it is always through the delegation. the commission is we call it a mailbox. but we don't have any primary and important position in this FPA. all the discussions, all the problems, everything is in Brussels.

C: so it is DG mare who takes the decisions?

M: yes. DG mare. now here what we do is the daily. management of the agreement. what is this the daily management. it is, they need to have a fishing permission, a fishing license, so they make a request to the delegation. we send to the ministry of fisheries, the ministry of fisheries writes the issues the license, and then we send it to them. so it is this type of management. ähm, other things. there are plenty of other things, because this is the work that consumes a lot of time. because I always have to be in communication with them. and we have to prepare letters, write letters, receive letters, translate letters into Portuguese. because our correspondence with the government of Mozambique it is always Portuguese, and our correspondence with Brussels, it is always English. so we have this problem with the language, we have problem with communication, and when we have the joint committee meetings, which is under the fisheries agreement, we have a lot of differentiations. all the preparation work is done here.

C: okay, but in the JC (joint committee) it's you who decides?

M: yeah, that is right. it is like this. for the management and the follow-up of the fisheries agreement we have never ask new things. we ask the governments to use documents they already have for planning. we don't ask anything special. for instance these tables are made by the government. the planning for 2012-2014, we ask them what they have already planned. it's nothing new. it's what they are doing. what they are currently doing. it's nothing new. so this is one thing we try to avoid during our JC, we never ask the government to do anything special for our agreement. no. ähm. this avoids a lot of problems. especially because most of the time they are overloaded. they are overworked with several other issues they have to do. the number of people working in the ministry are very limited, so they are always overworked. and if you ask for many things, they will not provide it. in general, in the JC what we discuss is the common things about the institution of the agreement. for instance. last time we had a problem with the limit of the fishing areas. of the fishing zones. so we had to make a specific JC, an extraordinary JC, just to discuss this specific issue. and this happened why? it happened because one Spanish vessel came to Mozambican waters without fishing rights. and started to fish in our waters. without fishing rights. of course they have asked for fishing license, but the fishing license has not been issued at that time. so they were not legally fishing. and the vessel was arrested. and we wanted to know in which area exactly was the fishing vessel fishing. and it was fishing in an area which the limit of the fishing area was not correctly measured at that time. and you know they use the GPS system and the satellite system. but there is always a margin of error. so in this case the error was almost 60 km. which is really big. between the maps they have. and the maps that we are using in our analysis. so just to avoid this type of issues. it was not a big problem for this vessel. because this vessel entered in our without license, so it was punished, äh, but if something happens with the problem of the limits of the fishing area it will be very difficult to afterwards to come to an agreement. because they say no, we were fishing outside the fishing area and we were saying no you were fishing inside the fishing area. so now the problem with the fishing limits is solved. then so it is this type of issues that we discuss in JC.

ähm, it is other things that we discuss in JC, that happen. because it is only once a year that we meet in JC, we have to prepare. we have to plan the activities for the planning year and we have also to make to see what were the activities that were already done. you haven't seen any joint committee report?

C: no, they are not publicly accessible. unfortunately.

M: so let me explain to you. it's an agreement, every year has a compensation fund. the commission gives a certain amount, € 980 000 each year. so one part for fishing rights compensation, one part for policy development. so what they have to give information about is not the compensation. but what is kind of a grant for the policy report. so we ask the government for information about how they use the 460 000. yes. and then they have to make a plan of activity. and submit to us, to the commission. the activities and the plan how to use the 460 000. and this is the reason why these activities appear on this sheet of paper. so we have indicators. because we don't like audit. the commission gives this money but afterwards no one from the commission is coming to Mozambique to see if this money was used for this and this. for the things that the government said it should be used for. we don't do that. we use indicators, reports. and we check the reports. or, sometimes we don't see the reports, but we see the annual plan and the result after the activity has been carried out.

C: the FPA provides for consultation in the JC. how valuable do you think this consultation process is?

M: it is always good to have both parties discuss the issues on the same table face to face. but in some joint committees or in some negotiations, there were some tough moments, very tense moments.

C: what were the subjects?

M: mainly for the negotiations of the agreements. we had several round tables. 3 or 4. sometimes we meet here, sometimes we meet in Brussels. it's alternate. and we discussed very much. more than what they do for other countries.

C: it is about money?

M: yes exactly. about money, about policies, we were about declining. there was a moment when we said: no we don't want more of this. both parties. because it was so tense. that both parties didn't want to continue.

C: how important do you think the agreement is for Mozambique in terms of financial compensation?

M: it is very important for them. but they wanted to increase the price. but they couldn't. because they couldn't they asked for other types of compensation. for instance, they asked for having observers on board. they asked for having inspectors on the board. they asked to have the fleet coming to port and want the product in port. so it is really very much. so it is a lot of money on top of this amount. and they asked for, the policy support was also higher. because this amount had increased a little bit. compared to 2007.

C: so Mozambique asked for compulsory landing of fish in Mozambican ports?

M: they asked for it. it was almost 2 days of discussion, because in these JC we also have representatives of the fleet. people from Spain, France and Portugal. and when we went to Brussels they went as well. so these people are really tough people. because they have to pay. Brussels just pays a certain amount. but all the other expenses are from the vessels. so they are representing the interests of the vessels. they said that it's really a big logistic and they would spend a lot of money to go from the middle of the Mozambican channel to the ports and then Mozambique said no, it's our policy, we cannot just allow these vessels allow continue operating if they don't go to port. that was the first fight. and the second fight was to land the catch. cause the first fight was to go to the port, just for the inspection. and also to receive the original fishing license. that was the first fight. and what they could get is that not all of the fleet is going to the part. but only one third of the fleet will be selected by Mozambique. and they have to inform in which port they wish to enter. and then they stay 24 hours in the port. so only for this part of the agreement, it took us hours to reach that part. so every year only one third. in the first year one third, second year one third, another third than the first one and so on. but you see, Mozambique was asking for all vessels to go to Mozambican ports every year. but after negotiations only one third go to the port.

another thing Mozambique asked was to have inspectors on the ports. but if the vessel does not enter in the port the inspectors have to go to somewhere else, where the vessel is based, in Mauritius or Seychelles, to catch the vessel. so this is an expense that I think is Mozambique that has to pay.

and there is another thing. they also wanted to have observers. observers on the board. but Mozambique accepted to receive a payment. if the vessel doesn't want to have an observer on board, they have to pay a certain amount of money to not have the observer on board. you see?

C: why do EU vessels not want to land in Mozambican ports?

M: the thing is this. the community has been working in this area for a long time. the Europeans have a tuna agreement for Mozambique, Madagascar, Seychelles, Mauritius, now this has been suspended but is renewed. comores. you see that all the west Indian ocean countries have tuna agreements with the EU. so they have already prepared, they have already made their logistics. because it is not easy to prepare logistics for a faraway fleet. and they do not have logistics in every port of every country. because for them it's not good from an economic point of view. so the seiners land the catch in Seychelles. (...) and in Seychelles they have all the logistics they need. they also have factories. the tuna canning factories are in Seychelles. now the vessels can export directly to Japan. they take parts of the fish, the best parts, they do this on the boat and they sell it directly to Japan. the Spanish started to do this. so all the logistics is already prepared. so it is very difficult, in the middle of the business, to sell everything they have in Seychelles and start doing everything here in Mozambique. it's impossible! but Mozambique understood. they can't change everything. and now they started getting one third of the vessels into the port. they have to come to the port, they have to receive the original fishing license in the port, they may do inspection of the vessel and then they go.

C: but with landings in Mozambican ports, Mozambique would benefit economically?

M: yeah. no, they receive almost nothing. this is not happening.

C: so how is the business environment? is there anything happening to improve this?

M: no. for the seiners they land in Seychelles. but for longliners, they land in south Africa Durban. so the small vessels instead of going to Durban, they could go to Maputo. because in some times of year, they fish very close to Maputo. so it would be very easy for them to land here! but they don't do. it has to be a long discussion and they have to be patient, the Mozambicans.

C: what could the EU do support the improvement of the port facilities in Mozambique?

M: the EU? nothing. Mozambique has asked for some grant. some donation from the EU but...

C: is it true that a company builds a port in Mozambique and gets 10 000 tons of tuna for that?

M: no that is not true. because I have also read this. it was a company, yeah I have this information. but it is not true. I asked, the contact point. but it is not true. everything is not true. (...)

C: (...) What is being done by the EU and Mozambique to monitor the resources off the Mozambican coast?

M: the EU is part of the IOTC. so all the information we collect is from the IOTC. and the EU put a lot of pressure to also be part of IOTC. and this happened very recently. last year. but now we are also happy because we are sure that the information we have about resources also Mozambique has. we have the same information through IOTC. so all our information, everything we have, is following IOTC. also in terms of licensing vessels. in terms of the black list. so this type of things, we follow IOTC. also the tables, the format, of collecting data is the IOTC matrix.

C: does the EU follow IOTC recommendations?

M: yes, yes. but this is only at the very beginning, when the agreement is negotiated.

C: but theoretically, it could happen that the IOTC says, after the conclusion of the agreement, that the 8000 tons are not sustainable. would the EU adjust the licenses?

M: yes, in that case yes. but it has not happened so far. 2007-2011 the amount that was used, was the ceiling was 10000 a year. then this was reduced to 8000 in the new protocol. but from 8000 to the real catch it is a big distance. now we are catching something around 2000 tons.

C: why is this the case? is it due to a decrease of the stock?

M: ähm. huh. tuna is a highly migratory resource. and what I know is that there is one year in 5 years, where the catch is very good. and in the other years the catches are not so good. and this happened once in 2004. in 2004 they could catch around 12000 tons. and that was the maximum they could get. and the next year it went down to 2000. and it is 2000 since 2005 up to now. as you can see, there is a cycle of no good catches. but that is not because the stock is not good or overexploited. it's not like that. it's a normal cycle. that's what IOTC says. this is the information of them and their findings. so we believe that this is correct. so now the problem is not exactly on the tuna stock, the problem is on shark stocks. the sharks are declining. that is because of problem with shark fins. but in this agreement, there is allowed for 5% shark fins of the total catch. not more than that. so if you overcome 5% you get punished.

C: Is the bycatch being discarded?

M: no, they don't discard the bycatch. they collect. for instance, the longliners get more bycatch in terms of percentage than the seiners. because the seiners usually catch schools and they are usually the same fish. but the longliners, the hooks can have different species. so the bycatch in terms of percentage is higher for liners than seiners. and when they land the catch, they also land the bycatch. but they never discard.

C: so they weight of the bycatch is included in the tonnage?

M: yes. this is the report they have to send (Imelda shows me this in her documents) as you can see you have marlin (...) which is bycatch. so they have to do the entry and the exit of everything they have on board and what they catch.

C: so it needs to be reported to the government?

M: yes. it needs to be reported to the government. so see, this is what needs to be reported. so they do get data

C: so do you think the government calculates the amount of bycatch?

M: ähm. no. maybe not. so the information they have is the information we send to them. because you know, what type of information do they receive? they receive information on entry and information on exit. but in the end, what really interests them is the amount of catch. yeah. and they consider the bycatch, the whole package.

C: but the vessels only have to pay for the tuna or also for the bycatch?

M: for the tuna.

C: there is also illegal fishing going on. how big is this problem.

M: yes, it's a problem. there is also piracy. but only one vessel (...). since then the European vessels have armed people on boat. and when the vessels come to port. they also have to have stuff from our navy. because when they have guns on the board people from the navy have to go on the boat and see what's on the boat.

C: what is done in the fight against IUU?

M: it's very difficult. because the Mozambican coast is very big and Mozambique has one big patrol vessel and two small speed boats. (...) ähm and only with one vessel it is difficult to control the sea. we have the satellite control. but that is mainly for vessels that have the blue box on board. for the others it's difficult to control. the other thing is that the illegal vessels are mostly fishing in the central of Mozambican coast, where we have our most rich resources. so they are usually in the center part of Mozambique. it is many times the EU vessels that inform the Mozambican authorities of unknown

vessels. so it is more or less in this that Mozambique controls its coast. so Mozambique estimates that it loses some money because of illegal fishing. so this is the two problems that we have. illegal fishing and piracy.

C: the contract says that both parties shall monitor the development of resources. how important do you think is it to fight IUU in order to effectively monitor the resources? or can you say the EU is fishing sustainably if we don't know to what extent there is legal fishing?

M: Mozambique has at least an idea of how much they lose. The minister said that around \$100 million is lost every year because of illegal fishing. so they have at least some order of magnitude of how much they lose. ähm so this means that they know more or less what the nationality of these vessels are. they have this information. but in some places they cannot do more than what they are doing. but Mozambique is not part of IOC, Indian Ocean Commission. but what happened so far is that they do joint surveillance, joint control. but because Mozambique is not member, they cannot be part of that. but they IOC, they get also our support, EU support, to build a regional center of monitoring.

C: a coordination center?

M: yes.

C: so this is happening just now?

M: yes. it is already here. it is very recent. it is still very primary. but the EU paid for this in place. so I think Mozambique is appealing to all the initiatives to get better and better with controlling their water. and there is another initiative from the EU that is to combat IUU fishing.

(...)

I still wanted to show you this table. This is the most important table for me. ( I received this table later via e-mail) (...) so the ceiling was 10000, but the percentage of actual catches is very, very little. (...)

then you have the VMS, this is the problem of 2010, is the logsheet information did not work very well. so this year they started with the electronic recording system.

C: Is it working better with this electronic system?

M: we don't have information. because it started in September. very late. so we have this problem delayed. but we believe that it will work much better than before.

C: do you think you could send me this document as well?

M: I don't know. I have to ask for permission in Brussels first. I can try. For me there is nothing to hide. This should be public. Because there is nothing, completely nothing to hide.

(...)

each vessel is connected with the fishing monitoring center in their headquarters. so the Spanish have their contact in Madrid and they have to send the information there. and they have to send the information to Maputo. (...) in April we had a problem to discuss. a problem that is not yet solved. it's the problem of validation of catch. before the EU sends the catch to the delegation and to Mozambique, the catches have to be validated by their fishery research institute. in Madrid, in paris, and in Lisbon. this validation has to be done together with a Mozambican institute. but IIP is not joining. they are not participating in this validation. and this is part of the protocol. so this is an issue that has to be discussed in the JC. because this validation, they change very much! because they say we caught this amount in this area. but afterwards, they have to validate that information. this is the amount on boat, this is what they have from Madagascar, this from Mozambique. but if they mix for any reason we don't know inside the boat, one country can receive less money. because supposed spain has caught more, but validated less. and we don't have any means to make sure this is correct! the IIP should be present! IN the validation! when this information goes to paris or Madrid, the IIP representatives have also to be there! to ensure that what they are doing there is really correct. because the daily sheets from the vessels go to institute of research in paris. in this research institute in paris analyzes for each country, for Madagascar, for Mozambique, for Seychelles, so in the end they have to be sure that the

amount of catch they have on the vessels corresponds to what is reported on the sheets. what is reported. but on the other hand, they also have to be sure that what is reported for Madagascar, Mozambique and so on is correct!

C: Why has the problem not been solved yet?

M: because they are delaying things. they are delaying since 2007! because many things can happen. (...) it can happen that everything is still nice. but it can also happen that it is not so that nice. we don't know. because we are not there! we, I mean Mozambique. Mozambique is not participating. they are only receiving the information that they cannot validate. because they haven't anyone on board. the catch are not landing here. so we don't know ANYTHING!!! (...) and it's not a problem of the commission. because the commission wants the IIP to participate. because it is part of the protocol. but the others are just delaying things! the others are the French, the Spanish and the Portuguese. And we discuss this at every joint meeting. (...) the IIP wants to have focal points in the other institutes! (...) and now the commission sent a letter to these institutes, we haven't had no reply yet. and next year they want to make a big meeting together with the representatives of all these institutes and also IIP so that everybody could meet in front of the Commission.

C: Do you think that if this problem is not being solved, would Mozambique suspend the agreement?

M: No, no. I don't think so.

C: (...)

Maria Rodriguez

C: how important is it in your opinion to know about the extent of IUU, in order to efficiently monitor resources? how do you know how much fish is available?

M: that's a tough question. the thing about the tuna fishing is that a lot of vessels that come to Mozambique. and without the information about how much they are catching, we cannot know much about the development of the resources. so that's one thing.

the other thing is we need coordination with other countries. we need to work together. so in that part we have a regional office. (...) we can tell you more about that. in Mozambique what we try to do is to create an international dialogue with people from the government, civil society organizations, to get together. to get a more solid basis in order to negotiate fisheries partnership agreements. that's one thing. on the other hand we also support to create knowledge about the tuna stock. that has to be done nationally as well as regionally. we are supporting that.

C: how do you support that?

M: first, we had a meeting in July, in Mozambique, we brought the stakeholders together, (...) and there we discussed that. (...) so that was a starting point.

(...)

C: do you think you can say you're fishing sustainably if you don't have information about the fish stock? what information do you have on the fish stock?

M: yeah this is difficult. so we are trying to establish a tuna management strategy for Mozambique. because there is no information about tuna. (...) the information about the stock and what is available is missing.

(...)

(ALICE): and there is the problem that we don't get information about what is caught in our waters. the industry has rules that they need to follow. but the report about catch they don't do that. the EU has logbook. so that is solved. but before there was nothing. (...)

C: in terms of illegal fishing

M: actually we don't have so much information about IUU. we try more to help the Mozambican people to manage it. (...) so that we can promote sustainability. (...)

and the other thing is actually to improve the negotiating skills as well.

C: in terms of information

M: you know on the one side it's the piracy (...)

C: how does EU contribute to sustainability in fisheries policies?

I think its pretence. I think it sounds really nice. but I think they are not actually doing it. (...)

C: do you think the EU should help more to do surveillance of the Mozambican coast?

M: yes. yes. we do have meetings every year to ask them. are you going to talk to anybody from the fishery administration.

C: yes.

M: great

(...)

(The quality of the recording was very bad, so a proper transcription was not possible to do)

(...)

C: could you maybe briefly explain what you do?

A: (...) the IIP has a very small role in the fisheries partnership agreement, which is validation of catch. that is the role that the fishery research center has. and in the future we may also be directly involved. get some observers on the boats. monitor the catches. and things on that level.

C: do you have information of stock of tuna along the Mozambican coast available?

A: no. that's an information that depends on the administration of the catch data that is collected to IOTC. you know IOTC?

C: yes.

A: so since we are partner of the IOTC, the information that is given in terms of catches is given to the IOTC.

C: but the report of the IOTC says that Mozambique didn't transfer any data.

A: it's because they migrate. even if you are able to estimate the stock status of tuna in your water. that is a very volatile number. because these are migrating. you can take a picture and tell the assessment of just one period. by they don't represent the situation of the stock.

C: but how can the EU then be sure that their fishing is sustainable?

A: yeah, because the assessment, as I'm trying to say is a regional assessment. okay? that's why we have IOTC. is the body that deals with transfrontier of different countries. so if you do an assessment as IOTC and you compare this with catches that are reported to the IOTC you are able to tell the exploitation of stock is done in a sustainable or in an unsustainable way.

C: so you know from how much is being caught, how much is available?

A: yes. when you get good data about how much is being caught, you get good data, you are able to see how much is available. this is a matter of models and scientists can achieve that. unfortunately, fishery resources are under water and the only way of knowing the exact amount that is available there is by looking at the fishing effort and the amount of fishing that is done and the amount of catches that is obtained from that. you are able to use this trend along a period of time to tell the situation of stock. and how much is available in there. (...) that's a very easy way to assess that. you have to try to see the catch rates we are having. so when capacity goes up, also catch rates go up. but in general terms it is the IOTC that does the assessment for us.

C: there were issues under the former protocol with the reporting of catches. has this improved?

A: the information of the catches, the catch rates. that comes from the logbooks. that comes from the vessels, it should come all the way to Mozambique. but until now we have problems. some communication has been established in terms of contact with the other research institutions, namely the institutes of oceanografico of Spain, the one of France and DG Mar from Portugal. so we have approached these institutions. and we have had delays in terms of the contact person.

C: what is the problem. do you not get the catch reports?

A: the problem is not only getting the catch reports. according to the protocol, we should get this catch logbook first and then we as institutes validate these numbers with our counterparts in the countries that provide most of the vessels. because they are doing the same process. they are getting logbooks from the vessels. and there the other institutes are checking on the numbers so they are doing that. what we as research institute are doing the same thing. so we should find a moment to come together and compare the values. that's called catch validation. to achieve that catch validation you need to have

technical people here and technical people there. the difficulty now is trying to get at least a name of a technical person there. from the French we have some advances, we got at least a name of one technical person there. we would compare our data. what we have what they have and if there are discrepancies we can talk. find out what's wrong. why I have this number you have that number. that's a very important process that is not happening.

C: so there is no validation at the moment?

A: there is no validation at the moment. and that's a problem.

(...)

C: what role do you think does the EU have in terms of promoting sustainability in Mozambique?

A: that's a really tough question. but you know, academically speaking, this is a issue of... are you aware of the thing that the EU is doing, they are paying for the vessels that they can fish in Mozambique?

C: Yes, yes.

A: this is a way of subsidy. they have an advantage the vessels. they are in a better position to compete I would say. compared to any local or other vessel.

C: part of the money has to go to the promotion of sustainability in fisheries policies in Mozambique. so, how valuable in terms of sustainability do you think the EU is?

A: I don't know. But well sometimes it's easy to give money and say I'm contributing to sustainability. but if you look at the actions that are followed. may not be what can be called that. if they are not complying with basic things like giving the statistics that are correct or that are up to date. ah, how come you can claim that you are doing things for sustainability. what I'm trying to say if you are a father and you are giving money to your kid you will not achieve your role of being a good father just because of giving money. you need to be there and try to give this information. sometimes that is more important.

C: what information do you need?

A: the thing I was just mentioning here. we are having difficulty to achieve something that is very simple. have a contact of other institutes that can provide the catch validation. why don't we have that?

we have this issue that vessels sometimes give different numbers. one number to their country, one number to us. that's what people suspect, you know? because we have had a hard time in terms of that in the meetings European Union shows the number of the catch and they are not the same that we got from them. the numbers are quite higher, the numbers we get are small. that's an issue. that's why we want to sit down and validate, technically speaking, check. and that's not being done and is a big issue. it's something that the official channels are aware of. ours and the European Union. and it's to them to solve it anyways. (...)

Angelica Dengo

C: briefly describe what you're doing?

A: this is a cooperation department. the main task for this department is to establish good relationship with the development partners. we depend on financial external funding for the projects. state budget is not enough. so more than 50% come from external partners. (...) the other task is to look at bilateral and regional agreements. (...) and we are also, since 2005, my department looks at cooperation with national partners. with unions, with universities or other NGOs, national NGOs. (...)

C: what is being done by the both parties to monitor the tuna and tuna-like species?

A: there isn't. very little. I try to be honest with you.

C: yes please, that's why I came to Mozambique

A: the relation with the European union started a long time ago. I think it was in 1992. at that time the European fleet was fishing prawns. this happened until our national policy on fishing changed completely. one of the most important changes was that shallow water prawns should not be caught by foreign fleets anymore. so at this time we started to organize our national fleet. and at the second stage of cooperation with the European Union. and in this stage we, okay we monitored the performance of the national fleet. and we arrived that for shallow water fishing we can go along with national fleet only. but for deep water prawn we realized that we still have potential that is not used by national corporations. and then we opened access for European Union. and then we established an agreement which comprised the exportation for deep water prawn and tuna. (...) but then when we renegotiated and then the agreement only comprised tuna. so in 2007 we entered the third state of cooperation.

and now we made a revision of the protocol. because we need to update the protocol.

C: is it possible to fish sustainably if you don't have information on the fish resources?

A: yeah. when it comes to monitoring there is a problem. there is a provisions say that Mozambican fishery institute, research institute and the Spanish and the Portuguese and the French institutes, they should sit together and validate the catches in order to see whether the financial compensation is paid accordingly to what is caught. okay? because you know we establish a total catch for the fleet. and then there is provision which says if we put catch above they should pay difference. so in order to access and validate catch, and see whether extra money should be paid to Mozambique, the fishery research institute should validate the catch. this provision we have since long time ago. but we never sit together. all we hear from the European Union is okay we go to these JC. and we do a qualitative assessment. because our assessment during JC is based by the information of logbook. so the fish that is caught. so we see okay, total catch was this, we licensed x vessels for purse seiners and x vessels for surface longliners and that kind. and we get money. and we have to show okay with this money we made this and this and this. and this is what happens every year, every JC. but then when Mozambique says okay, we are still waiting for your confirmation about the dates for the validation of the catch, because we want to send our expertise to validate the catch, they NEVER do that. up to date. and the European Union do deny this provision.

C: why do you think this is so?

A: we are very very concerned. we just sent the European Commission a notification that we cannot continue like this our cooperation. if our research institutions cannot validate the catches, for us there is no need to continue with this relationship. (...)

under this new protocol we have managed to develop the vessel monitoring system. we made it jointly. Mozambique hired a company to establish that. so we should get all the information about catch and so directly. and we agreed on a deadline on the initialization of that. and the first deadline, I don't exactly remember the first deadline. but they did not manage start implement that provision. (...) we established another deadline. I think it was july. and now is November. the European fleet did not start sending the information through vessel monitoring system. (...) what to do? so we are informing the European Commission that they are not complying with the provision. European Union replies: Oh, you okay, we

need to sit with the countries that have the fishing license in order to see what's the problem. but now is November.

C: and this information is important in order to find out the appropriate financial compensation?

A: yes, we are member of IOTC since this year. and we get information from this organization. according to the database from IOTC the catches from our waters is very very far above what we get from the logbooks.

C: could this also be due to the fact that there is illegal fishing off the Mozambican coast?

A: probably yes. but I don't understand why the European Union doesn't apply the provision. so for us, they are not implementing, because they are not declaring what they catch in our water. that we are 100% sure. because the IOTC estimates that about 20000 tons of tuna within Mozambique water. but our logbook, they don't even fish 10000.

C: can you give me access to this information from IOTC?

A: you need to go to Fisheries administration. because this is official information.

(...)

and the European Union know that. (...) and they don't accept the joint validation of catch.

C: the agreement says, in case somebody is not complying with the provisions of the FPA, either party can suspend and even terminate the agreement. do you consider doing that?

A: it's one option. because there are so many partners who want to get access to tuna. and we were giving them a preferential position in our water. we take into account that Europe is a very traditional partner and, but things start to change. we know that European Union is one of the main state budget donor. but we have to see that when it comes to exportation of (...)

C: IUU – think that there should be more surveillance? what does the EU do? IUU problem?

A: I don't think IUU is a lot. because we have fishery surveillance. okay and we have received assistance from Norway since long time ago. It's our main partner for surveillance. we know that one vessel is not enough, because we have a very long coastal line. but if we look what we're doing, it doesn't make us look bad if we're comparing it with other countries. we are doing our best with one vessel. but we also charter another vessel together with (...). and we get some support on a regional level. we joined with Tanzania and with kenia. so we are doing a lot. and there is no much room for IUU in Mozambique. and last month, I think, or I don't know the month, a Greenpeace patrol they wanted to find out how Mozambique deals with IUU. what's the level of IUU in Mozambique. they did end the patrol and did not find a single illegal activity. and that was very good for us. because it was an external patrol from NGO Greenpeace, and they didn't find a single case. (...)

but IUU not much.

C: the minister talked about 100 million dollars lost due to IUU?

A: I think this is not right information. because if it's illegal, how do they even manage to control the amount of catch to calculate how much this equals.

C: promotion of sustainability... what is the EU's role in it? what do you think?

A: I don't think much. ähm. when we were trying to renegotiate the protocol in the JC. we made a qualitative assessment with regard to impact of economic access. and we told the European Union that Mozambique up to date is not getting any economic impact from this fishery agreement. because all the operation of the fleet is done offshore. the fleet doesn't land in our port. it doesn't even land the bycatch to promote the processing in our country to promote employment and all this. so everything is offshore activity. but there is no impact on Mozambique.

C: also no plan (according to agreement) action plan to promote landing capacities?

A: no. there is nothing. there is not even bycatch landed to promote processing in Mozambique and employment.

If we look at the financial impact of this agreement. we see that the fishing license we get paid are far below. if you compare with the fishing license fee paid by Japanese fleet, the European Union is paying peanuts. the European union says they cannot renegotiate the financial compensation because they have a formula which they apply for all of the countries in which they have FPAs. but this is not fair. because Japanese fleet come to our waters renegotiate our contracts and they pay double. and we want to check now. even the economic compensation from the EU is below what the national fleet pay.

we looked at social impact, we say that there is no single Mozambican employed on a European boat on a single vessel, so no employment is made, no social impact.

if we look the administrative impact. for this is okay, because the European Union does transfers the money but there are not cost to Mozambique. so administrative impact is the only positive thing.

if we look at the environmental impact on the resource, we do not have elements to make assessment of the environmental impact, because we never made a joint assessment of the impact. we don't know how much is in our water.

(...)

even now in the new protocol there is a specific clause that Mozambican must be employed. otherwise they have to pay. and this is what they will do, because they haven't employed a single Mozambican so far. but this is not how the relationship should be. we want to see our national people working in the industry. you see?

C: sustainability?

A: everything they put around that. okay. I don't know. because I understand the EU wants to contribute to sustainability. we expect them to sit with us and fully declare the Mozambican catch. okay so that's where I would start upon. and maybe we can also organize I don't know. maybe a joint survey. you cannot say you're sustainable if you never record a survey. never. I don't know.

C: the EU is sitting in the IOTC (monitoring), which is doing monitoring. do you consider that this is enough?

A: so if that is true. I can partly agree. why do the IOTC report about number of catches that Mozambique does not have? because the European Union is maybe given the truth from the IOTC. and the European Union knows that the average catch there in the Indian ocean. but why do they not even give us the information? if we find out it will be very very difficult negotiations. and we will find out. (...) and if this does not change we cannot continue the agreement. if we have to stop with the EU we have to stop with the EU.

(...)

if there is no transparency in the relation between the European Union and Mozambique, internationally. it took so long, it took so long. and the relation is not good at the moment. the relation has changed. because we are supposed to develop a table and justify EVERYTHING we do! every dollar we use! but look the EU they are coming, but they never have to justify for what they are doing with tuna. what is the value chain? we don't know. so we want a FAIR relation.

(...)

but I can imagine how much they get. it's too much of value. but we don't get information

C: EU complies with IOTC?

A: yeah, probably they comply.

C: do you know how much bycatch?

A: maybe ask at fishery administration

(...)

A: there is a lot of problem. validation, catch reporting, employment!

C: is it true that the Chinese are improving the facilities of Maputo port?

A: okay. so what happens is we get some funds from Japan. we are looking for money. if china comes to develop the port okay. (...) so whoever comes first is welcome! it is too much money, its 150 million dollars for Beira port.

C: private company getting fishing rights?

A: no, that's completely wrong. that's a misinformation. we could not grant exclusive rights. our national fishing law would not even allow that. not for anybody. so nothing is right. it's crazy, it's a complete misinformation.

(...)

Manuel Castiano

C: EU and Mozambique – what do they do in order to monitor resources?

M: firstly we think, personally, I think that this agreement it's called fisheries partnership agreement. I don't think that it's really a partnership. it's more fisheries access agreement. you know, of the zone. we don't see any way how this agreement could be a partnership agreement. that they work jointly to meet same goals and objectives and sometimes we see that the EU is not meeting such objects. because their intent is more to negotiate more to the interest of their fishing companies. to get access and fish. sometimes they have no control of their fleet operating in the area. so not a partnership.

C: what do you mean by 'the European fleet is not under control'?

M: it is such things you know. during long time ago we've renewed it. and due to a lack of capacity. institutional capacity there was fishing and there was no control, no control on our side because the capacity. and that is still a challenge today. but until we started pushing for it. we are now pushing to get the EU fleet compliant.

C: anything specific?

M: first, we monitor all the fleet, European fleet through our VMS. which is in force since 2010. so you see, for some time the EU fleet was not reporting. so we are now fully monitoring the fleet. aside from that we are enforcing entry exit reports in the zone. so this is also another pool that we started implement (...). It is that when the vessels cross the EEZ or before they cross the Mozambican EEZ, they have to report the intention of entry and the catch on board. as well as when the vessel is exiting, has to report this, the position and the catch on board. and then we will be in the position to see how much it has been caught in Mozambique. so we see that tool crosscheck with VMS as important tool to monitor how much is caught.

C: the EU also has to submit the logbooks, right?

M: they must submit the logbooks. but the final result is not the one that comes from the recording of logbooks and all this. the final result of the EU catch in the area is the opinion by the institutes from (...) France, Spain and Portugal. so it was like that for a long time. Mozambique was not involved in such exercise to see how much catch was. (...) what is absolutely unfair. so on the last discussion of the protocol we said that we need to participate in such exercise (...).

(...) at the end of the season of the fishing season those institutes validate the catch. (...) they come with the real figure about what was the catch. it means that even, although we have that figure it was not considered as a validate catch. for financial compensation. so for that compensation reason the institute comes with a figure. okay we fished can say some 4 or 5 thousand tons. even if according to our figures we say no, it's almost 6 thousand tons.

C: but the EU vessels have to fill out logbooks. do EU vessels not report correctly?

M: the logbooks are weekly reports. but the logbooks they only send it at the end of the season. that's one. but you know that tuna is a highly migratory species. but we receive that. but the real figure that we could... because there is a catch limit. it's 8000. so how we could say that okay 8000 tons have been caught. who gets to that figures. but we need to know. so now there is a need that our research institute has to join the work done by those institutes.

(...)

this is another thing that... I can say that involves sustainability. look, there is agreement for 75 vessels. purse seiners and long liners. how could 75 vessels fish 8000 tons tuna. is that economically viable? it's not. (...)

it's impossible you fish 8000 tons with 75 vessels. and this is linked as well with the capacity building of negotiations. there was no capacity to look at... normally, you know, we need to check what is the capacity of the country to negotiate. because if you have no capacity, so I want more. (...) so I think, I

mean, something that... the EU is one of the nature donor on the national budget. you know. and sometimes when we don't complete the agreement in our negotiations. it brings political issues. you know. there is political pressure. if you don't accept this one we cannot compromise our contribution to the budget, national budget. (...) sometimes we have costs of accept that agreement. it 8000 tons for 35 €. what is absolutely ridiculous. (...)

C: why does the EU want 8000 tons but only 75 fishing vessels?

M: it's open for cheat. for not reporting. so they can fish and not report to you. and then what is next. you'll never find that they fished more than they should. so if they underreport, it's not a problem. (...)

C: where does the misreporting happen? fishing vessels, national research institutes?

M: this I don't know exactly. we know that there is huge underreporting at present. so the EU always protects the flag states. so if their fishermen do something wrong, they come and protect you. you know? (...) probably it's the fleet. because the fleet belongs to companies. they work for companies. the big problem is, another thing is that they don't come to port. they don't come to port after fishing. this is the tool where we could close the gap. as they don't come to port. so it is difficult to monitor exactly how much they fished. VMS cannot do that.

C: do the vessels send the same numbers to IIP and national institutes or do they differ?

M: (...) you know, our national institute is just coming to work with these institutes. so we don't know exactly, you know, we don't know exactly what goes to them. we just receive the figures. sometimes the institute comes and says okay in this fishing season we fished 1000 tons more than what supposed to. and this is the payment for the extra tons. but how can you say this is not? (...) that difference always exists. sometimes they come and say it's lower, sometimes they say it's higher.

C: but entry, exit reports.

M: yeah but this is currently. now, now we have that. these are recent tools. because we've been, we've been we think they were shitting us for a while. so this is recent.

C: (...) and then you have to use this figure.

M: yes and that's the problem. there is always discrepancies. because if they caught more than what is supposed to, they have to pay for that. this is another thing. 35 € for the catch. what is that? we think that all these provisions do not play for the sustainability of the fisheries. because this kind of figures (...) they know I can fish more and they pay 35 €. and then they go the market and sell one ton by 2000 \$.

C: I couldn't access calculations on price. Could you maybe help me get that information?

M: (...) yes, we can help you. we can talk to analyst about current price in the market of tuna. but with all those exercises we know about how much they are really doing and how much they pay us. so I think that the next agreement, there will be a big discussion on all those issues. because nowadays we are charging almost 35000 \$ for a longliner, no for purse seiner license fee a year. and we are charging 32000 \$ for longliner. but we calculate. this is for commercial agreements. not for the EU. (...) and if we calculate for the EU fleet, we are losing a lot of money. it is better to not have that agreement. yes.

C: validation of catch – where can it be found? not in the agreement, not in the protocol. JC?

M: yes. it was in the joint committee (...). one thing that changed was claiming that one, second one to claim the fishing zone. for a long time, the fishing zone was not the correct one. so we lost too much catch. because a fairly big portion of Mozambican area, fishing area, was considered under the agreement of high seas. you know. now we realized that. and we came to the EU and say no. we have boundaries limits with Tanzania, Comores and so on, and the coordinates were different with those that comes under the EU Mozambican agreement. so it was mandatory to review the coordinates. as well as fishing zone. because we know what our fishing zone is. and this is on our VMS as well as on Madagascar VMS and France VMS. the fishing zone. so we realized that there is a huge zone that belongs to Mozambique but was not under the FPA. so we claimed that. and they finally the EU accepted this year. now we are claiming to EU to recognize the catch that they made in that area that

was supposed to be high seas. so this is still ongoing. I think that if they are really good players they will recognize that.

C: the result would be more money that has to be paid?

M: (...) the catch in that area is Mozambican catch. this is the consequence. (...) you know that there is an ongoing discussion of quota allocation. Mozambique is now a member of IOTC. and in the discussion on quota allocation. the historical catch is the one that will be a criteria for the distribution of quota. we consider that not only we have to consider historical catch, because historical catch is for those who have its own fleet. you know we have no fleet. we cannot lose.

C: so the IOTC does the quota allocation?

M: will do. will do. considering certain criteria. which we discuss.

C: is it obligatory?

M: yes. IOTC will fix TAC for all Indian ocean and gives the countries quotas.

(...)

C: who transfers data to IOTC?

M: I think that the fleet itself. the flag states. now we are binded to report and what Mozambique fished. so each flag state which is member of the IOTC has to report.

C: but does this mean that if there is really underreporting, the IOTC gets wrong figures?

M: Exactly, exactly. that compromise all the figures of IOTC and we mentioned that.

C: what makes you think there is underreporting from the EU?

M: according with the MRAG stock and according with the assessment done by the EU, the EU itself, they demanded for assessment study. ... megapesca. if you go and check that (..) on the assessment of the Mozambican FPA (p19) you will see how much should be supported Mozambique. (...) but the recommendations of this assessment are not implemented. so the question is why they ask for that. you know. (...)

C: IUU in Mozambican waters. do you have an idea how big the scale of IUU is?

M: from the previous you can realize that there is huge underreporting and illegal, unreported and unreported activity. this is something not only for Mozambique but for all the countries. the problem that MRAG touch. they calculate how much the loss is. we estimate that we are losing almost 35, 38 million \$ due to illegal activities. (...) but it's more from underreporting. most IUU activity in Mozambique is more underreporting. we are keen to trace all the fish in order to close the gate. only for tuna nonreporting we miss almost... I mean if people report to IOTC that our catch is almost 6000 tons, but we know that they are fishing almost 20, so ah, all this. we can account this. we made calculation how much we are losing. but also we have national fleet not reporting accurately the catch.

C: is there national fleet for distant water fishing?

M: only one. the more is foreign fishing fleet.

C: why do you think that Mozambique has not yet been able to develop its own fleet?

M: Mozambique is only now full member. we are full member. we've been non-contracting member. in 2010. and this year by February we've been admitted full member. contracting party.

C: of the IOTC?

M: of the IOTC. so as such it is mandatory to develop our own fleet development plan. so this one fleet is part of our obligation of IOTC to have our own fleet. and in coming year we are we are going to promote. there is some initiatives of some vessels of companies which will be Mozambican. which will

be fishing as a Mozambican flag. so in this sense it means that this kind of agreement will be second option. ah, we are going to merge the... we are not going to allow only vessels to come and fish. we are going to allow vessels to come and fish as well as to land. here in this port from Mozambique. so I don't see this kind of agreement with a long living time. yeah. unless if we really come and change the provisions of the agreement. now this agreement benefits only to the EU.

C: How important is the EU in sustainability?

M: I mean ah. first, that money (460000) is peanuts. it's really peanuts. it's not significant where we can say okay with this money we can do this or that. we cannot have big ambitions with that money, you know. we do have priorities and sometimes when the money comes. the ministry says how we are going to spend it. (...) the money comes as a whole and then we start to play with it. but nevertheless, we are still active with this availability. assessment as well as monitoring and control. so we think we have problem for MCS. so we think that we are following all MCS issues. I know that EU declared this that they claim this the sustainability. but you really need to see how they are doing this. look. in 2008, we saved a vessel you know. it was a Namibian flag vessel. but the real owner, the real beneficiaries were the Spanish. Spanish companies. ownership, you know. so it was caught with 33 tons of shark. so... for what? you know the beneficial of the shark was the Spanish. is this sustainability? is it sustainability to have a Spanish vessel in 3 hours 61 tons? and then to not pay? and not paying for the fine? we are still claiming for the fine.

so ahm, and now, recently we made joint patrols. joint patrols with greenpeace.

C: the rainbow warrior?

M: yeah, rainbow warrior. we patrolled a Spanish vessel. and immediately you know, I received a call from Spain. complaining about why we are doing a joint patrol with greenpeace. you know. because the agreement say that Mozambican patrol vessels have to show and sign to be a Mozambican patrol vessel. (...) so if there is nothing to hide – why are you worried?

(...)

but it was great in terms of outcome. just to confirm that we are doing a good job. because the, almost, the fleet was compliant. we didn't see any unlicensed vessel. so we did our homework. and when we come with greenpeace, they come and see what we're doing.

C: effect of misreporting on sustainability?

M: yes, there is a connection. absolutely. they research. there are advices from the IOTC. so if they advise us with the wrong data. we're gonna take management measures which are not sustainable. because we think that the stock is healthy, in terms of quantity while it's not. therefore we put much effort to get all the fleet compliant with reporting.

C: when was validation of catch agreed upon?

M: this year.

C: when is it happening?

M: by the end of the year.

(...)

Peter Flewwelling

C: major issues

P: I'm an advisor yeah. well if you want me to tell you. you need to be very careful about quotations because I still wanna go to Spain for a holiday. (...)

if one looks at the EU fisheries agreements and fisheries partnership agreements (...). the EU makes a particular profile for agreements and they get the whole developing countries to open the mouth and swallow. what I found the major problem is they make one formula (...) and they expect everybody to go with it. very few countries, because of their economic situation, are able to refuse these templates.

with respect to Mozambique. there is a fisheries partnership agreement. but my experience is from watching from the outside is that. well the EU is giving lots of financial means to the government of Mozambique.

[REDACTED]

(...)

so now the issue is we got the boundary. now we need to find out how much did they catch. (...) and this is critical to us. I say us because I'm definitely on the Mozambican side. it's critical to us. because we are now IOTC member and IOTC does quota allocation for tuna, as you know. (...) first thing is: how much was caught in your zone? and the EU corrupted, and I use the term very deliberate, corrupted the Mozambique database for catches in the EEZ for several years. not just since 2007 when we changed fisheries agreement. (...)

they were fishing in Mozambican zones claiming they were fishing on high seas. so we have, because we trusted that everybody would be honest and not corrupt, a database that says this much has been fished, which is totally underreported. and if the IOTC base their quota allocation on how much was historically caught in that zone, we lose. now that's what we lose in the future. so that's one of the biggest challenges for Mozambique to get the EU to actually admit what they caught in the EEZ. (...) we know that did not only get wrong catch values, but they never paid Mozambique for it. and what they are paying is peanuts. in another report of the economic value of fisheries, you've probably seen that one, in 2004, what the EU paid Mozambique was 11% of the value of the catches.

C: (...)

P: in 2010. the value that the EU is paying (...) decreased to 2.1%. and this is only the reported catch.

[REDACTED]

(...) so all these years, this fish was caught by the EU and not being paid for. now what happens if Mozambique says enough is enough, okay? so there is pressure that if there is no partnership agreement other funding can also be cut off. Mozambique can't afford that. It can't afford it. so we continue being raped.

(...)

there is still another side of the fisheries partnership agreement. ACP II is designed to help developing countries strengthen their monitoring control and surveillance. okay. everybody signed onto it. and then the EU changed the goal post. they changed the rules. and they said: if you've got a fisheries partnership agreement with us, you're not able to participate for any of the projects. funding, or support

under ACP II, which is supposed to strengthen MCS system. then they said you know, under the fisheries partnership agreements you have other sources of money from us. the problem is, the fisheries partnership agreements had all been signed. and the money received from the EU had already been assigned. not to MCS, but to other development aspects. (...)

(...)

manuel castiano: we are not beneficiaries of ACPII funding.

(...)

P: (...) the only way to really check on catches is if the vessels come to port the EU in the current agreement comes to port with 33% of the fleet. all the Japanese fleet comes to port. so do all other countries. not so the EU.

(...)

Henriques Jacinto Balidy

C: tell me a little bit about your work?

B: Our work. yeah. we are working for ministry of environment, specifically for the coastal zone. yes, we are under government supervision, but research. only looking for the coastal zones of Mozambique. from ponta d'ouro to (...) river. something like 2700 km. when we say coastal management we look at resources. marine resources, sharks, whale sharks, sea turtles, dugongs, and others including mangroves, seagrass, coral reef and the others including the belt of river of big river. but our mandate that includes also inland. where we find the big lakes. yes yes. because our concept we cover all our coastal zone.

C: (...) monitoring, enough efforts?

B: yes I don't know exactly how this mandate [in the IOTC] is working as well. because with this mandate for the fisheries resources in Mozambique we don't have linkage. but we're working with fishery institute. because it has mandate to monitor resources for fisheries. but yes. I don't know. I think this agreement is not working proper. not very very very well. because in the. for example we have, our coast is very very long. and I know that in this context in this agreement, the European they are giving us, the government of Mozambique, to introduce some technique of the fishery. like to catch species like marine resources like whale sharks. but this is not, they are not working very well. because we have always the ted you know?

C: no.

B: the teds. is ah. is including the sea turtles. our government always approved this legislation but they are not implementing in the fisheries. like fishery with the European Union. and for longlining is different. most kind of the fisheries. the European Union they use longliners. but longliner fisheries in 2005, in coast of xai xai. we found something more than 500 of marine turtles caught. without ted. along of our coast. because of purchasing of longlining fisheries. we don't know why.

C: only EU or also other countries longliners?

B: I think it's not exactly, maybe it's not exactly the European Union. But in our coast we got illegal fisheries by Japanese by Chinese, and other. we don't know specifically because we don't have surveillance along the coast. that reason, the other reason of this agreement is to help Mozambique to [patrol] the zone. the coastal zone. to look for the illegal fishing. but this part of the agreement is not working properly. I think. cause until now we've got a lot of illegal fishing.

C: in terms of unlicensed vessels, or misreporting?

B: yeah don't have licenses, they use not allowed fish traps. yeah yeah. we don't get data for port controlling. they catch not allowed species like marine turtles or sharks. yeah. ah.

C: (...) how big is the problem of IUU fishing in Mozambique?

B: yes I think so, yes I think so.

C: how can the EU help?

B: yes I think the European Union they've got a reason for that to control our coast. using the satellite or I don't know which other technique they use for controlling illegal fishing. ah, for example. (...) in 2010, the somalian pirates captured was 2 ships. one was, I think it was European company but most of the people on the ship were Mozambicans. I think only 5 people on the ship were saved, but other people I think 10 disappeared. this is another big problem of our coast. we don't have different fishing vessel patrolling for this kind. also I think the European Union they are all helping Mozambique with the, how do you say? patrolling but using the military. marine navy. yes marine navy, I think that will good for us. because Mozambique don't have marine naval. yes yes.

C: so that the EU would contribute in that?

B: yes, yes. (...) also the radar. and we don't have monitoring by satellites to monitor illegal fishing.

C: MCS coordination center. what do you know about it?

B: I don't know exactly about it. because they are in our region. most illegal fishing is contributed by the region. like Tanzania or Kenya. because Mozambique has lots of resources. other than Tanzania or Kenya. comparing with Mozambique, Mozambique has a lot resources. but the fishery from Tanzania or Kenya will fish in Mozambican parts without license in Mozambique waters. yeah that's very big problem of Mozambique. also with other countries like Seychelles. I think that this patrolling is not working very well. not very very very good. I think so. yeah.

C: EU contributed to economic development in Mozambique?

B: yes of course. now our economy in Mozambique. the fisheries is contributing second of income in Mozambique. yeah.

C: in terms of employment in the country – positive effect of the agreement?

B: yeah, I think it's very very positive.

C: tell me positive things?

B: yes. they contribute very much in our economy. because for now the fact that Mozambique has the agreement with European Union. they fishery productivity was increasing. if we compare for the past. (...)

the European Union is also helping the artisanal fisheries. with because Mozambique has institute of small scale fishing. and the institute for funding for small scale fisheries. yes. these two institutes they get the money from the European Union.

C: through the FPA?

B: yeah. and also for research. the institute for fisheries and research. ah how do you say. the funding of the European Union for specific activities in fisheries resources. like for example organizing the monitoring expeditions along the coast. yes I remember from 2006 to 2011, we get I think it was 3 big vessel ships from Norway and from Netherlands. (...)

C: money from FPA or other financing?

B: I think this money is from this agreement. because until last year we get this project. (...) this project was from the European Union. but we have other donors like global fund for the environment. but other part was the European Union. and we also get project of the European Union. was transboundary. transboundary something. was 100% funding from the European Union. but was looking for marine reporting. but in the transboundary zone like south and north of Mozambique.

C: overall role of EU in promotion of sustainability?

B: I didn't understand the question.

C: asking question again

B: oh yes, I think the European Union is very very interested for sustainability in fisheries in Mozambique. I remember, I don't know in which year. it was in last past years. I think in 2008 or 2006. (...) the European Union only we buy the shrimp from Mozambique if this shrimp come from with ah sustainable shrimp fishery. I think it was this year that the legislation for excluding bycatch like sea turtles and the other marine turtles. I think this is an example for the enforcement of sustainable fishing by the European Union. yes, I think so.

also in 2005, we promoting. because our mandate include the promotion of marine protected areas. in 2005 we proposed to the government to declarate an area very important fisheries but very important for ecosystem. because it has got a lot of the coral reef. and lots of fish that are concentrated in this place. this place is most important fish place in Mozambique. it's called sofala banks. north of lambesi

river. and we've got small islands. they are very important for the ecosystem. (...) we proposed it for marine protected area. but it was not until. only this year, last two weeks, the ministry approved it. now it's marine protected area. but this was incorporated by European Union. yes.

C: how did the EU do that?

B: the EU was founding for this project in the ministry of environment but the thing is the EU was enforcing was pressuring the ministry of fisheries. (...)

C: (...)