



Government.no

# Recommendation on Exclusion from the Government Petroleum Fund's Investment Universe of the Company Kerr-McGee Corporation

**Letter to the Ministry of Finance from the Petroleum Fund's  
Council on Ethics, dated 12 April 2005**

Letter | Date: 06/06/2005 | [Ministry of Finance](http://www.regjeringen.no/en/dep/fin/id216/) (<http://www.regjeringen.no/en/dep/fin/id216/>)

*(Unofficial English translation)*

**The Petroleum Fund's Council on Ethics**

Oslo, 12 April 2005

# Recommendation on Exclusion from the Government Petroleum Fund's Investment Universe of the Company Kerr-McGee Corporation

**Introduction**

In a letter from the Ministry of Finance dated 12 December 2004, the Petroleum Fund's Council on Ethics was asked to assess whether the investments by the Fund in the company Kerr-McGee could constitute a violation of the Ethical Guidelines for the Government Petroleum Fund. The background for this request was that the Minister of Finance had received letters from the Western Sahara Support Committee and the Government of the SADR (Saharawi Arab Democratic Republic), asking him to disinvest from the Fund's investments in the company Kerr-McGee Corporation. Subsequently, the Ministry of Finance also received a letter from Kerr-McGee Corporation, [1](#)Letter dated 4 January, 2005, arguing that their company should not be subject to disinvestment from the Fund. In its meeting on 21 December 2004, the Petroleum Fund's Council on Ethics decided to evaluate the merits of the case.

According to the Annual Report of Norges Bank [2](#)The Norwegian Central Bank. for 2004, which was published on 1 March 2005, the Fund had equity holdings of NOK 221 978 000 and fixed income securities of NOK 115 344 000 in Kerr-McGee Corporation.

The Council on Ethics has decided to make the following recommendation to the Ministry of Finance, which, according to point 4.5 of the Ethical Guidelines, shall be submitted to the company for comments.

### **Background for the case**

The company Kerr-McGee Corporation [3](#)Through its subsidiary Kerr-McGee du Maroc Ltd. entered in 2001 into a contract with the governmental Moroccan oil company ONAREP regarding geological and geophysical studies off shore Western Sahara. This contract has since been renewed. Moroccan authorities have informed the Office of the Legal Adviser of the UN that the contract contains "standard options for the relinquishment of the rights under the contract or its continuation, including an option for future oil contracts in the respective areas or parts thereof." [4](#)Letter from the Office of the Legal Adviser to the President of the Security Council (S/2002/161) dated 12 February 2002, para 2.

Moroccan authorities describe Western Sahara as “Moroccan Saharan Provinces”, and claim sovereignty over the area. According to the UN, however, Western Sahara is still a *Non-Self-Governing Territory*, and, as such, not subject to Moroccan sovereignty. Western Sahara, a Spanish protectorate since 1884, was, according to the provisions of the UN Charter, established as a Non-Self-Governing Territory in 1963. Spain was appointed Administrative Power for the area.

The liberation movement POLISARIO [5](#)(Frente) Popular para la Liberacion de Saguia el-Hamra y del Rio de Oro. was established in 1973. Its aim was to achieve independence for Western Sahara. POLISARIO started an armed uprising against the Spanish Administrative Power. In October 1975, the International Court of Justice (ICJ) rejected claims from Morocco and Mauritania regarding their alleged sovereignty over the territory. [6](#)ICJ, Advisory Opinion of 16 October 1975. Subsequently Morocco invaded parts of Western Sahara, which led to strong reactions from the Security Council. [7](#)US/RES 380 (1975), dated 6 November 1975. Later that year, Spain entered into an agreement with Morocco and Mauritania concerning the transfer of power over Western Sahara. [8](#)The “Madrid-Agreement”, dated 14 November 1975. In the Agreement, Spain confirmed her intentions of contributing to the decolonisation of Western Sahara, and to transfer the duties as Administrative Power to Morocco and Mauritania. The agreement thus did not transfer sovereignty over the territory, as Spain had no such sovereignty in the first place. The agreement did not alter the status of Western Sahara as Non-Self-Governing Territory under the UN. In the agreement, Spain recommended that a referendum should be held concerning the future status of Western Sahara. In 1976, however, Morocco and Mauritania agreed to divide Western Sahara between them. [9](#)Agreement dated 14 April 1976. In 1979, Mauritania withdrew from Western Sahara. Morocco has since occupied the whole territory.

Since 1979, Morocco has exercised de facto sovereignty over this territory without taking on the formal role as Administrative Power pursuant to the provisions of the UN Charter. Morocco would, as Administrative Power, have had an obligation to *“ensure, with due respect for the culture of the peoples concerned, their political, economic, social and educational advancement...”* and to *“develop self-government, to take due account of the political aspirations of the peoples...”*

[10](#)Article 73 of the UN Charter.

Even though Morocco has control over Western Sahara, Moroccan sovereignty over the territory has never been recognised by the UN. According to the UN, Western Sahara is still a Non-Self-Governing Territory. The UN General Assembly has adopted a number of resolutions confirming this. [11](#)The most recent General Assembly resolution was adopted on 25 January 2005 (A/RES/59/131). Western Sahara has been subject to a number of GA resolutions over the past years, e.g. A/RES/50/33, 6 December 1995, A/RES/52/72, 10 December 1997, A/RES/53/61, 3 December 1998, A/RES/54/84, 6 December 1999, A/RES/55/138, 8 December 2000, A/RES/56/66, 10 December 2001. The Western Sahara exile Government, while not being recognised as a State by the UN, has been recognised by more than 70 states, and is a Member of the African Union. [12](#)Information contained in the above mentioned letter to the Ministry of Finance from SADR's Minister for Foreign Affairs, Mohamed Salem Ould Salek.

Between 1975 and 1991 there was an armed conflict going on in Western Sahara, between POLISARIO and Morocco. In 1991, the UN managed to negotiate a cease-fire between the parties, which is still in force. In this connection, the UN peace-keeping force MINURSO [13](#)United Nations Mission for a Referendum in Western Sahara. was established to oversee the cease-fire and to prepare for a referendum on the future status of Western Sahara. During the period from 1991 to 2004, the UN Envoy for Western Sahara, James Baker, put forward two proposals for peaceful settlement of the conflict. Both peace proposals were rejected. One of the difficult points has been the UN plan to determine the future status of Western Sahara through a referendum. Moroccan authorities have allegedly moved many thousand Moroccans to the territory in question, thus seeking to outnumber the original Saharawi population. [14](#)The population in Western Sahara (the Sahrawi people) counts approximately 260.000 persons. Some 165.000 of these are in refugee camps in Algeria. The latest peace proposal would give the SADR limited self government for the first five years, and then put the question of future status of Western Sahara up for a referendum. This proposal, even though it provided for voting rights at the referendum for everybody within the territory, irrespective of ethnic origin, was rejected by Morocco.

The UN envoy James Baker withdrew from his position when the second peace proposal was rejected. [15](#)In June 2004. The UN Secretary-General subsequently appointed Alvaro de Soto, a senior UN official, as his successor. There seems to be no present developments indicating a breakthrough anytime soon. Mandated by the Security Council, the MINURSO is still monitoring the cease-fire. [16](#)The Security Council prolonged MINURSOs mandate until 30 April 2005 in Resolution S/RES/1570 (2004).

The Norwegian official position with regard to the situation in Western Sahara is that no governmental agency should act in a manner that might prejudice the outcome of the ongoing peace efforts by the UN. The Ministry for Foreign Affairs has also, on several occasions, expressed the view that Norwegian companies should avoid participating in economic enterprises in this area because such involvement might be seen to make Moroccan claims on Western Sahara more legitimate.

### **Some of the legal issues**

The Moroccan occupation of Western Sahara seems inconsistent with norms of international law, as well as with UN decisions and resolutions. There are, however, still rules for what may be considered lawful or not lawful *within* such an overall situation.

According to the UN Convention on the Law of the Sea, [17](#)United Nations Convention on the Law of the Sea, 1982 (UNCLOS). the point of departure is that all coastal states have sovereign rights to the natural resources on the continental shelf outside their territory. [18](#)Articles 76 and 77. According to the UN, Morocco does not have sovereignty over Western Sahara, and therefore, as a point of departure, no rights to the resources in this area. Article 73 of the UN Charter as well as several General Assembly resolutions [19](#)E.g. GA RES 3458 (XXV) dated 10 December 1975 which specifies “the right of the people of the Spanish Sahara to self-determination, in accordance with General Assembly Resolution 1514 (XV)”. imply that economic activities in Non-Self-Governing Territories shall not adversely affect the interests of the peoples of such territories, and may only take place subject to the consent of the local people. The same principles are laid down in the legal framework concerning the law of the sea. Resolution III, which is annexed to the UN Convention on the Law of the Sea, says that: