

COUNCIL ON ETHICS

THE GOVERNMENT PENSION FUND GLOBAL

To Norges Bank

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UNOFFICIAL ENGLISH TRANSLATION

Recommendation to exclude San Leon Energy Plc. from the Government Pension Fund Global

Summary

The Council recommends the exclusion of San Leon Energy Plc from the Government Pension Fund Global because the company contributes to serious violations of fundamental ethical norms through its onshore hydrocarbon exploration in Western Sahara on behalf of Moroccan authorities.

Western Sahara is a non-self-governing territory without a recognised administering power. The Council has based its assessment on article 73 of the UN Charter regarding non-self-governing territories and other sources relevant to the determination of international law. Under the framework of international law, the utilisation of natural resources in non-self-governing territories may be acceptable if it takes place in accordance with the wishes and interests of the local population.

San Leon maintains that its exploration activity cannot be equated with a possible, future extraction of the oil resources in the area. The company also states that its activity in Western Sahara is in accordance with the wishes and interests of the local population.

The Council is of the view that no distinction can be drawn between exploration activity and extraction in this context. No such distinction can be easily deduced from article 73 of the UN Charter. Under the framework of international law States may not freely initiate petroleum exploration outside their own sovereign territory. Morocco's aim in carrying out exploration activity is undoubtedly to exploit petroleum deposits. San Leon seems to contribute to this future aim, irrespective of whether the company merely carries out exploration activities or will actually take part in any future production in the area.

The Council finds that it has not been satisfied that the operations take place in accordance with the wishes and interests of the local population. The company has confirmed that it has not had a dialogue with Polisario, claiming that Polisario cannot be regarded as the legitimate representative of the people in the area. The UN regards Polisario as the representative of the people in the area and Morocco negotiates with Polisario when there are occasional talks on the future status of the territory. The company has consulted with some local stakeholders. It nevertheless appears difficult to draw conclusions about the wishes and interests of the people in the area when their recognised representative has not been consulted. On the other hand, it is publicly known that Polisario regards San Leon's activities in the area to be unlawful.

Moreover, the Council attaches weight to the fact that the exploration activity contributes to maintaining an unresolved situation in the area. The UN Charter stipulates that the utilisation of natural resources in non-self-governing territories can only take place in cooperation with the people of the area. This is precisely due to the conflict potential inherent in access to natural resources. As long as there is no political solution for the area and one of the parties is expressly opposing the exploration activity, warning that it may lead to an escalation of the conflict, it is reasonable to assume that this activity contributes to maintain the unresolved situation in the area and may even cause it to deteriorate.

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1 Introduction

The Council initiated a review of the GPFG's investment in San Leon Energy Plc.¹ («San Leon») by reference to the Fund's ethical guidelines in 2012 on account of the company's onshore hydrocarbon exploration activity in Western Sahara. Unrelated to the review, the company left the Fund's portfolio in 2013, and the Council set aside the case. After San Leon returned to the Fund's portfolio, the Council decided to review the matter again.

At the end of 2014, the GPFG owned shares in the company valued at NOK 1.5 million, corresponding to an ownership interest of 0.43 per cent of the company's shares.

San Leon was established in 1995 as an oil and gas exploration company. Until 2007, the company operated mainly an investment company. The company currently carries out oil and gas exploration and production activities in Europe and North Africa.

In a letter to the Council San Leon has confirmed that it has entered into four petroleum contracts with Moroccan authorities covering exploration activities in Western Sahara. The exploration is confined to the so-called Zag and Tarafaya fields. In a press release in September of 2015, San Leon announced that test drilling has proven gas deposits on the Tarafaya field, and that the company will conduct further seismic surveys in this exploration area.²

1.1 What the Council has considered

The Council has considered whether there is an unacceptable risk of San Leon contributing to particularly serious violations of fundamental ethical norms pursuant to section 3 letter e of the Ethical Guidelines³ through its exploration activity in Western Sahara on behalf of Moroccan authorities.

The preparatory works to the GPFG's Ethical Guidelines (Government White Paper, NOU 2003:22) specifically point to problems regarding investments in companies with activities in non-self-governing, disputed or occupied territories, and refer to Western Sahara as an example of an area where there may be reason to show restraint.⁴

The Council assumes that exploration activity in the area may be acceptable if it takes place in accordance with the wishes and interests of the people in the area. The specific question to be considered in this case is whether this condition has been met. It has also been considered whether the activities contribute to maintain an unresolved situation in the area.

¹ The company has the Issuer ID: 15213136.

² The company's press release dated 30 September 2015: <http://sanleonenergy.com/media-centre/news-releases/2015/september/30/interim-results-2015.aspx>.

³ Guidelines for observation and exclusion of Companies from the Government Pension Fund Global: <http://etikkradet.no/en/guidelines/>.

⁴ Government White Paper (NOU) 2003: 22, page 92 (Norwegian language only): <https://www.regjeringen.no/no/dokumenter/nou-2003-22/id118914/>.

1.2 Sources

This recommendation is mainly based on information from the company, various UN documents, the Moroccan authorities and Polisario.⁵

2 Background

2.1 Previous cases

The Kerr McGee Corp. engaged in offshore oil exploration in Western Sahara, and was excluded from the Fund in 2005 at the recommendation of the Council.⁶ Two main arguments led to the conclusion:

- It could not be satisfied that the activities took place in accordance with the wishes and interests of the people in the area.
- The activities contributed to maintain an unresolved situation in the area.

San Leon carries out its exploration activities onshore in Western Sahara, not offshore as in the Kerr McGee case. The issues to be assessed by the Council are nonetheless to a large extent the same.

The Council has also recommended the exclusion of two companies purchasing phosphate extracted onshore in Western Sahara.⁷

2.2 The situation in Western Sahara

The Council has described the situation in Western Sahara in previous recommendations (2005, 2010 and 2014) to the Ministry of Finance. The fundamental conditions in the area have not changed since these recommendations were made.

The territory of Western Sahara, which became a Spanish protectorate in 1884, was established as a non-self-governing Territory in 1963 in accordance with the provisions of the UN Charter. Simultaneously, Spain was appointed the administering power of what was then called Spanish Sahara.

⁵ Polisario was appointed by the UN as the representative of the population in Western Sahara by UN Resolution 34/37 (1978): «*The General Assembly [...] recommends to that end that the Frente Popular para la Liberacion de Saguia el-Hamra y de Rio de Orom [ie. Polisario], the representative of the people of Western Sahara, should participate fully in any search for a just, lasting and definitive lasting solution of the question of Western Sahara [...]*», <http://www.un.org/documents/ga/res/34/a34res37.pdf> .

⁶ Recommendation to exclude the Kerr McGee Corp, April 2005:

<http://etikkradet.no/files/2014/12/KMG-12-apri-2005-norsk.pdf>.

⁷ Recommendations in 2010 and 2011 regarding the exclusion of the FMC Corporation and Potash Corporation of Saskatchewan: <http://etikkradet.no/en/tilradninger-og-dokumenter/recommendations/other-particular-serious-violation-of-fundamental-ethical-norms/recommendations-2010-and-2011-on-the-exclusion-of-the-companies-fmc-corporation-and-potash-corporation-of-saskatchewan/> .

Recommendation dated 26 September 2014 regarding the exclusion of Innophos Holdings Inc:

<http://etikkradet.no/en/recommendation-26-september-2014-to-exclude-innophos-holdings-inc/>

Western Sahara still retains the UN status of a non-self-governing territory. Unlike other such territories, Western Sahara does not have a recognised administering power.⁸

Morocco has *de facto* control over most of the territory of Western Sahara. However, no UN body has recognised either Morocco's sovereignty over Western Sahara or Morocco as the lawful administering power in the area. No states recognise Moroccan sovereignty over Western Sahara. Nonetheless, Morocco refers to Western Sahara as a Moroccan province, claiming sovereignty over most of the area.

In 1973, a liberation group called Polisario was formed with the aim of making Western Sahara an independent state. Polisario started an armed insurgency against the Spanish administration. In 1975, the International Court of Justice in the Hague (ICJ) rejected Morocco's and Mauritania's claims to sovereignty over their respective parts of Western Sahara. Immediately afterwards, Morocco invaded parts of Western Sahara, resulting in strong condemnation by the UN Security Council. Later in 1975, Spain entered into an agreement (the Madrid Accords) with Mauritania and Morocco concerning the transfer of the administrative authority in Western Sahara. The Madrid Accords confirmed Spain's intention to support the decolonisation of Western Sahara and to transfer its duties as the administering power to Morocco and Mauritania. Accordingly, the agreement did not transfer sovereignty over Western Sahara to Morocco and Mauritania. Spain did not have such sovereignty, and thus could not cede or transfer it. Nor did the agreement alter Western Sahara's status as a non-self-governing territory under the UN Charter. The Spanish authorities presumed that a referendum would be held in Western Sahara regarding the territory's future status. In 1976, Morocco and Mauritania agreed to divide Western Sahara between them. However, Mauritania withdrew in 1979 and Morocco has in practice controlled most of the territory since then.

Morocco has administered most of the territory since 1979 without being the administering power pursuant to the provisions of the UN Charter.

In 1991 a ceasefire was signed, putting an end to the armed conflict between Polisario and Morocco. The UN peacekeeping force MINURSO is surveilling the ceasefire and was originally also intended to monitor the referendum on the future of the territory.

Since the 1990s, several initiatives have been launched under the auspices of the UN with the aim of holding the referendum. Moroccan authorities and Polisario resumed talks in April 2007, but they have broken down several times and made little progress. In 2007, Morocco presented a proposal implying Moroccan sovereignty over the territory but offering a certain level of self-rule (autonomy). Polisario is maintaining its demand for a referendum that includes the option of independence.

In an official celebration in 2014, Morocco's King Mohammed VI stated:

«[...] the Sahara will remain part of Morocco until the end of time. [...] The fact that Morocco chose to cooperate in good faith with all parties should not be interpreted as a sign of weakness; nor should it be used as a means to ask for

⁸ UN list of non-self-governing territories:

<http://www.un.org/en/events/nonselfgoverning/nonselfgoverning.shtml>

more concessions. [...] The autonomy initiative is the maximum Morocco can offer to achieve a final solution to this regional conflict.»⁹

There is thus little indication that any negotiated solution to the conflict will be achieved soon.

Currently Western Sahara is to a large extent populated by people of Moroccan origin who moved to the area after 1979. The population of Western Sahara is currently approximately 550,000. Around 165,000 of the area's indigenous population, the Saharawi, have been displaced to refugee camps in Algeria, where they live under very difficult conditions.¹⁰

2.3 International rules of law

Article 73 of the UN Charter

Chapter XI of the UN Charter pertains to non-self-governing territories. Article 73 imposes a duty on states that have or assume responsibility for the administration of such territories «*to ensure, with due respect for the culture of the peoples concerned, their political, economic, social and educational advancement, their just treatment and their protection against abuses*», and additionally «*to develop self-government, to take due account of the political aspirations of the peoples, and to assist them in the progressive development of their free political institutions, according to the particular circumstances of each territory and its peoples and their varying stages of advancement*».¹¹

Article 73 stipulates that the economic and political developments in such areas are to take place in accordance with the wishes and interests of the people in the area. As regards Western Sahara, this principle has been confirmed in a number of UN resolutions.¹²

Legal opinion from the UN's legal advisor («2002 UN Legal Opinion»)

A legal opinion from the UN legal advisor concerns the legality of extracting mineral resources in non-self-governing territories in general and provides an assessment of this in relation to the situation in Western Sahara in particular.

⁹ Quoted in the «*Report of the Secretary-General on the situation concerning Western Sahara*», 10 April 2015 (S/2015/246), http://www.un.org/en/ga/search/view_doc.asp?symbol=S/2015/246.

¹⁰ UNHCR, 2015: «*The Sahrawi refugees in Algeria are settled in five camps near Tindouf. Owing to the remoteness of the area, they remain dependent on humanitarian assistance with little prospect of self-reliance as income-generating activities are scarce. The Government estimates that there are 165,000 refugees in the camps.*» <http://www.unhcr.org/pages/49e4861f6.html>.

¹¹ UN Charter, Chapter XI: Declaration Regarding Non-Self-Governing Territories: <http://www.un.org/en/sections/un-charter/chapter-xi/index.html>.

¹² I.a. General Assembly RES 3458 (XXV) of 10 December 1975 which states «*the right of the people of the Spanish Sahara to self-determination, in accordance with General Assembly Resolution 1514 (XV)*»: <http://daccess-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/001/71/IMG/NR000171.pdf?OpenElement>. Western Sahara has otherwise been the subject of a number of other resolutions over the past few years, including 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, and in Security Council resolutions, i.a. 1754 (2007), 1783 (2007), 1813 (2008), 1871 (2009), 1920 (2010), 1979 (2011), 2044 (2012), 2099 (2013), and 2152 (2014).

Not all forms of economic activity in non-self-governing territories can be regarded as problematic according to this legal opinion. Reference is made to several UN resolutions which establish a distinction between economic activity in non-self-governing territories that are harmful to the local population and economic activity that benefits the local population:

*«In recognizing the inalienable rights of the peoples of Non-Self-Governing Territories to the natural resources of their territories, the General Assembly has consistently condemned the exploitation and plundering of natural resources and any economic activities which are detrimental to the interests of the peoples of those Territories and deprive them of their legitimate rights over their natural resources. The Assembly recognized, however, the value of economic activities which are undertaken in accordance with the wishes of the peoples of those Territories, and their contribution to the development of such Territories.»*¹³

This legal opinion issued in 2002 thus states that the extraction of mineral resources in non-self-governing territories is only acceptable if it takes place in accordance with the wishes and interests of the people of the area.

Legal opinion from the African Union's legal advisor, 2015

A legal opinion published in October 2015 regarding the legality of Moroccan exploration and exploitation of natural resources in Western Sahara concludes that all such activity in the area is illegal and an impediment to a peaceful solution to the conflict regarding the area:

*«Any exploration and exploitation of natural resources by Morocco is illegal as it violates international law and resolutions of the UN and the AU relating to the right to self-determination and permanent sovereignty of the people of Western Sahara over their natural resources. In addition, the exploration and exploitation seriously undermines the efforts and negotiations for a just and peaceful settlement over Western Sahara.»*¹⁴

The Geneva Conventions

In 2015, Polisario submitted a declaration¹⁵ to Switzerland, the depositary state for the Geneva Conventions (I-IV)¹⁶ and their Protocol I, where Polisario commits to apply the Convention and Protocol in the conflict with Morocco in accordance with article 96 (3) of Protocol I, cf article 1(4).¹⁷ This will imply that Morocco and Polisario, by being *«the*

¹³ A letter from the UN's legal office to the UN Security Council (S/2002/161), 12 February 2002, is often referred to as the «2002 UN Legal Opinion»:

<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N02/249/87/PDF/N0224987.pdf?OpenElement>

¹⁴ Legal Opinion, the Office of the Legal Counsel and Directorate for Legal Affairs of the African Union Commission. This document is undated but was published on 14 October 2015:

<http://legal.au.int/en/sites/default/files/The%20Legal%20Opinion%20%28final%20for%20posting%20on%20the%20website%29.pdf>

¹⁵ Switzerland is the depositary state for the Geneva Conventions. Notification from the Swiss foreign-affairs authorities 23 June 2015:

https://www.eda.admin.ch/content/dam/eda/fr/documents/aussenpolitik/voelkerrecht/geneve/150626-GENEVE_en.pdf

¹⁶ ICRC: <https://www.icrc.org/applic/ihl/ihl.nsf/vwTreaties1949.xsp>

¹⁷ «The authority representing a people engaged against a High Contracting Party in an armed conflict of the type referred to in Article 1, paragraph 4, may undertake to apply the Conventions and this Protocol in

authority representing a people engaged against a High Contracting Party», is bound by the rules of the Geneva Conventions for international conflict and occupation, cf. Protocol 1, article 96(3)(a) and (b). Morocco protested strongly, stating, i.a., that more than 25 years had passed since there were conduct of hostilities between Polisario and Morocco, and that Polisario cannot qualify as a representative under Protocol I.¹⁸

Court decision by the General Court, the court of first instance, of the European Court of Justice, December 2015

In a court decision¹⁹ issued in December 2015, the General Court agreed with Polisario's claim that the EU's trade agreement with Morocco in 2012 must be ruled invalid in so far as it concerns trade in products from Western Sahara. Although the decision is likely to be appealed to the European Court of Justice, the decision recognises Polisario as a party to the proceedings, stipulating that the EU and Morocco cannot amongst themselves enter into a trade agreement that applies to goods produced in Western Sahara if the EU has not complied with its independent duty to assess the effects of the agreement on the area.

2.4 The Council's meetings with Moroccan authorities

Moroccan authorities have requested two meetings with the Council during the past year. In December 2014, the Council met the Secretary General at the Moroccan Ministry of Foreign Affairs and, in February of this year, the Council met Morocco's ambassador to Norway.

Morocco's starting point for these conversations is that Western Sahara is Moroccan. As regards the question of safeguarding the wishes and interests of the people in the area, it stated that the authorities' safeguard everyone's interests through democratic processes. It was also underlined that Morocco has made considerable investments in the area over the past decades and that the standard of living has improved. Morocco emphasizes that the state investments in the area are far greater than the value of the natural resources extracted from the area. In addition, a regional development plan has been established for the area and will increase investments and further reinforce this development.

relation to that conflict by means of a unilateral declaration addressed to the depositary. Such declaration shall, upon its receipt by the depositary, have in relation to that conflict the following effects:

(a) the Conventions and this Protocol are brought into force for the said authority as a Party to the conflict with immediate effect;

(b) the said authority assumes the same rights and obligations as those which have been assumed by a High Contracting Party to the Conventions and this Protocol; and

(c) the Conventions and this Protocol are equally binding upon all Parties to the conflict.»

<https://www.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=4B3EBFB356E8FA04C12563CD0051E2FC>

¹⁸ Morocco's letter to the Swiss foreign-affairs authorities, 30 June 2015:

https://www.eda.admin.ch/content/dam/eda/fr/documents/aussenpolitik/voelkerrecht/geneve/150709-GENEVE-avec-ann_e.pdf

¹⁹ Ruling of the General Court, 11 December 2015:

<http://curia.europa.eu/juris/document/document.jsf?text=&docid=172870&pageIndex=0&doclang=FR&mode=lst&dir=&occ=first&part=1&cid=164110>

2.5 The Council's meetings with Polisario

The Council met Polisario's Nordic envoy in May of this year and met representatives of Polisario's leadership in October.

In Polisario's view, the oil exploration activities carried out by Morocco in Western Sahara are clearly unlawful. They can only be lawful if Polisario, which is the legitimate and recognised representative of the people of the area, gives its consent to this. Polisario has not been consulted. In July 2015, Polisario protested against San Leon's operations in a letter to the UN Security Council.²⁰

Polisario expressed concern that oil exploration and possible Moroccan oil production in the area may lead to a higher level of conflict in the area and reduce the possibilities for a negotiated solution. Polisario supports foreign investment, the extraction of natural resources and the economic development of the area, but is concerned that this must take place in the proper order, i.e. after the question of the area's future status has been resolved. If oil is found there, Polisario does not believe there will be any chance of Morocco relinquishing the area.

3 Information from the company

Letters from the company

The Council wrote to the company in March 2012, asking for information on its activity in Western Sahara. A first draft of this recommendation was submitted to the company in July 2012. The company replied to these communications in March and August 2012 respectively. A new draft of this recommendation was submitted to the company in November 2015 and the company was invited to submit its remarks. The company has not replied to this.

In the letter dated March 2012, the company confirms that it has a contract with Moroccan authorities on oil exploration in Western Sahara. San Leon states that it will adapt its exploration activities in the area to the prevailing rules of international law and refers to the legal opinion of the UN Legal Advisor in 2002. The company also states that the UN in practice regards Morocco as the area's *de facto* administering power and that this agrees with the 2002 legal opinion.

The company particularly emphasises the following wording in the 2002 UN legal opinion:

«[...] where resource exploitation activities are conducted in Non-Self-Governing Territories for the benefit of the peoples of those territories, on their behalf or in consultation with their representatives, they are considered compatible with the Charter obligations of the administering Power [...].»

The company maintains that the legal opinion refers to exploitation of resources, and not exploration. Only obligations relating to *exploitation* of resources are referred to in the opinion, and the company holds that the same obligations do not extend to exploration. The

²⁰ UN Security Council, document S/2015/ 804
http://www.un.org/en/ga/search/view_doc.asp?symbol=S/2015/804.

company underlines the fact that exploration activity does not in itself generate value or remove resources from the area.

The company also refers to Morocco's autonomy proposal in 2007 and the fact that this proposal has formed the basis for further negotiations since 2007. In conclusion, the company writes:

«In the meantime we as an exploration company operating in Morocco support the general principles outlined in the Corell opinion²¹ that if a recoverable production as result of an exploration recovery was made, we shall not exploit such resources in total disregard of the interests of the people living in the Sahara region and will act responsibly within the framework of our petroleum agreements signed with the government of the Kingdom of Morocco.»

After the company had been provided with a draft of the recommendation to exclude the company, the Council received a new letter from the company in August 2012 in which the company states that it believes the conclusion of the recommendation not only to be erroneous but also to contravene the interests of the local population and the desire to arrive at a negotiated solution to the conflict in the area.

As regards the people of the area and its representatives, the company deals with local authorities and provides examples of the fact that it has consulted with local politicians and of statements by local employees. The company also writes that Polisario, which it refers to as «a paramilitary organization with links to known terrorist groups» cannot be regarded as the legitimate representative of the local population and that the company for that reason does not have any dialogue with this organisation.

The company also provides further grounds for its argument in favour of differentiating between exploration and production, referring to exploration activity as the gathering of physical and geological data that in itself does not entail irreversible harm.

The company concludes by referring to changes in the area since the Kerr McGee case in 2005. It holds that the conditions for the local population have improved, that there has been progress in the process to arrive at a political solution to the question of the area's future, and that Moroccan authorities have made considerable investments to benefit the area's population. Accordingly, the company's continued exploration activity will be beneficial to the local population in the area and in accordance with their interests.

Information on the company's website

The company's website provides information on the exploration activity in the area.²² The company also refers to a joint declaration («*Joint Declaration of Principles*») dated July 2015 by San Leon and the Moroccan state-owned oil company ONHYM.²³ This declaration states

²¹ I.e. the 2002 UN Legal Opinion.

²² The company's website: <http://www.sanleonenergy.com/operations-and-assets.aspx#morocco/onshore>.

²³ Joint Declaration of Principles: «[...]The exploration and production of hydrocarbon natural resources will be in accordance with the principles enshrined in the Kingdom of Morocco Constitution and international standards, including those from the United Nations Charter stipulated in letter S/2002/161 dated January 29, 2002, addressed to the President of the UN Security Council, signed by the Under-Secretary General for Legal

that exploration for and the production of oil resources in the area will take place in accordance with the 2002 UN Legal Opinion, that the local population's representatives in this connection are to be consulted and that the local population are to benefit from the proceeds of this activity.

4 The Council's assessment

The Council takes as its point of departure that Morocco has no legal, sovereign rights over the natural resources in Western Sahara. It is not the task of the Council to conclude on the legality of Morocco's exploration activities in Western Sahara or on the future status that the disputed area should have.

In its assessment of this case, the Council will not distinguish between exploration and exploitation activities. No such distinction can easily be deduced from article 73 of the UN Charter. Under the framework of international law States may not freely initiate petroleum exploration outside their own sovereign territory. Morocco's aim for its exploration activities is undoubtedly the extraction of petroleum deposits and San Leon contributes to this future aim, irrespective of whether the company itself will only carry out exploration activity or will also take part in future production activity in the area. Although exploration activity does not in itself entail the removal of resources, the mapping the natural resources and the result of this mapping may to a large extent contribute to maintain unresolved situations or to escalate conflicts in disputed areas.

The situation in Western Sahara is unique in the sense that it is the only non-self-governing territory without a recognised administering power. There are no clear rules on the utilisation of natural resources in such areas. Under the framework of international law administering powers of non-self-governing territories are under an obligation to manage the territories in accordance with the wishes and interests of the people of the area. Since the UN does not recognise Morocco as the lawful administering power for Western Sahara, it can be argued that these obligations do not apply to this situation. The legal opinion issued by the UN legal advisor in 2002 is based on an analogy of the obligations of administering powers of non-self-governing territories. An alternative approach would be an assessment based on international humanitarian law. This would probably impose even stricter limitations on companies' operations in the area, as the legal opinion from the African Union concludes.

In its previous assessments, the Council has assumed that Morocco's exploitation of natural resources in Western Sahara may be acceptable if the wishes and interests of the people of the area are safeguarded, as, *inter alia*, the UN legal advisor assumed in the 2002 legal opinion. San Leon seems to share this view.

It will primarily be the responsibility of the authorities to ensure that the people of an area has given its consent. The Council assumes that the measures which a company can implement on its own to ensure such consent are limited.

Affairs, and guidelines recommended by the «New model of development » of the Conseil Economique, Social et Environnemental (CESE), from November 2013, namely that local populations and their representatives are involved and consulted and that they will benefit equitably and effectively therefrom.[...]»

<http://www.sanleonenergy.com/media/1796453/joint-declaration-of-principles-of-onhym-and-sle.pdf>

In the Kerr McGee case (2005), the Council on Ethics attached weight to the fact that the company's exploration activities were not in accordance with wishes and interests of the people of the area, and that they contributed to maintain an unresolved situation in the area. The Council considers the same factors to be of importance in its assessment of this case. The fact that Kerr McGee conducted off shore exploration activities and San Leon is prospecting on shore has little bearing on the Council's assessment.

In 2012 the company stated that Morocco's autonomy proposal formed the basis for continued negotiations on the area. To the Council's knowledge, the negotiations had stopped at that time and since then only informal talks have taken place between the parties. In any case, Morocco's proposal does not in itself alter the status of the area. The natural resources of Western Sahara can therefore currently not be mapped as if the autonomy proposal had been accepted and the areas were under legal Moroccan sovereignty, with Moroccan sovereign rights over its natural resources.

Owing to the fact that that no other state recognises Moroccan sovereignty over Western Sahara and that the area is a non-self-governing territory subject to the provisions of the UN Charter, strict limitations apply to the exploration and extraction of its natural resources. It is on this basis the Council will proceed to consider whether it can be regarded as grossly unethical of the company to carry out oil exploration activity in the territory on behalf of Moroccan authorities.

The company has published a joint declaration («*Joint Declaration of Principles*») with Moroccan authorities. The declaration refers to the 2002 UN Legal Opinion regarding the right of the people of the area to be consulted. This declaration must be interpreted in light of the fact that Morocco regards the area as its own and that it is consequently the Moroccan authorities who safeguard the local population's wishes and interests, decide on the exploration and the extraction of resources, invite applications for licences, allocate potential oil revenues, etc. This is a *fait accompli* and not an expression of a consultative process with the people of the area in the sense assumed by the 2002 UN Legal Opinion.

The company has made clear that no dialogue has taken place with Polisario, claiming that Polisario cannot be regarded as the legitimate representative of the people in the area. However, the UN regards Polisario as the representative of the people of the area. Moreover, Morocco negotiates with Polisario when talks on the future status of the area are occasionally held. The company has consulted with some local stakeholders. It nevertheless appears difficult to draw conclusions about the wishes and interests of the people in the area when their recognised representative has not been consulted. On the other hand, it is publicly known that Polisario considers San Leon's activities in the area to be unlawful.

The UN Charter stipulates that the utilisation of natural resources in non-self-governing territories can only take place in cooperation with the people of the area. This is precisely due to the conflict potential inherent in access to natural resources. As long as there is no political solution for the area and one of the parties is expressly opposing the exploration activity, warning that it may lead to an escalation of the conflict, it is reasonable to assume that this activity contributes to maintain the unresolved situation in the area and may even cause it to deteriorate.

In the Council's view, San Leon's exploration activity in Western Sahara must be regarded as a serious violation of ethical norms because the wishes and interests of the people of the area is not given due regard, and it contributes to maintain an unresolved situation in the area.

5 Recommendation

The Council recommends excluding San Leon Energy Plc. from the Government Pension Fund Global due to the unacceptable risk of the company contributing to particularly serious violations of fundamental ethical norms.

Johan H. Andresen	Hans Chr. Bugge	Cecilie Hellestveit	Arthur Sletteberg	Guro Slettemark
Chair				
(Signature)	(Signature)	(Signature)	(Signature)	(Signature)