

# Fugro

## Overview of controversial business practices in 2009



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**SOMO**

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## Colophon

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## Introduction

This brief company profile is a joint initiative of SOMO (Centre for Research on Multinational Corporations) and the VBDO (Vereniging van Beleggers voor Duurzame Ontwikkeling). It provides an overview of business practices that may be considered unsustainable, irresponsible, or controversial and that took place or were addressed in 2009. In the context of the upcoming annual general meetings (AGMs) of shareholders of Dutch corporations, the overview aims to provide additional information to Fugro's shareholders and other stakeholders on potentially controversial issues that may or may not be detected or reported by the company itself. By highlighting such issues, the overview can be used to identify areas of the company's corporate responsibility policies and practices that need improvement and to formulate a more informed assessment of a company's corporate responsibility performance.

The range of sustainability and corporate responsibility issues eligible for inclusion in this overview is broadly based on the issues and principles identified in the OECD Guidelines for Multinational Enterprises, which is one of the leading global normative standards for responsible business behaviour and which is applicable to all Netherlands-based companies by virtue of the Dutch government's membership in the OECD. Rather than an exhaustive analysis of Fugro's corporate responsibility policies, operational aspects of corporate responsibility management, implementation systems, reporting and transparency, or total performance on any issue, the overview provides a descriptive depiction of a limited number of corporate responsibility-related issues and cases that might merit further attention or reflection. Fugro's positive sustainability achievements in 2009 are not addressed here.

The research methodology for this overview involved primarily desk research methods, relying on information from SOMO's global network of civil society organisations, the company's own website and publications, media reports, and company information databases. All sources are cited in footnotes in the text. As per SOMO's standard research methodology, Fugro was informed about the research in advance and was given two weeks to review a draft report and provide comments and corrections of any factual errors in the draft version prior to publication. Fugro, however, did not make use of this opportunity.

The overview has been researched and drafted by SOMO. SOMO is an independent research organisation that was founded in 1973 to provide civil society organizations with knowledge on the structure and organisation of multinationals.

# Controversial Business Practices in 2009

## Fugro's presence in Western Sahara

### Summary

In January 2009, it came to light that Fugro-Geoteam, a Norwegian subsidiary of Fugro N.V. was conducting seismic measurements in the waters of the Western Sahara. The company was contracted by US-based Kosmos Energy, who in turn was contracted by the Moroccan government. In direct violation of UN advice about the legality of exploration activities in the Western Sahara, the company did not consult with the Saharwis, the local population of this occupied area. While Fugro has admitted conducting activities in the waters of Western Sahara, it has refused to respond to open letters or otherwise engage with the Sahrawis or its representatives.

### Context

Morocco has occupied the Western Sahara since 1975, when it made a historical claim to justify its control over the region.<sup>1</sup> However, in 1975, the International Court of Justice in The Hague rejected this claim. The United Nations regards the Western Sahara as a colony, and the Moroccan occupation as a decolonisation question. At the same time, the Western Sahara is regarded by the African Union as an independent nation, and is accepted as a full-fledged member.

The traditional inhabitants of the Western Sahara are the Sahrawis. The UN Security Council, The UN General Assembly and thereby all the world's states have expressed their support in principle for the Sahrawis' right to determine their own future.<sup>2</sup> Initially the Polisario, the liberation movement of the Sahrawi's, resisted the occupation with arms, and proclaimed the independent Sahrawi Arab Democratic Republic (SADR). The war ended in 1991 with a ceasefire, under the condition that a referendum about the future of the Western Sahara would be held. However, no such referendum has taken place. Several UN brokered mediation efforts have taken place over the years, but the two parties remain divided over the way forward.<sup>3</sup>

Recently, a number of incidents have taken place whereby Sahrawi human rights defenders were detained by Moroccan police.<sup>4</sup> One such incident involved seven activists returning from a visit to the Polisario refugee camps in Algeria, where they had openly criticized the government and king of Morocco on Algerian national television. The moment they returned to Morocco, they were arrested and brought in front of a military court on charges of treason. Another incident was the arrest of Aminatu Haidar, who declared her nationality to Moroccan immigration as "Sahrawi", rather than Moroccan. Haidar was eventually exiled.<sup>5</sup>

The Western Sahara is rich with natural resources, in particular large reserves of phosphate and potential oil and gas reserves.<sup>6</sup> In 2001, the Moroccan government initiated the first exploration

<sup>1</sup> Norwegian Refugee Council, "Occupied Country, Displaced People", NRC Reports; Western Sahara, A thematic report from the Norwegian Refugee Council, issue 2/2008.

<sup>2</sup> Idem.

<sup>3</sup> "Morocco, Polisario still apart on W.Sahara: UNAR", Canwest News Service, 11-02-10.

<sup>4</sup> United States State Department, "Background Note on Morocco", Targeted News Service, 01-01-10.

<sup>5</sup> Idem.

<sup>6</sup> United States State Department, "Background Note on Morocco", Targeted News Service, 01-01-10.

activities for oil in the Western Sahara. Contracts were awarded by the Moroccan government to French oil company Total and US-based exploration company Kerr-McGee.<sup>7</sup> The Polisario regarded these activities as a direct violation of the cease fire agreements.<sup>8</sup>

The role of oil exploration in this conflict was taken up as an issue by the UN Security Council, who issued a legal analysis of the conflict. Hans Corell, the UN Legal Council and author of the analysis, concluded that “while the specific contracts which are the subject of the Security Council's request are not in themselves illegal, if further exploration and exploitation activities were to proceed in disregard of the interests and wishes of the people of Western Sahara, they would be in violation of the principles of international law applicable to mineral resource activities in Non-Self-Governing Territories.”<sup>9</sup>

In the wake of these conclusions by the UN Security Council, Total withdrew from its activities in the Western Sahara. Initially, Kerr-McGee continued operations, causing the Norwegian Pension Funds to divest from this company after its Advisory Council on Ethics recommended exclusion from the Funds investments.<sup>10</sup> According to the Council, Kerr-McGee's presence in the Western Sahara was “[a particularly serious violation of fundamental ethical norms] e.g. because it may strengthen Morocco's sovereignty claims and thus contribute to undermining the UN peace process”.<sup>11</sup>

Kerr-McGee eventually withdrew from its operations and cooperation with the Moroccan government. Its concession rights for offshore exploitation of oil reserves was taken over by another US-based company, named Kosmos Energy.<sup>12</sup> As of 2009, Kosmos Energy is the only foreign company that holds concession rights offshore the Western Sahara.<sup>13</sup>

### **Role of Fugro**

The role of Fugro in this issue dates back to 2002, when it conducted the first seismic measurements for TGS-NOPEC.<sup>14</sup> As these activities took place well after the UN Security Council stated its conclusions about exploration and exploitation activities in the Western Sahara, the company was criticized for its decision to conduct these measurements. The SADR wrote an open letter protesting the company's presence. It stated that “Fugro's decision to acquire contracts awarded by the

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<sup>7</sup> P.A. Szczesniak, “The Mineral Industries of Morocco and Western Sahara”, United States Geological Survey, Minerals Yearbook 2001, <http://minerals.usgs.gov/minerals/pubs/country/2001/momyb01.pdf> (25-03-10).

<sup>8</sup> “Open letter regarding Fugro-Geoteam's involvement in occupied Western Sahara” to Hans Yvar Meier, Fugro Geoteam, from R. Hansen, Chairman, Norwegian Support Committee for Western Sahara & C. Lewis, International coordinator, Western Sahara Resource Watch, 12-01-09, <http://www.wsrw.org/index.php?cat=105&art=1010> (25-03-10).

<sup>9</sup> H. Correll, “Letter dated 29 January 2002 from the Under-Secretary-General for Legal Affairs, the Legal Counsel, addressed to the President of the Security Council”, United Nations Security Council, 12-02-02, [http://www.un.org/ga/search/view\\_doc.asp?symbol=S/2002/161](http://www.un.org/ga/search/view_doc.asp?symbol=S/2002/161) (25-03-10).

<sup>10</sup> Norwegian Ministry of Finance press release, “Company Excluded from the Government Petroleum Fund”, 06-06-05, [http://www.regjeringen.no/nn/dokumentarkiv/Regjeringa-Bondevik-II/fin/Nyheter-og-pressemeldinger/2005/company\\_excluded\\_from\\_the\\_government.html?id=256359](http://www.regjeringen.no/nn/dokumentarkiv/Regjeringa-Bondevik-II/fin/Nyheter-og-pressemeldinger/2005/company_excluded_from_the_government.html?id=256359) (25-03-10).

<sup>11</sup> Idem.

<sup>12</sup> Bank al Maghrib, “Note Mensuelle de Conjoncture”, July 2006, [http://www.vest-sahara.no/files/pdf/Bank\\_al\\_maghrib\\_re\\_Kosmos.pdf](http://www.vest-sahara.no/files/pdf/Bank_al_maghrib_re_Kosmos.pdf) (25-03-10).

<sup>13</sup> Western Sahara Resource Watch website, “US oil company doesn't believe in independence”, 06-05-08, [http://www.wsrw.org/index.php?parse\\_news=single&cat=128&art=709](http://www.wsrw.org/index.php?parse_news=single&cat=128&art=709) (25-03-10).

<sup>14</sup> E. Hagen, “Norwegian Oil Company Enters Occupied Western Sahara”, Norwatch, 13-01-09, <http://www.norwatch.no/200901131236/english/westernsahara/norwegian-oil-company-enters-occupied-western-sahara.html> (25-03-10).

occupying Moroccan regime therefore demonstrates its political naivety and is a clear disregard for both international law and the wishes of the indigenous Saharawi population”.<sup>15</sup>

As a follow up to this letter, a meeting took place between the board of directors of Fugro, and several representatives of Western Sahara support organisations. In one letter from 2006, addressed to the Western Sahara Resource Watch (WSRW), an international network of organisations working on the Western Sahara, the CEO of Fugro announces that the company has no plans to conduct any further activities in the Western Sahara.<sup>16</sup>

However, in January 2009 it came to light that Fugro Geoteam was again conducting seismic measurements in the waters of the Western Sahara.<sup>17</sup> This time it was contracted by Kosmos Energy, who had taken over the concessions from Kerr-McGee. It used the largest seismic vessel in the world, the Geo Caribbean, to carry out the last important analyses before Kosmos Energy can commence drilling for oil in the next years.<sup>18</sup>

Two civil society organisations, the Norwegian Support Committee for Western Sahara (NSCWS) and WSRW, sent an open letter to Fugro in January 2009, urging the company to cease its activities, claiming, “Neither Fugro, nor Kosmos Energy, have given proof that their activities are in line with international law as elaborated by the UN opinion, i.e. that the Sahrawi people has been consulted, or that it is actually in line with their interests and wishes.”<sup>19</sup> In fact, it seems as if the companies have attempted to keep the project secret in its entirety. Fugro did not announce that it would conduct its activities, did not provide any information on its website, and initially refused to respond to enquiries by journalists. Eventually, when it was announced that a story would be published, the company acknowledged its involvement but refused to answer questions or provide details.<sup>20</sup>

The SADR itself also wrote an open letter in January 2009 stressing the fact that the SADR is the recognized representative body of the Sahrawi people, and that it should have been consulted before these analyses commenced. The letter asserted, “The SADR, as the recognized sovereign authority for Western Sahara, has jurisdiction over, as well as the exclusive right to regulate and authorize, marine scientific research within its territorial waters. It also has the discretion to withhold its consent for such activities where those activities have ‘direct significance’ for the exploration and exploitation of natural resources, both living and non-living. To my knowledge, no attempt has been made by Kosmos Energy to contact, inform or seek authorization for the aforementioned seismic data acquisition activities from or by the SADR as the rightful sovereign authority and representative of the people of Western Sahara.”<sup>21</sup>

<sup>15</sup> Western Sahara Resource Watch website, “Letter from SADR to Fugro NV, 2004”, 08-06-04, <http://www.wsrw.org/index.php?cat=131&art=1008> (25-03-10).

<sup>16</sup> Letter from K.S. Wester, President and CEO of Fugro N.V. to E. den Haan, Stichting Zelfbestuur West-Sahara, 06-06-06, [http://members.home.nl/szws/Fugro\\_CEO\\_Wester\\_aan\\_SZWS\\_06-06-2006.pdf](http://members.home.nl/szws/Fugro_CEO_Wester_aan_SZWS_06-06-2006.pdf) (25-03-10).

<sup>17</sup> E. Hagen, “Norwegian Oil Company Enters Occupied Western Sahara”, Norwatch, 13-01-09, <http://www.norwatch.no/200901131236/english/westernsahara/norwegian-oil-company-enters-occupied-western-sahara.html> (25-03-10).

<sup>18</sup> Idem.

<sup>19</sup> “Open letter regarding Fugro-Geoteam’s involvement in occupied Western Sahara” to Hans Yvar Meier, Fugro Geoteam, from R. Hansen, Chairman, Norwegian Support Committee for Western Sahara & C. Lewis, International coordinator, Western Sahara Resource Watch, 12-01-09, <http://www.wsrw.org/index.php?cat=105&art=1010> (25-03-10).

<sup>20</sup> Idem.

<sup>21</sup> Open letter to J.C. Musselman, President and CEO of Kosmos Energy LLC, from E. Khadad, SADR Petroleum Authority, 15-01-09, [http://www.sadroidlandgas.com/pdfs/09\\_01\\_19\\_letter\\_kosmos.pdf](http://www.sadroidlandgas.com/pdfs/09_01_19_letter_kosmos.pdf) (25-03-10).

Fugro Geoteam's project was finalized in April 2009. On its journey back to Norway, it was met with protesting Sahrawi's in the port of Las Palmas on the Spanish Canary Islands. The WSRW is now demanding that the company hand over the collected data to the Sahrawis.

### **Relevant normative/legal standards**

The most relevant norms and standards in this case are referenced in the analysis of the UN Legal Council of 2002. This analysis looks at the relevant international legislation to determine whether the two oil reconnaissance contracts (with Kerr-McGee and with Total) of the Moroccan government are in violation of internationally established standards.<sup>22</sup> As stated above, this analysis ended with the following conclusion:

*"The conclusion is, therefore, that, while the specific contracts which are the subject of the Security Council's request are not in themselves illegal, if further exploration and exploitation activities were to proceed in disregard of the interests and wishes of the people of Western Sahara, they would be in violation of the principles of international law applicable to mineral resource activities in Non-Self-Governing Territories."<sup>23</sup>*

The UN interpreted the case as a matter of 'natural resource activities in Non-Self-Governing Territories'. It therefore based its analysis on a number of related documents and standards:

- ❑ Article 73 of the Charter of the United Nations. This charter lays down the principle that "Members of the United Nations who assumed responsibilities for the administration of these Territories" recognize their responsibility for the interests of the inhabitants of the Non-Self-Governing Territory and their obligation to promote to the utmost the well-being of the inhabitants of these Territories.
- ❑ A number of resolutions by the UN General Assembly dealing with issues of decolonization in general, and economic activities in Non-Governing Zones in particular.
- ❑ Case law of the International Court of Justice on basis of the cases of *East Timor (Portugal v. Australia)* and *Certain Phosphate Lands in Nauru (Nauru v. Australia)*.
- ❑ Several practices of other states dealing with similar cases regarding natural resource extraction, including Spain, Namibia and East Timor.

In a speech given late 2008, Hans Corell, the former Under-Secretary-General for Legal Affairs and Legal Council who drafted the legal analysis, made a number of comments directly related to the Western Sahara case.<sup>24</sup> Regarding the involvement of businesses in the exploration and exploitation of oil in Western Sahara, he stated, "Even though the international law to which I have referred in the past may not be directly binding on private entities, this law nevertheless constitutes a foundation upon which such entities should base their ethical considerations."<sup>25</sup>

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<sup>22</sup> H. Correll, "Letter dated 29 January 2002 from the Under-Secretary-General for Legal Affairs, the Legal Counsel, addressed to the President of the Security Council", United Nations Security Council, 12-02-02, [http://www.un.org/ga/search/view\\_doc.asp?symbol=S/2002/161](http://www.un.org/ga/search/view_doc.asp?symbol=S/2002/161) (25-03-10).

<sup>23</sup> Idem., p.6.

<sup>24</sup> "The legality of exploring and exploiting natural resources in Western Sahara", Address by Hans Correll, former Under-Secretary-General for Legal Affairs and Legal Council to United Nations, at the Conference on Multilateralism and International Law with Western Sahara as a Case Study, 05-12-08, <http://www.havc.se/res/SelectedMaterial/20081205pretoriawesternsahara1.pdf> (25-03-10).

<sup>25</sup> Idem.

A number of other legal documents are mentioned in reports of this case. Among them are the Laws of the Sea, which determine that coastal states have sovereign rights to the natural resources in their coastal waters. As Morocco has no sovereign control over Western Sahara, it has no rights to drill for oil in its waters. Mention is also made of the International Humanitarian Law and Laws of War, which state that an occupying power can not use the property of the occupied territory for the benefit of its own economy.

An article published in *Contemporary Review* in the autumn of 2009 deals specifically with international law and the conflict in Western Sahara.<sup>26</sup> In this article, a number of relevant United Nations resolutions are referred to, including General Assembly resolution 1514 (XV), under which the natural resources of Western Sahara are determined to belong to the Sahrawi people, and General Assembly Resolution 63/102 (2008) that calls on Member States to put an end to enterprises that are detrimental to the interests of inhabitants of Non-Self Governing Territories.

### **Conclusion**

Fugro's seismic measurements appear to be in violation of relevant international law, as clearly established by the UN Legal Council. The conclusions of this analysis are clearly applicable to the activities undertaken by Fugro in the beginning of 2009. The activities took place well after it had been established that future exploration activities would only be legal if conducted in regard of the interests and wishes of the Sahrawi people. Fugro has not provided any evidence that it has undertaken any efforts to assess these interests and wishes. Even more, the company refused to engage with the recognized representatives of the Sahrawi people and did not respond to the SADR's efforts to engage with the company. Furthermore, the SADR has clearly stated that the exploration activities are *against* its wishes and interests.

It is worrying that Fugro indicated in 2004 that it recognized the sensitivities around its activities in Western Sahara, and consoled its critics by saying it had no plans for future activities. In 2009, the company *did* undertake such controversial activities and has shrouded these in an air of secrecy by not communicating openly that it was again active in Western Sahara until confronted with media reports. No mention is made in the company's CSR report on how it deals with difficult issues such as those encountered in Western Sahara.

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<sup>26</sup> S. Simanowitz, "Not on Grain of Sand": International Law and the Conflict in Western Sahara", *Contemporary Review*, Autumn 2009, p.299.