

# PETROLEUM IN WESTERN SAHARA 2002

## 2. LETTER FROM POLISARIO FRONT

NOTE: In April we published a note about Western Sahara. About this issue, we have received a clarifying letter on Western Sahara situation, from Ahmed Boukhari, 5 Representative of the Polisario Front.

We wish to inform you that the future of Western Sahara is being decided at this very moment, in the UN.

POLISARIO LETTER

New York, February 18, 2002

AB/SC/2/2/02

His Excellency

***Ambassador Adolfo Aguilar Zinser***

President of the Security Council

United Nations

New York

Mr. President,

Prior to the Security Council informal consultations on the legal opinion remitted on January 29, 2002 by His Excellency Hans Corell, the Legal Counsel of the United Nations, on the legality of contracts between the Kingdom of Morocco and the two companies, Kerr McGee and TotalFinaElf, for oil exploration in the territorial seas of Western Sahara, I would like to call your attention to the following:

1. The Polisario Front notes and welcomes the clear and proper recognition in paragraphs 6 and 7 of the legal opinion that the Kingdom of Morocco does not have the legal status of an administering Power in Western Sahara.
2. Paragraph 6 recalls that the 1975 Madrid Agreement between Spain, Morocco and Mauritania "did not transfer sovereignty over the territory, nor did it confer upon any of the signatories the status of an administering Power"; nor did it "affect the international status of Western Sahara as a Non-Self-Governing Territory." Paragraph 7 reaffirms that the Kingdom of Morocco "is not listed as the administering Power of the territory in the United Nations list of Non Self-Governing Territories, and has, therefore, not transmitted information on the territory in accordance with Article 73(e) of the United Nations Charter.

3. The Polisario Front takes note of the recognition by Mr. Corell in paragraph 14 that the preeminent issue in the present case is the principle of "permanent sovereignty" of the people of Western Sahara over natural resources in the Territory. The legal question framed by Mr. Corell in paragraphs 14 and 21 is "whether the principle of Permanent sovereignty' prohibits any activities related to natural resources undertaken by an administering power in a Non-Self-Governing Territory, or only those which are undertaken in disregard of the needs, interests and benefits of the people of that territory". Mr. Corell concludes that international legal principles and State practice "supports the latter conclusion."
4. However, Mr. Corell's conclusion in paragraph 25 ^ that the contracts for exploration in the present case "are not in themselves illegal" ^ seems to assume that Morocco is the legal Administering power, an assumption that contradicts what is stated in paragraphs 6 and 7.
5. Mr. Corell reached his conclusion by distinguishing between the legality of contracts for oil exploration and contracts for oil exploitation. Clearly, that distinction is not relevant to the present case because the analysis supporting the distinction is based on legal principles and State practice that apply solely to administering Powers.
6. Morocco, as stated in paragraph 6, is not the Administering power. Therefore, it has no legal authority to enter into contracts to determine the fate of mineral resources in Western Sahara and, as a result, the contracts signed with Kerr McGee and TotalFinaElf for oil exploration should be rendered null and void.
7. Furthermore, at this very crucial stage in the peace process, the involvement of foreign economic interests will make it more difficult for the United Nations to successfully overcome the obstacles that are currently hindering the peace process. Morocco should not be permitted to benefit from obstructing the peace process, nor should it be allowed to take unilateral actions, which are a clear violation of international legality.
8. Any action by the Security Council to legitimize or sanction the contracts would set a precedent that not only is inconsistent with international law, but also would send an alarming message: that it is allegedly permissible to conspire or contract to commit illegal activities, until those activities have been consummated. In other words, it could be used to justify the unacceptable notion that a stranger may enter a home, in concert with another stranger, to search for valuables for sale, so long as the intruder does not physically remove any property. The danger in such a scenario is reflected in the basic legal principles that a contract for illegal purposes is void as a violation of public policy, and that a conspiracy to commit an unlawful act is itself unlawful.
9. Mr. Corell's conclusion that exploration contracts are not themselves illegal is based on a fictional distinction between the exploration and exploitation stages of mineral resource development, and is inconsistent with the spirit of recent actions by the Security Council to terminate the illegal control over and trade in natural resources of Angola, the Democratic Republic of Congo and Sierra Leone.

10. The lawful exploration and exploitation of mineral resources in Western Sahara by third parties can only be initiated on the basis of negotiations with the legitimate authorities of the territory; such negotiations may only proceed after full and fair implementation of the referendum plan for self-determination of the people of Western Sahara, under the organization and supervision of the United Nations.
11. Against this background, the Polisario Front considers that it is not only timely and relevant but also essential for the Security Council to take all necessary measures to ensure that the parties to the oil exploration contracts in Western Sahara do not proceed to execute said contracts, and instead await the outcome of the political process and referendum for self-determination. This is the only path to a just and lasting peace, one that respects the inalienable right of the Sahrawi people to self-determination and sovereignty over natural resources in Western Sahara.

I would appreciate if you could bring the content of this letter to the attention of the Members of the Council.

I avail myself of this opportunity to express to you my highest consideration.

**Ahmed Boukhari**  
**Representative of the Polisario Front**

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**Source:** RESISTANCE OILWATCH NETWORK BULLETIN Number 31 – August 2002