

BRIEFING

KOSMOS ENERGY: COWBOY DRILLING ON OCCUPIED LAND

November 2015



Photo: Saharawi refugees oppose Kosmos Energy's activities in their occupied homeland

Kosmos Energy Ltd operates under an oil licence in Western Sahara by an agreement with the territory's occupier; the Moroccan government. In violation of international law, the company has proceeded to undertake the first ever drilling operation in the history of Western Sahara under Moroccan occupation. An oil find in Western Sahara would cause irreparable damage to the UN led peace process and greatly diminish the chance of a peaceful solution to Africa's longest running conflict. This briefing documents Kosmos Energy's past and present in Africa's last colony. A background note on the Western Sahara conflict is included on the final page of the briefing.

Key facts

1. The area widely referred to as 'Western Sahara' lies on the Atlantic coast of north-west Africa, bordered by Morocco to the north, Algeria to the north-east and Mauritania to the south and south-east. The United Nations has defined Western Sahara to be a Non-Self-Governing Territory; one that still has to complete the process of decolonisation. A 1975 ruling of the International Court of Justice declared that Morocco had no legitimate claims to sovereignty over Western Sahara and that the indigenous Saharawi people were to be granted their right to self-determination.ⁱ Just days later, Morocco invaded Western Sahara. Today, it holds three-quarters of the territory under military occupation.
2. Kosmos Energy Ltd is a Dallas-based oil company founded in 2003, and has been registered on the New York Stock Exchange since May 2011. In January 2011, Kosmos Energy Ltd was incorporated in Bermuda.
3. Kosmos Energy Ltd is the American oil firm that will go into history as the first ever to undertake actual oil drilling in Western Sahara under Moroccan occupation, in late 2014.
4. Kosmos Energy operates under an oil licence for the so-called Cap Boujdour Offshore block, granted by ONHYM (*Office National des Hydrocarbures et des Mines*) – Morocco's state-owned oil company. The block is located off the mid-coast of Western Sahara, west of the town of Boujdour, and is a sizeable 29,740.70 km².
5. The block was previously owned by American company Kerr-McGee, which had obtained an exploration licence from the Moroccan government in 2001. On 29 October 2004, a subsidiary of Kosmos Energy partnered with Kerr-McGee for the "Boujdour Block", as it was then referred to. Kosmos Energy took a 30% share. Kerr-McGee withdrew from exploring in Western Sahara in 2006.
6. It was Morocco's licensing of the Boujdour block to Kerr-McGee that triggered the UN Security Council to commission its legal department to assess the legality of such deals. The resulting 2002 UN Legal Opinion considered exploration and exploitation in Western Sahara to be in violation of international law if such activity was not in accordance with the wishes and the interests of the Saharawi people.ⁱⁱ
7. Kosmos Energy first stated that it planned to drill off the coast of Western Sahara in 2005.
8. On 3 June 2006, Kosmos Energy signed an agreement for the operatorship of the Boujdour Block. On 26 June 2006, Kosmos Energy's so-called "Boujdour Offshore Petroleum Agreement" entered into force. The agreement was valid for eight years, including an initial exploration period of four years and eight months followed by the first extension period of one year and the second extension period of two years and four months.
9. Kosmos Energy commissioned the Dutch company Fugro NV to provide 2D seismic seabed surveys as part of its agreement with Morocco. In 2009, Canary Islands media reported that Kosmos considered the building of some industry support facilities on the Islands as part of the Boujdour project. Such a project has not been mentioned in the media or by the company since.
10. Kosmos signed a Memorandum of Understanding with ONHYM in September 2010. This allowed the company to move into a new petroleum agreement covering the highest potential areas of this block under essentially the same terms as the original licence.

11. In 2010, Fugro Geoteam AS, which conducted the seismic surveys for Kosmos in 2009, stated that it regretted its involvement. “Fugro Geoteam AS has decided to abstain from any further involvement in Western Sahara until the political situation has been resolved”, the company stated.ⁱⁱⁱ
12. In 2013, Kosmos Energy approached potential partners for the drilling operation in the waters of Western Sahara. At least one company refused due to legal concerns.
13. On 10 June 2013, the US company Atwood Oceanics Ltd, specializing in offshore oil drilling equipment, announced that its drillship *Atwood Achiever*, then being built in South Korea, had been awarded a drilling contract with Kosmos Energy “in Morocco”.
14. In October 2013, Kosmos Energy signed a farm-in agreement with Capricorn Exploration & Development Company Ltd, a wholly-owned subsidiary of the Scottish oil firm Cairn Energy PLC. Under the deal, Cairn obtained a 20% working interest in the Boujdour block, reducing Kosmos’ own stake to 55%. The remaining 25% would be held by ONHYM.
15. The name of the Boujdour Block was then changed to “Cap Boujdour Offshore”. Kosmos also announced that it had identified three prospects with the largest called *Gargaa*, in waters at a depth of 2135 meters.
16. In March 2014, Aker Solutions AS, which had been responsible for building and installing the drilling system on the *Atwood Achiever* stated that “if we had known that the equipment would be used in Western Sahara, we would not have signed this agreement”, and that “we often sign agreements of service and spare parts to equipment which we have already delivered, but in such agreements we state we will not deliver such equipment if the rig will be used in a territory where we don’t want to do business, such as Western Sahara”. The company cancelled the maintenance contract it had on the drillship.
17. In June 2014, Kosmos Energy’s vice President William Hayes was quoted in *Foreign Policy*, saying that “We feel good about the knowledge base we’ve got ... and we honest to God feel like we are doing the right thing in partnering with Morocco... We encourage the peace process to go on, and may the best party win”.
18. From June to August 2014, a vessel operated by the subsidiary of the China National Petroleum Corporation CNPC carried out the most recent geological surveys of the seafloor on the Cap Boujdour Offshore Block.
19. During 2013 and 2014, Kosmos Energy conducted a sham consultation process with pro-Moroccan groups in occupied Western Sahara. According to the company, the consultation was done by a Moroccan governmental institution, the *Conseil Economique, Social et Environnemental* (CESE), while the needs assessment was done by the High Atlas Foundation and the institute AMIDEAST. Board members of the two latter groups are on the payroll of the Moroccan government. The High Atlas Foundation proved to be notably defensive of Morocco’s claim to Western Sahara.^{iv} A campaigner of the Moroccan government’s position in the conflict who spent the previous decade lobbying against the right of the Saharawi people to self-determination took part in writing the Social Impact Assessment for Kosmos Energy.^v
20. Kosmos Energy spudded the first ever exploratory oil well off the mid-coast of Western Sahara on 19 December 2014, and drilling continued until February 2015. The *Atwood Achiever* rig bored the first oil well in Western Sahara at a depth of 2135 meters. As Kosmos declared to the US authorities, it chartered the drill rig

for an initial period of three years at a rate of US \$650,000 per day, with an option to extend for another three-year term.

21. From approx. 2014 onwards, Kosmos started suggesting to concerned investors that the company would establish a fund for the benefit and return of refugees. No Saharawi refugee group, nor Polisario, seems to have been even consulted on such suggestion. Proposing a return of refugees while still their homeland remains under occupation points towards a gross lack of respect for and understanding of the right to self-determination.

22. On 25 February 2015, the company launched the website www.westernsaharaoil.com, a propagandistic page defending its operations in occupied Western Sahara. The website is built on the argument that oil exploration in Western Sahara is perfectly acceptable as long as the locals benefit. However, this is a misrepresentation of the UN Legal Opinion of 2002 (see supra §6), and completely ignores the internationally recognized right to self-determination of the Saharawis. In any event, revenues from drilling (as with those fees paid for exploration licenses) are not paid to any office or agency in Western Sahara. They are to be remitted to the Moroccan central state treasury.

23. On 2 March 2015, Kosmos officially announced the results of its recent drilling. The company stated that it had “encountered hydrocarbons” but not apparently in commercial quantities. The company said that it plans to carry out further exploration in the block. CEO Andrew Inglis was quoted saying that “the well results confirm the substantial exploration potential of our 22,000 square kilometer Cap Boujdour block, which includes a diverse range of independent plays and fairways with multiple prospects. Going forward, the key exploration challenge is finding reservoirs of commercial size and quality. We will analyze the information gathered from CB-1 and integrate it with the additional 3D seismic data we recently acquired to refine our exploration plan, including deciding on the location and timing of a potential second well.” The *Atwood Achiever* drillship was then temporarily deployed to Mauritania.

24. Neither Kosmos Energy, its partner Cairn Energy, or the owner of the drillship *Atwood Achiever*, have ever sought the consent of the Saharawi people – who have a sovereign right to the territory and its resources as per their right to self-determination. The Saharawis continue to protest against the exploitation of their homeland’s resources.^{vi}

25. In March 2015, the African Union’s Peace and Security Council called for “a global boycott of products of companies involved in the illegal exploitation of the natural resources of Western Sahara”.^{vii} On 14 October 2015, the African Union issued a Legal Opinion, concluding that the ongoing exploration and exploitation of Western Sahara’s natural resources are in violation of international law. The Opinion refers to Morocco as the “occupying power” and states that “only the people of Western Sahara have the right to permanent sovereignty over their natural resources”, which includes the right to be consulted, consent to and actively participate in reaching any agreement that relates to the resources of the territory.^{viii}

26. On 9 October 2015, the UN Committee on Economic, Social and Cultural Rights had issued a strong set of recommendations to Morocco, calling for respect of the Saharawi people’s right to be consulted, consent to and benefit from the resource activities in their land.^{ix} Morocco rejected the recommendations.^x

For further information, check out our report about Kosmos in Western Sahara, entitled “Platform for Conflict”. The underlying materials for this briefing can be found our webpage www.wsrw.org.

Background to the Western Sahara conflict

The United Nations today considers Western Sahara a Non-Self Governing Territory without an administering power; a territory that still has to complete the process of decolonisation. In 1975, the country was invaded by Morocco, in blatant disrespect of the Advisory Opinion of the International Court of Justice, which stated that Morocco had no legitimate claims to sovereignty over Western Sahara, and that the Saharawi people, then the sole inhabitants of the territory, must be granted their right to self-determination.

The Frente POLISARIO, the Saharawi liberation movement that is internationally recognised as officially representing the Saharawi people, unilaterally proclaimed the Saharawi Arab Democratic Republic (SADR) in February 1976, and engaged in a civil war against Morocco. In order to avert POLISARIO's guerrilla attacks, Morocco gradually erected a military fortified wall throughout the territory. To this day, the 2000 km + long wall with adjacent mine fields, depicted as a red line on the above map, effectively divides the territory in two. The armed conflict between the POLISARIO and Morocco continued until 1991, when the UN brokered a ceasefire on the promise that a referendum on independence would be held soon after, to be carried out by the UN Mission for a referendum on the Western Sahara (MINURSO) pursuant to UN Security Council resolutions 658 (1990) and 690 (1991). Persistent Moroccan objections to UN efforts to establish an electoral roll prevented the referendum from going ahead, and several UN diplomats resigned in frustration at unacceptable Moroccan interference in all aspects of the UN's work.

Morocco's invasion and annexation of large parts of Western Sahara has led to the displacement of almost half of the Saharawi people, who today still survive in precarious conditions in refugee camps near Tindouf, Algeria. Those who stayed behind now live under the yoke of Morocco's occupation, characterized by gross human rights violations and plunder of Western Sahara's natural resources.

Following their right to self-determination, reaffirmed in over 100 UN Resolutions, the sovereign rights to the land and its resources lie with the Saharawi people. Accordingly, a UN Legal Opinion of 2002 concluded that any exploration or exploitation of Western Sahara's mineral resources will violate international law if not undertaken in accordance with the wishes and the interests of the people of the territory. In addition, international humanitarian law, including the 1949 Geneva Conventions, also applies. The Saharawi people have time and again protested against the ongoing taking of their resources.



Endnotes

- ⁱ International Court of Justice, Western Sahara (Advisory Opinion), 16 October 1975, <http://www.icj-cij.org/docket/files/61/6195.pdf>. The concluding paragraph 162 of the Legal Opinion states that “The Court’s conclusion is that the materials and information presented to it do not establish any tie of territorial sovereignty between the territory of Western Sahara and the Kingdom of Morocco [...]. Thus the Court has found no legal ties of such a nature that might affect the application of resolution 1514 (XV) in the decolonization of Western Sahara and, in particular, of the principle of self-determination through the free and genuine expression of the will of the peoples of the Territory.”
- ⁱⁱ UN Security Council, Letter dated 29 January 2002 from the Under-Secretary-General for Legal Affairs, the Legal Counsel, addressed to the President of the Security Council (S/2002/161), 12 February 2002, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N02/249/87/PDF/N0224987.pdf?OpenElement>
- ⁱⁱⁱ Fugro-Geoteam AS, letter to the Norwegian Government, 23 April 2010, available via http://www.wsrw.org/files/dated/2010-05-06/letter_fugro-nscws_23.04.2010.pdf
- ^{iv} WSRW, Kosmos partner in Sahara look for the wrong answers, 3 October 2014, <http://wsrw.org/a228x2971>
- ^v WSRW, Moroccan PR campaigner to write Kosmos Energy controversy assessment, 10 September 2014, <http://wsrw.org/a228x2949>
- ^{vi} See e.g. this letter to Kosmos Energy by the biggest Saharawi organisations from the occupied parts of Western Sahara, 15 October 2014, <http://wsrw.org/a228x2984>
- ^{vii} Communiqué of the Peace and Security Council of the African Union (AU), at its 496th meeting held on 27 March 2015, on the situation in Western Sahara. See more at: <http://www.peaceau.org/en/article/communique-of-the-peace-and-security-council-of-the-african-union-au-at-its-496th-meeting-held-on-27-march-2015-on-the-situation-in-western-sahara#sthash.gHnealf7.dpuf>
- ^{viii} Legal opinion on the legality in the context of international law of actions allegedly taken in the exploration and/or exploitation of renewable and non-renewable natural resources or any other economic activity in Western Sahara, 14 October 2015, <http://legal.au.int/en/content/legal-opinion-legality-context-international-law-actions-allegedly-taken-exploration-and-or-e>
- ^{ix} Comité des Droits Economiques, Sociaux et Culturels, Observations finales concernant le quatrième rapport périodique du Maroc, 9 October 2015, http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolNo=E%2fC.12%2fMAR%2fCO%2f4&Lang=en
- ^x Comments and Responses of the Moroccan Government to the Observations and Recommendations of the Committee on Economic, Social and Cultural Rights, published on 16 October 2015, http://tbinternet.ohchr.org/Treaties/CESCR/Shared%20Documents/MAR/INT_CESCR_COB_MAR_21960_E.pdf