

BRIEFING

TOTAL S.A.: BLAZING A TRAIL FOR A BLOOD OIL RUSH ON OCCUPIED LAND

November 2015



Photo: Saharawi refugees exiled Algeria protest against oil companies, like Total, that are looking for oil in their occupied homeland. March 2015.

Total S.A. 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 been looking for oil in Western Sahara's territorial waters. An oil find in the territory 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 Total'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

- 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.
- 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.ⁱⁱ In addition, international humanitarian law, including the 1949 Geneva Conventions, also applies.
- Total S.A. is a French multinational oil and gas company, and one of the so-called six supermajor oil companies in the world. Total was founded in 1924, and is headquartered in Courbevoie (Paris), France. The company is listed on the New York Stock Exchange and on the Euronext Stock Exchange.
- Total was one of the two companies to sign first-ever oil contracts with the Moroccan government for reconnaissance (exploratory) work in the occupied territory of Western Sahara. In October 2001, Total (then TotalFinaElf) signed the reconnaissance contract with ONAREP (*Office National de Recherches et d'Explorations Pétrolières*), the Moroccan government's oil exploration agency.
- Total's contract with the Moroccan government triggered the United Nations Security Council to ask its legal department to assess whether such a contract was in conformity with international law, given Western Sahara's status as a Non-Self-Governing Territory. The UN Legal Counsel presented an opinion in January 2002, concluding that any further exploration or exploitation that was not in accordance with the wishes and the interests of the people of Western Sahara would be in violation of international law.
- Seismic studies of the seabed were undertaken in 2002 with support of the occupying Moroccan forces in Western Sahara. Payments were made for this work to ONHYM (*Office National des Hydrocarbures et des Mines*) as part of the 2001 agreement. Extensions of the agreement were signed in 2002 and 2003.
- In November 2004, Total decided not to continue with its operations. It would not sign a new reconnaissance agreement with the Moroccan government until December 2011, however in the years between 2004 and 2011 the company continued its research on the data it had collected through seismic work in 2002.
- In December 2011, Total signed a 12 month "authorization of reconnaissance" with the Moroccan state oil company ONHYM for the same area as it had been active from 2001 to 2004. This time, the license area was far larger, and investments bigger as compared to the 2001-2004 area. The Anzarane block, as the license area is called, is located offshore the southern part of Western Sahara.

Accordingly, Total holds the biggest block of all the oil companies involved in occupied Western Sahara today, as Anzarane encompasses 100,926.70 km².

- Neither Total, nor ONHYM, have announced the signing of the reconnaissance agreement. The information on the block allocation was quietly added to the ONHYM license map shown on its website during the first half of 2012.
- Total has renewed its license for the Anzarane block annually. Its current license runs until December 2015.
- Total has carried out massive exploration in Anzarane. Seismic studies have been undertaken incessantly from July 2012 until July 2013. In July and August 2012, the UK marine survey company Gardline Shipping carried out the initial study. In October 2012, Chinese seismic company BGP took over. BGP is a subsidiary of the Chinese state oil company CNPC. WSRW estimates the total costs of Total's seismic studies at around 75 million USD.
- In December 2013, Total E&P Maroc and ONHYM signed two documents;
 - A joint declaration in which the two parties try to emphasize their commitment to comply with the Charter of the United Nations, by stating that "the local populations and their representatives are involved and consulted and that they will benefit equitably and effectively therefrom".ⁱⁱⁱ However, from a legal perspective, the joint declaration is redundant, as ONHYM has no legal standing with regard to the Anzarane block, located outside of its national territory and inside occupied Western Sahara. Moreover, the UN Charter does not only accord the rights to be consulted and benefit, but also the right to prior consent, to the people of Western Sahara – not to the local populations, which are nowadays in majority Moroccan settlers.
 - A Memorandum of Understanding, setting out corporate social responsibility principles for the reconnaissance period and any subsequent phase. Yet the very act of operating in a Non-Self-Governing Territory without the express consent of the people of that territory, and furthermore through a cooperation with the occupying regime responsible for gross human rights violation, is in direct contradiction of the core principles of Corporate Social Responsibility.
- In the summer of 2013, the Norwegian insurance company KLP excluded Total from its portfolios, stating that "Total's activities on the continental shelf off Western Sahara's coast may be linked to breaches of fundamental ethical norms".^{iv}
- Total has announced its plans to acquire a further 1,500 kilometer of 2D seismic studies in the seabed of the Anzarane Block during the "autumn of 2015".^v
- Total states that it works in accordance with the provisions of the UN 2002 Legal Opinion. The company says that if reconnaissance results are encouraging, "further exploration and exploitation activities will be conducted in compliance with the principles of international law applicable to mineral resources activities in the Non-Self-Governing Territories and not in disregard of the interests and wishes of the people of Western Sahara". In a letter to WSRW dated 14 May 2013, the company said that "Total as an Energy Company does not deem itself legitimate to have views on political or

diplomatic subjects that belong to the United Nations and that are still being debated within the relevant international institutions”.^{vi}

- 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}
- Only a week earlier, 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 more information about Total’s involvement in occupied Western Sahara, check out our report “Totally Wrong” via http://www.wsrw.org/files/dated/2013-09-01/totally_wrong.pdf or use the search engine on our website www.wsrw.org

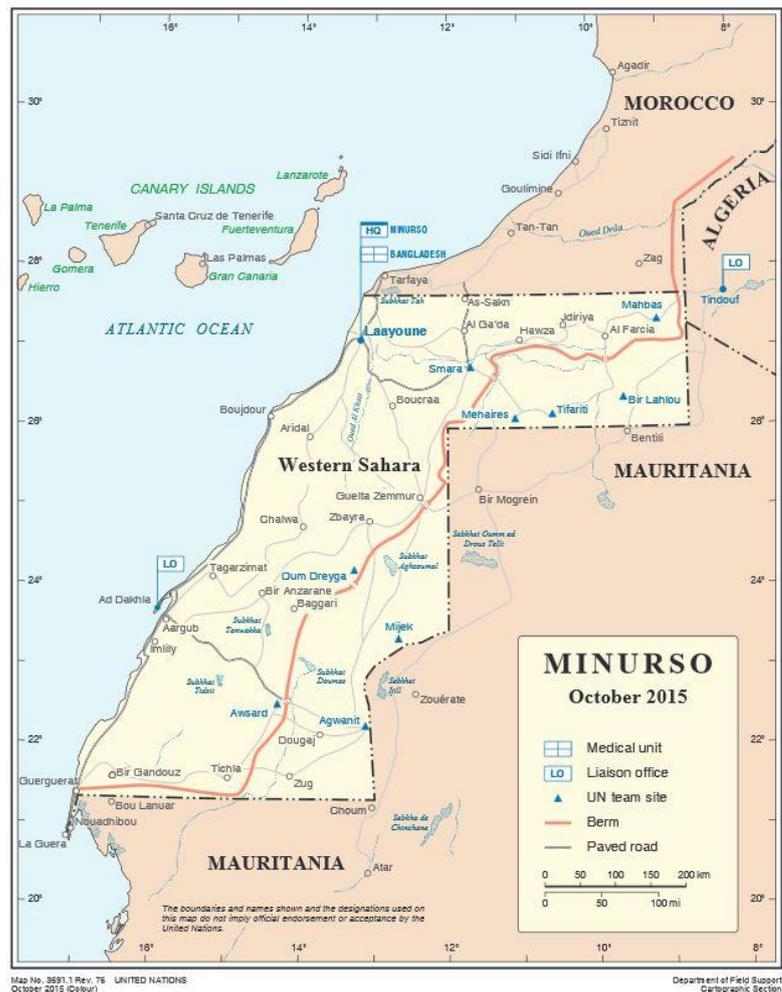
Background to the Western Sahara conflict

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 Total, Joint Declaration of Principles of ONHYM and Total E&P Maroc, 19 December 2013, http://csr-analysts.total.com/sites/default/files/declaration_of_principles.pdf

^{iv} KLP, Exclusion from investment portfolios, 3 June 2013, http://english.klp.no/polopoly_fs/1.24655.1391185298!/menu/standard/file/Total_Decision%20to%20exclude_03062013_ENGLISH.pdf

^v Kingdom of Morocco, Energy in Morocco: an ambitious strategy and huge opportunities for investments, key-note speech of Dr. Amina Benkhadra at the Oil Council Africa-Paris, June 2015, <http://www.oilandgascouncil.com/sites/default/files/files/Amina.pdf>

^{vi} WSRW, Total refuses further talks on Saharawis, 29 May 2013, <http://wsrw.org/a217x2593>

^{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