

INITIAL ASSESSMENT

NORWEGIAN SUPPORT COMMITTEE FOR WESTERN SAHARA VS. SJOVIK AS (SJOVIK AFRICA AND SJOVIK MOROCCO)

EXECUTIVE SUMMARY:

The Norwegian NCP concludes that this specific instance merits further examination based on the following criteria:

- the complainant is a concerned party with a legitimate interest in the matter raised in the complaint;
- the company is operating internationally;
- the issue raised is material and substantiated;
- there is an apparent link between the enterprise's activities and the issue raised in the specific instance;
- relevant public international law, including court rulings, have been presented; and
- the consideration of this specific instance is found to contribute to the purposes and effectiveness of the OECD Guidelines for Multinational Enterprises (the Guidelines) Chapter IV on Human Rights.

Accepting the case for further examination does not mean that the company in question has violated the Guidelines. The NCP has not considered the substance of the claims or whether the Guidelines have been violated.

Following the initial assessment the NCP will invite the parties to a meeting to explore opportunities for further dialogue or mediation. If dialogue or mediation is rejected or proves unsuccessful, the NCP will publish a final statement on whether or not the company has violated the Guidelines. The Norwegian NCP Procedures are available at www.responsiblebusiness.no.¹

THE COMPLAINT

On 5 December 2011 the NCP received a complaint against the Norwegian enterprise group Sjovik AS. The Norwegian Support Committee for Western Sahara

¹http://www.regjeringen.no/upload/UD/Vedlegg/ncp/ncp_prosedyrer_e.pdf

(NSCWS) submitted the complaint. Sjovik AS, through its subsidiaries Sjovik Africa AS, Sjovik Morocco S.A, is alleged to be in breach of the Guidelines by operating a fish vessel and leasing or running a fish processing plant in the Non-Self-Governing Territory of Western Sahara.²

The company is accused of breaching the Guidelines Chapter IV; Human Rights, no. 1 by having failed to respect the Sahrawi right to self-determination, including the right to be consulted in relation to the exploitation of natural resources. NSCWS demand that the company 1) withdraws from Western Sahara; 2) recognises the status of Western Sahara as a Non-Self-Governing Territory where the territory's people have the right to self-determination over their natural resources; and 3) maintains dialogue with the Western Sahara Support Committee.

RESPONSE TO THE COMPLAINT FROM SJOVIK AS

Upon the request of the Norwegian NCP, the company confirms its activities in Western Sahara, but responded in an e-mail dated 16 January 2012 that these activities are legally and morally defensible.

In a meeting on 30 January and an e-mail dated 12 February 2012, the company explains that they partnered with a Moroccan company in 2002/2003 following a Moroccan initiative to attract foreign investments and expertise. The Sjovik group was granted fishing licenses in the Moroccan "Zone C" outside Western Sahara. The company applied for export credit and guarantees and claims to have received positive signals from the Norwegian government and export credit agency until January 2005. At that time the company was officially informed that the Norwegian government would not support commercial activities in Western Sahara because such support could be interpreted as Norway de facto taking sides in the on-going dispute. At this point, Sjovik states, the company had already committed to further investments in Western Sahara, and decided to find alternative funding.

Sjovik contends that their investments are in a Moroccan company that harvests a renewable resource, which contributes to the benefit of local populations, including Moroccans, Sahrawi and Berbers, in an area in great need of employment and investment. In addition to employment, Sjovik AS emphasises that their company in Morocco has several agreements with the Sahrawi; that the company fishes on Sahrawi quotas and delivers to Sahrawi factories. Furthermore, Sjovik argues that their investments contribute to the transfer of knowledge critical to development of the Dakhla region. According to the company, no payments are made to the Moroccan government for the fishing quota. However, the project finances services offered by regional authorities (Dakhla), such as roads to ports and a factory, the

²The activities take place under the Moroccan flag.

development of port facilities, and the construction of schools, hospitals, and an airport.

THE NORWEGIAN NCP'S ASSESSMENT:

In accordance with the OECD Guidelines and the Norwegian NCP procedure for handling complaints, the NCP accepted to handle the complaint based on the following criteria.

- Is the Norwegian NCP the right entity to assess the alleged violation?
The Norwegian NCP was the recipient of the complaint concerning the headquarter policies of a Norwegian-registered multinational enterprise group. Western Sahara is claimed by Morocco, while no UN organ has recognised Moroccan sovereignty or status as rightful administering power. Western Sahara is recognised as a Non-Self-Governing Territory under the UN. Morocco is committed to following the Guidelines and has established an NCP. The unresolved territorial issues and the fact that the complaint concerns a Norwegian company favour the acceptance of the complaint by the Norwegian NCP. The Moroccan NCP has been notified about the specific instance.
- What is the interest of the Western Sahara Support Committee in the matter?
The Norwegian Support Committee for Western Sahara supports the rights of the people of Western Sahara and their right to self-determination, in accordance with common Article 1 of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.
- Is the complaint material and substantiated?
The complaint is material and substantiated with references to relevant and applicable public international law regarding the Sahrawi right to self-determination and the right to be consulted about and benefit from natural resources in Western Sahara.
- Does there seem to be a link between the enterprise's activities and the issue raised in the specific instance?
The company confirms and defends their activities in the Non-Self-Governing Territory of Western Sahara.
- What is the relevance of applicable law and procedures, including court rulings?
Applicable law and procedures include inter alia an advisory opinion from the International Court of Justice, resolutions from the UN General Assembly, the UN Convention on the Law of the Sea (UNCLOS) and other UN documents, EU procedures and documents, including EU Parliament Legal Opinions, and the

Norwegian Government's recommendations, including the advice to companies not to engage in commercial activities in Western Sahara .

- How have similar issues been, or are being, treated in other domestic or international proceedings?
Similar issues have been dealt with by the Norwegian NCP in 2010³ and the Council on Ethics of the Government Pension Fund – Global⁴.
- Would the consideration of the specific instance contribute to the purposes and effectiveness of the Guidelines?
The NCP finds that the issues raised in the specific instance would contribute to the purpose and effectiveness of the Guidelines. The Norwegian NCP will in accordance with the Norwegian NCP Procedure for Handling Complaints offer its good offices to the parties.

ATTACHMENTS

1. The Norwegian NCP process in this Specific Instance
2. Details on the parties involved
3. Information about the Norwegian NCP and the OECD Guidelines
4. The complaint

³A complaint was raised against Fugro-Geoteam for oil exploration activities outside Western Sahara. The complaint was withdrawn before it was formally accepted as a specific instance when Fugro-Geoteam AS announced in a letter to the Norwegian Ministry of Foreign Affairs that it had decided to discontinue the exploration. See www.responsiblebusiness.no.

⁴The Council on Ethics (www.etikkradet.no) is an independent advisory body to the Government on negative screening based on ethical criteria from the Norwegian State Pension Fund Global. The Council recommended disinvestment from companies operating within Western Sahara Territory twice: in 2005 related to oil exploration offshore Western Sahara, and in 2010 in regard to the purchasing of phosphates from Western Sahara. Both recommendations on Western Sahara were followed and shares sold by the Norwegian Bank Investment Management (NBIM). The 2005 recommendation was repealed in 2006 after the company documented that the contract with Moroccan authorities was terminated and activities ceased.

ANNEX 1: DETAILS OF THE NORWEGIAN NCP PROCESS IN THIS SPECIFIC INSTANCE

NCP Norway received the complaint on 5 December 2011. NCP Norway notified the company about the complaint on 6 December 2011 and invited the company to comment on the complaint by 15 January 2012. Both parties received NCP Norway's updated procedures for handling complaints on 12 December 2011.

The NCP began drafting the initial assessment on 19 December 2011 with the intention to accept the case. The parties received a draft Initial Assessment on 17 January 2012, and were invited to comment by 2 February. NSCWS sent their comments on 30 January. Due to a fire incident at the company's main office in Midsund, Norway, Sjovik asked for an extension of the deadline. The company also asked for a meeting with the NCP. NCP Norway met with the company on 30 January and the company sent a comment to the complaint on 10 February. The NCP formally accepted the case and published the Initial Assessment on 8 March 2012.

ANNEX 2: DETAILS OF THE PARTIES INVOLVED

THE COMPANY: SJOVIK AS

The Sjovik Group operates an international fishing enterprise from its base in Midsund, on the northwest coast of Norway. The company operates fishing vessels, produces and exports fish products, participates in shipping and yard operations and other related activities, including participating in other companies with similar operations in Norway and abroad. The Sjovik Group has established a worldwide sales organization through its network of companies and international partners. The company has the brand Seabay.⁵

The company Sjovik AS and Sjovik Africa control Sjovik Morocco S.A.⁶ Sjovik Morocco S.A. operates the vessel Midoy Dakhla-1⁷ from the industrial zone Dakhla in the Non-Self-Governing Territory of Western Sahara and trawls for pelagic fish. Sjovik Morocco S.A. also operates or leases a fish-processing facility in Dakhla.

⁵According to the NSCWS, Sjovik was known for the company Seabay Limited in Grimsby in the UK since 1979. The Seabay label was known in Europe as a specialist in various frozen fish products, but the company was closed on 20 January 2008 due to significant losses.

⁶Sjovik AS owns Sjovik Afrika, whose purpose is to own shares in Sjovik Morocco S.A. which in turn operates one vessel, (according to ?) Sjovik AS's Annual Financial Statement 2010 available at the Bronnoysund Register Centre www.brreg.no, obtained 8 December 2011. Sjovik Morocco has its postal address in the Zone Industrielle Hay Essalam, DAKHLA.

⁷Midoy Dakhla, registered by DNV.

<http://exchange.dnv.com/exchange/main.aspx?extool=vessel&subview=overview&vesselid=10475>.

<http://www.marinetraffic.com/ais/shipdetails.aspx?MMSI=242889000>,

https://webgate.ec.europa.eu/sanco/traces/output/FFP_MA_en.pdf 05.07.2011

THE COMPLAINANT: THE NORWEGIAN SUPPORT COMMITTEE FOR WESTERN SAHARA

The Norwegian Support Committee for Western Sahara (NSCWS) is a membership organisation, formed in 1993. The ultimate goal of NSCWS is for the Sahrawi population to achieve its legitimate right of self-determination, and participate in a referendum about the future of their country, as stated in UN Security Council Resolutions. The organisation distributes information on the situation in Western Sahara with the main aim of stopping foreign companies with concessions from the Moroccan authorities from doing business in the disputed territory. NSCWS puts pressure on Morocco when Sahrawi civil society is subjected to grave human rights violations.⁸

ANNEX 3: GENERAL INFORMATION ABOUT THE GUIDELINES AND THE NORWEGIAN NCP

APPLICATION OF THE OECD GUIDELINES FOR MULTINATIONAL ENTERPRISES

The initial assessment is based on the 2011 version of the Guidelines as the complaint was submitted after the updated OECD Guidelines for Responsible Business Conduct⁹ entered into force for the Norwegian NCP on 1 September 2011.

The Guidelines comprise a set of principles and standards for responsible business conduct in areas including human rights, disclosure, employment and industrial relations, environment, combating bribery, consumer interests, science and technology, competition, and taxation. The Guidelines are not legally binding. However, OECD governments and a number of non-OECD members are committed to encouraging multinational enterprises operating in or from their territories to observe the Guidelines, while taking into account the particular circumstances of each host country.

The Guidelines are implemented in adhering countries by National Contact Points (NCPs), which are charged with raising awareness of the Guidelines amongst businesses and civil society. NCPs are also responsible for dealing with complaints that the Guidelines have been breached by multinational enterprises operating in or from their territories.

THE NORWEGIAN NCP COMPLAINT PROCEDURE

⁸NSCWS also campaigns for increasing Norwegian aid to the refugee camps in Algeria. Until 2005, the organisation worked for the release of Moroccan prisoners of war taken by the Western Sahara liberation movement Front Polisario during the liberation war in the 1970s and 1980s.

⁹Updated OECD Guidelines for Responsible Business Conduct were adopted at ministerial level on 25 May 2011.

The Norwegian NCP complaint process is broadly divided into the following key stages:

- 1) *Initial assessment* – This consists of a desk-based analysis of the complaint, the company’s response, and any additional information provided by the parties. The Norwegian NCP uses this information to decide whether further consideration of a complaint is warranted.

- 2) *Conciliation/mediation OR examination* – If a case is accepted, the Norwegian NCP offers conciliation/mediation to both parties with the aim of reaching a settlement agreeable to both. Should conciliation/mediation fail to achieve a resolution, or should the parties decline the offer, the Norwegian NCP will examine the complaint in order to assess whether it is justified. The NCP may commission fact-finding or other services to support the processing of the case if deemed necessary.

- 3) *Final statement* – If a mediated solution has been reached, the Norwegian NCP will publish a final statement with details of the agreement. If conciliation/mediation is refused or fails to achieve an agreement, the Norwegian NCP will examine the complaint and prepare and publish a final statement on whether or not the Guidelines have been breached and, if appropriate, recommendations to the company for future conduct.

The complaint procedures, together with the Norwegian NCP's initial assessments, final statements, and follow-up statements, are published on the Norwegian NCP's website: www.responsiblebusiness.no.

ANNEX 4: THE COMPLAINT

See separate attachment (In Norwegian).