

# COUNCIL ON ETHICS

THE GOVERNMENT PENSION FUND GLOBAL

UNOFFICIAL ENGLISH TRANSLATION

**To the Ministry of Finance**

26.09.2014

**Recommendation to exclude Innophos Holdings Inc. from the investment universe of the Government Pension Fund Global**

# 1 Summary

The Council on Ethics recommends the exclusion of the company Innophos Holdings Inc. (Innophos) from the Government Pension Fund Global (GPF) due to an unacceptable risk of the company contributing to particularly serious violations of fundamental ethical norms through the purchase of phosphate from Western Sahara.

The state-owned Moroccan company OCP extracts phosphate minerals from Western Sahara and sells it to companies such as Innophos.

Morocco controls most of the territory of Western Sahara, but does not have legal sovereign right over the area's natural resources. The Council assumes that Moroccan mineral extraction in the area may be acceptable if it is conducted in accordance with the wishes and interests of the local population, but this requirement cannot be said to be fulfilled here, and, further, that the activity contributes to maintaining a situation of unresolved international legal status of the area. Within this context, the Council has considered it grossly unethical by the company to purchase on long-term contract phosphate minerals which OCP has extracted in Western Sahara.

The Council on Ethics has repeatedly sent requests for information to the company, but the company has not responded.

# 2 Introduction

In April 2014, the Council on Ethics decided to review the Fund's investment in Innophos Holdings Inc.<sup>1</sup> by reference to the Guidelines for the observation and exclusion of companies from the Government Pension Fund Global's investment universe (the ethical guidelines).<sup>2</sup> The reason for this decision was information that the company's wholly-owned subsidiary Innophos Mexicana SA de CV (hereafter also referred to as "Innophos") is purchasing phosphate extracted in Western Sahara under a long-term contract with the Moroccan state-owned company *Office Chérifien des Phosphates* (OCP). Western Sahara has the status in the UN as a Non-Self-Governing Territory without a recognized administrator. Most of the area is *de facto* controlled by Morocco, but it does not follow from this that Morocco has sovereign rights over the area's natural resources.

In 2010, the Council on Ethics recommended the exclusion of two companies that were purchasing, on long-term contracts, phosphate extracted in Western Sahara.<sup>3</sup> The Ministry of Finance adopted the recommendation. The assessments of the Council on Ethics in the present case are largely identical to those in the 2010 recommendation.

At the end of 2013, the GPF owned shares in the company valued at NOK 36 million, corresponding to an ownership interest of 0.6 per cent of the company's shares.

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<sup>1</sup> The company has the Issuer Id: 10938508.

<sup>2</sup> [http://www.regjeringen.no/en/sub/styret-rad-utvalg/ethics\\_council/ethical-guidelines.html?id=425277](http://www.regjeringen.no/en/sub/styret-rad-utvalg/ethics_council/ethical-guidelines.html?id=425277).

<sup>3</sup> The Council on Ethics' recommendation (2010) and subsequent correspondence with the Ministry of Finance: [http://www.regjeringen.no/en/sub/styret-rad-utvalg/ethics\\_council/Recommendations/Recommendations/Recommendations-on-other-particular-serious-violation-of-fundamental-ethical-norms/recommendation-of-november-15th-2010-on-.html?id=665562](http://www.regjeringen.no/en/sub/styret-rad-utvalg/ethics_council/Recommendations/Recommendations/Recommendations-on-other-particular-serious-violation-of-fundamental-ethical-norms/recommendation-of-november-15th-2010-on-.html?id=665562).

## 2.1 What the Council has considered

The Council has considered whether there is an unacceptable risk of Innophos contributing to particularly serious violations of fundamental ethical norms in accordance with section 2(3)(e) of the ethical guidelines.

This recommendation assesses the company's purchases of phosphate extracted in Western Sahara under long-term contracts. The Council has considered whether such purchases must be deemed to constitute serious violations of norms because the wishes and interests of the local population are not respected in connection with extraction and because OCP's activities contribute to maintaining a situation of unresolved international legal status of the area.

The Council on Ethics has proceeded on the basis that mineral extraction in Western Sahara may be acceptable if it occurs in accordance with the wishes and interests of the local population. The Council on Ethics' assessment in the present case is that OCP's activities do not respect the wishes and interests of the local population, and that this is one reason why OCP's activities in Western Sahara must be regarded as grossly unethical.

Accordingly, the Council on Ethics has considered whether it must be regarded as grossly unethical for the company to purchase phosphate from OCP under long-term contracts.

## 2.2 Sources

The Council has repeatedly sought information from the company on its purchases of phosphate minerals from Western Sahara, but the company has not responded.

Some general information is provided in the company's 2013 Annual Report. More specific information on the company's phosphate purchases from Western Sahara has been obtained from the organisation Western Sahara Resource Watch (WSRW) and is outlined in section 4.

# 3 Background

## 3.1 The situation in Western Sahara

The Council on Ethics has described the situation in Western Sahara in earlier recommendations to the Ministry of Finance (2005 and 2010). The fundamental conditions in the area have not changed since these recommendations were made.

Western Sahara, a Spanish protectorate since 1884, became a Non-Self-Governing Territory in 1963 under the UN Charter. At the same time, Spain was appointed the administering power of what was then called Spanish Sahara.

According to the UN, Western Sahara remains a Non-Self-Governing Territory. Unlike other Non-Self-Governing Territories, Western Sahara does not have any recognised administering power.

Morocco has *de facto* control over most of the territory, but no UN body has recognised neither Morocco's sovereignty nor that it is the lawful administering power of Western Sahara. Morocco refers to Western Sahara as the "*Moroccan Saharan Provinces*", and claims sovereignty over most of the area.

The liberation movement Polisario (*Frente Popular de Liberación de Saguía el Hamra y Río de Oro*) was established in 1973 with the objective of securing independence for Western Sahara. Polisario started an armed insurgency against the Spanish administration. In 1975, the

International Court of Justice (ICJ) in The Hague rejected Morocco and Mauritania's claims to sovereignty over their respective parts of Western Sahara. Immediately afterwards, Morocco invaded parts of Western Sahara, resulting in strong condemnation by the UN Security Council. Later in 1975, Spain signed an agreement (the Madrid Accords) with Mauritania and Morocco on the transfer of administrative power over Western Sahara. The Madrid Accords confirmed Spain's intention to support the decolonisation of Western Sahara and to transfer its duties as administering power to Morocco and Mauritania. Accordingly, the agreement did not transfer sovereignty over Western Sahara to Morocco and Mauritania, as Spain did not have – and thus could not cede or transfer – such sovereignty. Nor did the agreement alter Western Sahara's status as a Non-Self-Governing Territory under the UN Charter. The Spanish authorities presumed that a referendum would be held in Western Sahara regarding the territory's future status. In 1976, Morocco and Mauritania agreed to divide Western Sahara between them. However, Mauritania withdrew in 1979, and Morocco has in practice controlled most of the territory since then.

Morocco has exercised sovereignty over most of the territory since 1979 without being the administering power pursuant to the provisions of the UN Charter. As the rightful administering power of the territory, Morocco would, under Article 73 of the UN Charter, have an obligation to “*ensure, with due respect for the culture of the peoples concerned, their political, economic, social and educational advancement...*” and to “*develop self-government, to take due account of the political aspirations of the peoples...*”

Following armed conflicts between Polisario and Morocco, a ceasefire was signed in 1991. The UN's peacekeeping force MINURSO oversees the ceasefire and was originally also expected to monitor the referendum on the future of the territory.

Since the 1990s, several initiatives have been launched under the auspices of the UN with the aim of holding a referendum on the future of the territory. Although the Moroccan authorities and Polisario resumed talks in April 2007, these have suffered several breakdowns and made little progress. Morocco has presented a proposal for the territory involving limited self-rule under Moroccan sovereignty. Polisario is maintaining its demand for a referendum that includes the option of independence. In April 2014, the UN Security Council adopted a resolution that once again extended the MINURSO mission and again urged the parties to find a negotiated solution to the conflict.<sup>4</sup>

Today, Western Sahara is largely populated by people of Moroccan origin who moved there after Morocco's *de facto* annexation of the territory. The current population of Western Sahara totals approximately 550,000 people.<sup>5</sup>

Approximately 165,000 Saharawis, the territory's indigenous population, have been displaced to refugee camps in Algeria, where they live under very difficult conditions.

### **3.2 The phosphate industry**

Around 15 different minerals are referred to as phosphates. These minerals contain the element phosphorus. Depending on their composition, phosphates are mainly used in the manufacture of different types of inorganic fertilisers,<sup>6</sup> but also in the production of chemicals

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<sup>4</sup> UN Security Council resolution 2152 (2014)

<sup>5</sup> UN World Statistics Yearbook 2011, <http://unstats.un.org/>.

<sup>6</sup> Most inorganic fertilisers contain a mixture of nitrogen (N), phosphorus (P) and potassium (K) and are referred to as NPK or compound fertilisers.

(such as phosphoric acid), and for other purposes. Approximately 90 per cent of extracted phosphate is used in fertiliser production.<sup>7</sup>

Worldwide annual phosphate extraction amounts to approximately 225 million tonnes. This total is expected to increase to 260 million tonnes by 2017.<sup>8</sup>

Morocco extracts around 30 million tonnes per year, and is the world's third-largest phosphate producer after China and the USA. Morocco differs from other large phosphate-producing countries in that it has limited agricultural activity and thus a small domestic demand for phosphate. Both China and the USA are net importers of phosphate, and the USA in particular will in future have to increase its imports significantly because its own deposits are running out. OCP has announced plans to invest the equivalent of USD 9 billion in the period to 2020 to boost its annual production to 47 million tonnes.<sup>9</sup>

In Western Sahara, phosphate is extracted at the Bou Craa mine<sup>10</sup> by the state-owned Moroccan company OCP.<sup>11</sup> Annual phosphate extraction in Western Sahara totals 2.3 million tonnes.<sup>12</sup> The export value of this production corresponds to approximately NOK 2 billion and constitutes less than 10 per cent of Morocco's total phosphate production.

Bou Craa is the only known phosphate deposit in Western Sahara.

### **3.3 Companies' purchases of phosphate**

In the processing industry, it is common practice to sign long-term contracts for the supply of raw materials. The reason for this is the desire to ensure delivery and homogenous quality. Contracts for periods of five to 10 years including price adjustment options are not uncommon.

As regards the purchase of phosphate, the buyers – mainly fertiliser and chemicals manufacturers – normally specify the desired quality of the phosphate, including its chemical composition and other properties. Accordingly, the phosphate's origin (source/mine) will normally also be specified in the supply contract, and thus be known to the buyer.

## **4 The basis for the Council on Ethics' assessment**

### **4.1 The Council on Ethics' contact with the company**

The Council on Ethics initially contacted the company in January 2010, asking whether it was buying phosphate extracted in Western Sahara. The company did not reply to this enquiry. Since the company was nevertheless not in the GPF's portfolio shortly afterwards, the Council did not pursue the matter further.

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<sup>7</sup> US Department of the Interior – US Geological Survey: Phosphate Rock Statistical Compendium (2000).

<sup>8</sup> US Department of the Interior – US Geological Survey: Mineral Commodity Summaries, February 2014.

<sup>9</sup> US Department of the Interior – US Geological Survey: 2010 Minerals Yearbook – Morocco and Western Sahara. (Published August 2012.)

<sup>10</sup> Bou Craa (alternative spellings: Boucraa, Bu Craa, Boukra), location 26° 19' 22" N, 12° 50' 59" W, is OCP's only phosphate mine in Western Sahara.

<sup>11</sup> The company's website: <http://www.ocpgroup.ma/>.

<sup>12</sup> OCP Annual Report 2012, page 17: <http://www.ocpgroup.ma/sites/default/files/alldocs/OCP-Annual-Report-2012.pdf>.

In 2013, the company was once again in the GPFG's portfolio, and in April 2014 the Council on Ethics again wrote to Innophos, asking whether it purchases phosphate from Morocco that may stem from Western Sahara and, if so:

- What type of contract (e.g. long-term or spot), is the purchase based on?
- Is there any agreement regarding cooperation with the Moroccan seller?
- Does the company itself have any form of operation related to the extraction of phosphate in Western Sahara?

Innophos has not replied to either the Council on Ethics' enquiry in April or a follow-up enquiry made in May of this year. A draft version of this recommendation was submitted to the company in July 2014, and the company was invited to provide any comments it may have. The company did not respond to this, either.

## **4.2 Information provided in the company's 2013 Annual Report**

In its 2013 annual report, Innophos wrote that it was importing phosphate for its plant at Coatzacoalcos, Mexico, from various suppliers, but that the company expected the majority of its imports in 2014 to come from two suppliers. The company also stated that, until 2010, it had purchased phosphate solely from OCP:

*“We import phosphate rock for our Coatzacoalcos, Mexico site from multiple global suppliers. We are currently capable of successfully processing industrial scale quantities of phosphate rock from five separate suppliers and, for 2014, we expect the majority of our requirements to be met from two of these suppliers. Previously, the Coatzacoalcos facility was supplied exclusively by OCP, S.A., a state-owned mining company in Morocco under a 1992 supply agreement that expired in September 2010. Although the Coatzacoalcos facility has made significant advances in its ability to handle alternative grades of rock without adversely affecting operating efficiency, further investment may be required to realize the full benefits of improved process flexibility.”<sup>13</sup>*

## **4.3 Information from WSRW on Innophos' purchases of phosphate from Western Sahara**

The organisation Western Sahara Resource Watch (WSRW) monitors the shipping traffic departing from El Aaiun in Western Sahara, the departure point for phosphate from Bou Craa.

In 2012–2013, at least five shiploads of phosphate were transported from El Aaiun to Coatzacoalcos, Mexico. According to the port authorities, Innophos was the specified importer of these shipments.<sup>14</sup> In total, the company purchased an estimated 270,000 tonnes of phosphate from OCP in Western Sahara in 2013.

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<sup>13</sup> Innophos Holdings Inc. Annual Report 2013 (10-K): <http://ir.innophos.com/secfiling.cfm?filingID=1364099-14-6>.

<sup>14</sup> The Ocean Prince departed El Aaiun on 14 September 2012 and arrived in Coatzacoalcos on 18 September 2012. The Sunrise Sky departed El Aaiun on 5 April 2013 and arrived in Coatzacoalcos on 19 May 2013. The Coral Queen departed El Aaiun on 24 July 2013 and arrived in Coatzacoalcos on 7 August 2013. The Maritime Prosperity departed El Aaiun on 21 September 2013 and arrived in Coatzacoalcos on 7 October 2013. The Liberty Grace departed El Aaiun on 2 December 2013 and arrived in Coatzacoalcos on 16 December 2013. All of the ships carried phosphate from Bou Craa that was delivered to Innophos. WSRW Report, June 2014: *Morocco's exports of phosphates from occupied Western Sahara, 2012 & 2013*.

#### 4.4 Legal opinion from the UN's legal affairs adviser

A 2002 legal opinion from Ambassador Hans Corell, then the UN Under-Secretary-General for Legal Affairs, addressed the legality of mineral resource extraction in Non-Self-Governing Territories in general, and included an assessment of this issue with respect to the situation in Western Sahara in particular.

The legal opinion was based on Article 73 of the UN Charter, which obliges states that have assumed responsibility for Non-Self-Governing Territories to manage their resources in accordance with the interests of the inhabitants. This principle has been affirmed in a number of UN resolutions.

According to the legal opinion, not all forms of economic activity in Non-Self-Governing Territories are problematic. Reference was made to several UN resolutions that have established a distinction between economic activities in Non-Self-Governing Territories that harm the inhabitants and economic activities that benefit them:

*“In recognizing the inalienable rights of the peoples of Non-Self-Governing Territories to the natural resources of their territories, the General Assembly has consistently condemned the exploitation and plundering of natural resources and any economic activities which are detrimental to the interests of the peoples of those Territories and deprive them of their legitimate rights over their natural resources. The Assembly recognized, however, the value of economic activities which are undertaken in accordance with the wishes of the peoples of those Territories, and their contribution to the development of such Territories.”<sup>15</sup>*

The 2002 legal opinion thus concluded that mineral extraction in Non-Self-Governing Territories is only acceptable if proper consideration is given to the wishes and interests of the inhabitants.

Ambassador Corell<sup>16</sup> has subsequently made it clear that the best point of departure for the legal opinion was an analogy based on Article 73 of the UN Charter, since Morocco is not recognised as Western Sahara's rightful administering power. For states that are the *de facto*, rather than legitimate, administering powers of Non-Self-Governing Territories, the requirement that the inhabitants must benefit from resource exploitation must be considered a minimum standard:

*“I came to the conclusion that the best way to form a basis for the legal opinion was to make an analysis by analogy taking as a point of departure the competence of an administering Power. Any limitation of the powers of such entity acting in good faith would certainly apply a fortiori to an entity that did not qualify as an administering Power but de facto administered the Territory.”<sup>17</sup>*

#### 4.5 Meeting with OCP representatives

Representatives from OCP and the US law firm Covington & Burling LLP met with the Council on Ethics in Oslo in August 2010. At the meeting, OCP and Covington & Burling discussed OCP's activities in Western Sahara.

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<sup>15</sup> Letter from the UN Under-Secretary-General for Legal Affairs to the Security Council (S/2002/161).

<sup>16</sup> Ambassador Corell left his UN post in 2004, and was speaking in a private capacity in 2008.

<sup>17</sup> Ambassador Hans Corell, *Conference on Multilateralism and International Law with Western Sahara as a Case Study*, 5 December 2008, page 7, see <http://www.havc.se/res/SelectedMaterial/20081205pretoriawesternsahara1.pdf>.

In a subsequent letter to the Council on Ethics, Covington & Burling expanded on some of the points discussed at the meeting.<sup>18</sup> The importance of OCP's activities for the local economy at Bou Craa was emphasised in the letter, including the fact that OCP provides employment income for over 2,000 households in the region. The significance of OCP's investments to the future economic development of the area was also highlighted. OCP's investments at Bou Craa, it was also stated, had in no way been designed to influence or impede the development of territorial self-government. In conclusion, the letter expressed the hope that OCP's activities at Bou Craa would be assessed on the basis of OCP's own actions and matters under its control.

#### 4.6 Previous cases

In 2005, in a recommendation to exclude a company based on its activities in connection with Western Sahara, the Council on Ethics stated, among other things:

*“The framework of international law, including the UN Charter and the Convention on the Law of the Sea, lay down that economic activity which involves exploitation of natural resources in occupied or Non-Self-Governed Territories must be exercised in cooperation with the people inhabiting those territories. The local population also has a right to the potential profits of such activities. These rules have been developed through treaty law and state practice, based on the understanding that especially natural resources often constitute the very reason for occupation and violent conflicts. The framework of international law thus seeks to make it unlawful to benefit economically from exploitation of natural resources, if such exploitation has been based on occupation.”<sup>19</sup>*

In 2010, the Council on Ethics recommended the exclusion of two companies that were purchasing phosphate extracted in Western Sahara. In that case, the Council on Ethics emphasised that the companies had concluded long-term delivery contracts with OCP, and that the companies had explicitly ordered phosphate extracted in Western Sahara. The Council on Ethics considered this grossly unethical because it could not be proven that the phosphate extraction operation respected the good of the local population and, moreover, because the operation was contributing to the continuance of the unresolved situation in the area.

In the 2010 recommendation, the Council on Ethics also referred to a legal opinion (2009) from the European Parliament's Legal Service concerning the then-current fisheries agreement between the EU and Morocco. The opinion stated that the demography of the region had been substantially modified by Moroccan immigration to Western Sahara following Morocco's occupation. It also stated that large parts of the population, the Saharawi, were not integrated and living under difficult conditions, in some cases outside Western Sahara (e.g. in Algeria).<sup>20</sup> The opinion pointed out that if the fisheries agreement

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<sup>18</sup> Letter from Covington & Burling LLP to the Council on Ethics, dated 13 September 2010.

<sup>19</sup> Council on Ethics, 12 April 2005: [http://www.regjeringen.no/en/sub/styrer-rad-utvalg/ethics\\_council/Recommendations/Recommendations/Recommendations-on-other-particular-serious-violation-of-fundamental-ethical-norms/Recommendation-of-April-12-2005-on-exclu.html?id=425309](http://www.regjeringen.no/en/sub/styrer-rad-utvalg/ethics_council/Recommendations/Recommendations/Recommendations-on-other-particular-serious-violation-of-fundamental-ethical-norms/Recommendation-of-April-12-2005-on-exclu.html?id=425309).

<sup>20</sup> European Parliament's Legal Service, Legal Opinion, 13 July 2009, paragraph 29: “In this framework the Legal Service considers that it is appropriate to recall a few elements that seem undisputed: [...] b) Following Morocco's occupation, the demography of the region has been substantially modified due to the fact that Moroccan people have been settling in the region. On the other side, the Saharawi population is reported to be not integrated and to live in precarious conditions in camps, even outside the territory of Western Sahara (for instance the Tindouf camp in Algeria). The situation concerning the respect of the human rights of the



failed to safeguard the interests of the Saharawi, EU vessels should only fish in undisputed Moroccan waters.<sup>21</sup> In other words, it was concluded that resource exploitation in Western Sahara is only acceptable if the interests of the local population are respected, and it was emphasised that the local population in this context means the Saharawi.

In a subsequent letter (2011) to the Ministry of Finance, the Council on Ethics expanded on certain points in the 2010 recommendation. Among other things, the Council on Ethics wrote:

*“In cases where the buyer’s unethical behaviour is a result of the seller’s lack of legitimate rights to the resources that are being sold, one issue for the Council on Ethics to assess may be whether the agreement between buyer and seller is comparable to commissioned theft when the buyer, being fully aware of the conditions related to the production, specifies the origin of the product.”<sup>22</sup>*

## 5 The Council on Ethics’ assessment

### 5.1 Preliminary considerations

The situation in Western Sahara is unique in the sense that there are no other Non-Self-Governing Territories that do not have a recognised administering power. There are no clear-cut rules for the exploitation of mineral resources in such territories.

The framework of international law requires the administering powers of Non-Self-Governing Territories to manage the territories in accordance with the wishes and interests of the local inhabitants. Since the UN does not recognise Morocco as the rightful administrative power of Western Sahara, it may be objected that these rules do not apply to the situation in Western Sahara. Nevertheless, in its assessment, the Council on Ethics will adopt the starting point that Morocco’s resource extraction in Western Sahara may be acceptable if the wishes and interests of the local population are safeguarded as envisaged by, for example, UN Legal Counsel in its 2002 opinion. The European Parliament’s Legal Service took the same view in its 2009 opinion on the fisheries agreement between the EU and Morocco. The Council on Ethics has also proceeded on this basis in previous recommendations.

The Council on Ethics is not tasked with considering the legality of Morocco’s mineral resource extraction in Western Sahara or other legal issues that this case may raise. In the present case, the Council will only decide whether it may be regarded as grossly unethical for companies to purchase phosphate extracted in Western Sahara by a state-owned Moroccan company when the companies have specified in their purchase contracts that the phosphate must come from the Moroccan-controlled parts of Western Sahara. In order to decide this, several factors must be taken into account. First, the Council must assess whether OCP’s phosphate extraction in Western Sahara must be considered grossly unethical. Second, an

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*Saharawi population (including freedom of movement) has been the subject of concern, in particular by the European Parliament.”*

<sup>21</sup> Ibid, paragraph 37: *“In the event that it could not be demonstrated that the FPA was implemented in conformity with the principles of international law concerning the rights of the Saharawi people over their natural resources, principles which the Community is bound to respect, the Community should refrain from allowing vessels to fish in the waters off Western Sahara by requesting fishing licences only for fishing zones that are situated in the waters off Morocco.”* (“FPA” stands for Fisheries Partnership Agreement.)

<sup>22</sup> The Council on Ethics, 15 November 2010, and subsequent correspondence:

[http://www.regjeringen.no/en/sub/styrer-rad-utvalg/ethics\\_council/Recommendations/Recommendations/Recommendations-on-other-particular-serious-violation-of-fundamental-ethical-norms/recommendation-of-november-15th-2010-on-.html?id=665562](http://www.regjeringen.no/en/sub/styrer-rad-utvalg/ethics_council/Recommendations/Recommendations/Recommendations-on-other-particular-serious-violation-of-fundamental-ethical-norms/recommendation-of-november-15th-2010-on-.html?id=665562).

assessment must be undertaken of the degree to which companies that purchase phosphate extracted by OCP in Western Sahara contribute to any violations of norms by OCP.

## **5.2 The significance of phosphate extraction as regards Morocco's presence in Western Sahara**

Phosphate extraction in Western Sahara accounts for a limited proportion (less than 10 per cent), of Morocco total phosphate extraction. It is difficult to determine the extent to which the profitability of the operation influences Morocco's presence in the area. On a general basis, the Council would assume that the basis for a state's claim to territorial sovereignty is strengthened if it maintains a presence in the territory, for example in the form of commercial operations. The activities of the state-owned Moroccan company OCP in Western Sahara constitute a form of presence that may support Morocco's claim to the territory. Accordingly, Morocco's phosphate extraction operation in Western Sahara may be more important as a component of its sovereignty claim than as a source of revenue.

## **5.3 The interests of the local population in Western Sahara**

Since the Council on Ethics has concluded that Morocco's extraction of mineral resources in Western Sahara is grossly unethical if the activity does not benefit the local population, the Council must assess to what extent the local population actually benefits from extraction. A key question in this context is *who* comprises the local population.

The legal opinion from UN Legal Counsel (2002) stated that the wishes and interests of the local population should be safeguarded in connection with the extraction of natural resources in Western Sahara, but did not explicitly discuss who this population comprises. However, the legal opinion provided by the European Parliament's Legal Service on the fisheries agreement between the EU and Morocco stated that the local population whose interests are to be protected are the Saharawi, even though many have been displaced and live outside Morocco. On the other hand, the opinion did not provide any description of how their interests should be respected.

## **5.4 Assessment of violations of norms by OCP**

In the view of the Council on Ethics, the problematic aspects of OCP's phosphate extraction in Western Sahara are not connected to the company's conduct towards its employees or in the local community in which it operates. Nor does the Council assume that OCP's activities have by themselves caused the displacement of the local population, or that this displacement has taken place to accommodate the company's activities. The main question in the present case is whether the state-owned Moroccan company OCP is engaging in mineral extraction in a territory outside Moroccan sovereignty, without adequately respecting the wishes and interests of the local population.

As regards the original inhabitants of Western Sahara, these have largely been displaced from the territory and are living under very difficult conditions in refugee camps in Algeria. They cannot be said to be receiving any benefit from the ongoing economic activity in Western Sahara.

OCP has previously stated to the Council that its activities serve the local community in which it operates, pointing out that some of its employees in Western Sahara are Saharawi. In the Council's opinion, this cannot be regarded as sufficient to satisfy the requirement that

resource exploitation in Non-Self-Governing Territories must occur in accordance with the wishes and interests of the local population. The matter concerns the extraction of a limited deposit of non-renewable mineral resources. OCP's employment of some Saharawi does not compensate for the fact that the territory is being depleted of its natural resources and that a large proportion of the Saharawi population is not benefiting.

The Council has therefore concluded that OCP's activities in Western Sahara must be considered grossly unethical.

## **5.5 Assessment of the company's contribution to OCP's violations of norms**

The company has not replied to any of the Council on Ethics' enquiries in 2010 or 2014 asking whether it purchases phosphate from OCP that is extracted in Western Sahara. In its 2013 annual report, the company stated that, prior to 2010 it purchased phosphate for its plant at Coatzacoalcos, Mexico, solely from OCP. The company now primarily uses two suppliers to this plant, but has not identified them or where the phosphate stems from.

The report on ship arrivals in 2013 shows that at least some of the phosphate delivered to the company is extracted by OCP in Western Sahara. The Council on Ethics concludes that the company most likely has a long-term agreement with OCP for the delivery of phosphate extracted in Western Sahara.

In previous, similar cases, the Council on Ethics has also considered additional factors such as the company's knowledge and specification of the phosphate's origin, the phosphate's substitutability and the contractual relationship between the company and OCP. Since the company has not replied to the Council's enquiries, the Council has been unable to give these factors detailed consideration.

In any event, companies buying phosphate from Western Sahara are in reality supporting Morocco's presence in the territory, since the phosphate is sold by the state-owned Moroccan company OCP and it must be assumed that the revenues generated by the operation largely flow to the Moroccan State. In its present form, OCP's extraction of phosphate resources in Western Sahara constitutes a serious violation of norms. This is due both to the fact that the wishes and interests of the local population are not being respected and to the fact that the operation is contributing to the continuance of the unresolved international legal situation, and thus Morocco's presence and resource exploitation in a territory over which it does not have legitimate sovereignty. In the view of the Council on Ethics, a concrete, mutually beneficial relationship exists between OCP's violations of norms and companies' purchases of phosphate from Western Sahara.

The fact that Innophos has purchased phosphate minerals from Western Sahara over several years establishes closer ties with OCP than an occasional buyer of phosphate, and strengthens their degree of contribution to OCP's violations of norms. Such long-term contracts also increase the risk that the company may contribute to future violations of norms.

Based on the above, the Council on Ethics has concluded that Innophos should be excluded from the GPFG.

## 6 Recommendation

The Council on Ethics recommends the exclusion of the company Innophos Holdings Inc. from the investment universe of the Government Pension Fund Global due to an unacceptable risk of the company contributing to particularly serious violations of fundamental ethical norms.

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Chair

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Dag Olav Hessen

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