

Report on Kerr-McGee's contract in Western Sahara

The unethical, illegal and politically irresponsible activities of a US company in the Moroccan-occupied territory of Western Sahara

Information collected and systematized by Western Sahara Resource Watch.

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November 23, 2005

“KMG does not want to discuss the topic with us, but claims that the contract with Moroccan authorities is legal. It is our opinion that the KMG activities contributes to violate international law.”

Storebrand Insurance, June 22, 2005
Former shareholder

“We usually do not comment individual companies in our portfolio. But concerning Kerr-McGee, I can confirm that we are completely out. The reason is that we do not find that their corporate conduct acceptable.”

Storebrand Insurance, June 25, 2005
Former shareholder

“Kerr-McGee through its exploration activities most likely will enable Morocco to exploit petroleum resources in the area. The [Petroleum Fund’s Ethical] Council regarded this as “a particularly serious violation of fundamental ethical norms” e.g. because it may strengthen Morocco’s sovereignty claims and thus contribute to undermining the UN peace process.”

Norway’s Ministry of Finance, Press Release,
June 6, 2005
Former shareholder

“KLP chooses to follow the same recommendation (as the Petroleum Fund), based on the Fund’s assessment of the company’s activities, in relation to the International Convention for the Law of the Sea and the latter’s regulations on oil exploration in so-called Non-Self Governing Territories.”

KLP Insurance, Press Release, June 30, 2005
Former shareholder

“Their (Western Sahara) activities means that the risk of owning shares in the company has increased.”

Skagen Funds, Press Release, May 14, 2003.
Former shareholder

“We have on many occasions urged Kerr-McGee to act in a responsible manner and stop its illegal operations in our country but until now the company has ignored our request.”

Mohamed Salem Ould Salek, Minister of Foreign
Affairs, Saharawi Arab Democratic Republic, Nov
30, 2004

Kerr-McGee Corporation

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| <ul style="list-style-type: none"> • One of the largest US oil and gas companies • A familiar face to international legal dispute and nuclear spills scandals |
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- “Kerr-McGee Corporation is a global energy and inorganic chemical company based in Oklahoma City. [KMG is] a recognized leader in oil and natural gas exploration and production. [It is] also the world's third-largest producer and marketer of titanium dioxide pigment, the preferred whitener and opacifier for a variety of everyday products. Kerr-McGee was founded in 1929 and [its] stock has been traded on the New York Stock Exchange since 1956. We have **global assets of more than \$14 billion** [assets at September 30, 2004: \$ 14,5 bln -E&P \$12,2 billion, Chemical \$ 1,6 bln, other \$0,7 bln]. In addition, [it supplies] titanium dioxide pigment to customers in about 100 countries. KMG and Westport Resources Corp. merged on June 25, 2004, creating **one of the largest independent oil and gas companies in the U.S.** The end-of-year 2003 proved reserves from the combined companies is more than 1.3 billion barrels of oil equivalent”¹.
 - KMG produces oil and natural gas from the Gulf of Mexico, onshore **USA, UK** sector of the North Sea, **China's** Bohai Bay. Currently, KMG is conducting exploration activities in offshore **Alaska, Australia, Bahamas, Brazil, Canada** and “**Western Africa**” (i.e. Western Sahara- cf. KMG website).
 - KMG has approximately 63 million gross undeveloped acres, with more than 55 million acres in global deepwater locations (half of which are in Western Sahara) as of June 2004.
 - Initially involved in the nuclear weapons industry, KMG was charged with numerous instances of radioactive pollution. This led to the infamous killing of an employee, Karen Silkwood, in 1974 as she was about to reveal to the US media the radioactive pollution caused by the company's weapons plant in Oklahoma City. This incident received widespread publicity following its adaptation into a movie, *Silkwood*, with Meryl Streep.
 - A familiar face to international legal disputes and illegal exploitation as attests its contested involvement in the Timor Gap (a Western Sahara “twin case”).

¹ Kerr-McGee website: <http://www.kerr-mcgee.com>

What's the scandal about?

- Contracting with an illegal occupying power
 - Active in an occupied territory in disrespect of international law and of the wishes and interest of the indigenous Saharawi people
 - Total lack of transparency of its activities
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- Kerr-McGee du Maroc Ltd., a subsidiary of Kerr-McGee Corporation, entered into a reconnaissance permit (a 1-year extensible license) with the Moroccan state oil company, ONHYM², in September 2001 for the Boujdour area, offshore occupied Western Sahara. The permit was renewed in October 2003, on 19 October 2004, and in May 2005. The current contract is valid until 31st October 2005. The contract does not take into consideration that **Western Sahara has been illegally occupied by Morocco since 1975** (cf. below).
 - Object of the contract: **to evaluate the potential for hydrocarbons in the offshore area** through collection and analysis of seismic data. The contract covers 27 million acres, 350 miles along the coast and 200 miles offshore.
 - Official backing by US government: KMG license signed in the presence of US Ambassador to Morocco, Margaret Tutwiler.
 - Financial component of deal? French Oil Company Total stated that Total's similar contract with Morocco included financial provisions to the state-owned company ONHYM³. What about KMG?
 - KMG has refused to answer information requests by concerned individuals, NGOs, Saharawi representatives and even former shareholders.
 - Four shareholders have so far sold their shares in Kerr-McGee due to the Western Sahara engagement: Skagen Funds⁴, KLP⁵, Storebrand Insurance⁶ and the Norwegian Ministry of Finance⁷. Total divestments are approaching \$ 80 million.

² www.onhym.com; former ONAREP.

³ Note: French E & P Company TOTAL signed a similar contract in September 2001 for the "other half" of offshore Western Sahara (i.e. area of Dakhla). Did not renew the licence in November 2004 officially because of "lack of oil". According to Moroccan press, it was due to international pressure.

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⁵ KLP contact information: Mrs. Cornelia Moseid, Advisor for ethics and CSR, cornelia.moseid@klp.no, tel +47 22033554.

⁶ Storebrand Insurance contact information: Mrs. Christine Torklep Meisingset, SRI director, christine.torklep.meisingset@storebrand.com, tel +47 22315784.

⁷ Norwegian Petroleum Fund contact information: Mr. Anders Lande, Information Department, Norway's Ministry of Finance, anders.lande@finans.dep.no, tel +47 22244109.

Latest developments

- Subcontracted reputable companies, which under moral pressure from global civil society groups ended their co-operation with KMG
 - Continues investing in illegality
 - Continues violating international law
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- Subcontracted TGS-Nopec⁸ (Norway) and the Fugro group⁹ (Holland) for the seismic mapping. Both companies after **pressure from global Western Sahara solidarity movement** pledged not to resume activities in the area. A TGS-Nopec subcontractor, Danish offshore company **Thor Offshore Services**¹⁰ also expressed its regrets of having provided vessels to exploration activities offshore Western Sahara and pledged not to resume activities in the area.
 - KMG has announced its intention to invest “at least US\$ 2 million in the Boujdour area¹¹”.
 - According to KMG, the company “**is continuing to perform geological and geophysical studies**, which include interpretation of the existing seismic and the drop core program that already has been performed”.
 - **Drop coring** is a technique whereby a device is ‘dropped’ off the back of a survey vessel and on contact with the seabed a piston in the device is activated and takes a shallow ‘core’ (a cylindrical section of the seabed, up to a metre or so in thickness). This core is retained within the device (preserved from the atmosphere/sea) and then hauled back to the surface. Cores are taken either acquired in a random pattern over the acreage or located over anomalies that are seen on the seismic. These samples are then analysed under laboratory conditions to detect minute indications of hydrocarbons.
 - Exploring the seabed within Western Sahara continental shelf, including taking core samples, is **contrary to international law**. The Norwegian Deputy Foreign Minister, Vidar Helgesen, in 2003 questioned the legality of the exploration activities offshore Western Sahara, by referring to the lack of distinction between exploration and exploitation in the Resolution III of the 1982 Law of the Sea Convention. This was

⁸ Survey started in May 2003 and completed in January 2003. Data handed over to KMG, Total and Rabat in March 2003.

⁹ Contracted by KMG to carry out 2nd phase of seismic exploration in spring 2004. Survey completed in June 2004. In cooperation with UK based subsidiary Fugro SL Limited/Svitzer and Robertson Research International.

¹⁰ Had a two months cooperation with TGS-Nopec offshore Western Sahara in 2002. Dimmalaetting, January 11, 2005.

¹¹ IHS Energy report, June 25, 2004.

repeated in the very thorough assessment by the Ethical Council of the Norwegian Petroleum Fund on the KMG activities, April 12, 2005¹²:

“According to the aforementioned provision in Resolution III, Article 77(1) thus indicates that the rights related to the continental shelf, which in this case seems to belong to the people of Western Sahara, encompasses both exploring and exploiting.”

“It should be pointed out [...] that in a situation of contradictory interpretations of international law, treaty law would prevail over a legal opinion. One might therefore suggest that there are sound legal arguments for arguing that not only exploitation of natural resources, but also exploration, could be deemed unlawful in the present case.”

- KMG states to the press that they have no intentions to proceed with drilling in Western Sahara. Something else is stated in the KMG Q2 Conference Call, July 28, 2004. The following section is a reply from Dave Hager, Senior Vice President in KMG, after a question from John Bailey in Deutsche Bank:

HAGER: “And it is very possible that we will be drilling on those opportunities in [Benin in] 2005. We are also looking at bringing in a partner to share the costs of that seismic, as well as the costs of the wells. Morocco, a very similar story. Off the Boujdour block, in Morocco, the old Western Sahara, we have completed our seismic program there. We are -- it is currently in processing as we speak.

After that, we will do the interpretation on it. We had indications of structures from our initial grid. What we had to do is really infill this grid to really see how the faults hooked up and whether we really had a drillable prospect. And so I can't give you what the interpretation stands like on that right now until the data gets out of processor.”

BAILEY: “Okay. And that would determine the drilling schedule as well going forward?”

HAGER: “That's correct.”

- From 2005, KMG attracts two new partners to develop the Boujdour block, Kosmos Energy LCC and Pioneer Natural Resources Co, both from the US. Kosmos holds 30% working interest, Pioneer holds 20, while KMG holds 40¹³. Kosmos is a privately owned, non-listed company.
- September 26, 2005, US Trade and Development Agency (USTDA) awards a grant to ONHYM, for the development of a Geographical Information System (GIS) in order to assist the state company's exploration activities. The grant includes only the internationalised recognised territory of Morocco, thus excluding Western Sahara, in accordance with US stands on the issue¹⁴.

¹² www.odin.dep.no/fin/english/topics/p10001617/p10002777/screening/recommendations/006071-110246/dok-bn.html

¹³ www.kosmosenergy.com/assets.html. See also <http://www.onhym.com/onarep/accueil.htm>

¹⁴ www.tda.gov/USTDA/Press%20Release%20Archive/Press%20Releases/2005/September/September26_05Morocco.htm

KMG public statements

- Blatant lies
- Disrespect for UN rules and opinions
- Lack of transparency

- **No country world-wide, or the UN, has recognised the sovereignty of Morocco** over the territory. In spite of this, Kerr-McGee keeps referring to Western Sahara as a part of “Morocco”¹⁵ or as “former Western Sahara”¹⁶. KMG Director of Corporate Communications has stated that the “UN Under-Secretary for Legal Affairs confirmed that [the company] had acted lawfully in contracting with Morocco. Neither the United States of America nor the UN recognises any other administrative authority or government in that territory”¹⁷.
- Kerr-McGee also claims to “support the ongoing efforts of the UN to find a permanent and amicable solution to the Western Sahara issue. We hope to be able to make a contribution to the development of this area and its people. It would be inappropriate to speculate about what the future may hold in this area”¹⁸. Note that the company has only been in contact with the occupier, and never with the party that according to the UN is the representative of the Saharawi people. KMG has never documented how they claim to be supporting the UN peace process. Norway’s Ministry of Finance regards Kerr-McGee’s activities as “a particularly serious violation of fundamental ethical norms” because it may “strengthen Morocco’s sovereignty claims and thus contribute to undermining the UN peace process.”¹⁹
- **KMG refused to answer requests** from concerned individuals, NGOs and the UN recognised Saharawi government in exile. The former shareholder Storebrand Insurance claims that Kerr-McGee did not want to discuss the Western Sahara issue with them. Two European delegations of Western Sahara Resource Watch visited Oklahoma City October 2005, but the company each time fails to accept to meet the organisation.

¹⁵ e.g. www.kerr-mcgee.com or KMG Q2 Conference Call 2004.

¹⁶ E.g. KMG Q2 Conference Call 2004 or letter from KMG Senior Vice President Gregory F. Pilcher to Norges Bank Investment Management April 5, 2005.

¹⁷ PESA News April/May 2003.

¹⁸ PESA News April/May 2003.

¹⁹ Norway’s Ministry of Finance, Press Release, June 6, 2005.

KMG corporate ir-responsibility

- Window-dressing CSR: KMG totally disregards its CSR policy

- Its website states “At Kerr-McGee, our values influence everything we do. We are committed to quality, safety, environmental responsibility and ethical conduct”.
- The cornerstone of its code of conduct is described as “compliance with the law”. On an ethical level, under the section “International Political Activity”, the KMG code notes that “the company is committed to meeting high ethical standards in its world-wide operations. This includes treating everyone fairly and with respect, maintaining a safe and healthful workplace, and improving the quality of life wherever Kerr-McGee does business”.
- Its code of conduct and ethics defines the fundamental principles which “guide [its] business conduct and help [its] employees perform with integrity”: respect for the individual, ethical business dealings, safe working practices, responsible corporate citizenship, responsible care for the environment and continuous improvement²⁰.
- Its reporting system in case of suspected violations of the Code of Ethics includes an anonymous and confidential hotline and affirms that violations of the code are considered “serious offences that may result in disciplinary action, up to and including discharge, as well as possible legal action or penalties”.

²⁰ www.kerr-mcgee.com/ir/governance/ir_gov_ethics.htm KMG notes that “each employee receives the code of conduct and ethics upon joining the company, and compliance is a condition of employment”.

The Saharawi liberation movement – Polisario – and the oil licenses

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| <ul style="list-style-type: none"> • KMG threatens the UN peace process • KMG denies the UN-recognised legitimacy of the Saharawi representatives |
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- The Saharawi Arab Democratic Republic (hereafter SADR) representative to Australia, Kamal Fadel, said “this territory is still on the UN list as a non-self governing territory, it is a de-colonisation issue and the UN mission is present in the territory”²¹. He noted that his government was not against companies investing in Western Sahara but “it has to be done with the people who have a right to deal in the territory, with Saharawis themselves not with Morocco”.
 - SADR/Polisario representative at the UN Ahmed Bukharie said that the SADR would “blacklist those companies that participate in the E & P of any kind in our Exclusive Economic Zone and if we have to resume the armed struggle the arena would include the sea and offshore areas”. He also warned, “There was no guarantee” that the companies’ investments would be recovered²².
 - SADR/Polisario signed a technical cooperation agreement with UK-Australian E & P company **Fusion Oil** (announced May 27, 2002). Fusion was to evaluate the petroleum potential and to undertake an exclusive study and report on oil and gas prospectivity offshore Western Sahara. The deal covered the entire offshore territory of Western Sahara, i.e. 210,000 km². Upon completion of the study, Fusion Oil would have the right to nominate up to three areas of unexplored offshore acreage (of up to 20,000 km²) for future exploration licensing on regionally competitive terms, “once Western Sahara is a member of the UN”²³. According to Fusion's exploration director Jonathan Taylor, “any exploration licenses will be converted into full exploration licenses dependant on the outcome of the UN mission, which will determine the future status of Western Sahara”.
 - Fusion signed a deal with **Premier Oil** in May 2003 “to purchase a number of West African interests” including 35% of Fusion's rights under the TCA with the SADR.
 - SADR FM Mohamed Salem Ould Salek recommends shareholders to divest from KMG. November 30, 2004, Ould Salek sent letter to Norwegian MoF Foss expressing concern of unethical engagement of Norwegian government in Western Sahara through its investment in KMG and calling Oslo to divest from the company on ethical grounds (cf. <http://groups.yahoo.com/group/Sahara-Update/message/1427>). The letter resulted in the government divesting from KMG in June 2005.

²¹ PESA April/May 2003.

²² Upstream Online, 27 May 2002.

- May 2005, SADR announced a licence round for oil and gas exploration in Western Sahara²⁴. Successful bidders will sign production sharing contracts with the government in exile. Until the area becomes independent, the licensees are free to do desk studies, but not carry out exploration.
- July 2005, it was made public that Baraka Petroleum Limited and Roc Oil Company Limited had been in dialogue with the SADR government in exile. The two companies had then already signed exploration agreements with Morocco for the areas offshore the border area between Western Sahara and Morocco. After the dialogue with the SADR government, the two companies made clear that they did not intend to explore the Saharan waters.

²³ Afrol News, 27 May 2002.

²⁴ www.sadroilandgas.com

Background on Western Sahara and hydrocarbon exploration

Western Sahara

- An occupied territory since 1975
 - The last African territory to be decolonised
 - 2/3 of a nation in refugee camps for nearly 30 years
 - A daily reality of heavy-handed military occupation, large-scale human rights violations, mass corruption and plundering of natural resources
 - Occupation to be financed by oil exploitation
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- In total disrespect for international law, Morocco invaded its Southern neighbour, the former Spanish colony of Western Sahara in 1975. Ignoring repeated international sanctions and requests, Morocco has heavily **colonised** (US State dept. evaluate the presence of at least 250,000 settlers), **plundered** the resources (e.g. fisheries, phosphates) and heavily **repressed** the local, indigenous population (according to Amnesty International and Human Rights Watch reports). Morocco has thwarted all efforts of the MINURSO, the UN Mission in the territory, to organise the UN requested referendum of self-determination for the last African territory yet to be decolonised.
 - Past exploration: over the second half of 20th century, oil and gas companies have shown sporadic interest in the Western Sahara territory, which has fed many rumours about the existing hydrocarbon reserves. However, the protracted territorial dispute and the related legal uncertainties of investing in the area diverted the attention of **major oil players** away from the territory (including Gulf Oil, WB Grace, Texaco and Standard Oil, Pan American Hispano Oil, Caltex, Gulf Oil, Philips Oil and BP, Shell).
 - The exploitation of Saharawi resources is at the very heart of the occupation of the territory since it both contributes to financing the costly occupation and represents a key element in sustaining loyalty to the monarchy. **The extensive depletion of fisheries in Saharawi waters and of the phosphate deposits has encouraged Morocco to look for alternative sources of revenue.**
 - Moroccan Energy and Mines Minister Boutaleb stated that exploitation of oil in Western Sahara is "not a problem. It's simply our country and His Majesty the King is committed to developing Morocco, so there is no question or illegal aspects to exploration and development there"²⁵.

²⁵ Upstream Online, 29 April 2004.

The United Nations and the Western Sahara

- A territory to be de-colonised under a UN-sponsored resolution process
 - An occupation recognised by not one single State
 - Efforts of a UN Mission in Western Sahara since 1991 stymied since 1991
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- Western Sahara remains on the **UN list of Non-Self Governing Territories**. For the UN IVth Committee, the committee for decolonisation issues, Spain, as the administrative power defined under article 73 of the UN Charter, continues to be responsible for the fate of the territory, which remains to be de-colonised.
 - No country has officially recognised the annexation of the territory by Morocco while the **SADR has been recognised by more than 70 states** (including most recently by South Africa in October 2004 and Kenya in June 2005).

International case law and the Corell opinion

- Morocco has no legitimate sovereignty over Western Sahara
 - The Saharawi people has a universal and permanent right over the natural resources in their territory
 - KMG must respect the wishes and interest of the Saharawi people
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- The law applicable in this matter is based on **Article 73 of the UN Charter** and a series of documents and practice developed by the UN (especially by the Special Committee and UNGA). Article 73 states that Administrative Powers by their status have “recognised the principle that the interests of the inhabitants of these territories are paramount” and have accepted “as a sacred trust the obligation to promote to the utmost [...] the well-being of the inhabitants of these territories”.
 - The Under-Secretary General for Legal Affairs, Hans Corell on January 29 2002²⁶ responding to a request from the President of the UNSC on behalf of the SC members on “the legality in the context of international law, including relevant resolutions of the Security Council and the General Assembly of the United Nations, and agreements concerning Western Sahara of actions allegedly taken by the Moroccan authorities consisting in the offering and signing of contracts with foreign companies for the exploration of mineral resources in Western Sahara”, provided his opinion on “the status of the territory of Western Sahara and the status of Morocco in relation to the territory” as

²⁶ Legal Opinion (S/2002/161).

well as an analysis of the principles of international law governing mineral resource activities in Non-Self-Governing Territories (hereafter NSG territories).

- Corell first states that the Madrid Agreement and the subsequent notification by Spain to the UNSG of the relinquishing of its responsibilities have no legal founding and that “Spain alone could not have unilaterally transferred” its status of administrative power. As a result, Corell notes that the international status of Western Sahara remains that of NSG territory and that, while “Morocco has administered the territory alone since 1979”, it is not listed as the administering power of the territory in the UN list of NSG territories.
- The UN Legal Counsel enlists the developments in international law applicable to mineral resource activities in NSG territories. In brief, he notes that Administrative Powers must ensure that all economic activities in NSG territories do not adversely affect the interests of the peoples therein but are directed towards assisting them in the exercise of their right to self-determination (§10); and that any administrative power that deprives the colonial peoples of NSG territories of the exercise of their legitimate rights over their natural resources violates the solemn obligations it has assumed under the UN Charter (§ 11).
- The Legal Counsel then observes that the doctrine regarding the exploitation of natural resources has evolved and refers in particular to a resolution of 6 December 1995 (50/33) which drew a distinction between economic activities that are detrimental to the people of these territories and those directed to benefit them (paragraph 12). In that same resolution, UNGA stated the “value of foreign economic investment undertaken in collaboration with the peoples of NSG territories and in accordance with their wishes in order to make a valid contribution to the socio-economic development of the territories”. The Legal Counsel notes that such an evolution in the doctrine was confirmed in later resolutions²⁷.
- Hans Corell then refers to the principle of “permanent sovereignty over natural resources”, which was established by UNGA in 1962 and also reaffirmed in subsequent resolutions²⁸ as well as in international conventions such as the 1966 ICCPR and ICESCR. This principle, which as the UN Legal Counsel notes “is indisputably part of customary international law” yet “its exact legal scope and implications are still debatable”, consists in the “right of peoples and nations to use and dispose of the natural resources in their territories in the interest of their national development and well-being” (§ 14).

²⁷ UNGA resolutions 52/72 of 10/12/97; 53/61 of 03/12/98; 54/84 of 05/12/99; 55/38 of 08/12/00; 56/66 of 10/12/01.

²⁸ E.g. Resolution 3201 (S VI) of 01/05/74 containing the “Declaration on the establishment of a new international economic order”; Resolution 3281 (XXIX) containing the Charter of Economic Rights and Duties of States.

- Using the ICJ cases of East Timor and Nauru Phosphates, Corell concludes that mineral resource activities in a NSG territory by an administering power is illegal “only if conducted in disregard of the needs and interests of the people of that territory” (§ 21).
- The UN Legal Counsel goes as far as noting the existence of an “*opinio juris*” (§ 24): resource exploitation activities in NSG territories are compatible with international law when they are conducted “for the benefit of the peoples of these territories, on their behalf or in consultation with their representatives”. This applies *both* to administering powers and third states.
- Corell refers not only to mineral resources but also to “economic activities in NSG territories in general and mineral resource exploitation in particular”²⁹, thereby confirming that the **international doctrine applies to all types of natural resources**.
- Regarding the specific exploration contracts signed by Rabat, Corell states that “if further exploration and exploitation activities were to proceed in disregard of the interests and wishes of the people of Western Sahara, they would be in **violation of the international law principles applicable to mineral resource activities in Non self-governing territories**” (§25).
- The Corell opinion does not include any reference to the Law of the Sea Convention.

²⁹ Legal Opinion, paragraph 25.