



Saharawi Arab Democratic Republic



June 2014

Statement of the Saharawi Arab Democratic Republic concerning seabed petroleum exploration in occupied Western Sahara and in response to the February 2014 statement of Kosmos Energy Ltd.

Summary

For more than a decade there has been continuing international interest in the exploration for and development of potential petroleum reserves in occupied Western Sahara. In response to the initial activity of two multinational oil companies in the early 2000s and to objections raised at the time by the Saharawi Arab Democratic Republic (the SADR), the United Nations Security Council sought guidance about the legality of petroleum exploration and development in Western Sahara. In 2002 the Security Council received advice from the UN Legal Counsel, which explained that any continuing exploration or development of petroleum or other natural resources in occupied Western Sahara would be contrary to (that is, in violation of) international law unless it was conducted **both** in accordance with the wishes of the Saharawi people of Western Sahara, and if the resulting economic activity was of benefit to them.

Through the publication of this statement the SADR wishes to make known its position on continuing international attempts to explore and develop petroleum reserves in that part of Western Sahara which remains occupied by the Kingdom of Morocco (Morocco), and in particular respond to a February 2014 statement issued by the United States-based Kosmos Energy Ltd. titled "Kosmos Energy: On Hydrocarbon Exploration Offshore Western Sahara".

The government of the SADR underscores once again that the Saharawi people **do not consent** to further exploration and exploitation of natural resources in occupied Western Sahara, and specifically reject the exploration, development and exploitation of petroleum on land and the continental shelf of the territory. This is based on the fact that the Kingdom of Morocco, which the SADR considers to be an illegal occupying power, receives the benefit of such resource activities and the Saharawi people do not. Such activities therefore entrench an illegal occupation marked by serious human rights violations and attempts to create a demographic *fait accompli* through settlement.

The SADR rejects the characterization of Morocco as the "de facto administering power" of Western Sahara. Such a status does not exist under international law. Furthermore, the UN's 2002 Legal Opinion does not name Morocco as such.



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The Saharawi people also continue to be concerned about the environmental impacts which result from the exploitation of natural resources in the area of Western Sahara under occupation. For example, the sand wall (or “berm”) constructed by Morocco during the 1980s that now divides the territory, built in part to secure phosphate mineral rock production facilities and reserves at Bu Craa, has resulted in significant negative impacts including the disruption of surface and groundwater hydrology, and interference with animal and avian migratory patterns.

The position of the SADR is that the natural resources belonging to the Saharawi people must be developed upon the determination of the territory’s final status once the decolonization process is completed, and that such resources should not be depleted while the a process of self-determination is pending.

Morocco’s status in Western Sahara

It is a settled point under international law that Morocco does not have any territorial claim or sovereign rights in that part of Western Sahara that it occupies. As such, it is not legally competent to hold out promises that petroleum exploration and development work may be undertaken, nor enter into commercial contracts for that purpose. No state in the world recognizes Morocco’s claimed sovereignty over Western Sahara. Under international law, Western Sahara is a Non-Self-Governing Territory awaiting a process of decolonization, a status that it has held since designated as such by the United Nations General Assembly in 1963.

In 1975, the International Court of Justice determined that Morocco has no claim to Western Sahara, eliminating any pretence of right or acceptable presence in the territory. Paragraph 162 of the Court’s *Western Sahara Advisory Opinion* reads as follows:

“[T]he 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 or the Mauritanian entity. Thus the Court has not found legal ties of such a nature as might affect the application of [UN General Assembly] 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.”

Accordingly, natural resource exploration permits offered by Morocco – known as reconnaissance licenses in the case of seabed (continental shelf)



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exploration on the coast of occupied Western Sahara – are illegal. An example can be seen in the issue of petroleum and fisheries permits, respectively, by the occupying powers in East Timor (Timor Leste) and Namibia, which did not survive the self-determination and restoration to independence of those territories in the 1990s.

The wishes of the Saharawi people

There are several reasons why the Saharawi people reject petroleum development in the Non-Self-Governing Territory of Western Sahara, including the ongoing exploration of the Saharan continental shelf:

- Petroleum exploration serves as a further pretext to justify Morocco's illegal occupation of Western Sahara. As with the illegal exploitation of resources such as the coastal fisheries and phosphate mineral rock, such activity finances economic development programs in the territory – notably the illegal settlement of Moroccan nationals. Annexation by economic activity, forbidden under international law and universally condemned in recent self-determination cases, is a principal reason to oppose petroleum development in Western Sahara.
- The Saharawi people do not receive any tangible benefit from resource development in the occupied area of Western Sahara. Fully half the Saharawi people live in the Saharawi refugee camps near Tindouf, Algeria with no share in the economy of their territory. Those Saharawi able to participate in the formal economy of occupied Western Sahara have been relegated to low paying, marginal employment. Resource rents from the fishery and phosphate rock are not received in Western Sahara (which Morocco does not regard as such, instead considering the territory a part of its so-called southern provinces) but into the Moroccan state central treasury with no public accountability about their eventual disposition.
- Significant adverse environmental impact continues to result from the exploitation of resources in Western Sahara, including the presence of the sand wall (berm) noted above and large-scale military activities to secure Morocco's occupation. The enforcement of meaningful environmental law and international environmental protection standards in the territory is *non-existent*. Development projects do not undergo environmental risk assessment, and Saharawi populations in the occupied area and the Saharawi refugee camps are never consulted about the social, cultural and environmental impacts of economic activity and infrastructure projects. No study or assessment report has been made public about the expected environmental impacts to result from seabed petroleum drilling which Kosmos Energy has announced will begin in 2014. This activity, along the mid-Saharan coast, will be in the central area of Africa's most productive ocean fishery, the Canary



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Current Large Marine Ecosystem.

- The exploitation of non-renewable resources such as phosphate rock and petroleum will deny the entire Saharawi population the eventual benefit to the full portion of such resources once a process of self-determination occurs. The Saharawi people deserve to be left with a viable economy, based partly on resource development. The taking of petroleum, a non-renewable resource, will deprive the Saharawi people of a commodity needed for a balanced and socially redistributive economy.
- Seabed petroleum development - exploration and survey work, including exploratory drilling - is contrary to Saharawi law. In 2009, the SADR enacted legislation that created an Exclusive Economic Zone (EEZ) seaward of the Saharan coast. The legislation provides that “[t]here shall be no exploration or economic exploitation of the natural resources of the Exclusive Economic Zone by persons or vessels other than nationals of the Saharawi Arab Democratic Republic ... and no artificial island, installation or structure may be constructed, operated or used within the zone, for any of the foregoing purposes, unless such activity has been authorized by the Government of the Saharawi Arab Democratic Republic.” The United Nations has noted the enactment of this legislation, and its existence is routinely cited to governments and commercial operators who are planning activities in Saharan waters.

Kosmos Energy’s Claims Regarding Its Presence in Western Sahara

To justify its seabed petroleum exploration, Kosmos Energy relies on an erroneous interpretation of the 2002 *United Nations Legal Opinion on Western Sahara* (the 2002 UN Opinion). The overarching rule of international law contained in the Opinion is as follows:

“[W]here resource exploitation activities are conducted in Non-Self-Governing Territories for the benefit of the peoples of those Territories, on their behalf or in consultation with their representatives, they are considered compatible with the Charter obligations of the administering power and in conformity with the General Assembly resolutions and the principle of ‘permanent sovereignty over natural resources’ enshrined therein.” (2002 UN Opinion, paragraph 24.)

The 2002 UN Opinion concluded on the question of the legality of the then oil exploration contracts that had concerned the UN Security Council:

“[W]hile the specific contracts which are the subject of the Security Council’s request are not in themselves illegal, if further exploration and exploitation activities were to proceed in



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disregard of the interests and wishes of the people of Western Sahara, they would be in violation of the principles of international law applicable to mineral resource activities in Non-Self-Governing Territories.” (Paragraph 25.)

The failure to note such rules and conclusions of law is compounded by Kosmos Energy’s assertion in its February 2014 statement that eventual petroleum extraction will benefit “all the people of Western Sahara.” However, it is the Saharawi people alone who have sovereign rights to the resources of the territory, for they were the sole and exclusive inhabitants until Spanish colonization and thereafter, until the invasion by Morocco and Mauritania in 1975.

Furthermore, it is illegal under international law for an occupying power to resettle its nationals into an annexed territory and for such a transferred population to acquire the use or benefits of public resources. This is a matter of international humanitarian law which now applies in occupied Western Sahara and was. Kosmos Energy fails to address international humanitarian law in its February 2014 statement.

It must be underlined that the right of self-determination is held by the original population of Western Sahara – the Saharawi people – as has been confirmed in numerous resolutions of the United Nations, and which Morocco itself has recognized in ceasefire and self-determination referendum agreements in 1990 and 1991. Morocco, as a member state of the 1982 UN *Convention on the Law of the Sea* is bound by Resolution III of the *Convention* to protect and ensure the Saharawi people’s rights to ocean resources as a non-self-governing population. Resolution III itself removes any competence from Morocco to enter into petroleum exploration and development activities with foreign entities in occupied Western Sahara.

International law - as recapitulated in the 2002 UN Legal Opinion and international humanitarian law - requires both the prior consent of the Saharawi people to the development of seabed petroleum, and that the benefits of the activity accrue to them. Neither condition holds.

The government of the SADR notes the financial and legal risks that will be faced by Kosmos Energy as a result of its proposed activities in occupied Western Sahara. The first is the company’s misplaced reliance on the commitments purportedly made by Morocco in the December 2013 Joint Declaration on Principles between Kosmos Energy and Morocco’s state agency for petroleum and mines, ONHYM. As noted above, Morocco is not competent to enter into agreements with respect to the natural resources of a Non-Self-Governing Territory.



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The second risk to result from petroleum exploration in occupied Western Sahara is that of reparations claims against Kosmos Energy. Such claims would be two-fold: (i) civil compensation actions for the taking of petroleum and assisting other parties in its taking; and (ii) criminal proceedings, including compensation, against corporate directors and officers for aiding and abetting the commission of a war crime - pillage - carried out by individual Moroccan perpetrators.

Human Rights and the Occupation of Western Sahara

Kosmos Energy claims to be “keenly interested in the human rights situation in Western Sahara.” A genuine interest might have included discussions with the Saharawi people - including its recognized political leadership in the Saharawi refugee camps - about the effects of resource development in the Non-Self-Governing Territory. Kosmos Energy might have come to understand the ethical failing in signing a contract with Morocco given the Morocco’s poor human rights record and the grave human rights situation in Western Sahara, as well as the longstanding protests of individual Saharawis and their government against the taking of resources from the territory.

The US State Department’s Country Report on Human Rights Practices for 2013 on Western Sahara noted that:

“The most important human rights problem specific to the territory was Moroccan government restrictions on the civil liberties and political rights of pro-independence advocates. Serious problems included limitations on the freedoms of speech, press, assembly, and association; the use of arbitrary and prolonged detention to quell dissent; and physical and verbal abuse of detainees during arrest and imprisonment. Authorities also continued to deny recognition of pro-independence associations. As a result, these associations could not establish offices, recruit members, collect donations, or visit Saharan pro-independence activists or POLISARIO separatists detained in facilities in Morocco. [...] Widespread impunity existed, and there were no prosecutions of human rights abusers. Sahrawi human rights organizations claimed that the majority of police and other officials accused of torture remained in positions of authority. There were no reports of investigations or punishment of abuse or corruption among the police and security services, contributing to the widespread perception of impunity.”

The report added:

“Widespread corruption among security forces and judicial officials, as in Morocco, was a problem, as was lack of government transparency. Substantial development spending



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and military officers' involvement in private business created the conditions of susceptibility to both problems. Some military officers reportedly relied on government connections to gain preferential access to fishing licenses or lucrative contracts for sand and other quarries on state lands. The government and state-owned enterprises were the territory's principal employers, and residents sought civil service jobs and taxi licenses through official contacts."

The 2014 annual report of the UN Secretary-General to the UN Security Council specifically noted the legal requirement for resource development in Western Sahara:

"In the light of increased interest in the natural resources of Western Sahara, it is timely to call upon all relevant actors to 'recognize the principle that the interests of the inhabitants of these territories are paramount', in accordance with Chapter XI, Article 73 of the Charter." (Report of the Secretary-General on the situation concerning Western Sahara, 10 April 2014, UN doc. S/2014/258*, paragraph 97.)

The Saharawi people face imminent peril from the illegal exploitation of seabed petroleum on the coast of their territory. Unless brought to an end, the activity threatens to fund what has been a demonstrably brutal military occupation that remains unrecognized by the international community. It is an activity that could further delay that most basic of human rights for the Saharawi as the people of Africa's last colony, the right to self-determination.