SOVEREIGN RIGHTS FOR NON-SOVEREIGNS: A REVIEW OF THE RIGHTS OF NON-STATE ENTITIES TO THE CONTINENTAL SHELF

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1. Introduction

It is a basic principle of the Law of the Sea that States enjoy rights to hydrocarbons located in the continental shelf adjacent to their coasts. This is undisputed as a matter of customary and conventional law. As confirmed by the International Court of Justice, these rights exist "*ipso facto* and *ab initio*" and do not need to be declared.

This principle rests on the assumption that these rights, which are expressly referred to as "sovereign rights", belong to States. This follows in part from the fact that the subjects of public international law, of which the Law of the Sea forms part, are primarily States.

The purpose of this paper is to examine State practice in respect of the rights that non-State entities, including (but not limited to) entities identified by the United Nations as Non-Self-Governing Territories, enjoy in respect of hydrocarbon resources located in the continental shelf. As discussed in this paper, there is settled State practice that certain types of non-State entities enjoy these rights along with evidence of a belief that this State practice is obligatory. As a consequence, there are strong grounds for arguing that, as a matter of customary international law, non-State entities, or at least those which enjoy a legitimate claim to exercise their right to self-determination, enjoy rights to hydrocarbons located in their continental shelf.[2]

The more difficult question remains, however, as to what type of non-State entities enjoy such rights. The answer may be relatively uncontroversial in the case of Non-Self-Governing Territories which are recognised as such by the United Nations. However, there are many examples of rich hydrocarbon deposits lying offshore areas populated by peoples whose desire for self-determination has only limited domestic or international recognition. Such cases are likely to give rise in the future to legal and practical complications.

2. The Rights of States to the Continental Shelf

The international legal régime governing rights over maritime spaces, as an area of public international law, focuses on the rights of States.

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1 The views contained in this article are those of the author, and do not necessarily reflect those of Latham & Watkins.

2 As observed by the International Court of Justice, for State practice to constitute a rule of customary international law "two conditions must be fulfilled. Not only must the acts concerned amount to a settled practice, but they must also be such, or be carried out in such a way, as to be evidence of a belief that this practice is rendered obligatory by the existence of a rule of law requiring it. The need for such a belief, i.e., the existence of a subjective element, is implicit in the very notion of the *opinio juris sive necessitatis*. The States concerned must therefore feel that they are conforming to what amounts to a legal obligation". *North Sea Continental Shelf, Judgment, I.C.J. Reports 1969*, p. 3 at 44, para. 77.

This is reflected not only in the body of treaties governing the Law of the Sea, but also the related jurisprudence of the International Court of Justice.

For example, the 1958 Convention on the Territorial Sea and the Contiguous Zone (the "1958 Territorial Sea Convention") and the 1958 Convention on the Continental Shelf (the "1958 Continental Shelf Convention") regulate the rights of "coastal States". The 1958 Territorial Sea Convention confirmed that the "sovereignty of a State extends, beyond its land territory and its internal waters, to a belt of sea adjacent to its coast, described as the territorial sea",[3] and the 1958 Continental Shelf Convention provided that "[t]he coastal State exercises over the continental shelf sovereign rights for the purpose of exploring it and exploiting its natural resources".[4]

Similarly, the 1982 Convention on the Law of the Sea (the "1982 Convention"), despite being relatively comprehensive in scope, focused on the rights and obligations of coastal States. Article 2(1) of the 1982 Convention incorporated language identical of that contained in the 1958 Territorial Sea Convention to the effect that the sovereignty of a coastal State extends to the territorial sea. The provisions relating to the exclusive economic zone defined the rights of coastal States to include "sovereign rights" to explore for and exploit natural resources of the waters superjacent to the sea-bed, the seabed and its subsoil.[5] As regards the continental shelf, Article 77.1 repeated Article 2.1 of the 1958 Continental Shelf Convention in confirming that coastal States "[exercise] over the continental Shelf sovereign rights for the purpose of exploring it and exploiting its natural resources". Similarly, insofar as the 1982 Convention concerns obligations, it concerns obligations incumbent on States, for example, "to protect and preserve the marine environment" pursuant to Article 192.

These treaties accordingly concern the rights of States in respect of maritime spaces. They do not purport to regulate or appear to anticipate the rights of non-State entities. This is despite the fact that the 1982 Convention was open for signature not only by States, but also by "territories which enjoy full internal self-government, recognized as such by the United Nations, but have not attained full independence in accordance with General Assembly resolution 1514(XV)".[6]

The International Court of Justice in the *North Sea Continental Shelf* cases emphasised the primacy of the principle that rights to the continental shelf vest in coastal States in its celebrated *dictum* that:

> "the most fundamental of all the rules of law relating to the continental shelf, enshrined in Article 2 of the 1958 Geneva Convention, though quite independent of it, - namely that the rights of the coastal State in respect of the area of continental shelf that constitutes a natural prolongation of its land territory into and under the sea exist

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3 Article 1.1.

4 Article 2.1.

5 Article 56.1(a).

6 U.N. General Assembly resolution 1514(XV) declared, *inter alia*, that "[a]ll peoples have the right to self-determination; by virtue of that right they freely determine their political status and freely determine their economic, social and cultural development". The 1982 Convention was signed by four national liberation movements: the African National Congress of South Africa; the Pan Africanist Congress of Azania; the Palestine Liberation Organization; and the South West Africa People's Organization.

ipso facto and *ab initio*, by virtue of its sovereignty over the land, and as an extension of it in an exercise of sovereign rights for the purpose of exploring the seabed and exploiting its natural resources. In short, there is here an inherent right."[7]

This general principle, which exists as a matter of customary and conventional international law, appears to be clear-cut. Rights, including rights to explore for and exploit natural resources in the continental shelf, vest in coastal States, and there would appear to be no scope for a derogation from this principle where the coastal area is occupied by a people that enjoys an element of autonomy or aspires to self-determination.

As will be demonstrated in the following section, there is, however, State practice that in such cases it is the non-State entity which enjoys these rights and, in the light of this State practice, there appears to be a principle of customary international law to this effect.

3. State Practice regarding the Rights of non-State Entities to the Continental Shelf

a. East Timor[8]

East Timor's path to statehood has been fraught with political and legal complexities. East Timor was a Portuguese colony, known as Portuguese Timor, which in 1960 was classified by the United Nations as a Non-Self-Governing Territory.[9]

In the early 1970's, Australia and Indonesia entered into a series of treaties establishing their maritime boundaries. These included the Agreement Establishing Certain Seabed Boundaries in the Area of the Timor and Arafura Seas which was signed on 9 October 1972 (the "1972 Timor Sea Agreement").[10] Australia successfully invoked the judgment of the International Court of Justice in the *North Sea Continental Shelf* cases in support of its negotiating position that natural prolongation was a relevant circumstance in the delimitation of the continental shelf. Clearly influenced by this understanding of the Law of the Sea, the two States agreed on a line of delimitation approximating to the southern edge of the Timor Trough, well to the north of the median line.

The 1972 Timor Sea Agreement established two portions of the continental shelf boundary. The eastern section connected the 1971 boundary between Australia and Indonesia[11] to a point approximating to the eastern limit of the maritime area lying offshore Portuguese Timor. The western section extended from the western limit of Portuguese Timor's maritime

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7 *North Sea Continental Shelf, Judgment, I.C.J. Reports 1969*, p. 3 at 22, para. 19.

8 The official name of the State of East Timor is Timor Leste.

9 See U.N. General Assembly resolution 1542(XV).

10 Agreement between the Government of the Commonwealth of Australia and the Government of the Republic of Indonesia Establishing Certain Seabed Boundaries in the Area of the Timor and Arafura Seas Supplementary to the Agreement of 18 May 1971, 1974 UNTS 319 (1957). See Jonathan I. Charney, Lewis M. Alexander and Robert W. Smith, *International Maritimes Boundaries* (Martinus Nijhoff Publishers, Dordrecht / Boston / London, 1996-2005) (referred to as "Charney and Alexander" for Volumes I-III and "Charney and Smith" for Volumes IV-V), Volume II, pp. 1207-1218.

11 Agreement between the Government of the Commonwealth of Australia and the Government of the Republic of Indonesia Establishing Certain Seabed Boundaries signed 18 May 1971, 974 UNTS 307 (1975). See Charney and Alexander, Volume II, pp. 1195-1205.

areas to a point approximately equidistant from Australia's Ashmore Reef and Indonesia's Pula Roti.[12]

Australia evidently intended to fill the gap between the two sections of the 1972 Timor Sea Agreement through negotiating a similar boundary agreement with Portugal. However, this did not occur for various reasons. In 1974, Portuguese Timor awarded to Petrotimor rights to hydrocarbon resources in the offshore area extending up to an approximate median line between Portuguese Timor and Australia,[13] and Australia and Portugal had failed to reach agreement on the maritime boundary before Portugal withdrew from its colony following the 1974 Carnation Revolution. In 1975, shortly after Portugal's hasty withdrawal, Indonesia annexed East Timor.

Indonesia's occupation of East Timor attracted international condemnation. The United Nations Security Council called for Indonesia to withdraw from the territory and reaffirmed the right of the people of East Timor to self-determination and independence.[14]

Despite this international opposition, in December 1978 Australia formally recognized Indonesia's occupation of East Timor and subsequently attempted to negotiate with Indonesia a boundary treaty to fill the gap left by the 1972 Timor Sea Agreement. The two States eventually decided not to delimit the Timor Gap, but rather to establish a joint development agreement to facilitate immediate development of the rich hydrocarbon resources of the Timor Sea and on 11 December 1989 Australia and Indonesia signed the Treaty on the Zone of Cooperation in an Area between the Indonesian Province of East Timor and Northern Australia (the "Timor Gap Treaty").[15]

The Timor Gap Treaty was clearly driven by *realpolitik*. The concept of natural prolongation had in 1985 been rejected as a relevant circumstance for the purposes of maritime delimitation by the International Court of Justice in its Judgment in *Libya / Malta*[16] with the result that the legal justification of Australia's claim to areas beyond the median line had been largely discredited. Indonesia's annexation of East Timor, on the other hand, was generally regarded as illegal under international law. The Timor Gap Treaty brought obvious advantages to both States. Australia obtained access to hydrocarbons (which in the central Zone A were shared on a 50:50 basis)[17] to which it would not be entitled according to prevailing interpretations of the Law of the Sea. Indonesia similarly secured access to East Timor's hydrocarbons despite the fact that the United Nations had expressly affirmed the right of the East Timorese people to self-determination and independence and, pursuant to U.N. General Assembly resolution 1514 (XV), freely to dispose of their natural resources.

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12 Charney and Alexander, Volume II, p. 1207. The outer limits of the maritime areas attributed by Australia and Indonesia to Portuguese Timor were established by points lying close to equidistance lines between Indonesia and Portuguese Timor. These points were not agreed to by Portugal.

13 Details of the Petrotimor concession are at www.petrotimor.com.

14 See U.N. Security Council resolutions 384 (1975) and 389 (1976).

15 29 ILM 469 (1990). See Charney and Alexander, Volume II, pp. 1245-1328.

16 *Continental Shelf (Libyan Arab Jamahirya / Malta), Judgment, I.C.J. Reports 1985*, p. 13.

17 The Timor Gap Treaty provided for three areas: Zone A, a "coffin-shaped" area between the Timor Trough and the median line; Zone B, the southern zone located between the median line and the outer limit of Indonesia's 200 nm claim, and Zone C, a strip lying to the north of the Timor Trough.

The legal régime reflected in the Timor Gap Treaty continued until 1999. On 30 August 1999, following a change of régime in Indonesia, a referendum was held in which the East Timorese voted in favour of independence. The result of the referendum was ratified by the Indonesian Parliament in October 1999, following which the United Nations assumed responsibility for the administration of East Timor through the United Nations Transitional Administration in East Timor (UNTAET).[18]

UNTAET needed to decide how to deal with the Timor Gap Treaty. The East Timorese leaders considered that the Treaty was illegal, and that a future East Timorese State would be the legal successor to Portugal and not Indonesia (with the result that it would not be bound by treaties entered into by Indonesia). UNTAET's solution was to enter into an Exchange of Notes with Australia on 10 February 2000 pursuant to which the terms of the Timor Gap Treaty were continued, but not the treaty itself.[19]

The Exchange of Notes provided that UNTAET would assume all rights and obligations under the Timor Gap Treaty that had previously been assumed by Indonesia, and that it would do so "on behalf of East Timor, until the date of independence of East Timor".[20] Simultaneous with the Exchange of Notes, UNTAET and Australia signed a memorandum of understanding which confirmed the "[c]ontinued applicability of the legal regime of the [Timor Gap] Treaty", and that all existing production sharing contracts would continue to apply.

In adopting these measures, UNTAET ensured that the East Timorese people would enjoy the economic benefits of the hydrocarbon resources which had been discovered in Zone A. This interim arrangement acknowledged that the sovereign rights to these deposits belonged to East Timor despite the fact that East Timor was not a State. The fact that East Timor was not at this stage a State did not represent an obstacle to the arrangement. Rather, it was anticipated that a future Government would decide how to proceed with the arrangement with Australia without prejudice to the Exchange of Notes.[21]

East Timor became formally independent on 20 May 2002, and promptly signed the Timor Sea Treaty with the Government of Australia (the "Timor Sea Treaty"). The Timor Sea Treaty, which entered into force on 2 April 2003, contained an agreement to continue to develop jointly the hydrocarbon resources of the Timor Sea, albeit in revised proportions. Whereas the Timor Gap Treaty created three zones, including the central "coffin-shaped" Zone A in which resources were shared equally, the Timor Sea Treaty only provided for a single joint development zone, which corresponded to Zone A, and stipulated that revenues were to be apportioned 90 percent to East Timor and 10 percent to Australia. This revised apportionment reflected to some degree the strength of East Timor's claim to resources on East Timor's side of the median line between the two States in the light of developments in the Law of the Sea since the early 1970's.

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18 U.N. Security Council resolution 1272 (1999).

19 Paragraph 35 of the Report of the Secretary-General on the Situation in East Timor (S/1999/1024) provided that the United Nations would conclude such international agreements as may be necessary for the carrying out of UNTAET's functions in East Timor.

20 A copy of the Exchange of Notes is at Charney and Smith, Vol. IV, pp. 2763-2765.

21 See second paragraph of the Exchange of Notes.

b. Western Sahara

There are some parallels between the post-colonial experiences of East Timor and Western Sahara. Both were included in the list of Non-Self-Governing Territories under Chapter XI of the U.N. Charter and both were occupied by powerful neighbours following the rushed decolonisation of the Iberian powers in the mid-1970's.

Just as Portugal hastily abandoned East Timor following its domestic upheavals, in the final days of Franco's régime, Spain abandoned its Saharan colony in the face of competing claims by Morocco and Mauritania and despite the demands for independence that had previously been made on behalf of the Saharawi people.

Anticipating the problems that might arise from Morocco and Mauritania's territorial ambitions, in December 1974 the U.N. General Assembly, reaffirming "the right of the population of the Spanish Sahara to self-determination in accordance with resolution 1514 (XV)", requested the International Court of Justice to provide an advisory opinion on the issue of Western Sahara.[22]

The General Assembly requested the International Court of Justice to answer two questions: first, whether Western Sahara was, at the time of colonization by Spain, *terra nullius* and, second, if the answer to the first question was in the negative, what were the legal ties between the territory, on the one hand, and Morocco and Mauritania, on the other. Having answered the first question in the negative, the Court rejected Morocco and Mauritania's claims to territorial sovereignty over Western Sahara,[23] and concluded that it had been unable to find "legal ties of such a nature as might affect the application of resolution 1514 (XV) in the decolonization of Western Sahara and, in particular, of the principle of self-determination through the free and genuine expression of the will of the peoples of the Territory".[24]

The International Court's opinion had little influence on developments in the territory. On 14 November 1975, Morocco, Mauritania and Spain signed the unpublished Madrid Agreement which provided that, upon Spain's withdrawal, the territory would be partitioned between Morocco and Mauritania.[25] The Madrid Agreement was strongly opposed by the Polisario Front which commenced a campaign of armed resistance against Morocco and Mauritania. Although Mauritania withdrew from the territory in 1979, Morocco then occupied the entire territory and, despite various attempts by the United Nations to broker a solution, occupies Western Sahara to this day.

The issue of access to natural resources has played a role in the developments in Western Sahara since 1975. Under the Madrid Agreement, it was agreed that Spain would retain 35 percent of the shares in the valuable phosphate deposits in Bu Craa along with certain fishing rights. However, the issue of rights to natural resources came to a head in 2001 when the Moroccan Office National de Recherches et d'Exploitation Petrolières (ONAREP) awarded rights to two Western oil companies, Kerr McGee and TotalFinaElf, to explore for oil offshore Western Sahara.

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22 U.N. General Assembly resolution 3292 (XXIX).

23 *Western Sahara, Advisory Opinion, I.C.J. Reports 1975*, p. 12 at p. 67, para. 158.

24 *Ibid.*, p. 68, para. 162.

25 See Thomas M. Franck, "The Stealing of the Sahara", *70 Am. J. Int'l L.* 694 1976 at p. 715.

In the light of this development, the President of the U.N. Security Council requested the Under-Secretary General for Legal Affairs, Hans Corell, to provide an opinion on the legality of these contracts. Mr. Corell issued his legal opinion on 29 January 2002 (the "Corell Opinion").[26]

The Corell Opinion noted that Western Sahara enjoyed the status of a Non-Self-Governing Territory and, despite the fact that Morocco was not listed as the administering Power of the territory, reviewed the law applicable to mineral resource activities in Non-Self-Governing Territories. The opinion recalled that the legal régime applicable to Non-Self-Governing Territories required administering Powers to safeguard the rights of the administered peoples to their natural resources. The opinion invoked the principle of "permanent sovereignty over natural resources" as established in U.N. General Assembly resolution 1803 (XVII), as a corollary to the principle of territorial sovereignty or the right to self-determination, stating that although the principle "is indisputably part of customary international law, its exact legal scope and implications are still debatable".[27]

The Corell Opinion then considered State practice regarding the exploitation of natural resources in Non-Self-Governing Territories. It referred to a 1975 mission to Spanish Sahara which had been informed that the revenues from the Bu Craa phosphate deposits would be used for the benefit of the territory and that Spain had "recognized the sovereignty of the Saharan population over the Territory's natural resources".[28] The opinion considered other examples of State practice, such as the international condemnation of uranium mining in Namibia during the South Africa's illegal presence in that territory and the case of East Timor. In respect of East Timor, the opinion observed that, although East Timor was technically listed as a Non-Self-Governing Territory, UNTAET was not an administering power but had nevertheless consulted fully with representatives of the East Timorese people in continuing the arrangements for oil and gas activities in the Timor Sea.

Mr. Corell analysed the legality of the Morocco offshore contracts by analogy to mineral resource activities in a Non-Self-Governing Territory and concluded that such activities are illegal if conducted in disregard of the needs and interests of the people of that Territory.[29] His opinion stated that recent State practice was "illustrative of an opinio juris on the part of both administering Powers and third States that resource exploitation activities conducted in Non-Self-Governing Territories should be conducted for the benefit of the peoples of those Territories, on their behalf or in consultation with their representatives".[30] However, with regard to the actual contracts in issue, given that they were for oil exploration and not actual exploitation, Mr. Correll concluded they were not in themselves illegal. If further exploration and exploitation activities were to proceed in disregard of the interests and wishes of the people of Western Sahara, on the other hand, this would violate international law.

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26 The opinion is published as United Nations document S/2002/161.

27 Para. 14.

28 Para. 18.

29 Para. 21.

30 Para. 25.

c. Palestine

The modern history of Palestine is complex and controversial and cannot be summarised satisfactorily in this paper. As is well-known, following the withdrawal of the British upon termination of the mandate, the Arab-Israeli War ensued which ended with a series of armistice agreements. The Israel-Egypt Armistice Agreement signed on 24 February 1949 drew an armistice line along the Israel-Egypt international boundary and around what is now known as the Gaza Strip, territory that had previously been part of the Ottoman Empire and the British mandate territory.

The Gaza Strip was administered by Egypt until the 1967 Six-Day War, after which it was occupied by Israel until the Oslo Accords were signed between Israel and the Palestinian Liberation Organisation in 1993-1995.

The Oslo Accords confirmed that the territorial jurisdiction of the Palestinian Authority included the land and subsoil of the Jericho Area and the Gaza Strip, including its territorial waters.[31] The agreements did not, however, address rights to the continental shelf or access to offshore natural resources.

The agreements created three "Maritime Activity Zones",[32] which were depicted on map No. 6 annexed to the Gaza-Jericho Agreement.[33] These zones only extended 20 nm seaward from the Gaza Strip. They consisted of two buffer zones, located on the lateral margins of the 20 nm maritime area and a central "Zone L", which, according to the agreement, was open for "fishing, recreation and economic activities". The Oslo Accords did not deal with areas lying beyond these 20 nm zones or expressly address rights to hydrocarbons whether located in Zone L or further offshore.

Despite the fact that the Oslo Accords did not address access to offshore hydrocarbons, in November 1999, the Palestinian Authority granted to BG Group and its partner, Consolidated Contractors International, rights to explore for and develop oil and gas under a 25-year agreement that covered the entire maritime area offshore Gaza. In June 2000, BG discovered a gas field, known as the Gaza Marine, which was estimated to hold around one trillion cubic feet of gas.[34]

Although political issues complicated the eventual commercial development of the field, these impacted the proposed agreements to sell the gas and not the right of the Palestinian Authority to licence the exploration and exploitation of hydrocarbons offshore Gaza. To the contrary, the Israeli Government accepted that Israel did not have the right to grant concessions to natural resources located offshore Gaza and a petition before the Israeli Supreme Court which attempted to challenge the Palestinians' right to the discovery was eventually withdrawn.[35]

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31 Article V.1.a of the Gaza-Jericho Agreement and Article XVII.2.a of the Interim Agreement.

32 See Article XI of Annex I to the Gaza-Jericho Agreement and Article XIV of Annex I to the Interim Agreement.

33 Map No. 6 of the Gaza-Jericho Agreement was reproduced as Map No. 8 to the Interim Agreement.

34 See BG Group website, announcement for June 2000.

35 See, for example, "BG Group at centre of $4bn deal to supply Gaza gas to Israel", *The Times*, 23 May 2007.

Accordingly, the example of Palestine, albeit not a territory listed by the United Nations as a Non-Self Governing Territory, can be regarded as a further instance of State practice where rights to hydrocarbons located in the continental shelf have been regarded as vesting in a non-State entity. The fact that Israel accepted the Palestine Authority's right to hydrocarbons located in the Gaza continental shelf can be cited as further evidence of an *opinio juris* that non-State entities, or at least which are regarded as possessing a right to self-determination, enjoy rights to natural resources located in their continental shelf.

d. Greenland

The final example of State practice considered in this paper is Greenland. Greenland, which currently has a population of 57,000 of which 88% are Inuit, was listed by the United Nations as a Non-Self-Governing Territory until 1954 when it gained home rule.[36] Although Greenland now enjoys a substantial degree of autonomy, it is not an independent State and remains part of the Kingdom of Denmark.

As regards rights to hydrocarbons located in its continental shelf, on 21 June 2009, Greenland assumed self-determination with responsibility for, amongst other things, natural resources. Accordingly, although Denmark remains responsible for Greenland's foreign affairs and defence, Greenland enjoys the right to grant exploration and exploitation rights in respect of offshore hydrocarbon reserves and to retain any revenues it collects as a consequence.

In 1985, Greenland created a national oil company, NUNAOIL, which has been active in granting licences to international oil companies to the areas of its continental shelf.[37] The sole responsibility and exclusive rights in respect of its continental shelf resources this vest in Greenland, despite the fact that it is not a State. This relatively uncontroversial example can be regarded as a further instance of State practice in which a non-State is regarded as possessing "sovereign rights" to its continental shelf.

4. Conclusions

This survey of State practice is not comprehensive. Other cases exist where non-State entities have licenced or purported to licence rights to hydrocarbons, both offshore and onshore. For example, the Somaliland Ministry of Water and Mineral Resources announced in February 2009 a bid round for both onshore and offshore concession areas.[38] Somaliland, which regards itself as the successor to British Somaliland, is not recognised as an independent State despite its attempts to exercise self-determination. Likewise, Iraqi Kurdistan and Southern Sudan have been active in licensing international oil companies to develop their onshore oil and gas resources.

However, this review of State practice, when considered in the light of the conclusions articulated in the Corell Opinion, provides strong support for the proposition that there is a rule of customary international law that non-State entities may enjoy sovereign rights to natural resources located in their continental shelf. These non-State entities are entitled to

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36 See www.un.org/Depts/dpi/decolonization/trust2.htm.

37 See www.nunaoil.gl.

38 As reported, for example, on www.gulfoilandgas.com, 19 February 2009.

licence exploration and exploitation activities in respect of these resources. These rights are not, as might be inferred, for example, from the 1958 and 1982 Law of the Sea treaties the exclusive rights of States.

The question remains as to what type of non-State entities enjoy such rights. It may be concluded that entities that are regarded as entitled to exercise their right to self-determination, such as those listed by the United Nations as Non-Self-Governing Territories, do enjoy these rights. There is some State practice that territories not listed as Non-Self-Governing Territories, but where independence movements exist, also enjoy these rights. However, the question of the application of this principle to aspiring, breakaway States is likely to give rise to controversial political and legal questions. This will likely have important practical consequences given the valuable hydrocarbon resources which may be at stake.