PORTUGAL'S ACTION IN THE INTERNATIONAL COURT OF JUSTICE AGAINST AUSTRALIA CONCERNING THE TIMOR GAP TREATY

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[This comment deals with Portugal's impending legal action against Australia in the International Court of Justice concerning the Timor Gap Treaty. It commences with a history of the Timor Gap negotiations, explaining the background to the Treaty and present court action. It then undertakes an examination of potential procedural difficulties in the Portuguese litigation, before looking in detail at the substantive legal issues involved. The article concludes by noting the dilemma faced by Australia in awaiting the Court's judgment.]

HISTORY OF THE TIMOR GAP NEGOTIATIONS

The region known as the Timor Gap arose as a result of international maritime boundary agreements between Australia and Indonesia in 1971-1972 which left a gap in the boundary opposite what was then Portuguese Timor. From 1974 to 1975, discussions between Australian and Portuguese authorities took place concerning a closing of the boundary gap. These talks, however, stalled and were still unresolved in December 1975 at the time of the Indonesian invasion of East Timor. It would seem that Australia's decision to recognize Indonesia's annexation of East Timor was influenced in part by a desire to resolve the Timor Gap issue. In August 1975, the Australian Ambassador to Indonesia, Mr Dick Woolcott, sent a cable to the Australian Department of Foreign Affairs in which he stated:

> We are all aware of the Australian defence interest in the Portuguese Timor situation but I wonder whether the Department has ascertained the interest of the Minister of the Department of Minerals and Energy in the Timor situation. It would seem to me that this Department might well have an interest in closing the present gap in the agreed sea border and this could be much more readily negotiated with Indonesia than with Portugal or independent Portuguese Timor. I know I am recommending a pragmatic rather than a principled stand but that is what national interest and foreign policy is all about.[1]

In October 1976, ten months after the Fretilin declaration of independence for East Timor and the subsequent Indonesian invasion, Australian and Indonesian officials began informal negotiations to establish a sea bed boundary between Australia and East Timor. Fretilin lodged protests against the negotiations. However, the politically sensitive issue of Australia's recognition of the Indonesian annexation caused negotiations to stall. It was feared that if Canberra opposed Indonesia's incorporation of East Timor at the United Nations, Indonesia could retaliate by freezing the boundary

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1 Cable from the Australian Ambassador to Indonesia to the Department of Foreign Affairs (August 17, 1975) reprinted in *Documents On Australian Defence and Foreign Policy 1968-1975* (1981) 197.

talks. During the visit in December 1978 by Indonesian Foreign Minister Mochtar Kasumaatmadja to Canberra, Australian Foreign Minister Andrew Peacock announced that the Fraser Government would be ready to accord *de jure* recognition of Indonesia's control over East Timor as an essential preliminary to finalizing the sea bed boundary.[2] On January 20, 1978, Mr Peacock announced that the Government had decided to accept East Timor as part of Indonesia:

> [It] is a reality with which we must come to terms... Accordingly, the Government has decided that although it remains critical of the means by which integration was brought about it would be unrealistic to continue to refuse to recognise de facto that East Timor is part of Indonesia.[3]

In February 1979, the Australian Government formally commenced negotiations with Indonesia in relation to the sea bed boundaries.

Although nine rounds of negotiations have occurred since 1979, Australia and Indonesia have been unable to agree on a permanent delimitation of the sea bed boundary because each country has taken a different view as to the principles of international law which govern this area. Australia's position has been that under international law each country's sea bed rights extend from its coast line throughout the natural prolongation of its continental shelves which, in this case, end in the deepest part of the Timor Trough. Indonesia's position, on the other hand, has been that there is one shared continental shelf between itself and Australia and that, accordingly, a boundary equidistant from each coast line is appropriate.

Due to the difficulty of reconciling the two competing claims, both countries began exploring the possibility of a provisional 'joint development zone' to operate pending final delimitation. After detailed discussions from 1985 onwards, the Timor Gap Zone of Cooperation Treaty was signed on December 11, 1989.[4] The Treaty settles arrangements for Australian and Indonesian exploration and exploitation of offshore resources between the Northern Coast of Australia and East Timor. It divides this area into three zones. The northernmost and southernmost zones are left open for exploration by Indonesia and Australia respectively, with some provision for profit sharing by the other party. The middle zone is one of joint cooperation and development with Australia and Indonesia sharing its management, exploration and exploitation.[5]

THE PORTUGUESE ACTION

On February 22, 1991, Portugal filed an application in the International Court of Justice (I.C.J.) instituting proceedings against Australia with respect

2 Richardson, M., 'Tying up Timor's loose ends', *Far Eastern Economic Review*, 5 January 1979, 44.
3 Peacock, A., 'Relations with Indonesia' (1978) 49 *Australian Foreign Affairs Record* 46, 47.
4 Treaty between Australia and the Republic of Indonesia on the Zone of Cooperation in an Area between the Indonesian Province of East Timor and Northern Australia (11 December 1989), in force 9 February 1991, Aust. TS No. 9, 1991 ('the Treaty').
5 *Ibid.* art. 2.

to Australia's conclusion of the Timor Gap Treaty with Indonesia.[6] It brought its action against Australia and not Indonesia because, unlike Indonesia, Australia has accepted the compulsory jurisdiction of the I.C.J.

In its application to the Court, Portugal has alleged that the conclusion of the Treaty represents a violation, by Australia, of both Portugal's position as administering power of East Timor as a non-self-governing territory, and the rights of the East Timorese people to self-determination and to permanent sovereignty over their natural resources within the Gap.

Before examining the substantial merits of the case, I will first address some potential procedural difficulties in the Portuguese litigation.

POTENTIAL PROCEDURAL DIFFICULTIES IN THE PORTUGUESE LITIGATION

1. *Indonesia's Absence*

Portugal's case against Australia is centred on the proposition that Australia has violated a duty of non-recognition of an illegal situation by concluding the Timor Gap Treaty with Indonesia. In assessing this claim, the I.C.J. must firstly determine the illegality of the actions of Indonesia, which is a third party not present before the Court. Although the case only directly involves Portugal and Australia, it may also be seen to infringe upon the interests of Indonesia. It is possible in some situations for the I.C.J. to decline to exercise jurisdiction over disputes involving the rights and obligations of absent third parties.

In the *Nicaragua* case,[7] the issue of whether other States' interests were so affected that a suit could not proceed without their participation was raised as an objection to jurisdiction by the United States. The United States claimed that Honduras, Costa Rica and El Salvador were indispensable parties without whose consent and participation adjudication of the dispute could not occur. Nicaragua denied that the Court was possessed of an 'indispensable party' doctrine sufficient to terminate proceedings if these states were absent, and emphasized that it had formulated claims against the United States only.

The Court rejected the objections of the United States and held that it could only refuse to exercise its jurisdiction where a third party was *truly indispensable* to the case. Hence it is insufficient that the legal interests of a third state may be affected by the decision — they must form the focal point of the case.

A case concerning a treaty to which both Australia and Indonesia are parties will necessarily affect Indonesian interests. Whether or not the Court would deem Indonesia to be an indispensable party to the case is, however,

6 Application of the Republic of Portugal to the International Court of Justice, filed in the Registry on February 22, 1991, 1991 I.C.J. General List No. 84.

7 *Case Concerning Military and Paramilitary Activities In and Against Nicaragua: Jurisdiction and Admissibility* [1984] I.C.J. Rep. 392.

another matter. Despite this, the Portuguese application to the I.C.J. focuses solely on Australia's behaviour as a member of the international community in its failure to fulfil its obligations and duties. The actions of Indonesia cannot be seen as indispensable to an examination of whether Australia has fulfilled its own independent international obligations, such as that to accept and carry out the decisions of the Security Council under Article 25. Thus it appears unlikely that the Court will refuse to exercise its jurisdiction on the basis of Indonesia's absence.[8]

2. *Portugal's capacity to bring the claim*

A second objection which might be raised is that Portugal lacks the capacity to bring the claim. However, Portugal's capacity to bring its action on behalf of East Timor, as the State which bears international responsibility for the territory, is supported by Security Council resolution 384 of 1976 which *calls upon* the Portuguese Government as Administering Power to cooperate fully with the United Nations so as to enable the people of East Timor to exercise freely their right of self-determination.

It may be thought that given the reality of the situation in East Timor, where Indonesia has exercised continuous control since its invasion, Portugal may no longer be seen as the legal Administering Power, particularly after its withdrawal from the colony in 1975. However, it is to be noted that the United Nations resolutions concerning East Timor in the late 1970s and early 1980s continued to refer to Portugal as the Administering Power of East Timor,[9] and that the United Nations continues to view Portugal as the Administering Power today. In its Advisory Opinion on Namibia, the I.C.J. ruled that it did not possess powers of judicial review or appeal in relation to particular decisions made by United Nations organs.[10] However, the *Libya v. The United States* and the *Libya v. The United Kingdom* cases[11] suggest that judicial opinion on this point may be easing slightly. The I.C.J. decided, by a majority of eleven votes to five, not to grant the interim protection sought by Libya in relation to the jurisdiction conferred by the Montreal Convention. Libya had argued that its right to seek interim measures to protect its Montreal Convention rights should not be affected by Security Council resolution 748, imposing sanctions on Libya until it handed over the alleged terrorists. The majority's reasoning was based on

8 It should be noted that under Article 62 of the I.C.J. Statute it would be possible for Indonesia to intervene in the case. Article 62 provides that should a State consider that it has an interest of a legal nature which may be affected by the decision in a case, it may submit a request to the Court to be committed to intervene. But as Indonesian interests are best served by remaining aloof from the proceedings, it is probably unlikely that such an intervention would occur.

9 G.A. res. 3485 (XXX) of 1975, G.A. res. 31/53 of 1976, G.A. res. 32/34 of 1977, G.A. res. 33/39 of 1987, G.A. res. 34/40 of 1979, G.A. res. 35/27 of 1980, G.A. res. 36/50 of 1981, G.A. res. 37/30 of 1982, S.C. res. 384 of 1975, and S.C. res. 389 of 1976.

10 *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council res. 276 (1970)* (The 'Namibia Advisory Opinion') [1971] I.C.J. Rep. 16, 45.

11 *Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie*, unreported, International Court of Justice, 14 April 1992.

the proposition that Security Council resolutions are binding under Article 25 of the U.N. Charter and prevail over obligations under any other international instrument by virtue of Article 103 of the Charter.

However, the five dissenting judges stressed the independence of the I.C.J. in determining international law questions, and even some of the majority judges dismissed any notion of conflict arising from the I.C.J. and the Security Council's consideration of the same dispute. Judge Weeramantry, for example, rejected any encroachment upon the I.C.J.'s domain of international law by actions of the Security Council. Judge El-Kosheri argued that as Article 92 of the U.N. Charter deems the I.C.J. to be 'the principal judicial organ of the United Nations', the Security Council resolution did not *prima facie* affect the jurisdiction of the I.C.J. and the resolution was subject to judicial review for conformity with the object and purposes of the U.N. Charter. The strength of this radical interpretation is perhaps tempered by the fact that Judge El-Kosheri was an *ad hoc* judge nominated by Libya. However, the overall tenor of the judgments in this case suggests that in the future the I.C.J. may be less reluctant to review decisions of U.N. organs.

Nevertheless, the classification by the Security Council of Portugal as the Administering Power of East Timor in resolution 384 and the continuing acknowledgment of this fact by the U.N. Special Committee for Decolonization is not something that could be dismissed lightly by the Court. Furthermore, in the *Northern Cameroons* case,[12] the Court accepted the argument of the United Kingdom that because only the United Kingdom and the United Nations were party to the Trusteeship Agreement concerning the Cameroons, only they could terminate it. Individual members of the United Nations were precluded from raising issues regarding the administration of the territory before the Court.

The view that Portugal lacks standing is based on the notion that Portugal no longer has the status of Administering Power due to the legal fiction/practical reality of Portugal's role in East Timor today, and Portugal's lengthy delay in taking action. Yet the I.C.J. continued to maintain the legal existence of the Mandate in South Africa and the illegality of South Africa's presence there in any other capacity over a period of twenty years until the termination of the Mandate by the General Assembly, despite factual evidence to the contrary. The legality of the Portuguese situation and the right of East Timor to self-determination cannot be adversely affected by the lack of political activity in the United Nations arena on this issue. The I.C.J. and the United Nations are governed by different considerations, the former by the sphere of law and the latter by the (unruly) sphere of political considerations. Lack of political activity or support at any particular time cannot obliterate the legal right to self-determination.

In what concerns Portugal's 'delay' in commencing its action, the said delay was barely two weeks after the domestic implementation of the Treaty

12 *Case Concerning The Northern Cameroons* [1963] I.C.J. Rep. 15.

in Australia in February 1991. Portugal's decision to wait until the Treaty was fully implemented was underscored by the fact that until its actual implementation, there was no concrete violation of Portuguese or East Timorese rights.

3. *East Timor as a non-state entity*

Another possible objection that might be raised concerns the fact that Portugal is bringing the action against Australia both on its own behalf as administering power, and on behalf of East Timor. Article 34 of the Statute of the I.C.J. provides that only states may be parties in cases before the Court, while Article 59 provides that the decision of the Court has no binding force 'except between the parties and in respect of that particular state.' Thus it could be claimed that to be a 'party' to a case an entity must be a 'state'. Since East Timor is not a 'state' it might be argued that no adjudicative determination can be made of East Timor's interests before the International Court, as the judgment would not bind East Timor as a non-state entity. However, the preferable view is that, notwithstanding their formal terms, Articles 34 and 59 of the Statute do not combine to prevent the adjudication of the interests of a non state territorial entity, providing that the primary participation in the case is undertaken by the State which bears international responsibility for that entity: in this instance, Portugal.

THE SUBSTANTIVE ISSUES IN THE CASE

1. *Has Australia violated Portugal's rights as Administering Power of East Timor by breaching an international duty of non-recognition of the Indonesian annexation?*

The duty of non-recognition of territory acquired by force has developed in international law over many years and was crystallized in two unanimously adopted resolutions of the United Nations General Assembly. The 1970 Declaration on Principles of International law Concerning Friendly Relations and Cooperation Among States declares that:

> Every State has the duty to refrain in its international relations from the threat or use of force against the territorial integrity or political independence of any State . . . The territory of a State shall not be the object of acquisition by another State resulting from the threat or use of force. No territorial acquisition resulting from the threat or use of force shall be recognised as legal.[13]

Similarly, Article 5(3) of the 1974 resolution on the Definition of Aggression states that:

> No territorial acquisition or special advantage resulting from aggression is or shall be recognized as lawful.[14]

It is necessary to consider the extent to which these resolutions spell out a binding legal obligation. Article 38 of the I.C.J. Statute provides for

13 G.A. res. 2625(XXV) of 1970.
14 G.A. res. 3314(XXIX) of 1974.

international treaties and international custom as two sources of international law. Both the 1970 and the 1974 resolutions can be seen to establish propositions of either customary international law (by regarding the resolutions as a unanimously accepted statement of the law on this point) or of international treaty law (by regarding the resolutions as an authoritative interpretation of the U.N. Charter). Article 2(4) of the Charter states that:

> All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.

Both the 1970 and the 1974 General Assembly resolutions can be seen as an interpretation of Article 2(4) of the U.N. Charter. These resolutions thus represent the view of U.N. members in relation to the threat of force and prohibition of aggression.

Various General Assembly and Security Council resolutions and declarations have demonstrated the view of U.N. members that no territorial acquisition resulting from aggression and armed force will be recognized as lawful. One example is both organs' declarations of invalidity of Israel's acquisitions of territories from neighbouring states in 1967 and 1973[15]. A further example is the Security Council's more recent call upon all states not to recognize any Cypriot State other than the Republic of Cyprus,[16] and its statement that the establishment of the 'Turkish Republic of Northern Cyprus' resulted from the use of armed force and occupation by Turkey. This call for non-recognition was based both on the prohibition of aggression and on the right of the Cypriot people to self-determination. And finally, in its Advisory Opinion concerning Namibia, the I.C.J. stated that U.N. members were under an obligation to recognize the illegality and invalidity of South Africa's continuing presence in Namibia.

But the Australian position has been to deny the existence of an international duty not to recognize territory acquired by force. Senator Evans stated in the Senate on November 1, 1989,[17] that the legality of the original acquisition of territory has to be distinguished in subsequent dealings between the state acquiring that new territory and other states. However, Australia's recognition of the Indonesian annexation of East Timor is inconsistent with its refusal to recognize other forceful acquisitions of territory, even after decades of occupation. For example, for more than thirty years after the annexation of the Baltic States by the former Soviet Union, Australia withheld *de jure* recognition of the incorporation. Other examples of Australian non-recognition apparently influenced by the threatened or actual use of armed force in violation of the U.N. Charter include its non-recognition of the Vietnamese backed regime in Kampuchea and the Soviet-backed regime in Afghanistan.

The Australian view is that its *de jure* recognition of Indonesian sover-

15 See, generally, S.C. ress 252 of 1968 and 267 of 1969; G.A. ress 2851(XXVI) of 1971 and 2949(XXVII) of 1972.
16 S.C. res. 541 of 1983.
17 Commonwealth, *Parliamentary Debates*, Senate, 1 November 1989, 2702.

eignty over East Timor is decisive of the legality of the agreement. This, however, cannot be seen as a viable argument, because the recognition itself constitutes a breach of an international obligation. There is in fact strong authority for the assertion that the resolutions concerning the duty of non-recognition represent a legal obligation. In the 1986 cases concerning Nicaragua and the United States, for example, the I.C.J. held that the consent of states to certain General Assembly resolutions and, in particular, to the 1970 resolution of Friendly Relations, 'may be understood as an acceptance of the validity of the rule . . . declared by the resolution'.[18]

Also enshrined within the 1974 Declaration of Aggression is an obligation of states not to deal with Indonesia as though it were the legal government of East Timor. This is similar to the obligation of states not to recognize the formerly illegal presence of South Africa in Namibia, an obligation recognized by the I.C.J. in its Advisory Opinion concerning the *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) Notwithstanding Security Council resolution 276 (1970)*.[19] The I.C.J. held that member States of the United Nations were under an obligation to recognize the illegality of South Africa's presence in Namibia, and to refrain from any acts or dealings with the government of South Africa implying recognition of the legality of such presence.

In particular, the I.C.J. stated that member States were under an obligation to abstain from entering into treaty relations with South Africa in all cases in which the government of South Africa purported to act on behalf of or concerning Namibia.[20] This I.C.J. Advisory Opinion on Namibia is clearly analogous to the East Timor situation, where Indonesia maintains a continued illegal presence and Australia has entered into treaty relations with Indonesia in respect of an area pertaining to East Timor's interests. More recently, in a resolution concerning Iraq's invasion of Kuwait, the Security Council stated that the annexation of Kuwait by Iraq had no legal validity and called upon all states and international organisations 'not to recognise that annexation and to refrain from any action or dealing that might be interpreted as an indirect recognition of the annexation.'[21] Australia's action in concluding the Timor Gap Treaty with Indonesia clearly constitutes a *direct* recognition of Indonesia's annexation of East Timor, and thus renders Australia in breach of the duty of non-recognition of Territory acquired by force.

2. *Has Australia violated the East Timorese people's right to self-determination?*

The argument here is that Australia's conclusion of the Treaty with Indonesia signifies a reiteration of Indonesia's unjustified assertion of sovereignty over East Timor, and thus constitutes a breach of the duty not to

18 *Case Concerning Military and Paramilitary Activities In and Against Nicaragua (Merits)* [1986] I.C.J. Rep. 14, 100.
19 *Namibia Advisory Opinion* [1971] I.C.J. Rep. 16.
20 *Ibid.* 58.
21 S.C. res. 662 of 1990.

impede the realization of self determination as a corollary of the right of self-determination itself. Article 1(1) of the International Covenants on Civil and Political Rights, and on Economic, Social and Cultural Rights states that 'all peoples have the right to self-determination'. The continuing existence of the right of self-determination, despite its violation, is shown by the fact that Portugal, the United Nations and, in particular, the United Nations Special Committee on Decolonization all continue to regard East Timor as a non-self-governing territory that has yet to realize self-determination. Under the U.N. Charter, the task of assisting non-self-governing peoples to achieve self-government is described as a 'sacred trust', vested immediately in the colonial power but also at a deeper level in the United Nations as a whole. Therefore the Treaty cannot be seen as merely a bilateral matter between Australia and Indonesia.

Australia has itself acknowledged that a proper act of self-determination has not occurred within East Timor. Senator Evans has stated that:

> recognition does not mean that Australia condones the method of incorporation — on the contrary the government has been forthright in protesting the circumstances of incorporation.[22]

The position of the Australian Government is that the conclusion of the Treaty in no way impedes its efforts in continuing to support a discussion between Portugal and Indonesia at the United Nations to resolve the East Timor issue. But it is hard to see how this position can be maintained given that the title of the Treaty refers to 'an Area between the *Indonesian province of East Timor* and Northern Australia.' Indonesia's ability to enter into the treaty with Australia is dependent on its unjustifiable and illegal assertion of sovereignty over East Timor.

The Timor Gap Treaty, enabling as it does the exploitation of resources from the Timor Gap region, is also in violation of the principle of Permanent Sovereignty over Natural Resources enshrined in Article 2 of the Charter of Economic Rights and Duties of States. As economic freedom enables the achievement and maintenance of political independence, to exploit another peoples' natural resources without their consent is, in effect, to appropriate part of their sovereignty. Article 1(2) of the International Covenants on Civil and Political Rights, and on Economic, Social and Cultural Rights states that in no case may a people be deprived of its own means of existence.

The exploitation of a dependent people's natural resources was condemned by the international community in the 'Question as to Namibian Uranium', in General Assembly resolution 2271(XXXV) of 1987. The General Assembly described the exploitation as a major obstacle to the gaining of political independence by Namibia. Similarly, the plundering of Timor Gap resources would deny East Timor a strong economic base on which to sustain a claim for political independence.

If Australia and Indonesia were to embark on a judicial delimitation of the Gap area, it is almost inconceivable that Australia would be held entitled to the whole of areas A, B and C as defined by the Treaty. Only certain segments, such as area B, would definitely come within Australian

22 Statement by Senator Gareth Evans to Timor Gap Forum, Darwin, 3 November 1990, 3.

jurisdiction. Whilst Australia is entitled to do as it wishes with its own resources, problems arise when it attempts to share portions of resources obtained by aggression. The principle which applies here is that of *Nemo Dat Quod Non Habet* — *i.e.* you cannot give a better title than you have. This is a familiar domestic law concept and applies equally at international law.[23] A domestic law example is buying a stolen car from a thief. The thief does not have a good title which he or she can pass on to you, and the original owner is therefore entitled to reclaim his or her car. In the international situation at hand, Australia cannot get good title to the resources in the Timor Gap through the bad Indonesian title.

An alternative line of argument is the *Jus Cogens* or peremptory norm argument. Article 53 of the Vienna Convention states that a treaty is void if, at the time of its conclusion, it conflicts with a peremptory norm of international law. A peremptory norm is one accepted by the international community as one from which no derogation is permitted. The basic Friendly Relations Declaration rule proscribing the use of force is widely held to be such a norm. It may be argued that a treaty which involves the sharing out of territory, even though this occurs *after* the act of aggression, is thus in violation of Article 53 and renders the Treaty void.

CONCLUSION

Portugal claims that Australia's actions in negotiating, concluding and implementing the Timor Gap Treaty with Indonesia, and in excluding negotiation with Portugal, has caused 'particularly serious legal and moral damage to the people of East Timor and Portugal, which will become material damage if the exploitation of hydro-carbon resources begins.'[24] As a consequence, Portugal is requesting that the I.C.J. declare Australia to be in breach of duties to both itself as Administering Power, and to the people of East Timor. It also seeks a Court order that Australia pay damages in reparation for its infringements of those rights, that Australia refrain from any further negotiations concerning the Timor Gap, and that Australia refrain from any exploration and exploitation of the continental shelf in that area without involving Portugal as a necessary party.

The Australian Department of Foreign Affairs has stated that the impending court action will have no impact on the activities of the Australian-Indonesian Joint Authority under the Timor Gap Treaty, which has been awarding production-sharing contracts for the exploration and exploitation of petroleum within the Zone of Cooperation. Nevertheless, in light of the fact that the I.C.J. does not have the power to enforce the judgments that it delivers, the force of international community opinion will be an important factor in determining the aftermath of this case. Were the Court to deliver a judgment against Australia, the Australian Government would have to choose between complying with the decision so as to avoid damaging its 'good international citizen' image, and bowing to commercial and Indonesian interests by carrying on with the treaty regardless.

23 Brownlie, I., *Principles of Public International Law* (4th ed. 1990) 125.
24 Portuguese I.C.J. Application, *supra* n. 6.