INTERNATIONAL COURT OF JUSTICE

EAST TIMOR
(PORTUGAL v. AUSTRALIA)

COUNTER-MEMORIAL OF THE GOVERNMENT OF AUSTRALIA

1 JUNE 1992

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INTRODUCTION

INTRODUCTION

1. This Counter-Memorial is submitted in accordance with the Rules, and the Order of the Court of 3 May 1991. In accordance with Article 49 of those Rules, it replies to the facts stated in the Portuguese Memorial; and it contains observations concerning the statement of law made by Portugal and answers thereto. Certain observations relate to the admissibility of the particular claims in the Portuguese Application and Memorial. The Government of Australia considers that the issues of admissibility should be heard and determined within the framework of the merits with which in this case they are inextricably linked and the Counter-Memorial has been prepared on that basis.

Section I: Nature and scope of the dispute

2. Portugal asserts that it is in dispute with Australia, a dispute which it asks the Court to resolve. But if there is a dispute, there is disagreement as to what that dispute is about. A determination of that issue is important for the resolution of this case.

3. According to a widely accepted definition, a dispute is "a disagreement on a point of law or fact, a conflict of legal views or of interests between two persons" (Mavrommatis Palestine Concessions, PCIJ, Series A, no.2, p.11; see also e.g., Interpretation of Peace Treaties ICJ Reports 1950, p.74; Applicability of the Obligation to Arbitrate Under Section 21 of the United Nations Headquarters Agreement of 26 June 1947 ICJ Reports 1988, p.27). The subject matter of a dispute is embodied in the submissions of the claimant State; and "real submissions" must be distinguished from "propositions which, in the form of definitions, principles or rules, purport to justify certain contentions and do not constitute a precise and direct statement of a claim" (Fisheries Case ICJ Reports 1951, p.126). The latter "may be taken into account only insofar as they would appear to be relevant for deciding the (...) question in dispute" (*ibid.*).

4. In the present case, Portugal seems reluctant to articulate the real basis for its claims as shown by the very striking gap between what it calls "l'objet du différend" (Memorial, pp.73-76) and its submissions as they appear at the end

of the Application as well as of the Memorial. The reason would appear to be that the real dispute that Portugal has in mind has nothing to do with the alleged dispute it has submitted to the Court.

A. The alleged dispute

5. According to Portugal's submissions the specific activities of which Portugal complains are:

- the negotiation of an agreement by Australia with a third State (Indonesia) relating to the exploration for and exploitation of the continental shelf in the area of the Timor Gap (i.e. the negotiation of the Timor Gap Treaty);

- the conclusion by Australia and Indonesia of the Treaty (including its signature and ratification);

- the exclusion by Australia (and Indonesia) of Portugal from previous and on-going negotiations on maritime areas of direct concern to East Timor;

- the initiation of the performance by Australia and Indonesia of the Treaty, by the inaugural meeting on 9 February 1991 of the Ministerial Council established under the Treaty;

- the enactment by the Australian Parliament of internal domestic legislation to give effect to the Treaty; and

- the on-going negotiation by Australia with the third State (Indonesia) of the delimitation of the continental shelf in the area of the Timor Gap to the exclusion of Portugal.

See Application, paragraphs 2, 3, 26 and 34(2)(3)(4) & (5)); Memorial, Conclusions, pp.235-6.

6. This contradicts directly the Portuguese allegation that "la présente instance ne concerne pas la question de la validité de l' "Accord"" (Memorial, para.3.06, p.75). On the contrary, the Timor Gap Treaty is, indeed, the very subject-matter of the alleged dispute. Portugal complains of - and only complains of:

- the negotiation of the treaty,

- the conclusion of the treaty,

- the application of the treaty,

and submits that Australia is, as a consequence in breach of obligations owed to Portugal and to the people of East Timor and thus:

- has incurred international responsibility because of these breaches arising only out of the Treaty;

- owes reparation for the so-called damage caused by the Treaty;

- and must desist from the breaches involved in implementing the Treaty.

Indeed, Portugal warns that "La demande est une demande en responsabilité internationale, rien d'autre" (Memorial, para.3.06, p.75). But only an internationally wrongful act of a State entails international responsibility. There is such an act when:

> "(a) conduct consisting of an action or omission is attributable to the State under international law; and
>
> (b) that conduct constitutes a breach of an international obligation of the State." (ILC, Draft Articles on State Responsibility, Part I, Art.3, Yearbook of ILC, 1976, Vol.II, p.75)

The wrongful act which Portugal alleges is the Australia-Indonesia Timor Gap Treaty.

7. Hence, it is clearly impossible for the Court to adjudicate this case without deciding on the "validité" (or "licéité" ...) of the Treaty, that is to say of an international act between two States, one of which is not a party to the present proceedings.

8. Although Portugal says that it is not challenging the validity of the Timor

Gap Treaty, a decision in its favour would make the Treaty inoperative. The Treaty creates a framework for petroleum exploration and exploitation by both Australian and Indonesian interests. Central to this framework is the joint venture zone (the Zone of Co-operation in Article 2). This is under the joint control of the two contracting States, Indonesia and Australia. Control is dependent on the active participation of both States. As the Treaty's provisions (especially Article 2) show, the rights and obligations which arise under the Treaty are very clearly reciprocal: the running of the joint venture depends very much on the mutual co-operation of both States.

9. Portugal requests the Court to enjoin Australia from "any act relating to the exploration and exploitation" of the continental shelf in the area of the "Timor Gap" (Application, para.34(5)(b); Memorial, Conclusion 5(b)). If Portugal were successful, the Court's order would require Australia to abstain from carrying out its obligations to Indonesia under the Treaty, thereby rendering the Treaty ineffective. In reality, therefore, Portugal does challenge the effectiveness of the Treaty and the obligations to which it gives rise. If the Court were to decide the merits of this case, it would necessarily be declaring the entitlements of both Indonesia and Australia under the Treaty.

10. Certainly, it must be kept in mind that Portugal also requests the Court:

> "(1) to adjudge and declare that, first, the rights of the people of East Timor to self-determination, to territorial integrity and unity (as defined in paragraphs 5 and 6 of the present Application) and to permanent sovereignty over its wealth and natural resources and, secondly, the duties, powers and rights of Portugal as the administering Power of the Territory of East Timor are opposable to Australia, which is under an obligation not to disregard them, but to respect them." (Application, para.34(1); Memorial, Conclusions (1))

But such a contention is not a "submission" in the proper meaning of the term but a mere "proposition" purporting to "justify" a contention (para.3 above). In French it would be said to be a "moyen" not a "conclusion". If the Treaty were void, it would be because it is contrary to these principles. But this would not change one iota the definition of the dispute which entirely and exclusively revolves around the Timor Gap Agreement between Australia and Indonesia.

11. Portugal's claims are also based on certain other assumptions:

(a) that it has rights of its own in East Timor which it is entitled to protect by proceedings of this kind; and

(b) that it has the capacity to bring such proceedings on behalf of the people of East Timor.

As Australia contests both of these assumptions, its view is that there is no basis upon which Portugal is entitled to present the matters outlined in its Application and Memorial. See further Part II, Chapter 2 below.

B. The real dispute

12. It falls to the Court to look behind misleading appearances, to ascertain the legal reality of Portugal's Application and Submissions. As the Court noted in the Nuclear Tests Case (ICJ Reports 1974, p.262):

> "Thus, it is the Court's duty to isolate the real issues in the case and to identify the object of the claim. It has never been contested that the Court is entitled to interpret the submissions of the parties, and in fact is bound to do so: this is one of the attributes of judicial functions."

In doing so, the Court "must ascertain the true object and purpose of the claim" and, amongst other things, "take into account the Application as a whole, [and] the arguments of the Applicant before the Court" (*ibid.*, p.263). See also Interpretation of Peace Treaties, Advisory Opinion (ICJ Reports 1950, p.74); Interpretation of the Agreement of 25 March 1951 between WHO and Egypt (ICJ Reports 1980, pp.98-9); Continental Shelf (Libya/Malta) Case (ICJ Reports 1984, p.20).

13. In the present case it is more than likely that "the true object and purpose" of the Portuguese claim, if one considers the Application and the Memorial as a whole, is only to provide some semblance of legitimacy for Portugal's position regarding East Timor. For an examination of the Portuguese claim shows that it is not capable of adjudication by the Court in these proceedings and relates to Portugal's legal position vis à vis Indonesia, not Australia.

14. Portugal kept silent during the first years of the Indonesian presence in East Timor. It is only more recently that it seems to be promoting its own views of what is in the best interests of the people of East Timor. The litigation which Portugal has commenced against Australia must be seen as part of a policy of obtaining international approval for Portugal's position rather than as a dispute over the alleged rights of the people of East Timor. With regard to the latter, the true situation is that the United Nations, acting principally through the General Assembly, assumed responsibility for finding a settlement by consultation and negotiation between the parties directly concerned. The United Nations has never placed Portugal in a position which would entitle it to an adjudication of its claims in this case.

15. If the people of East Timor have been deprived of their right to self-determination this would not be because of the facts listed in the Portuguese submissions (referred to in para.5 above), but as a consequence of the past failings of Portuguese attitudes and policies and of the subsequent conduct of a third State which is not before the Court. Indeed, Australia is not accused of any illegality in relation to Indonesia's intervention in East Timor in December 1975. Portugal accepts that Australia was not in any sense a participant in that event.

16. Instead, Portugal accuses Australia of illegality in concluding an agreement with Indonesia in relation to the Timor Gap in December 1989. Portugal's case depends, and necessarily depends, on demonstrating that Indonesian claims of sovereignty over East Timor are unwarranted. Australia contends that Portugal is using these proceedings as a means of having its claims against Indonesia heard in this Court, because Australia, and not Indonesia, has accepted the Court's jurisdiction under Article 36(2) of the Statute of the Court. In reality, Australia is no more than an occasional decoy. The real dispute is between Portugal and Indonesia, and Australia stands entirely removed from this dispute.

17. This leads to an inescapable consequence: whether one takes into consideration the alleged dispute or the real dispute, Portugal seeks to use this case as a vehicle for presenting its claims against a third State which, unlike Australia, has not accepted the Court's jurisdiction under Article 36(2). On the first hypothesis (alleged dispute) the real problem is to determine if Indonesia

(not Australia) has a legal capacity to conclude the Treaty. It is only if the answer to this question is negative that the "validité" (or the "licéité") of the Treaty can be contested and this cannot be decided by the Court in the absence of Indonesia. The position is the same in relation to the real dispute: it is entirely between Portugal and Indonesia.

Section II: Summary of argument

18. The Australian response to the Portuguese claims is summarised in the following paragraphs. As the preceding discussion of the nature and scope of the dispute indicates, Australia considers that the Portuguese claims against it cannot be made in the absence of Indonesia. Moreover, in bringing its case before the Court Portugal invites the Court to act in a way which would be contrary to procedural and judicial propriety. Portugal cannot establish any basis on which it can have the case adjudicated. Nor can it show that the case has any legitimate object.

19. When one examines the substance of the case, the facts show that Australia acted in ways which did not breach any obligation incumbent on it not to deal with a State in control of the territory of East Timor. The United Nations has never adopted a rule of non-recognition of the consequences of the situation brought about in 1975-6. There has been no resolution of the Security Council on the situation since 1976, and no resolution of the General Assembly since 1982. Moreover the resolutions that were concluded in the period 1976-82 revealed not only a complete lack of consensus on the issue, but also an increasing level of international acceptance of the new situation. In these circumstances Australia was entitled, when it concluded the Treaty in 1989, to deal with the State in actual control of the territory. It was entitled to take the steps it took to safeguard and exercise its long-asserted legal rights. In short, the Portuguese claim is brought in the wrong forum and against the wrong party.

20. The Court should, in the present case, refrain from deciding on the substance of the Portuguese claims since the application of Portugal is clearly inadmissible. The claimant is engaged in an attempt to misuse the Court's processes. There are no rights of its own in issue, and it has no rights which by virtue of their close identification with rights of the people of East Timor would

support these proceedings. Moreover, Australia is the wrong target, the true respondent to such a case being Indonesia. Yet, as explained above, these bars to the Court's right to hear the claim are, in this case, inextricably linked with the merits so that it could be difficult to deal with them separately and to establish that they possess an exclusively preliminary character. For this reason, and in the interest of expedition, the present Counter-Memorial will tackle both the problems of admissibility and of substance. But Australia wishes to make clear that, in its view, the submissions on the merits have only a subsidiary character.

21. The text of the Counter-Memorial is divided into three Parts:

I Background to the case

II Inadmissibility

III Substance of the case.

The Counter-Memorial concludes with Submissions. Attached to it are three Appendices containing material relevant to particular legal issues and Annexes containing relevant documents.

PART I

BACKGROUND TO THE CASE

PART I

BACKGROUND TO THE CASE

CHAPTER 1

FACTUAL BACKGROUND

22. The following three chapters outline the facts which are necessary to appreciate the case which Portugal brings to the Court. Australia has sought to avoid repeating those matters which have already been adequately dealt with by Portugal in its Memorial. Unless otherwise indicated, the references in brackets are to paragraph numbers or Annexes of the Portuguese Memorial.

Section I: The Portuguese involvement in East Timor

23. In 1960, by resolution 1542(XV), the General Assembly declared Portuguese Timor to be a non-self-governing territory within Chapter XI of the Charter. As Portugal admits (Memorial, para.1.09), it was not until 1974 that Portugal recognized that this was in truth the Territory's status. Further, although Portugal's association with East Timor had been long, it was a poor model of an administering Power. In that capacity, it failed to discharge adequately its responsibilities under the United Nations Charter.

24. Portugal's involvement in East Timor, especially after 1974, shows that it failed completely to take steps for the effective realisation of the right to self-determination of the Territory's people. In particular, it failed to maintain law and order, to prevent civil disorder, or to take steps to prevent the invasion of the Territory by Indonesia's armed forces in December 1975.

A. The situation in East Timor before 1974

25. Portuguese involvement in Timor dates from the sixteenth century. However, the actual boundaries of the territory, including the enclave of OéCusse, were the result of agreements between Portugal and the Netherlands in 1859, 1893 and 1904. An arbitration concerning part of the boundaries took place in 1914. (For text see (1915) 9 American Journal of International Law

240). The Dutch territory became part of the independent Indonesia. The Portuguese territory remained as a colonial anomaly. Following the last great rebellion by the people of Portuguese Timor against Portugal in 1912, Portuguese control was gradually extended inland over the territory. Portuguese administration depended on the co-operation of traditional local rulers. Portugal did not encourage economic investment. What little economic development there was centred on a small coffee industry controlled by a very small non-indigenous Chinese and Portuguese population. Schooling was very much neglected and health services were virtually unknown, despite the prevalence of malaria and other diseases. There was little political activity, and what little activity that did occur was severely limited by the political police (PIDE).

26. In Timor: A People Betrayed (1983), pp.20-21, James Dunn, Australian Consul in Dili between 1962-64, wrote:

> "On the eve of the outbreak of World War I, Portuguese Timor was undoubtedly the most economically backward colony in South-east Asia, its living conditions often a subject of derision to the few who ventured to it. With the basis of a territorial administration, some improvements in agriculture, and relative peace, East Timor seemed ready to go, but in fact changes took place very slowly, and the colony tended to drift into a torpid state, with its remoteness and isolation shielding it from the pressures of change that had begun to build up elsewhere in South-east Asia. In the thirty years of peace before Japan entered World War 2, the Portuguese returned to that earlier languid and apathetic form of administration. There was, as one observer put it, 'little administration and less development' although the 'officials managed to keep themselves occupied'."

Dunn continued:

> "The Depression left Portugal on the verge of bankruptcy and by the time a measure of recovery was in sight the disruptive effects of World War 2 were already being felt. During this period the problems of Timor were disregarded or neglected. In the perspectives of the metropolitan government Timor barely registered its existence and, in any case, there were no funds available for its

> social or economic development. In Lisbon it was known for its modest production of high-quality coffee and as a safe, distant place of exile for opponents of the Salazar regime. Economically, it was considered as something of an embarrassment, for although the coffee exports enriched a few Portuguese and Chinese the colony of Timor was a drain, albeit a small one, on Portugal's meagre resources. In fact, the mother country's subsidy was so small that, apart from some road construction and other improvements in the administration's infrastructure largely designed to make life a little more comfortable for the expatriate community, very little economic development actually took place. On the eve of World War 2 the capital, Dili, had no electricity and no town water supply; there were no paved roads, no telephone services (other than to the houses and offices of senior officials), and not even a wharf for cargo handling." (*ibid.*)

27. World War II was disastrous for the colony's development. In Dunn's words, it "seemed to have taken the country back to the Stone Age" (p.27). Nevertheless, in the twenty-nine years which followed, there was a little progress - in such areas as health, education and physical infrastructure. The population increased to around 650,000 and Dili was rebuilt. More Timorese entered the army, church and public administration. The production of rubber, coffee, copra, grain and livestock improved, although the economic dependence of the majority of inhabitants on subsistence agriculture did not alter. The export sector remained within the control of a small non-indigenous group. Despite the introduction of a Legislative Assembly, political expression remained limited and the PIDE vigilant.

28. East Timor was seen at this time by Portugal as merely a drain on its resources. East Timor was "a poor, backward territory with a very uncertain future" (Dunn, *op.cit.* 37). The province was very seldom visited by top-ranking officials and the visit in 1975, of Dr Almeida Santos, the responsible Minister for overseas territories, had been preceded by only one other Ministerial visit in 1952. Despite the dedication of local officials, the central government viewed the territory as no more than a liability. Dunn concluded:

> "When the Portuguese withdrew from Dili at the end of August 1975, it was just over 200 years since Governor Meneses had moved the seat of

> government there from Lifau in Oecussi. In that long period of settlement their achievements were unimpressive, and they left the colony as one of the poorest and least-developed countries in the Third World." (*op.cit.* p.53)

29. In FUNU: The Unfinished Saga of East Timor (1987), the Timorese leader, Jose Ramos-Horta described his impressions of the pre-1974 colony on his return from two years in Mozambique in 1971 and 1972 as follows:

> "I found my beloved country much the same as I had left it. East Timor, under the Portuguese, seemed to sit still in history. The clock of development didn't tick there. For centuries the Portuguese neglected the East Timorese. The colony was only maintained as a symbol of empire, for the Portuguese valued myths and symbols." (p.14)

B. Major events of 1974-1975 in East Timor

30. In April 1974, a military coup in Portugal led by the Armed Forces Movement resulted in the overthrow of the former Portuguese Government. In the aftermath, the new Portuguese Government recognized the right of self-determination of the people of Portugal's colonies (Memorial, para.1.10). The Armed Forces Movement (AFM) and the successive governments which held power in Lisbon over the succeeding two years focussed almost exclusively on Africa. The two non-African territories Timor and Macau remained afterthoughts.

31. During the later months of 1974, however, the Portuguese administration in Timor was re-organised. A new Governor, Lt Col Lemos Pires, was appointed in November. The number of soldiers coming from metropolitan Portugal was progressively reduced. By mid 1975 the several thousand members of the armed forces in the Territory were almost entirely Timorese.

32. Other steps to implement decolonization policies were taken. The Portuguese administration in Timor permitted the formation of local political parties. During the later months of 1974, the three principal parties - UDT, FRETILIN and APODETI (Memorial, paras.1.21-1.23) - expanded in Dili and up-country and sought assistance from abroad. Then, on 22 January 1975, after

weeks of negotiations, UDT and FRETILIN signed a coalition agreement. This had the support of the local Portuguese administration which saw it as assisting the decolonization process. On 18 March 1975, UDT and FRETILIN issued a joint communique in which they stated that "independence is the only possible way for real liberation of the people from exploitation and oppression of any form" (Annex 1 to this Counter-Memorial). They proposed a three point program leading towards full independence. In late May, however, the coalition was unilaterally dissolved by the UDT.

33. On 9 March 1975, Dr Almeida Santos, Portugal's Minister for Interterritorial Co-ordination, and General Murtopo of Indonesia met in London. At the meeting, Dr Santos stated that Portugal was prepared to accept de jure independence for Timor after a transitional period of several years. It was agreed that, as a first step, the three main Timorese political parties (UDT, FRETILIN and APODETI) should be invited to a meeting with representatives from Portugal to be held later that year. The meeting was subsequently held in Macau between 26-28 June 1975, although FRETILIN declined to attend. A communique issued at the meeting's conclusion reaffirmed the right of the people of Portuguese Timor to self-determination, and the principle that it was up to the people of Timor to define the political future of the Territory (Annex 2 hereto).

34. At the Macau talks, a draft constitutional law on the decolonization of Portuguese Timor was also considered and later approved by the Council of the Revolution in Lisbon. The Council published a law (7/75 of 17 July 1975, reproduced in Annex II:13 of Memorial) which provided for -

(a) a "deliberative" High Commissioner's Council. This was to be headed by a Portuguese High Commissioner who was to be assisted by five "joint secretaries" - three Timorese and two Portuguese nominees. The High Commissioner was to have a casting vote.

(b) a Consultative Government Council. This was to consist of 38 members, to be constituted by two representatives from each of thirteen regional councils and four members from each political association.

(c) a constituent Assembly to be elected in October 1976. The law further provided that Portuguese sovereignty would end in October 1978,

although it contained a means for adjusting that date in accordance with "the genuine wishes of the people of Timor".

The law proved inoperative, however. In late July 1975, APODETI sent a message to the Chairman of the United Nations Special Committee on Decolonization which stated that the Portuguese Government had shown itself to be an "incompetent referee of political parties concerning the Timor decolonization process". Shortly after, on 10-11 August, the UDT attempted a coup in East Timor. This was defeated within a few days by a FRETILIN counter-coup strongly supported by Timorese troops, being the total remnants of the Portuguese army who made arms available to FRETILIN.

35. Portugal made little response. It did not attempt to send armed reinforcements, nor did it institute diplomatic action. After repeated requests by the Governor for direction from the Portuguese Government in Lisbon, the Portuguese administration was finally authorised to move from Dili. (See the account by the Governor at the time, M Lemos Pires, Descolonização de Timor: Missao impossivel? (Lisbon, 1991), esp. pp.202-265). The Portuguese Governor and his administration withdrew to the offshore island of Atauro, 23 kms north of Dili, where they remained until December 1975. Thus, from August 1975, Portugal ceased to exercise any effective power in the Territory (Memorial, para.1.25).

36. Between August and December 1975, tension increased in and around Timor. Whilst FRETILIN consolidated its control over the Territory, attacks were mounted along the border by pro-Indonesian elements connected with the UDT and some minor parties. Dr Santos paid a second visit to the region, this time designated by Portugal as Special Representative, but his efforts to mediate between FRETILIN and its opponents failed.

37. Portuguese and Indonesian Foreign Ministers met in Rome between 1-2 November 1975. They agreed on the need for Portugal to meet the three Timorese parties and on the need to restore peace and order in Timor, before the population could determine its future (Memorial, para.1.29). Portugal did little to give effect to the agreement. It is true that subsequently the Portuguese Decolonization Committee cabled FRETILIN, UDT and APODETI to propose round-table talks in Australia in late November 1975 (Memorial, para.1.30), but the talks did not eventuate.

38. On 28 November 1975, FRETILIN, in a unilateral declaration of independence (UDI), proclaimed the "Democratic Republic of East Timor". Portugal, admitting it did not have the means to assure normalization of the situation, brought the matter to the attention of the United Nations (UN Doc.S/11887). UDT and APODETI (and two smaller parties) issued a joint declaration which condemned FRETILIN'S UDI and stated that the moment had come "to re-establish formally these strong ties with the Indonesian nation". They stated that:

> "4. After having been forcibly separated from the strong links of blood, identity, ethnic and moral culture with the people of Indonesia by the colonial power of Portugal for more than 400 years, we deem it is now the right moment for the people of Portuguese Timor to re-establish formally these strong ties with the Indonesian nation.
>
> (a) In the name of God the Almighty, we therefore solemnly declare the independence and integration of the whole former colonial Territory of Portuguese Timor with the Republic of Indonesia, which is in accordance with the real wishes of the entire people of Portuguese Timor.
>
> (b) We also urge the Indonesian Government and people to take steps immediately to protect the lives of the people who now regard themselves as Indonesians, yet are still suffering due to the terror and fascist practices of the FRETILIN gang, armed and supported by the Portuguese Government." (Full text in Annex 3 hereto.)

39. Also on 29 November 1975, the Portuguese National Decolonization Committee issued a lengthy statement which condemned the respective declarations of FRETILIN and of UDT/APODETI (Memorial, para.1.32 and Annex II.18). The last three paragraphs stated:

> "... Portugal, as administering Power, cannot accept claims of independence or of integration into third States, that are not in accordance with the fundamental principle of the decolonization process.

> Portugal also cannot fail strongly to repudiate and condemn any military intervention in the Territory of East Timor, calling attention to the grave consequences that may arise from that, not only with respect to the violation of the right of the people of Timor freely to exercise their right to self-determination but also with respect to the threat to international peace and security.
>
> Faced with the gravity of the situation, and in order to safeguard the lives and rights of the people of East Timor and international peace and security, Portugal will be obliged to resort to the competent international bodies, in the hope that a peaceful solution to the conflict can be reached, and that conclusion of the decolonization process can be achieved in harmony with the principles defined by the United Nations." (UN Doc.S/11890)

40. Eighteen days earlier, on 11 November 1975, Indonesia had stated, in a Note to the United Nations Secretary-General, that it could not accept a situation imposed by armed force on any party in East Timor. Then, on 4 December 1975, Indonesia issued a statement in which it recorded that Indonesia regretted the FRETILIN UDI and sympathised with the desire of UDT/APODETI for integration, and that it stood ready to take whatever action was necessary to protect the Timorese people and the process of decolonization (UN Doc.A/C.4/808 - Annex 3 hereto).

41. On 7 December 1975 Indonesia made air and naval landings in Dili. Over the following weeks and months, Indonesia progressively occupied East Timor. Portugal broke off diplomatic relations with Indonesia on 7 December and sought Security Council consideration (UN Doc.S/11899). A day later it withdrew its administration from Atauro. Portugal did not make any attempt to prevent or repel the Indonesian military intervention. The withdrawal of its administration to Atauro in August 1975, its inaction while there, and its departure from Atauro the day after the Indonesian intervention in December 1975 constituted a clear abandonment by Portugal of its responsibilities as administering Power. No actions could have been more calculated to encourage outside intervention in the affairs of East Timor.

42. In a Statement of 8 December 1975, Australia was critical of Indonesia's

use of force but noted the fact that successive Portuguese Governments had been unable to exercise sufficient influence in Portuguese Timor either to carry out the Macau agreement, or to prevent civil disorder (Annex 13). The comment by Australia's Ambassador Woolcott referred to by Portugal (para.2.02) did not represent Australian policy. That policy was contained in the Australian statement of 8 December 1975, a statement critical of the Indonesian action.

43. On 17 December 1975, the pro-Indonesian parties declared the establishment of the Provisional Government of East Timor (PGET) (Annex 6 hereto). The United Nations response is dealt with in Chapter 2 of this Part of the Counter-Memorial.

C. The Portuguese attitude to East Timor since 1976

44. Prior to 1976, the Portuguese Constitution regarded East Timor, known until then as Portuguese Timor, as an "overseas province", just like any of the provinces that made up continental Portugal. In 1976 Portugal amended its Constitution so as no longer to treat Timor as a part of Portugal. Article 307 of the Portuguese Constitution, as amended in 1976, provided:

> "Independence of Timor
>
> 1. Portugal shall remain bound by its responsibility, in accordance with international law, to promote and safeguard the right to independence of Timor Leste.
>
> 2. The President of the Republic, assisted by the Council of the Revolution, and the government shall be competent to perform all acts necessary to achievement of the aims set forth in the foregoing paragraph."

This provision now appears as Article 293 of the 1989 revision of the Constitution. See Annex 8 of this Counter-Memorial.

45. After 1976 at least, the only stated interest of Portugal was to pursue the issue of self-determination for the people of East Timor. But it faced the reality that it was no longer in control and that it never expected to be in control again.

Since 1976, Portugal's interest in East Timor has fluctuated, depending on the attitudes of successive Presidents and governments. The Portuguese Memorial is in error in paragraph 1.06 in claiming that the pre 1976 position continues until the present. Since 1976, Timor has not been regarded by Portuguese domestic law as a territory of Portugal.

46. Until 1980, Portugal made no real effort to assist the United Nations to find a solution to the situation in East Timor. It relinquished responsibility entirely to the international community. As the Portuguese Foreign Minister, Freitas de Amaral, said in an interview with the weekly Lisbon journal "Expresso" on 10 May 1980 (as translated by the Australian Embassy, Lisbon at the time):

> "As to the efforts to find a solution, there has been no initiative from the Governments which preceded us and I consider it a serious matter that of the five constitutional governments before us, none took any initiative to resolve this problem whose human and political aspects are so delicate and so serious..." (Annex 7)

Ramos-Horta, in FUNU, *op.cit.* pp.125-126, similarly criticised Portuguese inaction. He wrote "that from 1976 to 1982 the Portuguese acted as if they had accepted the fait accompli. Portuguese politicians, diplomats and officials simply shrugged when they were approached on the subject of East Timor".

47. Only after 1980 is there any evidence that Portugal was taking steps to assist in resolving the East Timor situation. In 1980, Portugal undertook diplomatic initiatives in the United Nations General Assembly (para.132 below). It extended these in later years to other international bodies, including the United Nations Commission on Human Rights, the European Parliament, the Non-Aligned Movement, the Inter-Parliamentary Conference. It has also made bilateral representations to other Governments, including Australia. In Portugal and elsewhere, Presidents Eanes and Soares have spoken of the need to find a solution to the East Timor problem. Portugal's current attitude is considerably at odds with its attitude in the years immediately after Indonesia's intervention. But while Portugal has now attempted to do something about its past neglect it has not been able to achieve any further consideration of the issue in the United Nations.

Section II: Intervention by Indonesia in East Timor

48. The nub of these proceedings is Indonesia's military intervention in East Timor in late 1975 and its continuing presence there. What follows is a brief account of the matters directly bearing on that intervention. Since Australia played no part in the events of 1975, this account may well be incomplete. It is drawn from published sources, and Australia is in no position to guarantee its accuracy in detail.

49. In the period between Indonesia's independence in 1949 and April 1974, the Government in Jakarta showed very little official interest in the affairs of East Timor. There was limited co-operation between Portuguese and Indonesian officials on Timor itself, but Indonesia was then largely pre-occupied with nation-building, including the suppression of secessionist and other rebellions, the absorption of West Irian and dealing with its other neighbours in the region such as the newly-independent Malaysia. It was the military coup of April 1974 in Portugal which led to changes in Indonesian attitudes.

50. The coup in Portugal was initially seen by Indonesia as a welcome event. Thus, in a letter of 17 June 1974 following a meeting in Jakarta with FRETILIN Representative Ramos-Horta, Foreign Minister Malik stated that the coup offered a "good opportunity" to the people of Timor to accelerate the process towards independence. In the same letter, Mr Malik denied any Indonesian territorial ambitions and sought to assure "whoever will govern in Timor in the future after independence ... that the Government of Indonesia will always strive to maintain good relations, friendship and co-operation for the benefit of both countries". (The letter is reproduced in Jolliffe, East Timor: Nationalism and Colonialism (1978), p.66.) However, in the face of disorder and following the request of certain elements within East Timor, Indonesia decided to intervene.

51. In November 1975, a group of pro-Indonesian parties collectively known as the "MAC" - the Anti-Communist Movement - had proclaimed the "integration of the whole former colonial Territory of Portuguese Timor with the Republic of Indonesia" (Annex 3). This had been preceded by the FRETILIN UDI (para.38 above). Civil disorder broke out, with a number of

persons fleeing into Indonesia. On 7 December 1975, Indonesian military forces entered East Timor. This action was immediately subject to consideration in the United Nations General Assembly and later in the Security Council. The United Nations response is described in Chapter 2 of this Part of the Counter-Memorial.

52. On 14 December 1975, the Indonesian Government issued a statement which sought to explain its action. The statement asserted that:

> "the pending crisis in Portuguese Timor is the result of measures taken by the Government of Portugal to maintain colonialism in its main form in the territory. Portugal has made use of a local political faction, FRETILIN, to support the implementation of its colonial plan in its new form with the argument of decolonization." (Annex 4)

Indonesia referred to a number of events, including the withdrawal of the Portuguese administration to Atauro, which it said demonstrated Portuguese complicity with FRETILIN. Also in the statement of 14 December, it described Indonesian "volunteers" as assisting their brothers in Portuguese Timor; it dismissed resolution 3485(XXX) passed by the United Nations General Assembly on 12 December 1975 as having no bearing on "the prevailing conditions"; and it expressed disappointment "in the attitude of a number of friendly countries, in particular those situated in the neighbourhood of the territory of Portuguese Timor which indeed gave their support to [the] said resolution or took an indifferent attitude towards it" (*ibid.*, para. 9).

53. On 17 December 1975, the MAC declared the establishment of the Provisional Government of East Timor (PGET) which then assumed nominal control over the territory. On 31 January 1976, the PGET announced the dissolution of all political parties in East Timor and the formation of a National Front.

54. It was not until 31 May 1976 that a Popular Assembly, consisting of thirty-seven members, met in the East Timorese capital of Dili in the presence of official observers from Indonesia, Malaysia, New Zealand, Thailand, India, Saudi Arabia, Nigeria and Iran. The United Nations and Australia had declined invitations to attend. The Popular Assembly adopted a resolution petitioning Indonesia for integration (UN Doc.S/12097 Annex II, reproduced as Annex 5 to

this Counter-Memorial). Subsequently, on 24 June 1976, a fact-finding team from the Indonesian National Parliament visited Dili to "verify the wishes of the people". It was accompanied by diplomatic observers from a number of countries, although again none from the United Nations (UN.Doc.S/12104) nor Australia. On 16 July 1976, the Indonesian Parliament adopted a bill incorporating East Timor into Indonesia. This was signed into law by President Suharto the following day. Since that date, Indonesia has remained in physical control of the territory which it describes as its twenty-seventh province and administers as an integral part of Indonesia.

55. On 5 November 1976, Mr Anwar Sani, the Indonesian Representative in the Fourth Committee, stated the Indonesian position in the following terms:

> "Neither the Charter of the United Nations nor General Assembly resolutions 1514(XV) and 1541(XV) prescribed processes which should be blindly followed. Each case of decolonization should be understood in the light of its own existing realities. There had been cases in the history of decolonization where local circumstances had made popular consultation through a plebiscite or a referendum unnecessary and cases where other forms of consultation had been accepted, with or without United Nations supervision or observation. What was important was that the right of self-determination should be exercised in accordance with the basic precepts of the Charter, which stipulated that the interests of the inhabitants of Non-Self-Governing Territories were paramount. He could not but wonder why some countries far removed from the region should arrogate to themselves the prerogative of deciding what was best for the people of East Timor. Those countries, without any first-hand knowledge of the real situation, were now exerting pressure on the Committee to adopt positions contrary to the existing realities prevailing in East Timor and contrary to the expressed wishes of its people. In line with those wishes, the Indonesian Parliament had passed a bill formalising the integration of East Timor with Indonesia. That bill had become law on 17 July 1976, and, as from that moment, the question of decolonization of East Timor had ceased to exist. The integration of East Timor with Indonesia had been carried out on the basis of complete equality between the population of East Timor and the people of Indonesia. The people of East Timor, being Indonesian people, had equal guarantees of fundamental rights and freedoms without any distinction or discrimination

and were now concentrating their efforts on the task of reconstruction and development.

His delegation sincerely hoped that the Committee would base its attitude on the reality of the situation prevailing in East Timor, namely, the fact that the process of decolonization in that Territory had been concluded." (A/C.4/31/SR.16, paras. 34-35)

56. Bearing in mind Indonesia's control over and attitude towards East Timor, Indonesia is clearly "directly affected" by United Nations efforts to resolve the East Timor situation (*cf.* UNGA resolution 37/30 of 1982). This is true, whether a resolution of the situation is sought through political or judicial means. Accordingly, the Secretary-General continues to discuss with Portugal and Indonesia ways in which to reconcile the positions of the two Governments on the question (paras.146 to 152 below *cf.* Memorial, paras.1.54 -1.58). It is not for Australia to justify the actions of another State which is not before this Court. But the point must be made that the complete absence of any Portuguese presence in East Timor, and the continuous and effective exercise of sovereignty by Indonesia over the territory since 1976 are facts which cannot be ignored by the international community, nor indeed by the Court.

Section III: Australia's policy towards East Timor

57. As early as 1961 Australia indicated that it was unable to support Portugal's colonial policies. In that year it supported United Nations General Assembly resolution 1699(XVI) of 19 December 1961 which created a Special Committee on Portuguese Territories. Portugal had, according to Australia, obligations to transmit information in relation to its colonies under Article 73 of the United Nations Charter and to prepare its colonies for the exercise, at an appropriate time, of the right of self-determination. This attitude is reflected in Australia's support for General Assembly resolutions 2795(XXV), 2918(XXVII) and 3113(XXVIII) in 1971-1973, each of which condemned Portuguese colonial policies.

58. Although not a party to the dialogue over East Timor which developed between Portugal and Indonesia during 1974-5, Australia had had bilateral discussions on the subject with both Governments and had participated in the

deliberations of the United Nations Committee of 24 and the Fourth Committee during that period. President Suharto of Indonesia and Prime Minister Whitlam of Australia had met in September 1974 in Wonosobo, Indonesia and again in April 1975 in Townsville, Australia. The views expressed by Australia at these meetings were later conveyed to Portugal. There were also exchanges between the Portuguese and Australian Foreign Ministers in New York in March 1975. Dr Almeida Santos, Portugal's Minister for Interterritorial Co-ordination and later Special Representative, visited Canberra for talks in October 1974 and in September 1975.

59. The Australian Foreign Minister made a statement to the Australian Parliament on 30 October 1975 which referred to "Portugal's regrettable inability to reassert its authority in the territory" and urged the resolution of the situation by peaceful means. The text appears as Annex 10 of the Counter-Memorial. Australia did not recognize the Unilateral Declaration of Independence made by FRETILIN at the end of November 1975. (See the statement made by Australia's Foreign Minister on 29 November 1975, set out in Annex 11 hereto.)

60. Australia's response to Indonesia's intervention in East Timor on 7 December 1975 is contained in a number of statements issued by the Australian Government as well as in debates in the United Nations, including the Security Council. Portugal presents a selection of these in paragraphs 2.17-2.24 of its Memorial. What follows is a more complete account.

61. There were six statements by the Australian Foreign Minister between 7 December and 29 December 1975. These are set out in Annexes 12 to 17 hereto. In his Ministerial statement of 7 December 1975, the then Minister for Foreign Affairs, Mr Andrew Peacock, said that Australia "deeply regretted the course which events in East Timor had taken". The next day, 8 December, the Minister stated that:

> "Indonesia's stated objective, was the restoration of law and order, a task which Portugal had been unable to carry out, as a necessary pre-condition to a proper expression by the Timorese people of their own wishes regarding their political future. While this objective was laudable, the means chosen by Indonesia was a matter for deep regret and concern on the part of the Australian Government."

Three days later, on 11 December, the Minister noted that Australia's views on East Timor had been conveyed to the Indonesian Government . He indicated that Australia would seek to speak in the Security Council, in order to urge involvement by the United Nations and in particular, that the Secretary-General despatch a representative to the territory to report on conditions there.

62. The following day, on 12 December 1975, the Minister noted the adoption by the United Nations General Assembly of resolution 3485(XXX) and explained Australia's support for it. He further observed that:

> "[H]e understood the reasons why Indonesia had opposed the resolution. To some extent Australia shared those misgivings.
>
> Not least we understand Indonesia's view that it is necessary to have peace and order in the territory to facilitate the expression of the views of the people of Timor of their own wishes for the future. Nevertheless we cannot agree that the use of force is an appropriate means of settling the problem of East Timor..."

63. Subsequently, in his statement of 23 December 1975, the Minister welcomed the unanimous adoption by the Security Council, on 22 December, of resolution 384 and noted that it was a matter of particular satisfaction that the Security Council had asked for the appointment by the Secretary-General of a Special Representative to assess the situation in East Timor.

64. Meanwhile there were reports of renewed fighting in East Timor. According to the Minister's statement of 29 December 1975, the Australian Government had reminded the Indonesian authorities of Australia's opposition to the use of force in East Timor. This statement also urged the immediate departure of the Secretary-General's representative. The statement continued:

> "... [A]llegations that the Australian Government had turned its back on the Timor situation were unfounded. Australia had indeed been more active than any other country, in the region or outside it, in trying to bring about a peaceful settlement in East Timor. This applied to Portugal nominally the administering power. Mr Peacock

> recalled in this regard that, while Australia had no formal responsibilities for East Timor, it had through its successful work in the United Nations, through the government's unequivocal calls for the cessation of hostilities, and through our proposals for the appointment of a United Nations special representative for East Timor, played a positive and constructive role in trying to resolve the present crisis. Australia had also been very positive in the humanitarian area where Australia's official contributions for relief have far exceeded contributions forthcoming so far from any other source." (Annex 17 hereto)

65. Early the next year, on 19 and 20 January 1976, Mr Peacock had talks in Jakarta with the Indonesian Foreign Minister, Mr Malik. He emphasized the need for a cessation of hostilities, a resumption of international humanitarian aid, a withdrawal of Indonesian forces and a genuine act of self-determination. This was repeated by him in a statement to the House of Representatives on 4 March 1976, where he also reiterated Australia's support for the resolutions passed by the United Nations General Assembly and Security Council in December 1975. The statement appears as Annex 18 hereto. On 14 April 1976 before the Security Council, Australia again re-affirmed its support for the United Nations resolutions, the sending of a special representative and the exercise of the right of self-determination (Memorial, para.2.17).

66. Australia had declined to accept the invitations to attend the meeting of the Popular Assembly in East Timor in May 1976. On 1 June 1976, the Foreign Minister informed the Australian Parliament of the Government's reasons for so doing. The Foreign Minister stated that as "no indication was forthcoming from the United Nations that it would be involved... we accordingly decided that it would be appropriate for us not to attend... Some form of United Nations participation and observation is essential." The text of the statement is at Annex 19.

67. When Indonesia announced the integration into Indonesia of East Timor in July 1976 and there was no immediate United Nations response, Australia considered it necessary to review its policy on East Timor. Australia did not endorse the 1976 plebiscite as a satisfactory exercise of the right of self determination (Annex 20 hereto). Nevertheless, it sought to deal with Indonesia in relation to East Timor so as best to promote the interests of the people of East

Timor. In October 1976, shortly after the Australian Prime Minister had visited Indonesia, Australia announced that it would make available $250,000 (in addition to an earlier contribution of over $80,000) for humanitarian relief through the Indonesian Red Cross.

68. Australian policy has done no more than recognize the continuing reality of Indonesia's control of East Timor. This was the basis for the de facto recognition of Indonesia's incorporation of East Timor in January 1978. As to that recognition, the Australian Government stated that although it "remains critical of the means by which integration was brought about it would be unrealistic to refuse to recognize de facto that East Timor is part of Indonesia." In that same statement, the Government further noted that if Australia was to assist in "the rehabilitation of Timor", it would "need to continue to deal directly with the Indonesian Government as the authority in effective control". (The statement is set out at Annex 21 hereto.)

69. In December 1978, the Australian Government announced that negotiations would commence with Indonesia in relation to the Timor Gap. Negotiations commenced in February 1979 (Memorial, para.2.22 and Annex III.37). The Australian view, as expressed by its Foreign Minister, was that the start of negotiations would imply de jure recognition of Indonesian incorporation of East Timor. In his statement of 15 December 1978 (Memorial, Annex III.37), the Australian Foreign Minister repeated that Australia's entry into these negotiations did not alter his Government's opposition to the manner of Indonesia's incorporation of East Timor, but that Australia had to "face the realities". For practical reasons, including the planned development of the resources of the sea bed, the Australian Government had decided to proceed.

70. In the intervening years between 1979 and now, Australia has continued to deal with Indonesia over East Timor, by providing humanitarian and other assistance. On a number of occasions, it has conveyed its concern to Indonesia about the human rights situation in East Timor, most recently as a result of the outbreak of violence in Dili at the end of 1991. Australia has also continued to encourage Portugal and Indonesia to consult one another, either directly or under the auspices of the Secretary-General, with a view to resolving the situation in East Timor.

71. Australia has taken the view that the implementation of the right to self-determination of the people of East Timor is a matter for the responsible organs of the United Nations. Australia has been and remains ready to accept and act on any authoritative decision made by the competent organs of the United Nations in the matter, or on any internationally acceptable resolution of the issue arrived at by the "parties directly concerned", of whom Australia is not one. But, as the following account demonstrates, the international community has taken no action which might challenge continued Indonesian control over East Timor and indeed, since 1982, no action at all, at the level of the Security Council or the General Assembly.

CHAPTER 2

THE INTERNATIONAL COMMUNITY AND THE QUESTION OF EAST TIMOR

Section I: Resolutions of the Security Council and the General Assembly on the question of East Timor

72. Since December 1975 the United Nations has assumed the principal responsibility for resolving the dispute over East Timor. Resolutions on the question of East Timor were passed by the Security Council in 1975 and 1976, and by the General Assembly between 1975 and 1982. Neither body has given further consideration to the question. The text of the resolutions together with voting records is set out in Annexes 25 and 26 of this Counter-Memorial. (The resolutions also appear in Annex 1 of Portugal's Application and Annexes I.1-I.10 of Portugal's Memorial.) What follows is a brief account first, of the resolutions of the Security Council and secondly, of the resolutions of the General Assembly. In Part III of this Counter-Memorial, Australia examines the application of these resolutions to the facts of the case in more detail.

A. Security Council resolution 384 of 22 December 1975

73. On 22 December, twelve days after General Assembly resolution 3485 (discussed in para.98ff. below), and fifteen days after the Indonesian intervention, the Security Council unanimously adopted resolution 384.

74. In the preambular paragraphs of the resolution, the Security Council recognised the right of the people of East Timor to self-determination; noted the decision of the General Assembly to request the Committee of Twenty-Four to send a fact-finding mission there; deplored, although without condemning, the military intervention by Indonesia in East Timor; and regretted "that the Government of Portugal did not discharge fully its responsibilities as administering Power in the Territory under Chapter XI of the Charter". The Security Council thus began by recognising expressly that Portugal had failed to fulfil its responsibilities as administering Power in the Territory, by failing to assist the East Timorese people towards an orderly act of self-determination and

by its disorderly withdrawal from the Territory.

75. In the operative paragraphs of resolution 384, the Security Council "called upon" all States to respect the territorial integrity of East Timor and the right of the East Timorese people to self-determination; called upon "the Government of Indonesia to withdraw without delay all its forces from the Territory" and "the Government of Portugal as administering Power to co-operate fully with the United Nations so as to enable the people of East Timor to exercise freely their right to self-determination".

76. By operative paragraph 4, the resolution also stated that the Security Council:

> "*Urges* all States and other parties concerned to co-operate fully with the efforts of the United Nations to achieve a peaceful solution to the existing situation and to facilitate the decolonization of the Territory."

77. Further, by operative paragraphs 5 and 6, the Security Council requested the Secretary-General to send a special representative to the Territory and, on considering the representative's report, to submit recommendations to the Security Council.

78. Resolution 384 shows that the Security Council accepted that the United Nations had the primary responsibility for finding a means of settling the dispute which had arisen over East Timor. It also shows that the Security Council chose not to make any findings which might have been construed as attracting its enforcement powers under Chapter VII. It did not, for example, make any finding of breach of the peace, or act of aggression on Indonesia's part. Clearly the Security Council intended to act only under Chapter VI and not Chapter VII. In keeping with this, the terms of the resolution were purely recommendatory. They did not contain any specific findings concerning either Indonesian occupation of the territory, or the denial of the rights of the East Timorese people to self-determination. There is no indication in resolution 384 that the Security Council intended to make any decision binding on Member States under Article 25 of the Charter, and no such decision was made.

79. This understanding of resolution 384 is supported by many of the statements made by Member States during the Security Council's discussion of

the East Timor situation between 15 and 22 December 1975. It should be borne in mind that Member States were conscious of their lack of reliable information and of the apparent complexity of the problem. Explaining his delegation's support for the resolution on 22 December 1975, the representative of Italy stated:

> "In the light of what we heard we could by and large realize the complexity of the problem with which the United Nations is confronted and the difficulties which the Council would have to overcome in order effectively to fulfil the task of restoring peace and order in that troubled territory and ensure to its people the right to decide freely their own destiny.
>
> I must add in all candour that the picture of the events, as we could draw it in our minds, was far from clear, except in its tragic human connotations. ...
>
> What we could however sum up from their statements is the confirmation that a factional strife had been going on for some months in the Territory causing heavy losses of life and undue sufferings to the people, and that that situation had led first to the withdrawal of the administering authority and secondly to armed intervention by a neighbouring country.
>
> In the face of such a situation, it is the opinion of my delegation that the resolution just adopted by the Council takes due account of what has apparently been going on in East Timor and has chosen the most realistic and proper course of action at this stage. ... [I]t tries to make the presence of the United Nations felt at once in the Territory... .
>
> That is why, in the opinion of my delegation, it is of the utmost importance that the special representative to be appointed by the Secretary-General should establish contacts with all the Governments and parties concerned in order to promote the cessation of factional strife as a first step to reconciliation among the fighters. At the same time, he should collect all relevant information for the Secretary-General, whose following recommendations to the Council will

guide our future most appropriate action." (S/PV.1869, pp.32-3)

80. It was in this context that most States recognized that it was not the task of the Council to allocate blame, and that what was needed was practical action. In endorsing the resolution, the representative of France said:

> "The mission of the Council in this case is not to lay blame, and even less to attribute it to a single one of the parties involved. We know that historic situations are rarely simple enough for good and evil to be discerned from a single vantage point. Timor is no exception to that rule. A series of circumstances has plunged the Territory of East Timor into a war, both civil and foreign. The administering Power, despite its obvious goodwill and the sincerity of its commitments, has certainly been unable to devote all due attention and diligence to the decolonization of that far-off island." (S/PV.1869, pp.34-5, 36)

81. The representative of the United Republic of Cameroon also commented that:

> "[T]he Council, as the outcome of the lengthy and difficult consultations which it has carried out in recent days, has, in the final analysis, we believe, taken a balanced decision of a more or less conciliatory nature which will be likely to reduce tension and to promote conditions for a calm and normal evolution of events in East Timor, at the same time safeguarding international peace and security in the area.
>
> It was, in fact, deliberately - that is, in a spirit of realism - that the Council finally did not feel it should energetically condemn the intervention of Indonesian armed forces in that Territory. ...
>
> It can be said that responsibility for this tragedy is largely shared. At the origin of these events is undoubtedly the characteristic nature of Portuguese colonial history, aggravated by the uncertainties of power in Lisbon. ...
>
> ...
>
> The mandate which the Council has in this case entrusted to the Secretary-General is in the context of its role as a body to safeguard

> international peace and security in general and particularly in this region ... , it being perfectly understood that the General Assembly of the United Nations, through its organs, is the only competent body to deal with the decolonization of Timor, a question of which it is already seized." (S/PV.1869, pp.8, 11)

82. The representative of Costa Rica also noted that the Security Council had only "scanty information" (S/PV.1869, p.18) and observed that:

> "my delegation [can] find [no] justification for Portugal's weakness as the administering Power. Portugal, at the final stage of its mandate, lost control over the domestic situation in East Timor." (S/PV.1869, p.21)

In explaining Japan's vote for the resolution on 22 December 1975, the representative of Japan commended the Security Council for taking "practical action to dispose of the situation in East Timor," in the form of a request to the Secretary-General to send a special representative to the Territory to make an on-the-spot assessment of the existing situation (S/PV.1869, p.17).

83. It should, however, also be noted that, even at this stage, there were States which did lay the blame on Portugal. On 15 December 1975, the representative of Malaysia (which had been granted permission to speak although not a member of the Council) stated:

> "In evacuating almost all of the Portuguese in Portuguese Timor, the colonial Power abdicated the solemn responsibilities it had assumed as the administering Power under the United Nations Charter and the Declaration on the Granting of Independence to Colonial Countries and Peoples. Furthermore, having removed itself physically from the Territory, the Portuguese Government also lost any leverage it might have had for influencing the course of events in Portuguese Timor.
>
> ...
>
> It can be seen, therefore, that the Portuguese Government had neither the ability nor the means to restore peace and order in the Territory and assist its people in the process of decolonization. In fact, the Portuguese Government admitted as much in its letter to the Secretary-General of 28 November, in which it stated that it did not

have the means to ensure normalization of the situation in Timor." (S/PV.1864, pp.66-7)

84. Before the Security Council, Indonesia had stated:

"As a result of the bloody fighting in Portuguese Timor, Indonesia was ... confronted with extremely serious difficulties." (S/PV. 1864, p.37)

"Indonesia totally and emphatically rejects the sanctimonious contention of Portugal ... that Indonesia has committed a military aggression in Timor. It is Portugal that should be charged with criminal negligence ... of its responsibilities towards the people of East Timor." (S/PV. 1864, pp.42-3)

"Indonesia is vitally interested in peace and stability in Timor ... Indonesia will continue to participate in every bona fide effort to restore peaceful conditions to the territory in order to enable the people freely and democratically to exercise its right to self-determination. The future political status of East Timor must be based on the outcome of such an exercise of the right to self-determination by the entire people. Indonesia is prepared to co-operate with the United Nations and countries of the region to achieve that purpose." (S/PV. 1864, p.43)

B. Security Council resolution 389 of 22 April 1976

85. The Security Council next considered the question of East Timor between 12 and 22 April 1976, after the visit to the Territory of the Secretary-General's Special Representative (Mr Winspeare Guicciardi). On 22 April 1976, the Security Council adopted resolution 389, by 12 votes to nil. Japan and the United States abstained and Benin did not participate in the voting. Although more than 5 months had elapsed since Indonesia's occupation of the territory, the second Security Council resolution was substantially the same as its first. By its preambular paragraphs, the resolution again commenced by "[r]eaffirming" the right of the people of East Timor to self-determination; by "[n]oting that the question of East Timor is before the Assembly"; and stating that it was:

> "*Conscious* of the urgent need to bring to an end the continued situation of tension in East Timor."

86. By its operative paragraphs, the Security Council again "called upon" all States to respect the territorial integrity of East Timor and the right of its people to self-determination; called upon the government of Indonesia to withdraw; and called upon:

> "all States and other parties concerned to co-operate fully with the United Nations to achieve a peaceful solution to the existing situation and to facilitate the decolonization of the Territory."

87. Two other operative paragraphs requested the Secretary-General to have his Special Representative continue the assignment and to submit a report to the Security Council. The terms of resolution 389 indicate that the Security Council was obviously concerned to be better informed of the facts.

88. Like resolution 384, resolution 389 expressed the Security Council's view that the United Nations through its various organs should assume responsibility for finding a peaceful solution to the East Timor situation, through the processes of consultation and negotiation. Its terms, like those of resolution 384, were entirely recommendatory. It "called upon", but did not "demand", "insist ", or "order" Indonesia to withdraw from the Territory. It should be borne in mind that in Security Council usage, generally speaking, the ascending order of peremptoriness of language is "recommend", "request", "appeal", "call upon", "urge", "demand", "insist", "order": see Goodrich, Hambro and Simmons, Charter of the United Nations (3rd ed, 1969), p.307. The resolution again omitted any specific finding that Indonesia had committed an act of aggression, or engaged in unlawful use of force. There is nothing in the language of resolution 389 to invoke any of the Security Council's powers under Chapter VII, and it recorded no decision which could be construed as giving rise to an obligation on the part of Member States to abstain from entering into dealings with Indonesia in relation to East Timor.

89. Again this understanding of the resolution is reflected in the statements made by States concerning East Timor. Members of the Council expressed the view that, in the particular circumstances of East Timor, a solution should be

sought through negotiation under the auspices of the United Nations. On 20 April 1976, the representative of Italy again noted that the situation was a complex one and stated:

> "When the Council met in December last to consider the question of East Timor there was general agreement among its members that our knowledge of the local situation was not comprehensive enough to enable this body to take proper action under the responsibilities bestowed upon it by the Charter.
>
> ...
>
> The situation prevailing in East Timor is certainly not a simple one, as can be clearly seen from the report of the Special Representative, and the task of the Council is not easy.
>
> ...
>
> We were... favourably impressed by the conclusions drawn by the Special representative in his report - namely, that all the parties concerned concurred in principle that any agreement on the settlement of the problem should be submitted to the people of East Timor and approved by them. It is true that ... opinions vary about who should take part in the negotiating process which might produce such a settlement, and how popular approval should be sought. Our main task at this stage cannot be other than to try to reconcile these differences.
>
> ...
>
> We therefore share the view of the Secretary-General, now that the existence of some essential elements of a possible solution has been ascertained, that the Council should recommend the promotion of further contacts between the Special Representative and the parties concerned. The final objective of these contacts should be to bring the parties together and work out a solution on the basis of some fundamental guidelines to be established by this Council." (S/PV.1912, pp.31-33)

90. The representative of the USSR also remarked that the situation in the Territory remained "complex, tense and unsettled" and agreed that there was a need for a further report from the Secretary-General's Special Representative (S/PV.1915, pp.12-13). See also the statement by the United Kingdom representative, who commented:

> "A major difficulty will be the absence of any prior preparation in the Territory for the use of democratic processes. In our view, procedures suited to the local circumstances should be used." (S/PV.1915, p.18)

91. Members of the Security Council remained of the view that it was, in the circumstances, inappropriate to allocate blame. Thus, when the representative of Pakistan spoke before the Council on 22 April 1976, he said:

> "The proximate cause of the crisis in East Timor was the outbreak of dissension and civil strife between various political and ideological factions in the Territory. ... It is no longer material to discuss which act was the cause and which the consequence; undoubtedly the vacuum created by Portugal's abrupt and unceremonious departure from the scene had much to do with these developments. In the circumstances it is difficult to accept Portugal as having in any practical sense any further responsibilities as the Administering Authority..." (S/PV. 1914, p.36)

He added:

> "[We] hope ... that the Special Representative will receive the continued backing of the Council in his difficult and delicate task. We are pleased to see that the resolution now adopted has avoided fault-finding and recrimination and aims at finding a solution which would be acceptable to all and would promote the welfare of the people concerned." (S/PV. 1914, p.38-40)

92. A similar view was entertained by France, whose representative said:

> "Like resolution 384 (1975), adopted on 22 December last by the Council , the one just adopted today... seems to us a substantial improvement over resolution 3485(XXX), which the General Assembly had adopted 10 days earlier.
>
> ...
>
> Indeed, rather than unilaterally placing responsibility for the situation on one of the parties to the conflict it takes into account the various

points of view and the facts of life. ...

My delegation fully approves of continuing the assignment entrusted to the Secretary-General's Special Representative. Rather than dwelling on the past and apportioning blame here or there, it is to the future that we must now look. The future of East Timor must be characterized by national reconciliation ... .

Even though some encouraging signs in this respect have already been reported, it is not to be expected that this reconciliation will be without its vicissitudes or without long and laborious negotiations; therefore it would be desirable for such negotiations to be held, or at least started, under the United Nations auspices and, initially, through the good offices of the Secretary-General's Special Representative." (S/PV. 1915, 22 April, 1976, pp.11-12)

93. It should also be noted that, appearing before the Security Council on 14 April 1976, the representative of Indonesia again maintained that "the Indonesian presence in East Timor was upon the specific request of the large majority of the people" (S/PV. 1909, pp.8-10). He said further that:

"As far as the people of East Timor are concerned, in their view they have already formally decided to become independent through complete integration with the Republic of Indonesia. They now consider themselves as much Indonesian as any other Indonesian from any other part of Indonesia and their territory as much part of Indonesia as any other province of Indonesia.

...

It is because of its respect for the right to self-determination that Indonesia has stated time and again that, though the Indonesian people welcome the decision for integration with Indonesia made by the people of East Timor, we should like to see, however, whether that decision, proclaimed on 30 November 1975, will subsequently be confirmed by the people in the exercise of their right to self-determination. The Indonesian Government will also have to consult the Indonesian Parliament as to whether it accepts the decision for integration of the people of East Timor." (S/PV. 1909, pp.11-12)

94. Indonesia's stance was supported by certain States which, although not members of the Council, spoke before the Council. On 20 April 1976, the representative of Malaysia (which had been granted permission to speak) stated:

> "Our delegation participated in the deliberations of the Council when it met last year to consider the question of Timor for the first time. At that time, we were faced with a situation which was markedly different from the one existing in Timor today ...
>
> ...
>
> We have ... been told that preparations for the establishment of a People's Assembly will be completed in two or three months. Such an achievement by the Provisional Government cannot be underestimated, considering that, during the long occupation by Portuguese colonial power, no effort had been made to develop any indigenous political system in the Territory ...
>
> ...
>
> [W]e are pleased to note that the Provisional Government is committed to the principle of self-determination and has agreed to invite the United Nations to witness the implementation of its decision ...
>
> ...
>
> As to the form and manner of the act of self-determination, this, as we all know, varies from place to place, depending upon the particular circumstances existing in the respective Territories. In the case of East Timor, given the fact that over 90 per cent of the people are illiterate, and given the difficulties of communications, the Malaysian Government accepts and supports the manner in which the people of East Timor have exercised their right to self-determination." (S/PV. 1911, pp.11-5)

95. On 14 April 1976, a similar view was expressed by the representative of the Philippines who stated:

> "It is relevant to recall that Indonesia entered East Timor at the request of those parties representing the majority of the East Timorese, and did so only after efforts to find a peaceful solution to the strife in the Territory had failed. ... My delegation cannot fail to note that the people of East Timor have expressed the wish through

> four parties - APODETI, UDT, KOTA and Trabalhista - to be integrated with Indonesia, and that Indonesia has refused to accede to their request except in so far as the people of East Timor themselves shall have expressed their wishes in a formal act of self-determination." (S/PV.1909, p.26)

96. When the representative of Saudi Arabia addressed the Council on 15 April 1976, he was openly critical of Portugal's conduct and stated:

> "So if the Indonesians moved at one time it was not in order to lord it over the East Timorese. It was in order to see what could be done so that public order could be maintained when the so-called vacuum was created by the withdrawal of Portugal. Therefore, there is no reason to molest or criticize Indonesia." (S/PV. 1910, pp.8-10)

97. No other resolution with respect to East Timor has since been considered by the Security Council, even though the General Assembly called on the Security Council to consider the matter further in its resolutions on East Timor of 1976, 1977 and 1978.

C. General Assembly resolution 3485(XXX) of 12 December 1975

98. On 12 December 1975, 5 days after the Indonesian armed forces had entered the East Timorese capital of Dili, the General Assembly passed resolution 3485(XXX). The votes in favour numbered 72, including Australia. 10 States voted against the resolution; 43 abstained; and 19 States were absent when the vote was taken.

99. The focus of the resolution is expressed in operative paragraph 3 in which the Assembly:

> "*Appeals* to all the parties in Portuguese Timor to respond positively to efforts to find a peaceful solution through talks between them and the Government of Portugal in the hope that such talks will bring an end to the strife in the Territory and lead toward the orderly exercise of the right to self-determination by the people of Portuguese Timor."

100. The resolution also declared in operative paragraphs 4-6 that the Assembly:

> "4. *Strongly deplores* the military intervention of the armed forces of Indonesia in Portuguese Timor;
>
> 5. *Calls upon* the Government of Indonesia to desist from further violation of the territorial integrity of Portuguese Timor and to withdraw without delay its armed forces from the Territory in order to enable the people of the Territory freely to exercise their right to self-determination and independence;
>
> [and]
>
> 6. *Draws the attention* of the Security Council, in conformity with Article 11, paragraph 3, of the Charter, to the critical situation in the Territory of Portuguese Timor and recommends that it take urgent action to protect the territorial integrity of Portuguese Timor and the inalienable right of its people to self-determination."

101. Paragraph 4 was voted on separately. The vote was 59:11:55 (A/PV.2439, 12 December 1975). Operative paragraph 5 contains the only reference by any organ of the United Nations to Indonesian action as a "violation of the territorial integrity of Portuguese Timor". The description was not adopted by the Security Council, nor repeated by the General Assembly on any other occasion.

102. By relying on Article 11(3) of the Charter to draw the matter to the Security Council's attention, the General Assembly indicated that the Assembly regarded the situation as one "likely to endanger international peace and security" and thus falling within Article 33 of the Charter. Whilst Article 33 attracts the recommendatory powers of the Security Council under Chapter VI, it does not attract its decision-making powers under Chapter VII. Indeed the Assembly omitted from the terms of the resolution any language which was capable of forming a basis for action by the Security Council under Chapter VII. Had it so wished the Assembly could have used the word "condemn", rather than "deplore", or "aggression" rather than "military intervention". It has used those words on other occasions. See, for instance,

resolutions 40/52 and 40/53 (1985) set out in Appendix B hereto; resolution 39/146B (1984) "strongly condemning" Israel for failing to comply with earlier General Assembly and Security Council resolutions concerning Israel's occupation of the Golan Heights (para.1); resolution 2383(XXIII) (1968) "condemning" the failure of the United Kingdom, as administering Power, to take effective measures to end the illegal regime in Southern Rhodesia (para.3) and "condemning" the illegal intervention of South African forces in Southern Rhodesia (para.10); also General Assembly resolution 498(V) (1951) concerning the "aggression" in Korea.

103. This understanding of resolution 3485(XXX) is reflected in the statements made by States in the Fourth Committee when the draft resolution was under consideration. On 8 December 1975, the representative of Sri Lanka described the general understanding of States of the situation in East Timor. He stated:

> "What was essential was that Indonesia should be urged to withdraw its troops and that an administration should be established in Portuguese Timor which would be able to maintain order until conditions in the Territory permitted the people to exercise freely their right to self-determination. The interested parties should therefore undertake consultations to that end. It appeared, however, that Portugal was not in a position to deal with the situation alone. The best course, therefore, would be for Portugal and the United Nations to ensure the administration of the Territory until the aforementioned favourable conditions were established.
>
> He did not believe that any purpose would be served in condemning the action taken by Indonesia, which was nevertheless most regrettable." (A/C.4/SR.2185)

104. States emphasised the need for a negotiated settlement. Thus, the representative of Japan stated:

> "His delegation still believed that talks between Portugal and all the political parties in Portuguese Timor offered the best basis for achieving a negotiated settlement, ending the armed conflict, and bringing about the peaceful and orderly decolonization of the Territory.

...

His delegation hoped that the United Nations would play an appropriate role in overcoming the current difficulties, in co-operation with the administering Power, and that all Member States would help to achieve a peaceful solution and the decolonization of Portuguese Timor." (A/C.4//SR.2180, 3 December 1975)

The representative of India expressed similar views (*ibid.*).

105. The representative of Indonesia stated in his country's defence that:

"He would remind those who criticized Indonesia's action in Timor that the course of events in the Territory would have taken a different turn if only Portugal had not been criminally negligent in the discharge of its obligations as administering Power.

...

He wished to repeat most emphatically that Indonesia's presence in Timor was not intended to impose a political solution on its people. Indonesia's sole aim was to promote a solution which would be consistent with General Assembly resolutions 1514(XV) and 1541(XV). Indonesia, far from wishing to confront the world with a fait accompli, would welcome appropriate United Nations participation in order to ensure that the people's will was respected." (A/C.4/SR.2187)

106. Some States expressed sympathy for Indonesia's position. Thus, the representative of Fiji:

"expressed regret that the administering Power, Portugal, had proved to be not only impotent but also grossly negligent in Portuguese Timor, where for several months there had been a reign of terror, bloodshed and total lack of law and order. The concern expressed by Indonesia, a neighbouring country which had had an influx of 40,000 refugees from the Territory, was therefore entirely legitimate and understandable. However, his delegation was of the view that a state of anarchy did not in any way diminish the right of the peoples of all colonial Territories to self-determination and independence. It accepted Indonesia's explanation of the reasons for its intervention,

> but such intervention could not justify any infringement of the right of the peoples of Portuguese Timor to self-determination or of the principle that no State had the right to intervene, directly or indirectly, in the internal or external affairs of any other State.
>
> ...
>
> His delegation in no way condoned such intervention, but, being realistic, it recognized that the Indonesian military forces were currently in occupation of much of Portuguese Timor and that the presence of the administering Power was nowhere to be seen." (A/C.4/SR.2187)

A similar view was expressed by Saudi Arabia whose representative said:

> "The responsibility for the situation currently prevailing in Portuguese Timor lay in many respects with Portugal, which was far from the scene of conflict, whereas Indonesia, which had attempted to put out the fire, was close by." (A/C.4/SR.2187)

The representative of Japan stated:

> "Portugal's symbolic presence and its limited authority had led to the escalation of armed strife and tension in the Territory. Portugal's failure to take appropriate measures to restore peace and order, which were essential to the free exercise of the right to self-determination, and its failure to honour its commitment as administering Power had created a vacuum. The resulting escalation of the armed struggle between the rival parties in the Territory had caused bloodshed and suffering and Indonesia's intervention should be viewed against that background." (A/C.4/SR.2189, 11 December 1975)

107. In the Fourth Committee, as in the Security Council, States recognized that they had insufficient information to enable them to judge what had occurred in the Territory. Thus, the representative of the Philippines said:

> "The events that had occurred in Portuguese Timor could not fail to be of interest to the Philippines, which was in the same region. His delegation did not feel it was appropriate to condemn Indonesia before the Committee had clear and first-hand information regarding

> *the real situation in Portuguese Timor.*" (A/C.4/SR.2188, 11 December 1975)

In the Fourth Committee, the representative of Malaysia supported the proposal that "the United Nations should participate in the decolonization process by sending a visiting mission", observing that

> "Such a mission would make it possible to ascertain the actual situation prevailing in the area and would help to lay to rest the many conflicting reports which had come to the attention of the international community." (A/C.4/SR.2180, 3 December 1975)

D. General Assembly resolution 31/53 of 1 December 1976

108. The General Assembly did not again consider the question of East Timor until 1 December 1976. Under the Portuguese Constitution adopted in April 1976, East Timor was no longer defined as territory under Portuguese sovereignty. The Provisional Government of East Timor had convened a "Popular Assembly" in Dili on 31 May 1976 to vote on a proposal for integration of the territory with Indonesia. The Special United Nations Committee on Decolonization had declined the invitation of the Provisional Government to observe the proceedings, although similar invitations had been accepted by the Governments of India, Iran, Malaysia, New Zealand, Nigeria, Saudi Arabia, and Thailand. The Government of Indonesia had later (on 7 June 1976) issued its own invitations to the Special Committee and to the Security Council to observe a fact-finding mission of the Indonesian Parliament to the Territory which was designed to assess the resolution of the Popular Assembly in favour of integration with Indonesia and to "verify the wishes of the people". Again those invitations were declined by the United Nations bodies, but similar invitations were accepted by a number of countries. On 12 August 1976 Indonesia reported to the Secretary-General of the United Nations that the Indonesian Parliament had decided to accept the petition by the East Timor Popular Assembly for integration with Indonesia, and that a formal act of integration had been passed by the Parliament on 17 July 1976 (UN Doc.S/12174). See paragraph 54 above.

109. After debating these developments, the General Assembly adopted resolution 31/53 on 1 December 1976. In its preambular paragraphs, the

General Assembly reiterated that it remained:

> "*Deeply concerned* at the critical situation resulting from the military intervention of the armed forces of Indonesia in East Timor."

110. In its operative paragraphs, the Assembly re-affirmed its previous resolution, together with those of the Security Council, and stated that it:

> "*Strongly deplores* the persistent refusal of the Government of Indonesia to comply with the provisions of General Assembly resolution of 3485(XXX) and Security Council resolution 384 (1975) and 389 (1976);
>
> *Rejects* the claim that East Timor has been integrated into Indonesia, inasmuch as the people of the Territory have not been able to exercise freely their right to self-determination and independence;
>
> [and]
>
> *Calls upon* the Government of Indonesia to withdraw all its forces from the Territory."

111. Again referring to Article 11(3) of the Charter, the Assembly sought to draw the Security Council's attention to what it described as "the critical situation in the Territory of East Timor" and recommended that the Security Council take "all effective steps" for the implementation of its earlier resolutions. The Assembly also requested the United Nations Special Committee on Decolonization "to despatch to the Territory as soon as is possible a visiting mission ". That mission was not sent.

112. In this, and subsequent resolutions, the Assembly no longer referred to the Territory as Portuguese Timor, but as East Timor. In this as in earlier resolutions the Assembly's language was recommendatory. It made no finding against Indonesia which might have led it to engage the attention of the Security Council under Chapter VII. On the contrary, the Assembly confirmed its previous position that the Security Council should act under Chapter VI.

Despite the recommendation for further action by the Security Council in the General Assembly's resolution 31/53, however, no such item returned to the agenda of the Security Council.

113. The vote on resolution 31/53 was 68 in favour, 20 against, 49 (including Australia) abstaining, and 9 absent. The debate on the resolution in the plenary session of the Assembly was not extensive. Indeed, Portugal did not speak at all, although it had spoken in support of the draft resolution in the preceding debate in the United Nations Fourth Committee.

114. Before the Fourth Committee on 17 November 1976, Indonesia had defended itself by declaring that:

> "his delegation would categorically reject any resolution which did not respect the legitimate decision already taken by the people of East Timor to be independent through integration with Indonesia and which did not take into account the prevailing realities in East Timor.
> ...
> The exercise of the right to self-determination had taken place in freedom in accordance with the customary practice of the people concerned. Indonesia respected the wish of the people of the Territory and accepted their decision to be independent through integration with Indonesia." (A/C.4/31/SR.27)

It repeated this in Plenary session on 1 December 1976 (A/31/PV.85).

115. Some States accepted that there had in fact been a valid act of self-determination in May 1976. See the statements made by the Philippines, A/C.4/31/SR.16, 5 November 1976; A/31/PV.85, 1 December 1976; Malaysia, A/C.4/31/SR.27, 17 November 1976; Iran, A/C.4/31/SR.16, 5 November 1976; Morocco, A/C.4/31/SR.16, 5 November 1976; Oman, A/C.4/31/SR.16, 5 November 1976 and A/31/PV.85, 1 December 1976; and India, A/C.4/31/SR.13, 2 November 1976.

116. Most States urged a co-operative solution. Thus, the representative of Japan said:

> "while the decolonization of East Timor had been carried out in the normal way until April 1974, the sudden collapse of the administering Power at that time had created utter chaos throughout the Territory. Armed conflicts had eventually broken out between the various political groups and it was regrettable, as stated in Security Council resolution 384 (1975), that the Government of Portugal had not fully discharged its responsibilities under Chapter XI of the Charter.
>
> ...
>
> In May 1976, the Provisional Government had submitted a formal request to the Indonesian Government for integration with Indonesia, so that it could become independent as an integral part of that country. Indonesia had accepted that request in July 1976, and that was how the situation now stood.
>
> ...
>
> His delegation hoped that an atmosphere of reconciliation would soon prevail among all parties involved in the dispute, and he welcomed the statement by the representative of Portugal that the Portuguese Government would accept a consensus of the United Nations on that matter, in the knowledge that it would be in accordance with the principles that had always guided the United Nations." (A/C.4/31/SR.16, 5 November 1976. See also A/C.4/31/SR.27, 17 November 1976.)

Saudi Arabia agreed, observing:

> "Indonesia was a polyethnic nation and had legitimate interests in protecting peace and security on the island of Timor. He was pained to see Indonesia, an early leader in the anti-colonialist struggle, maligned by people who were themselves far from perfect and should know better. The temptation to create a mountain out of a molehill could only lead to trouble for States Members of the United Nations." (A/C.4/31/SR.13, 2 November 1976)

E. General Assembly resolution 32/34 of 28 November 1977

117. The question of East Timor was considered again by the General Assembly at its next annual session. Resolution 32/34 of 28 November 1977 was almost identical in terms to resolution 31/53. Again it expressed the Assembly's "deep concern" for the situation in the Territory, "resulting from the persistent refusal on the part of the Government of Indonesia to comply with the provisions of the resolutions of the General Assembly and the Security Council". Again, by operative paragraph 6, the Assembly sought to draw the Security Council's attention to the matter, in conformity with Article 11(3) of the Charter.

118. Operative paragraph 5 did, however, introduce a new request - that the Secretary-General send urgently a special representative to East Timor with a view to making "a thorough, on-the-spot assessment of the existing situation in the Territory and of establishing contact with the representatives of [FRETILIN] and the Government of Indonesia, as well as the Governments of other States concerned, in order to prepare the ground for a visiting mission of the Special Committee...". (That visiting mission had been mandated by earlier resolutions.)

119. This new element showed the Assembly's concern that there be some reliable fact-finding undertaken in the Territory, and that the processes of settlement be appropriately pursued between the parties directly concerned, specifically FRETILIN and Indonesia. In this connection, Portugal was not named, although it no doubt fell into the general category of "other States concerned". In keeping with this approach to Portugal's limited role, neither in this resolution (nor indeed in resolution 31/53 and Security Council resolution 389) was there any specific reference to Portugal as administering Power.

120. Resolution 32/34 was adopted by the General Assembly by 67 votes in favour, 26 against, 47 (including Australia) abstaining and 9 absent. Before the vote was taken, only two statements were made - by Indonesia and the Philippines both speaking against the resolution. Portugal did not speak.

121. In the General Assembly, Indonesia reiterated that:

> "the people of East Timor have exercised their right to self-determination in accordance with their own traditional practices; the territory has become independent as an inseparable part of the sovereign Republic of Indonesia." (A/32/PV.83, 28 November 1977)

The Philippines added that:

> "It is our conviction, based on the facts, that the people of East Timor have already exercised [their right to self-determination] freely, in accordance with General Assembly resolution 1514(XV) and resolution 1541(XV). The international community and the United Nations should now respect that expression of will." (A/32/PV.83, 28 November 1977. See also A/C.4/32/SR.21, 10 November 1977.)

122. In the Fourth Committee, other States indicated that they shared the view of the Philippines. See India, A/C.4/32/SR.21, 10 November 1977; Malaysia, A/C.4/32/SR.13, 2 November 1977; Iran, A/C.4/32/SR.15, 4 November 1977. The representative of the Netherlands, on the other hand, opposed the draft resolution because:

> "the draft resolution which had just been adopted did not make a positive contribution to the solution of the problems of East Timor, although he recognized that past developments in the Territory had left some questions unanswered, in particular with regard to the role that the United Nations should have been allowed to play in shaping its destiny. His country was deeply concerned about the current situation of the people of East Timor and believed that the Government of Indonesia had a moral obligation to satisfy the international community's need for information regarding the state of affairs in the Territory. His delegation therefore supported the appeal to the Government of Indonesia that it should facilitate the entry into East Timor of the International Committee of the Red Cross and other relief organizations in order to assist the people of the Territory." (A/C.4/32/SR.21, 10 November 1977)

At the same meeting, the representative of Australia also expressed the view that the draft resolution "was neither realistic nor constructive" (A/C.4/32/SR.21).

F. General Assembly resolution 33/39 of 13 December 1978

123. On 13 December 1978, the General Assembly adopted resolution 33/39 on the question of East Timor. This resolution was essentially the same as that of the previous year. Voting support, however, had significantly declined to 59 in favour, 31 against, 44 abstaining, and 16 absent. For the first time, Australia joined those voting against the resolution.

124. The debate was not extensive in either the Fourth Committee or the plenary Assembly. Portugal spoke at neither meeting. In the Fourth Committee, more States recognized that East Timor had become part of Indonesia. See statements made on behalf of Canada, A/C.4/33/SR.33, 5 December 1978 and Saudi Arabia, A/C.14/33/SR.21, 20 November 1978. *Cf* also Papua New Guinea, A/33/PV.11, 7 September 1978. The representative of France expressed the view that the draft resolution "did not seem to take account of the real situation in East Timor" (A/C.4/33/SR.33, 5 December 1978).

G. General Assembly resolution 34/40 of 21 November 1979

125. On 21 November 1979, the General Assembly adopted resolution 34/40; by 62 votes in favour, 31 (including Australia) against, 45 abstaining, and 14 absent. The resolution of 1979 marked a substantial change in the approach of the Assembly to the question of East Timor. The change carried with it important legal consequences. Whilst the preamble reaffirmed the right to self-determination of all peoples, it no longer referred to Article 2(4) of the Charter (and the prohibition on the use of force), as earlier resolutions had done. The operative paragraphs of the resolution did not reaffirm any of the previous resolutions dealing with the question of East Timor. Nor did they repeat the Assembly's reference to Article 11(3) of the Charter, nor the requests previously addressed to the Security Council. Operative paragraph 1 reaffirmed the right of the people of East Timor to self-determination, but paragraph 2 declared, in terms not previously used in resolutions on East Timor, that:

> "the people of East Timor must be enabled freely to determine their own future, under the auspices of the United Nations." (Emphasis added.)

The remaining paragraphs concerned the humanitarian aspects of the situation in East Timor.

126. By choosing not to reaffirm previous United Nations resolutions, the General Assembly indicated that the earlier resolutions dealing specifically with East Timor were no longer to be regarded as operative. It also indicated that, as the political organ responsible for decolonization, it had withdrawn its judgment that East Timor had not in fact been integrated into Indonesia. The basic proposition for which this and subsequent resolutions stand is limited to that in operative paragraph 2 that the people of East Timor must be enabled freely to determine their own future under the auspices of the United Nations.

127. The debates on resolution 34/40 were more extensive than in previous years, both in the Fourth Committee and in the General Assembly. Portugal spoke in the Fourth Committee, although not in the General Assembly. In the Fourth Committee and in the General Assembly, Indonesia reiterated its position. It affirmed that:

> "Each case of decolonization should be understood in the light of its own existing realities. There had been cases in the history of decolonization where local circumstances had made popular consultation through a plebiscite or a referendum unnecessary and cases where other forms of consultation had been accepted, with or without United Nations supervision or observation. What was important was that the right of self-determination should be exercised in accordance with basic precepts of the Charter, which stipulated that the interests of the inhabitants of Non-Self-Governing Territories were paramount.
>
> ...
>
> The integration of East Timor with Indonesia had been carried out on the basis of complete equality between the population of East Timor and the people of Indonesia. The people of East Timor, being Indonesian people, had equal guarantees of fundamental rights and freedoms without any distinction or discrimination and were now concentrating their efforts on reconstruction and development.

> His delegation sincerely hoped that the Committee would base its attitude on the reality of the situation prevailing in East Timor, namely, the fact that the process of decolonization in that Territory had been concluded." (A/C.4/31/SR.16, 24 October 1979)

128. A number of States again expressed the view that there had in fact been a valid act of self-determination in East Timor. See the statements made by India, A/34/PV.75, 21 November 1979, A/C.4/34/SR.15, 24 October 1979; Bangladesh, A/C.4/34/SR.17, 25 October 1979; Thailand, A/C.4/34/SR.17, 25 October 1979; Papua New Guinea, A/34/PV.75, 21 November 1979; Suriname, A/C.4/34/SR.13, 22 October 1979; Singapore, A/C.4/34/SR.15, 24 October 1979; and Malaysia, Japan and the Philippines, all in A/C.4/34/SR.16, 24 October 1979. For this reason, the representative of India stated that:

> "we are at a loss to understand why this question should now continue to engage the time and attention of the United Nations.
>
> We are firmly of the view that the serious efforts being made by the Indonesian Government to rehabilitate the economy of East Timor through resettlement and other programmes deserve the support of all countries and that the constant raising of polemical clouds serves no useful purpose." (A/34/PV.75, 21 November 1979)

129. In the Fourth Committee, the representative of Sweden said:

> "Sweden recognized that there was in East Timor today a de facto situation to which there was no realistic alternative. Its vote for draft resolution A/C.4/34/L.3/Rev.1 should therefore be seen solely as an expression of support for its humanitarian aspects." (A/C.4/34/SR.23, 2 November 1979)

130. There were still States, though their number was dwindling, which expressed views similar to those of the representative of Mexico in the Fourth Committee, who stated:

> "It was clear that the population of the Territory had national characteristics of its own, including a separate culture, and that it was inspired by a national spirit. On the other hand, there was no trustworthy evidence that it had ever been given a clear and unequivocal opportunity to express itself freely on its political future.
>
> In that connexion, the delegation of Mexico considered that the people of East Timor should be allowed to determine their own future, as for example through a plebiscite under United Nations auspices; it therefore addressed an urgent and friendly appeal in that sense to Indonesia. Until such a solution had been reached, the General Assembly and the Fourth Committee must continue their consideration of the question which, in the light of the principles of the Charter, represented a solemn and unavoidable duty." (A/C.4/34/SR.16, 24 October 1979)

See also the statements made by Senegal A/C.4/34/SR.17, 25 October 1979; Haiti, A/C.4/34/SR.13, 22 October 1979; and Belgium, A/C.4/34/SR.23, 2 November 1979.

H. General Assembly resolution 35/27 of 11 November 1980

131. Until 1980 no Portuguese Government had actively sought to resolve the East Timor problem. It was not until 1980 that Portugal announced that it would seek to resolve the situation through diplomatic means (*cf* para.46).

132. Portugal's new activity was reflected in the General Assembly's resolution 35/27 adopted on 11 November 1980, by 58 votes to 35 (including Australia), with 46 abstaining and 15 absent. The Assembly referred in the resolution's preamble to "the diplomatic initiative taken by the Government of Portugal" and added, in operative paragraph 3, that it:

> "*Welcomes* the diplomatic initiative taken by the Government of Portugal as a first step towards the free exercise by the people of East Timor of their right to self-determination and independence, and urges all parties directly concerned to co-operate fully with a view to creating the conditions necessary for the speedy implementation of

> General Assembly resolution 1514(XV) [the Declaration on the Granting of Independence to Colonial Countries and Peoples, (1960)]."

133. Save for this, however, resolution 35/27 was much the same as resolution 34/40 of the previous year. Like resolution 34/40, it omitted any reference to past resolutions on East Timor and refrained from passing judgment on Indonesia's actions. The characterisation of the matter further altered, however, so that the situation in East Timor was described in the 1980 resolution as simply a "problem" for which a "comprehensive solution" was to be sought by the United Nations. The resolution did not indicate what might be an appropriate solution, leaving open the range of possibilities recognized in United Nations practice.

134. In the Fourth Committee, the representative of Papua New Guinea reiterated that:

> "His country considered East Timor to be an integral part of Indonesia and, as such, no longer a dependent Territory. The circumstances that had led to Indonesian intervention in East Timor should be judged in the light of the situation as it had been at the time. The administering Power had then no longer been in effective control of the Territory and had left the indigenous people to attend to their own affairs, which they had been unprepared to do after 200 years of Portuguese rule." (A/C.4/35/SR.13, 21 October 1980)

There were other States too which accepted Indonesia's views. See the statements for Thailand, Malaysia, Singapore and the Philippines, A/C.4/35/SR.11, 17 October 1980. The representative of Thailand added that:

> "Consideration of the item by the Fourth Committee clearly constituted interference in matters which were essentially within Indonesia's domestic jurisdiction." (A/C.4/35/SR.11, 17 October 1980)

The representative of Japan again drew attention to the fact that "the Territory was being effectively governed by Indonesia" (A/C.4/35/SR.11, 17 October 1980). See also the statements by Singapore and Malaysia, *ibid.* The general

view was expressed by the representative of the Federal Republic of Germany who "was happy to note" the Indonesian Government's efforts to co-operate with humanitarian organizations and to promote East Timor's economic development. He added:

> "As to the proposal made by the Council of Ministers of Portugal, he welcomed the idea of negotiations between the Administering Power and Indonesia, which would, he hoped, lead to positive progress on the humanitarian, cultural and political level." (A/C.4/35/SR.23, 3 November 1980)

I. General Assembly resolution 36/50 of 24 November 1981

135. General Assembly resolution 36/50 was adopted on 24 November 1981 by 54 votes in favour, 42 (including Australia) against, 46 abstaining, and 15 absent. It was very much the same in purpose and effect as the resolutions of the two previous years. It did not reaffirm previous resolutions on East Timor and did not pass judgment on Indonesia's conduct. It did, however, again note the diplomatic initiatives taken by Portugal in the previous year and invited it to "continue its efforts with a view to ensuring the proper exercise of the right to self-determination and independence by the people of East Timor". Further, by operative paragraph 3, the Assembly stated that it:

> "*Calls upon* all interested parties, namely Portugal, as the administering Power, and the representatives of the East Timorese people, as well as Indonesia, to co-operate fully with United Nations with a view to guaranteeing the full exercise of the right to self-determination by the people of East Timor."

136. States sought to encourage Indonesia and Portugal to negotiate on economic, cultural and political matters with a view to finding a solution to the problem. See for example statements on behalf of the Federal Republic of Germany and Haiti in the Fourth Committee, A/C.4/36/SR.21, 9 November 1981. However, Indonesia rejected the resolution for the reasons that:

> "First, there is no question of East Timor, as the people of East Timor themselves, in the exercise of their right to self-determination, decided as long ago as 1976 to become independent through

> integration with the Republic of Indonesia. Secondly, the resolution constitutes interference in the internal affairs of a sovereign Member States, thus violating Article 2, paragraph 7, of the Charter. Thirdly, this resolution serves no purpose as it has nothing to do with the realities and actual conditions in that province." (A/36/PV.70, 24 November 1981)

The representative of Indonesia added:

> "Furthermore, continuing to refer to Portugal as the administering Power is tantamount to reintroducing colonialism in that territory. That is clearly unacceptable and should be so to all anti-colonial forces. Portugal deliberately and definitively abdicated its responsibilities by running away from the territory in December 1975, abandoning the East Timorese people in their hour of need."

Indeed, a number of States again affirmed their view that East Timor had become integrated with Indonesia, in accordance with the wishes of the people of East Timor. See statements for Malaysia, A/C.4/36/SR.17, 30 October 1981; Thailand, A/36/PV.70, 24 November 1981; A/C.4/36/SR.9, 19 October 1981; Japan, A/C.4/36/SR.10, 20 October 1981; Oman, A/C.4/36/SR.21, 9 November 1981; Singapore, A/C.4/36/SR.12, 22 October 1981; Philippines, A/C.4/36/SR.12, 23 October 1981; and India, A/C.4/36/SR.10, 29 October 1981.

Speaking in the Fourth Committee, India added:

> "For the Committee to keep the question of East Timor on its agenda was an attempt to negate reality and interfere in the internal affairs of a sovereign Member State." (A/C.4/36/SR.10)

J. General Assembly resolution 37/30 of 23 November 1982

137. The eighth and last United Nations General Assembly resolution concerning East Timor was adopted on 23 November 1982. Resolution 37/30 was passed by the narrow margin of 50 in favour, 46 (including Australia)

against, 50 abstaining and 11 absent. In light of subsequent indications to the Secretariat by two absent delegations that they had intended to vote against the resolution, the true vote was even narrower at 50:48:50.

138. For the most part the preambular paragraphs of the resolution resemble those of previous resolutions, save that for the first time since 1978, there appears a reference to all the Assembly's resolutions on East Timor since 1975. Instead of the word "recalling", however, the Assembly used the expression "bearing in mind" to refer to the resolutions. Further, unlike the resolutions in 1976, 1977 and 1978, there is no corresponding reaffirmation of the past resolutions in any operative paragraph. Thus, it cannot be said that the 1982 resolution re-instituted earlier appraisals of the situation in East Timor.

139. There were only three operative paragraphs The first requested the United Nations Secretary-General "to initiate consultations with all parties directly concerned, with a view to exploring avenues for achieving a comprehensive settlement of the problem". The second requested United Nations Special Committee on Decolonization to "keep the situation in the Territory under active consideration and to render all assistance to the Secretary-General". The third called upon the humanitarian agencies of the United Nations to assist the people of East Timor "in close consultation with Portugal, as the administering Power".

140. In the debates in the Fourth Committee, some States again affirmed that, in their judgment, the people of East Timor had already exercised their right to self-determination. See Iraq, A/C.4/37/SR.14, 8 November 1982; Singapore, A/C.4/37/SR.13, 5 November 1982; Thailand, A/C.4/37/SR.11, 1 November 1982; Jordan, A/C.4/37/SR.22, 12 November 1982; Bangladesh, A/C.4/37/SR.18, 10 November 1982; and Malaysia, A/C.4/37/SR.18, 10 November 1982. Other States emphasised the need for consultation between the Portuguese and Indonesian Governments, under United Nations auspices. Thus, the representative of the Federal Republic of Germany stated:

> "The reports had convinced it that the living conditions in East Timor had not deteriorated and that, on the contrary, the process of stabilization was continuing. His delegation nevertheless hoped that that process could be further accelerated.

> The criticisms voiced in the debate on the question might be reduced in future if complete information on the Territory could be obtained and be made freely accessible. His delegation believed that the co-operation of international bodies and the Indonesian Government should be encouraged and that every effort to improve living conditions in the Territory should be made. It was also essential to promote dialogue between the Indonesian Government and the other parties in order to overcome the remaining obstacles. The request, made to the Secretary-General in the draft resolution, to initiate consultations with all parties directly concerned was a positive element." (A/C.4/37/SR.23, 15 November 1982)

The representative of Italy also said:

> "his delegation would abstain from voting on the draft resolution on East Timor. It believed that it was preferable not to take a position on the substance of a question which could be more easily resolved through direct dialogue between the parties concerned. His delegation was nevertheless convinced that the good offices of the Secretary-General could be effective when they were requested for the purpose of settling a controversial question." (A/C.4/37/SR.23)

The representative of Guatemala made a statement to the same effect (A/C.4/37/SR.23). After the vote in the General Assembly Indonesia noted:

> "only 50 countries voted in favour of the draft resolution. This number represents less than one-third of the total membership of the Organization. Only about 30 per cent of all members continue to question East Timor's integration with Indonesia. As the record further shows, the number of members supporting Indonesia on this question has, year after year, shown a steady increase. This year's tally shows 46 countries voting against the resolution. Conversely, the number of members supporting the resolution has steadily diminished. Thus, the difference between the "yes" and "no" votes is now only 4, as compared to 12 last year. Moreover, the large number of countries abstaining this year is undoubtedly an indication that an overwhelming majority of States question the relevance of continued consideration of this item. Indeed, what is the value of a resolution

> which has the support of only a third of the membership - support which, I may add, continues to decline. This trend, which has been apparent for several years now, is viewed by my delegation as gratifying indeed. We are confident that support for Indonesia's position will continued to grow." (A/37/PV.77, 23 November 1981)

141. Following resolution 37/30 the United Nations Secretary-General began his mediation role in direct talks between Indonesia and Portugal. These talks are continuing. (See para.146 -152 below.) This has been the path chosen by the United Nations to seek a friendly settlement to the dispute over East Timor. Since 1982 it has been the only path.

K. Conclusion

142. The record of debates in the Security Council and in the General Assembly on the question of East Timor from 1975 to 1982 shows that no delegate adverted to the possible implications for third States, or to effects opposable erga omnes, flowing from the undetermined status of East Timor. No delegation suggested at any time the insertion of a paragraph calling for the non-recognition of Indonesia's incorporation of East Timor. This can be contrasted with the position in resolutions dealing with other situations (as to which see Appendix A).

143. The terms of the Security Council's resolutions show that the Security Council did not seek to bind States under Article 25 by any decision concerning the situation in East Timor. Nor did it make any finding of breach, either of the Charter or of general international law, which could have given rise to an obligation opposable to third States. There is nothing in the terms of the resolutions of the General Assembly which constitute a collective decision giving rise to obligations for third States not to recognize, or to deal with Indonesia in relation to East Timor. The Assembly has not maintained its rejection of Indonesia's incorporation of East Timor after 1978.

144. Moreover, as far as Portugal's position as applicant is concerned, there is no support for its claim to be entitled to commence these proceedings on behalf of itself, or the people of East Timor.

Section II: The continuing role of the United Nations

145. As the previous section shows, the Security Council's consideration of the situation in East Timor ended after its adoption of resolution 389 of 22 April 1976. In the case of the General Assembly, its last resolution on the question was resolution 37/30 of 23 November 1982, although the question of East Timor has been included in the Assembly's provisional agenda for each year since 1982. When the General Committee of the Assembly has come to the item, it has on each occasion recommended that the Plenary Session of the Assembly defer consideration of it for the time being. Every year since 1982, the General Assembly has followed the General Committee's recommendation and deferred consideration of the question of East Timor to its next session. (See General Assembly decisions 38/402, 39/402, 40/402, 42/402, 43/402 and also A/41/PV.3, A/44/PV.3 and A/45/PV.3.) As resolution 37/30 contemplated, the task of finding an internationally acceptable solution to the problem of East Timor has been actively undertaken by the United Nations Secretary-General, assisted by the Committee of Twenty-four.

A. The Secretary-General's mediating role is continuing

146. The United Nations Secretary-General's direct involvement in East Timor began in December 1975, when the Security Council requested him to send a Special Representative to East Timor to make an on-the-spot assessment of the situation and to establish contact with all the parties in the Territory and the States concerned (Security Council resolution 384 (1975)). As already noted, the Secretary-General appointed Mr Vittorio Winspeare Guicciardi as his Special Representative. After his visit to East Timor in 1976, Mr Guicciardi reported that he "was able to establish useful contacts with the parties and States concerned regarding implementation of resolution 384 (1975)". (See Report by the Secretary-General in pursuance of Security Council resolution 384 (1975), S/12011, 12 March 1976, Annex, p.9, para.38.) The Special Representative reported that:

> "[t]he Government of Indonesia pointed out that the presence of Indonesian volunteers in East Timor was upon the request of APODETI, UDT, KOTA and Trabalhista and later of the 'Provisional Government of East Timor', in which the four parties were represented ... in order to give whatever assistance was

> necessary to restore peace and order in the Territory, as a prerequisite for the proper exercise of the right of self-determination by the people of East Timor. Consequently, the termination of their presence in, and their withdrawal from the Territory should be carried out upon the request of the 'Provisional Government of East Timor." (Annex pp.9-10, para. 39)

It was in this context that the Secretary-General wrote in his report of 29 February 1976 that:

> "[A]s the parties concerned have expressed their readiness to continue consultations with my special representative, I suggest that these consultations should be continued for the time being on the understanding that any developments will be reported to the Council." (Report, para.8, S/12011, 12 March 1976)

147. The Security Council accepted the Secretary-General's suggestion and, subsequently, the Special Representative consulted with representatives of the Provisional Government of East Timor, as well as Indonesia and Portugal. He also made contact with FRETILIN. (See Security Council resolution 389 (1976) and Report of the Secretary-General in pursuance of Security Council resolution 389 (1976), S/12106.) However, the Security Council has given no further consideration to the matter, despite calls by the General Assembly to do so in 1977 and 1978. As a result, the General Assembly in 1979 itself directly "request[ed] the Secretary-General to follow the implementation of [resolution 34/40 of 21 November 1979] and to report thereon to the General Assembly". In 1982 it went further and, in resolution 37/30 of 23 November 1982, requested the Secretary-General to initiate consultations with all parties concerned, with a view to exploring avenues for achieving a comprehensive settlement of the problem.

148. Thus, since 1982, the Secretary-General has had much more than a fact-finding role and has acted under the mandate given him by General Assembly resolution 37/30. In accordance with that resolution, the Secretary-General has, since 1983, kept the General Assembly apprised of developments in exercising his good offices. Every year since 1984, he has submitted a brief progress report. (See A/38/352, A/39/361, A/40/622, A/41/602, A/42/539, A/43/588, and A/44/529.)

149. The Secretary-General's first progress report of 25 July 1984 (A/39/361) did little more than record the commencement of consultations between Portugal and Indonesia and the participation of Under Secretary-General Ahmed in the consultative process. It did, however, emphasise the Secretary-General's concern that Indonesia facilitate the activities of international humanitarian organisations, including the United Nations Children's Fund and the International Committee of the Red Cross. In his report of the following year, the Secretary-General noted that:

> "As a result of ... exchanges, it was decided that Indonesia and Portugal would begin substantive talks under the auspices of the United Nations in November 1984. It was agreed that these talks would commence with considerations of humanitarian issues, on the understanding that they would ultimately deal with the question in a comprehensive way, thus facilitating an internationally acceptable settlement of the question of East Timor." (A/40/622 of 11 September 1985, para.6)

According to the Secretary-General's report, talks centred on questions of repatriation for Portuguese civil servants in East Timor and for East Timorese in Portugal, the protection of the cultural heritage of the East Timorese people, and economic and social conditions in East Timor. It was the Secretary-General's stated opinion that "the substantive talks between Indonesia and Portugal have proceeded in a constructive atmosphere" (para.25).

150. Although the Secretary-General, in his report of 8 September 1987, expressed his "deep regret" that talks between Indonesia and Portugal had not yet resulted in settlement of the question of East Timor, he did observe that:

> "None the less, the talks have enabled both sides to establish a useful dialogue and to make a serious attempt to bridge the differences in their respective position. In this connection, the two sides are considering the possibility of a Portuguese Parliamentary delegation undertaking a visit to East Timor, with a view to obtaining first-hand information on the situation." (A/42/539, 8 September 1987, para.16)

151. In his reports since then, the Secretary-General has maintained a degree of cautious optimism. In his progress report of 13 September 1988 (A/43/588), the Secretary-General noted that agreement in principle to the visit of a Portuguese Parliamentary delegation had been reached between Indonesia and Portugal; and that the repatriation programme for former Portuguese civil servants and their dependants had very nearly been completed. In his progress report of 14 September 1989 (A/44/524), paragraph 2, the Secretary-General explained that he had:

> "obtained the re-affirmation from both sides of their commitment to achieving a comprehensive and internationally acceptable solution to the question of East Timor."

He added that:

> "I am confident that progress can continue to be made through the substantive talks. While it may be regrettable that the pace of progress has not been constant, I am encouraged by the increased frequency of discussions between the two sides in recent months. These talks are being conducted in a constructive atmosphere and in a serious manner." (*id.*, para.4)

The Secretary-General has not had cause to resile from this view. In his most recent report (A/46/456, 13 September 1991), the Secretary-General stated:

> "In the course of... consultations, both sides have reiterated their determination to seek a comprehensive and internationally acceptable solution through continuing dialogue and negotiation." (*id.*, para.2)

152. The Secretary-General is thus playing a central role in facilitating consultations between Portugal and Indonesia and in promoting the processes which the United Nations has chosen as most appropriate for the settlement of the problem of East Timor. He has not suggested that other States act or refrain from acting in any manner in order to assist these processes. It is clear from all this that the United Nations does not see any role for Portugal other than that of participating in the process of consultation and negotiation.

B. The Committee of Twenty-four has kept the question of East Timor under consideration

153. In its last resolution on the matter, resolution 37/30 of 23 November 1982, the General Assembly, as in certain previous resolutions, also requested the Special Committee on the Situation with Regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples ("the Committee of Twenty-four") to involve itself in the question of East Timor. On this occasion, it requested the Committee "to keep the situation in the Territory under active consideration and to render all assistance to the Secretary-General".

154. In accordance with the Assembly's request, the Committee of Twenty-four has reviewed the situation in East Timor each year since 1983. On each occasion, it has decided to continue consideration of the question at its next session, subject to any direction from the General Assembly. The Committee has been well informed. In the course of its annual deliberations, the Committee has heard statements from Member States as well as petitioners, such as Amnesty International and FRETILIN, concerning the situation in the Territory. The Committee has also been provided with carefully written working papers prepared by the United Nations Secretariat. (See A/AC.109/715, A/AC.109/747, A/AC.109/783, A/AC.109/836, A/AC.109/871, A/AC.109/919, A/AC.109/961, A/AC.109/1001, A/AC.109/1072.)

155. Between 1984 and 1986, each working paper contained a succinct description of United Nations actions in relation to East Timor, the military and human rights situation, and economic and social conditions. After 1987, the Secretariat also gave attention to the political developments in the Territory. Thus, in its report for 3 August 1987 (A/AC.109/919), the Secretariat noted that the East Timorese had, by virtue of Indonesian Law 7/76, promulgated on 17 July 1976, participated in the Indonesian general elections on 24 April 1987 for the national House of Representatives and the People's Consultative Assembly (para.11). The following year, the Secretariat noted that Indonesian Law 7/76 also provided for "the establishment of a 'Regional Government' consisting of a 'Regional Secretariat' and a 'Regional House of Representatives'" and that "[m]ost of the posts in these bodies were filled by local inhabitants" (A/AC.109/961, 26 July 1988, para.17).

156. The working papers prepared by the Secretariat for the assistance of the Committee of Twenty-four are typically compiled from a variety of sources - press reports, information gathered by Member States (including Indonesia) and international organisations. In its most recent report (A/AC.109/1072 of 24 July 1991), the Secretariat based its description of the economic and social conditions in the Territory largely on Indonesian publications, accepting that these were the most reliable sources of information on such matters. (The Secretariat's account shows significant improvement in communications, health and education in East Timor.)

157. The Secretariat's working papers are not compiled from information given by Portugal, a fact noted in the Secretariat's report of 26 July 1988 (A/AC.109/961) and in subsequent reports. Portugal has not provided information under Article 73(e) of the Charter for more than a decade. In reply to a request dated 20 December 1976 for information under Article 73(e) of the Charter, Portugal had responded, by note verbale dated 20 April 1977, to the Secretary-General as follows:

> "1. Effective exercise of Portuguese sovereignty on the Territory of Timor ceased in August 1975 when, owing to the violent incidents which took place at the time in the Territory, the Governor of Timor was compelled to leave and to withdraw, together with his principal civil and military collaborators, to the Island of Atauro. The Governor and the other agents of the Portuguese administration subsequently left the island and never returned to Timor.
>
> (a) In December 1975, armed forces of the Indonesian Republic attacked and occupied the Territory of Timor, facts which the General Assembly and the Security Council were duly informed of by the Portuguese Government. ...
>
> (b) Under these circumstances, and referring to the year 1975, the only information that could be transmitted would concern the first months of that year, a period during which the Portuguese Government feels no significant changes or reforms took place in the Territory which could justify additional information to that transmitted on 5 June 1975 with reference to 1974. As regards facts of a political and

constitutional nature, it is also felt that the United Nations is fully informed on the subject and that the transmittal of information thereon would therefore be unnecessary.

(c) As regards the year 1976, the aforementioned circumstances impeding the Portuguese Government from exercising the effective administration of the Territory, namely, the presence thereon of armed forces of the Republic of Indonesia, have continued to prevail. The Portuguese Government is thereby de facto prevented from transmitting, concerning Timor, any information under Article 73(e) of the Charter." (A/32/73, 28 April 1977)

158. In reply to a subsequent request for information under Article 73(e), the Portuguese Government replied by a note of 6 April 1979 (A/34/311) that conditions prevailing in East Timor prevented it from assuming its responsibility for the administration of the Territory and it regretted being unable to provide the information requested. Each year, in reply to a request for information under Article 73(e) of the Charter, the Portuguese Government has reiterated that it has had nothing to add to that note. (See A/AC.109/715, A/AC.109/747, A/AC.109/783, A/AC.109/836, A/AC.109/871, A/AC.109/919, A/AC.109/961, A/AC.109/1001, A/AC.109/1072.)

C. The Commission on Human Rights has played a limited role

159. In comparison with the Secretary-General's activities and the deliberations of the Committee of Twenty-four, the Commission on Human Rights has played a minor role in relation to East Timor. It is true that in resolution 1983/8 of 16 February 1983, it affirmed the right of the people of East Timor to self-determination (by 16 votes to 14 with 10 abstentions and with one representative not participating in the vote). See Memorial, Annex II.75, vol. IV, p.136. There was, however, no further consideration of the question until February 1985 when the Commission considered the question of East Timor in closed session, in accordance with its confidential procedure. On 5 March 1985, the Chairman announced in open session that the situation in East Timor was no longer under consideration (E/CN.4/1985/SR 41/Add.1). Subsequently, events in Dili in November 1991 prompted the Chairman of the Commission to make a statement on the human rights situation in East Timor.

Although his statement of 4 March 1992, agreed by consensus by the Commission, indicated that the Commission "strongly deplore[d] the violent incident in Dili", it contained no reference to any unexercised right of the people of East Timor to self-determination. The statement is set out in Annex 27 of this Counter-Memorial.

160. The Sub-Commission on the Prevention of Discrimination and Protection of Minorities has also considered the situation in East Timor, a fact reflected in its resolutions 1982/20 of 8 September 1982, 1983/26 of 6 September 1983, 1984/24 of 29 August 1984 and 1987/13 of 2 September 1987 concerning the situation in East Timor. The Sub-Commission has mainly sought to re-enforce the Secretary-General's role as well as the activities of certain humanitarian organisations. Thus, by operative paragraphs 2 and 3 of resolution 1987/13 (Memorial, Annex II.97, vol. IV, p.23), the Sub-Commission:

> "*Request[ed]* the Secretary-General to continue his efforts to encourage all parties concerned ... to co-operate to achieve a durable solution taking into full consideration the rights and wishes of the people of east Timor; [and] *Request[ed]* the Indonesian authorities to facilitate without restrictions the activities of humanitarian organisations in East Timor."

161. A year later, on 1 September 1988, the Sub-Commission (by 10 votes to 9 with 5 abstentions) decided not to take any action on a further draft resolution. See E/CN.4/Sub.2/1988/L.26 and press release HR.3361. A year later again, on 31 August 1989, the Sub-Commission adopted resolution 1989/7 (by secret ballot by 12 votes to 9 with 3 abstentions) by which the Sub-Commission recommended that the Commission of Human Rights consider the human rights situation in East Timor at its next session (E/CN.4/Sub.2/1989/58-E/CN.4/1990/2, in Annex II.100, vol. IV, p.241). The Commission did not act on this recommendation. A similar resolution (Memorial, Annex II. 102, vol. IV, p.248) was adopted by the Sub-Commission on 30 August 1990 (by secret ballot by 14 votes to 9 with 1 abstention) but again the Commission of Human Rights did not take any action in response.

Section III: Practice of States in relation to East Timor

162. The Court can infer from the statements and behaviour of States that a significant number has accepted the incorporation of East Timor into Indonesia. The practice of States, including that of Portugal, shows widespread acceptance of the reality of Indonesian control of East Timor, and of the need to deal with Indonesia in relation to East Timor. The practice is reflected in the statements of States which recognize Indonesian control, as well as in voting behaviour in the United Nations and in the many treaties concluded by States with Indonesia. Portugal itself has failed to register any protest in relation to multilateral treaty action by Indonesia which extends to East Timor.

A. Voting behaviour in the United Nations

163. The General Assembly has considered the East Timor question ten times between 1975 and 1982. The texts of the resolutions which it has adopted are set out in Annex 26 of this Counter-Memorial together with the voting positions of individual countries. (See also Memorial, Vol.II, Annexes 1.3-1.10 and Application, Annex 1.) The voting patterns reveal that over this period the number of States supporting the resolutions has declined, whilst the number of States voting against the resolutions has increased (more than four-fold). The number of States abstaining has remained more or less steady. The statistics are as follows:

RESOLUTION	FOR	AGAINST	ABSTAINING	ABSENT
3485(XXX) (1975)	72	10	43	19
31/53 (1976)	68	20	49	09
32/34 (1977)	67	26	47	09
33/39 (1978)	59	31	44	16
34/40 (1979)	62	31	45	14
35/27 (1980)	58	35	46	15
36/50 (1981)	54	42	46	15
37/30 (1982)	50	46	50	11

Although not determinative, these trends indicate the growth over time in the number of States which are prepared, for a variety of reasons, to accept the situation in East Timor as they find it.

B. Treaty arrangements involving Indonesia and Portugal

1. Bilateral treaties

164. Since 1976, a number of States have concluded bilateral treaties with Indonesia which contain a provision defining the territory of the Republic of Indonesia. Generally, the provision provides that Indonesia be defined in accordance with its own laws and in accordance with the United Nations Convention on the Law of the Sea, 1982. Under Indonesian law effective from 17 July 1976, East Timor is part of Indonesia. Where States have accepted a provision defining the Territory of Indonesia in a way which incorporates East Timor into Indonesia, they must be taken to have accepted that incorporation as a fact. Australia knows of no treaty concluded with Indonesia since 1976 that contains any reservation or definition which would exclude the territory of East Timor from the operation of the treaties. This has been confirmed by the Department of Foreign Affairs of the Republic of Indonesia. See Annex 24 to this Counter-Memorial.

165. Since July 1976 Indonesia has entered into bilateral double tax treaties with some 31 States, a list of which also appears in Annex 24. Most of them contain a territorial application clause which necessarily incorporates the territory of East Timor as part of Indonesia. The following provisions are typical.

(a) Agreement between the Government of the Republic of Indonesia and the Government of the Republic of Austria for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and Capital, signed at Vienna on 24 July 1986. Article 3(1)(a)(i) provides:

> "the term 'Indonesia' comprises the territory of the Republic of Indonesia as defined in its laws and the adjacent areas over which the Republic of Indonesia has sovereign rights or jurisdiction in accordance with the provisions of the United Nations Convention on the Law of the Sea, 1982."

(b) Convention between Canada and the Republic of Indonesia for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and Capital, signed at Jakarta on 16 January 1979. Article 3(1)(a)(ii) provides:

> "the term 'Indonesia' comprises the territory of the Republic of Indonesia as defined in its laws and parts of the continental shelf and adjacent seas, over which the Republic of Indonesia has sovereignty, sovereign rights or other rights in accordance with international law."

The relevant texts of other agreements which contain a definition of Indonesian Territory are contained in Appendix C.

166. The numerous double tax treaties provide excellent examples of State practice since July 1976. A significant number of States have entered into such treaties with Indonesia and have accepted a definition of Indonesia which clearly extends the territorial application of the treaty to East Timor. So far as Australia is aware, Portugal has not lodged a protest with any of the Contracting States.

2. Multilateral treaties

167. Since 17 July 1976 (when Indonesia formally incorporated East Timor into Indonesia), Indonesia has ratified or acceded to a number of multilateral treaties. State parties which have not recognized the incorporation of East Timor might have been expected to lodge a formal objection with the depositary of the treaty to the effect that Indonesia's adhesion is invalid in so far as it purports to include East Timor in the area of territorial application. Failure to do so raises a strong inference that States accept the status quo.

168. A study of the conventions contained in the current list, UN Doc.ST/LEEG/SER.E/9 - Multilateral Treaties Deposited with the Secretary-General, Status as at 31 December 1990 - yields the following examples of treaties which Indonesia has ratified or acceded to after December 1975:

- The Vienna Convention on Diplomatic Relations, 1961. Portugal acceded on 11 September 1968. Indonesia acceded on 4 June 1982. Neither Portugal nor any other country has lodged a declaration to the effect that Indonesia's accession should not be regarded as applying the Convention to East Timor;

- The Vienna Convention on Consular Relations, 1963. Portugal acceded on 13 September 1972. Indonesia acceded on 4 June 1982. Again neither Portugal nor any other country has lodged a declaration that Indonesia's accession should not be regarded as applying the Convention to East Timor;

- The Convention on the Elimination of all Forms of Discrimination Against Women, 1979. Portugal signed on 24 April 1980 and ratified on 30 July 1980. Indonesia signed on 29 July 1980 and ratified on 13 September 1984. There has been no response by Portugal or any other State party;

- The Convention on the Rights of the Child, 1989. Portugal signed on 26 January 1990 and ratified on 21 September 1990. Indonesia signed on 26 January 1990 and ratified on 5 September 1990. There has been no response by Portugal or any other State party;

- The Single Convention on Narcotic Drugs, 1961. Indonesia signed and ratified on 28 July 1961 and 3 September 1976, respectively. There has been no response by any State party.

A more extensive list of multilateral treaties which Indonesia has adhered to since 1976 is contained in Annex 24 hereto. No State has lodged objections against Indonesia's adherence to the 41 treaties there named.

3. Portuguese silence in relation to treaty action

169. From time to time, States have considered that treaty action by other States has called for some formal declaration, objection, or protest in order to maintain their own particular legal position. The failure to take such action

where it is appropriate can indicate that a State does not seriously hold to its supposed legal position. Portugal has remained silent in circumstances which apparently called for it to indicate its position on East Timor.

170. Had Portugal been anxious to preserve its position in relation to East Timor, it might reasonably have been expected to make some communication to the United Nations of the type made to the United Nations Secretary-General by Uganda and Portugal following Portugal's ratification, on 30 December 1971, of the Single Convention on Narcotic Drugs (New York: 30 March 1961). The note of that communication was in the following terms:

> "In a communication received by the Secretary-General on 15 February 1972, the Charge d'Affaires a.i. of the Republic of Uganda to the United Nations informed him of the following:
>
> > 'It is the understanding of the Republic of Uganda that in ratifying the said Convention, the Government of Portugal did not purport to act on behalf of Angola, Mozambique and Guinea-Bissau which are distinct and separate political entities for which Portugal lacks any legal, moral or political capacity to represent.'
>
> In a communication received by the Secretary-General on 25 April 1972, the Permanent Representative of Portugal to the United Nations informed him as follows with respect to the abovementioned communication:
>
> > 'The Government of Portugal is surprised that communications containing meaningless statements such as that from the Charge d'Affaires of Uganda should be circulated, since they show clear ignorance of the fact that Portugal was admitted to the membership of the United Nations with the territorial composition that it has today, and including Angola, Mozambique and Portuguese Guinea.'"

171. When Indonesia accepted obligations and rights under multilateral treaties extending to East Timor as part of its territory, Portugal might reasonably have

been expected to protest, perhaps in terms similar to those contained in the protest made by a number of Eastern European States upon the extension by the Federal Republic of Germany of application of the Vienna Convention on Diplomatic Relations (1961) to Land Berlin. The protest read:

> "The Governments of Albania, Bulgaria, the Byelorussian SSR, Czechoslovakia, Hungary, Poland, Romania, the Ukrainian SSR and the Union of the Soviet Socialist Republics have informed the Secretary-General that they consider the abovementioned statement as having no legal force on the ground that West Berlin is not, and never has been, a State territory of the Federal Republic of Germany and that consequently, the Government of the Federal Republic of Germany is in no way competent to assume any obligations in respect of West Berlin or to extend to it the application of international agreements, including the Convention in question."

172. The protest of Romania against the acceptance by the Republic of Korea of certain amendments to the Constitution of the World Health Organisation is also illustrative. It stated:

> "In a communication received by the Secretary-General on 24 February 1972 with reference to the abovementioned acceptance, the Permanent Representative of Romania to the United Nations stated that his Government considers that the said acceptance constitutes an illegal act, inasmuch as the South Korean authorities can, in no case, act on behalf of Korea."

173. States have made declarations to maintain their own claims, or deny those asserted by others on many other occasions. Examples include:

- Spain on acceding to the four Geneva Conventions on the Law of the Sea, 1958, on 25 February 1971:

  > "Spain's accession is not to be interpreted as recognition of any rights or situations in connexion with the waters of Gibraltar other than those referred to in Article 10 of the Treaty of Utrecht, of 13 July 1713, between the Crowns of Spain and Great Britain."

- Argentina on signing and ratifying the Vienna Convention for the Protection of the Ozone Layer, done on 22 March 1985, and the Montreal Protocol on Substances that Deplete the Ozone Layer, on 16 September 1987:

> "The Argentine Republic rejects the ratification of the abovementioned Convention by the Government of the United Kingdom of Great Britain and Northern Ireland with respect to the Malvinas, South Georgia and South Sandwich Islands, and reaffirms its sovereignty over those Islands, which form a part of its national territory ... ."

174. Study of the conventions referred to in paragraph 168 above shows that there are a number of treaties to which Indonesia and Portugal are parties and to which ratification or accession was given by one or both of them after December 1975. Australia has found no occasion on which Portugal has made any declaration regarding the status of East Timor under these or any other treaties; nor has Portugal made any protest against Indonesia's treaty actions since 1975 even though they have implied that Indonesia has assumed a capacity to act on behalf of East Timor as part of Indonesian territory. Opportunities to do so have been ignored by Portugal. Portugal has thus not challenged Indonesia's assertion of competence, nor maintained its claim to be the lawful administering Power in this most important arena of international relations.

C. Other State practice on acceptance of incorporation of East Timor

1. Statements in the United Nations accepting the incorporation of East Timor

175. The following is a summary of statements made by States in debates in the Fourth Committee, or in the General Assembly in respect of various resolutions on East Timor between 1975 and 1982, in which they accepted the incorporation of East Timor.

Australia

On 2 November 1979, in the Fourth Committee, Australia stated that the draft resolution on the question of East Timor which was then under discussion:

> "ignored East Timor's incorporation into Indonesia, which was a fact and the reality on which any consideration of the matter had to be based.
>
> ...
>
> It followed that Australia believed the question of the decolonization of East Timor to have been resolved." (A/C.4/34/SR.23)

Bangladesh

On 25 October 1979, in the Fourth Committee, the representative of Bangladesh stated:

> "in the case of East Timor, the people had regained their independence when the colonial power had voluntarily withdrawn from the Territory and the inhabitants had voluntarily chosen to become a part of Indonesia. Consequently, his delegation saw no justification for the question to be the subject of further discussion in the Committee." (A/C.4/34/SR.17)

Bangladesh has since repeated this view: see A/C.4/37/SR.18, 10 November 1982.

Canada

On 5 December 1978, in the Fourth Committee, Canada:

> "... recognized the de facto integration of East Timor with Indonesia even through the way in which that integration had taken place had by no means done justice to the principle of self-determination." (A/C.4/33/SR.33)

India

On 2 November 1976, in the Fourth Committee, the representative of India stated:

> "... the political parties in East Timor had struggled for supremacy until the party which favoured the Territory's integration into Indonesia had emerged victorious. Constitutional steps had then been taken, including some form of popular consultation, after which East Timor had been integrated into Indonesia." (A/C.4/31/SR.13)

India has repeated this view on a number of occasions: see A/C.4/32/SR.21, 10 November 1977; A/34/PV.75, 21 November 1979; A/C.4/34/SR.15, 24 October 1979; and A/C.4/36/SR.10, 29 October 1982.

Iran

On 5 November 1976, in the Fourth Committee, the representative of Iran stated:

> "After it had been ascertained that the great majority of the population did, in fact, want integration with Indonesia, the Indonesian Parliament had approved the statute of integration. This delegation believed, therefore, that the process of decolonization had been concluded, that the people of East Timor had exercised their right to self-determination, and that the provisions of resolution 1514(XV) had therefore been implemented." (A/C.4/31/SR.16)

Iran has since repeated this view: see A/C.4/32/SR.15, 4 November 1977.

Iraq

On 8 November 1982, the representative of Iraq stated that:

> "As far as East Timor was concerned, his delegation believed that the people of that former territory had already exercised their right to self-determination in July 1976 when they had decided to join Indonesia." (A/C.4/37/SR.14)

Japan

On 20 October 1981, the representative of Japan:

> "reviewed the events that had occurred in East Timor from the time when a coalition of diverse political groups, excluding the FRETILIN, had declared independence in 1974 up to the formal request for independence and integration with Indonesia presented by the provisional Government in 1976. Indonesia, which had become deeply involved in the decolonization of East Timor, with which it shared close ethnic and geographical ties, had accepted that request." (A/C.4/36/SR.10)

He had said as much in earlier years: see A/C.4/34/SR.16, 24 October 1979 and A/C.4/35/SR.11, 17 October 1980.

Jordan

On 12 November 1982, in the Fourth Committee, the representative of Jordan stated:

> "In the view of his delegation, the people of East Timor had exercised their right to self-determination when they had asked to be reunited with Indonesia. That had occurred immediately after the termination of Portuguese colonial rule and, with it, the territorial integrity of Indonesia had been restored." (A/C.4/37/SR.22)

Malaysia

On 17 November 1976, the representative of Malaysia stated in the Fourth Committee that:

> "his delegation was satisfied that the process of self-determination had been carried out by the elected representatives of the people of Timor, who had expressed themselves in favour of integration with Indonesia." (A/C.4/31/SR.27)

Malaysia has repeated this view on a number of occasions: see A/C.4/32/SR.13, 2 November 1977; A/C.4/34/SR.16, 24 October 1979; A/C.4/35/SR.11, 17 October 1980; A/C.4/36/SR.17, 30 October 1980; and A/C.4/37/SR.18, 10 November 1982.

Mauritania

On 17 November 1976, the representative of Mauritania stated that:

> "Each Territory had special features which make it unique. The political developments which had taken place in East Timor were incontrovertible and should be recognized by the Committee." (A/C.4/31/SR.27; A/C.4/31/SR/15, 4 November 1976)

Morocco

On 5 November 1976, the representative of Morocco stated in the Fourth Committee that:

> "... each Territory had different features requiring different solutions. ... [A]s East Timor had, in both its pre-colonial and colonial period, had close historical links with Indonesia, the island of Timor, and the whole of Indonesia should constitute a single national entity. The uniformity which characterised both their common history and their common destiny weighed in favour of a global solution which met the interests of all the people.
>
> The political parties which had existed during the period of East Timor's occupation had reflected the desire of the majority of the people of East Timor for such a global solution, and it was for that reason that, following independence, the majority party had freely expressed a wish to integrate the Territory with the Republic of Indonesia." (A/C.4/31/SR.16)

Oman

On 1 December 1976, the representative of Oman stated:

> "The entire people of Timor, and in fact of Indonesia as a whole, are related by ethnic, cultural, linguistic and geographical affinities. The delegation of Oman, therefore, considers that the United Nations should not interfere with a free decision of the Indonesian people or of any other people to strengthen their unity and the national integrity of their territory and to work as a united people for national progress and prosperity." (A/31/PV.85)

Earlier on 5 November 1976, in the Fourth Committee, the representative of Oman had said:

> "East Timor was not a standard case of an entire nation struggling for self-determination and independence, that Territory was ethnically, culturally and geographically part of Timor and therefore an *indivisible part of the Republic of Indonesia. The people of both* parts of Timor had struggled for their liberation for many years and had finally achieved their objectives through armed struggle; he hoped that they would now commit themselves to the cause of Indonesia's economic and national development." (A/C.4/31/SR.16)

Oman has since repeated this view: see A/C.4/36/SR.21, 9 November 1981.

Papua New Guinea

On 21 November 1979, in the General Assembly, the representative of Papua New Guinea stated:

> "... my Government is of the view that there is no need for anything further in the decolonization process in that Territory and that the reality of the situation is that East Timor is now an integrated part of the Republic of Indonesia." (A/34/PV.75)

See also A/C.4.4/35/SR.13, 21 October 1980.

Philippines

On 5 November 1976, the representative of the Philippines said in the Fourth Committee:

> "his delegation had closely observed developments in East Timor and was satisfied that the principles of decolonization set out in the Charter and the relevant General Assembly resolutions had been complied with.
>
> ...
>
> After peace and order had been restored in East Timor, the people had exercised their right to self-determination on 31 May 1976 through a representative assembly. Having decided at that time on full integration with Indonesia, the people of East Timor had declared that they had exercised their right of self-determination and had concluded the process of decolonization in the Territory." (A/C.4/31/SR.16)

Later, on 1 December 1976, the representative of the Philippines said, in the General Assembly that:

> "My delegation will vote against draft resolution IX, on the question of East Timor for the following reasons. First, my delegation believes that the process of self-determination in the Territory has taken place in a manner consonant with the wishes expressed by the people of East Timor. The draft resolution does not, therefore, conform to the present situation in East Timor. Secondly, the People's Assembly of East Timor, on 31 May 1976, exercised the right of self-determination and opted to become independent through integration with the Republic of Indonesia. Thirdly, the Indonesian Government accepted integration in accordance with resolutions 1514(XV) and 1541(XV) of the General Assembly, in which there is a provision allowing colonial Territories, by the expressed will of the people, to be integrated into any other country. For these reasons, and in view of the fact that the principles of decolonization stipulated in the United Nations Charter and the relevant General Assembly resolutions have been complied with, my delegation believes that the question of East Timor has been settled accordingly." (A/31/PV.85)

> "In the case of East Timor, the Thai delegation holds the view that the people of East Timor have exercised their right to self-determination. The people of that former Territory have made a clear decision to end their dependent status through integration with Indonesia. Also, that decision has been legally accepted by both the Indonesian National Assembly and the Indonesian Government, which on 17 July 1976 integrated East Timor into the Republic of Indonesia as the twenty-seventh province of that country. The process of decolonization in East Timor was therefore terminated in accordance with General Assembly resolution 1514(XV) and other relevant resolutions." (A/36/PV.70)

Thailand has reaffirmed its position on a number of other occasions: see A/C.4/35/SR.11, 17 October 1980; A/36/PV.70, 24 November 1981; A/C.4/36/SR.9, 19 October 1981; and A/C.4/37/SR.11, 1 November 1982.

2. Diplomatic relations

176. Australia understands that no State that has diplomatic or consular relations with Indonesia has qualified the terms of its diplomatic recognition in any way to take account of the dispute between Portugal and Indonesia over East Timor (Indonesian Note, Annex 24). This includes former Portuguese colonies, such as Mozambique. Diplomatic missions accredited to Indonesia perform their functions in relation to East Timor in the ordinary way.

PART II

INADMISSIBILITY

PART II

INADMISSIBILITY

CHAPTER 1

THE TRUE RESPONDENT IS NOT A PARTY TO THESE PROCEEDINGS

Section I: Analysis of the position of the parties in this case

177. The analysis of the facts surrounding this case (Part I) shows that Australia is not the true respondent to these proceedings. Although Australia has consented to the jurisdiction of the Court through its declaration under Article 36(2) of the Statute of the Court, this is not sufficient for the Court to proceed to determine the case brought by Portugal. This chapter will show that the Court cannot determine the case in the absence as a party to the proceedings of a third State, Indonesia.

178 Portugal has pointed to various bases upon which it might claim rights deserving of protection in this case. It has alleged to be entitled to claim on its own behalf as well as on behalf of the people of East Timor. Furthermore, in an attempt to bolster its position, it has asserted that the rights in question arise erga omnes and that it is an appropriate party to enforce those rights.

179. Whatever the basis of the particular right in issue, there are limits on the scope of the Court's jurisdiction where a third State, not a party to the proceedings, is involved in the breaches of the right. Three situations arise:

(a) A claimant State alleges breach of rights erga omnes committed by another State and brings a claim solely against that State;

(b) A claimant State alleges breach of rights erga omnes committed jointly by more than one State although it does not bring its claim against all, but only one (or some) of those States; and

(c) A claimant State alleges breach of rights erga omnes committed by one State but brings its claim in respect of that breach against another State.

180. The first situation does not apply here. Rather, the actions of which Portugal complains constitute an alleged breach of rights by either Indonesia alone, or Indonesia and Australia jointly. In so far as the Portuguese claim challenges the making of the Timor Gap Treaty, Australia and Indonesia have acted jointly. On this view, the case is an example of the second situation. At bottom, however, the Portuguese claim goes further than this and, even though Portugal does not expressly purport to seek a ruling on Indonesia's actions in East Timor, it in fact challenges the legality of Indonesia's claim to have sovereignty over East Timor. On this view, the Portuguese claim falls within the third situation referred to in the preceding paragraph. Whichever analysis is preferred, the fact remains that the Court cannot proceed to determine Portugal's claim in the absence of Indonesia as a party to the proceedings. The following section shows why this is so as a matter of law.

Section II: The true parties to the dispute must be parties to the proceedings

181. One State cannot invoke the Court's jurisdiction against another State as the basis for the adjudication of a dispute which it has with a third State not consenting to the Court's jurisdiction. Where the legal interests of a third State are put in issue in proceedings to which it is not a party, the Court cannot rule on the matter, and the Court is thereby prevented from deciding the case, even as between the parties to the litigation. In other words, unless a State has consented to the Court's adjudication of the matter, the Court cannot determine the rights and obligations, competence and responsibility of that State. It cannot do so in proceedings to which the State is a party - a fortiori it cannot do so in proceedings to which it is not a party.

182. This is a fundamental principle of international adjudication, supported by both the Permanent Court of International Justice and the present Court. In the Status of Eastern Carelia, PCIJ, Series B, No. 5, 1923, p.27, the Permanent Court stated that:

> "It is well established in international law that no State can, without its consent, be compelled to submit its disputes with other States either to mediation or to arbitration, or to any other kind of pacific settlement."

See also Mavrommatis Palestine Concessions, Judgment No. 2, 1924, PCIJ, Series A, No. 2, p.16, Rights of Minorities in Upper Silesia, PCIJ, Series A, No. 15, 1928, p.22 and Factory at Chorzow, Merits, PCIJ, Series A, No. 17, 1928, pp.37-8.

A. A challenge to a bilateral treaty requires the consent of both parties

183. In situation (b) outlined above (para.179), even if the respondent State (Australia) consented to the exercise of jurisdiction by the Court, the Court could not proceed to adjudicate a claim against it unless the other State alleged jointly to have committed the breach (Indonesia) was also a party to the proceedings. This is because a challenge to actions under a bilateral treaty requires the consent of both parties before the Court can adjudicate on those actions. Such a challenge in this case could be only on one of two grounds:

(a) that one (or both) of the parties lacked capacity to enter into the Timor Gap Treaty; or

(b) that performance of the obligations due under the Treaty could be prevented if their performance amounted to a breach of an obligation owed to the claimant State.

1. The Issue of Capacity

184. There can be no doubt as to Australia's capacity, as a coastal State, to enter into a treaty dealing with the exploration and exploitation of the maritime areas adjacent to its coast. This is, from its perspective, what the Timor Gap Treaty is about. There is no issue about Australia's status as a coastal State in relation to the area, or about its recognized international capacity to represent its people. Accordingly, Portugal's challenge to the Timor Gap Treaty, if directed to the capacity of the parties to conclude it, must be on the basis of a lack of capacity on the part of Indonesia to enter into a treaty with regard to the maritime areas adjacent to East Timor. To do this is to put in issue not the

capacity of Australia, but the capacity of Indonesia, a third party which is not before the Court. This is not therefore a matter upon which the Court can adjudicate.

2. Conflicting Obligations

185. The implementation of a treaty may be prohibited by having the treaty declared invalid. Portugal, however, seeks to have performance of the Timor Gap Treaty enjoined without having it declared invalid. The basis of Portugal's contention is that Australia acted wrongfully in entering into the Treaty, by creating rights and duties between Australia and Indonesia which are inconsistent with duties owed by Australia, and by Indonesia, to Portugal.

186. Australia has two responses. In the first place, assuming that Portugal could satisfy the Court that Australia is subject to obligations owed to Portugal, which conflict with obligations owed to Indonesia under the Treaty, that does not entitle Portugal to enjoin performance of the Treaty. For, in principle, there is no hierarchy of obligations.

187. The matter might be different if Portugal were alleging that the Treaty was invalid. In that event, Portugal could ask, with some semblance of logic, that Australia be restrained from performing its obligations (or exercising its rights) under an invalid Treaty. But Portugal does not take that position (nor could it do so, since the Court's judgment on the validity of the Treaty would directly and immediately involve the rights of Indonesia). Portugal treats the Treaty as valid, but argues that Australia acted illegally in concluding it, and would act illegally in performing it.

188. In the second place, and more fundamentally, whether Portugal is seeking to enjoin performance of the Treaty, or to obtain reparations if Australia and Indonesia carry out their obligations under the Treaty, the Court would be called upon to adjudicate the rights of the other party to the Treaty, Indonesia, without its consent, contrary to the Monetary Gold principle.

189. The application of the principle of consent in this context was expressly recognized by the Central American Court of Justice in Costa Rica v Nicaragua (1916), text in (1917) 11 American Journal of International Law 181, and El Salvador v Nicaragua (1917), text in (1917) 11 American Journal of

International Law 674. In the Costa Rica case (at p.228) the Court explained:

> "To judge of the validity or invalidity of the acts of a contracting party not subject to the jurisdiction of the Court; to make findings respecting its conduct and render a decision which would completely and definitely embrace it - a party that had no share in the litigation, or legal occasion to be heard - is not the mission of the Court, which, conscious of its high duty, desires to confine itself within the scope of its particular powers."

Substantially the same issue was raised in El Salvador v Nicaragua, in which the Court held (at p.695) that it could not enjoin Nicaragua to abstain from fulfilling the Bryan-Chamorro Treaty, on the ground that one party to the Treaty (the United States) was not subject to the jurisdiction of the Court.

190. In this case, Portugal contends that its rights are dependent upon certain multilateral treaties which it claims that Australia has breached. In Australia's view this makes no difference to the underlying situation. The dispute with which this case is concerned is about the lawfulness of the Timor Gap Treaty and the bilateral obligations between Australia and Indonesia to which it gives rise. Portugal relies on particular multilateral treaties only to assist its argument that Australia has unlawfully concluded the Timor Gap Treaty and, for that reason, it is entitled to an order enjoining Australia from performing acts which the Treaty requires Australia to perform (Application, para.34(5)). Thus, by its Application, Portugal in fact seeks the adjudication of a dispute concerning a bilateral treaty, although one of the parties to that treaty is not before the Court. To challenge the existence or legality of Australia's duty to perform the Treaty is, necessarily, to challenge the existence or legality of Indonesia's right to have the Treaty performed.

B. The Court cannot hear allegations of breaches of rights made against a State that are consequential on breaches of duty by another State

191. Alternatively, Indonesia is the real and only (and thus, essential) party to this dispute. Australia is the wrong party entirely. The legal interests of Indonesia and not those of Australia form the very subject - matter of the dispute. This is situation (c) outlined in paragraph 179 above. The Court cannot adjudicate in such a situation without the consent of the State which is

alleged to have committed the breach (Indonesia). This is because the Court cannot decide whether the right of self-determination of the people of East Timor has been infringed without first deciding Indonesia's claim that it had the authority in 1989 to make the Timor Gap Treaty because it then had sovereignty over East Timor. This is the inevitable result if the Court were to accept that the real dispute does not concern the Timor Gap Treaty as such but the claim based on the right to self-determination. Even on this basis the Monetary Gold case (ICJ Reports 1954, p.19) also applies, just as in situation (b).

192. The Court will recall that in the Monetary Gold case part of the monetary gold, removed from Rome in 1943, was claimed by both Albania and Italy. An arbitrator found that the gold belonged to Albania. Subsequently, a Tripartite Commission decided to allocate the gold to the United Kingdom, not Albania, in partial satisfaction of the award made against Albania in the Corfu Channel case (ICJ Reports 1949, p.4). Italy disputed the allocation, arguing that it was entitled to priority over the United Kingdom. Italy's claim to priority depended upon whether Italy was entitled to compensation for the expropriation of the Bank of Albania, most of the shares in which were held by the Italian State. In making its claim to priority, Italy called into question the lawfulness of Albania's acts in relation to Italy, so that to decide the merits of the case would have required the Court first to decide a dispute between Italy and Albania, even though Albania was not a party to the proceedings. As the Court said:

> "The Court is not merely called upon to say whether the gold should be delivered to Italy or to the United Kingdom. It is requested to determine first certain legal questions upon the solution of which depends the delivery of the gold. In order, therefore, to determine whether Italy is entitled to receive the gold, it is necessary to determine whether Albania has committed any international wrong against Italy, and whether she is under an obligation to pay compensation to her; and, if so, to determine also the amount of compensation." (ICJ Reports 1954, pp.31-2)

The Court concluded:

> "... Albania's legal interests would not only be affected by a decision, but would form the very subject-matter of the decision. In such a case, the Statute cannot be regarded, by implication, as authorizing proceedings to be continued in the absence of Albania." (ICJ Reports 1954, p.32)

193. In this circumstance, the Court declined to decide the dispute, observing

> "Where, as in the present case, the vital issue to be settled concerns the international responsibility of a third State, the Court cannot, without the consent of that third State, give a decision on that issue binding upon any State, either the third State, or any of the parties before it.
>
> Even if the ultimate matter for the Court to decide was the priority, as between the United Kingdom and Italy, of the claims to the gold, that question could not be decided, because it depended on the Court's ruling on a preliminary issue, arising solely between Italy and Albania." (Monetary Gold Case, ICJ Reports 1954, p.33)

194. Portugal contends that as the right to self-determination of the people of East Timor gives rise to an obligation erga omnes to promote that right, its claim is opposable to Australia, irrespective of the position of other States. This fails to take account of the fact that the direct violation of the right to self-determination which Portugal's claim against Australia assumes must, on the facts relied on by Portugal, be attributable solely to Indonesia. Any other (indirect) violation can only be consequential on Indonesia's wrongdoing. Even if there is an obligation erga omnes to promote the right of the East Timorese to self-determination, the alleged violation of that right by Australia lies in Australia's treaty relations with Indonesia. So the substance of the allegation is that Australia was not entitled to treat with Indonesia because Indonesia did not lawfully represent the people of East Timor. The whole allegation depends upon the legality of Indonesia's claim, as sovereign, to represent the people of the territory. The claim thus contravenes the principle of consent which bars the adjudication of the legal responsibility of Indonesia without its agreement. Australia contends that the Monetary Gold Case is directly applicable to the

case now brought by Portugal, because the Court cannot decide this case without deciding:

- the international responsibility of Indonesia for any wrongdoing in relation to the people of East Timor;

- the resulting rights and obligations of Indonesia in respect of the territory of East Timor; and

- the entitlement of Indonesia in 1989 to negotiate and conclude the Timor Gap Treaty.

195. This is not to say that the Court's jurisdiction always depends on the consent of every State whose interests may be affected by the decision. The Monetary Gold Case recognizes that there is a distinction to be drawn between legal interests which form "the very subject-matter of the decision" and legal interests which are likely to be no more than consequentially affected by the decision. This distinction is the basis of a number of the Court's decisions, as for example the Continental Shelf (Libya/Malta) Case (ICJ Reports 1984, p.25); Maritime Frontier Case (ICJ Reports 1990, pp.115-6); and Military and Paramilitary Activities In and Against Nicaragua (ICJ Reports 1984, p.431).

196. The decision of the Court in Military and Paramilitary Activities in and against Nicaragua (ICJ Reports 1984, p.215) is not authority to the contrary. In that case, Nicaragua alleged that United States support for the insurrectionary forces known as the "contras" constituted an unlawful use of armed force and an unlawful intervention in Nicaragua's internal affairs. The United States responded that Nicaragua was supporting insurgencies in neighbouring States and that support for the "contras" was in exercise of the right of collective self-defence. The United States contended that Nicaragua's claim against it was inadmissible, because the adjudication of it would necessarily implicate the rights and obligations of other States (ICJ Reports 1984, pp.430-1). The latter contention failed, not because the Court rejected the validity of the Monetary Gold case, but because it was satisfied, in the circumstances of the case, that Nicaragua's application would not necessarily require the Court to make any findings as to the individual right of self-defence of third States. Not even the strength of the United States' plea of justifiable self-defence could arise unless the Court found there was sufficient evidence for a finding that the United

States had in fact used force against Nicaragua. At most, the position of third States would only have been affected by implications which might have been drawn against them, as a consequence of the Court's rejection of the United States' defence. Contrast the claim which Portugal brings in this case: a finding of Indonesia's legal responsibility is a precondition to any consideration of Australia's position. In this situation, Australia is simply the wrong party for Portugal to sue. The real cause of action is against Indonesia. Australia's position is merely consequential.

197. That this is the correct characterisation of the situation is evident if one considers the situation that would arise if both Portugal and Indonesia had consented to the Court's jurisdiction for resolving a dispute between them as to the issue of self-determination for East Timor. In such a situation Australia could not even successfully intervene on the issue of self-determination. That is an issue between the former colonial power and the State in actual control of the territory. Australia's legal interests would not be directly en cause. Yet Portugal contends that the same issue can be determined in a suit between it and Australia in the absence of Indonesia. This clearly cannot be correct. Portugal's arguments in this regard come down to a question of the capacity of Indonesia. It is only because Portugal says that Indonesia lacks capacity to represent the people of East Timor through making a treaty in relation to their territory that it says that the Treaty is tainted by unlawfulness (*illicéité*). Portugal's arguments in relation to self-determination and permanent sovereignty all relate to, and depend upon, this alleged lack of capacity on the part of Indonesia - that is on its legal position as the State unlawfully occupying East Timor. What it attacks is the ability of Australia to negotiate and conclude the Treaty, and that is a mere consequence of the (asserted) incapacity of Indonesia. The (asserted) incapacity of Indonesia arises, whether or not the Timor Gap Treaty exists. If Australia is not entitled to act in relation to the maritime area in question, this can only be as a consequence of the general incapacity of another State (Indonesia or Portugal) to deal with the area in question. The competing interests of these two States can, however, only be resolved by determining the legal interests of Indonesia.

198. To determine this case, the Court has to determine the rights of the people of East Timor to self-determination and, faced with asserted Indonesian sovereignty, this also requires the Court to determine the legal interests of Indonesia. The situation in this case, however characterised, falls directly within the Monetary Gold principle.

C. Adjudication of the "consequential" responsibility of a State requires the consent of the State with original responsibility

199. The essence of Portugal's complaint is not that the Treaty per se - in terms of its substantive provisions - is a violation of the rights of Portugal, but rather that the violation arises from the fact that Australia negotiated and concluded the Treaty with Indonesia. It is thus Indonesia's capacity to act, in the place of Portugal, which is the core of the complaint.

200. But even if it is accepted, for the purposes of argument, that Indonesia acted unlawfully in replacing Portugal as the coastal state, competent to conclude this treaty, it would follow that the original, primary responsibility would rest with Indonesia. The responsibility of Australia, for joining with Indonesia in concluding this treaty, would be essentially consequential, and the illegality of Australia's conduct could arise only as a consequence of the prior illegality of Indonesia. Hence it follows that, as a precondition for any finding of illegality by Australia, the Court would be bound to establish the prior, illegal act of Indonesia. Without the consent of Indonesia, that cannot be done.

201. Portugal seeks to avoid this conclusion by, in effect, arguing that the obligations of Australia relate to the rights of Portugal erga omnes, and on this basis assumes that Australia owes obligations quite independently of any owed by Indonesia - so that Australia's responsibility would be "original", and not "consequential". But this ignores the facts that:

- any duty owed by Australia would arise as a direct consequence of the prior breach by Indonesia (*viz* the alleged unlawful occupation of East Timor); and

- such duty would be in the nature of a collective response to Indonesia's unlawful act, and would arise as a consequence of the collective decision of a competent United Nations organ.

202. The references to the right of the people of East Timor to self-determination in Portugal's Application and Memorial inevitably raise the issue of which State is primarily responsible for the alleged breach of the right. However this situation is analysed, the only State which could be responsible for, or guilty of, that alleged wrong is Indonesia. In relation to Portugal's claims, Australia is in the position of a third State. Australia is not the State against which the "injured" State - Portugal, or a separate East Timor entity represented by Portugal - may legitimately proceed. Australia is simply a third State which has responded to a situation brought about by two other States - Portugal and Indonesia - in order to protect its own long-asserted rights and interests. In 1989, Australia dealt with this new situation by making the Timor Gap Treaty, but Australia's dealings in this regard did not give rise to international legal responsibility.

203. A third state can incur a consequential responsibility only in exceptional circumstances; and only as a legal consequence of the wrongdoing of the primary State and of the collective decision of other States. This collective decision may be taken by the appropriate political organs of the United Nations. It was not, however, taken in this case. See Part I, Chapter 2; Part III, Chapter 1. There is therefore no ground for any Portuguese claim that Australia was itself under an erga omnes obligation which it failed to observe. It had no obligation to abstain from making the Timor Gap Treaty in December 1989 and has incurred no international responsibility by so doing.

204. If the true relationship of Portugal to Australia is not that of "injured" and "wrongdoer" State, but that of "injured" and third State, the Portuguese case against Australia depends on establishing that a primary wrong has been committed (by Indonesia) and that the wrong has been the subject of a collective decision requiring States, including Australia, to act, or abstain from acting in a particular way. Thus, to decide the merits of this case, the Court cannot attribute any consequential responsibility to Australia, without first deciding the "wrongdoing" of another State and whether that "wrongdoing" has been confirmed by a collective decision of the relevant kind. These findings are the prerequisites for any finding of Australian responsibility. It follows from this that the Court cannot, consistently with the principle of consent, decide this case in the absence of an allegedly "wrongdoing" State, which could only be Indonesia. Moreover, Portugal insists that its only interest in the present case is

its interest in ensuring the application of the principle of self-determination to East Timor. The Court cannot determine that the principle of self-determination has been violated, or that that principle has specified consequences for third parties, in a case in which Indonesia is not a party.

Section III: The case at hand

205. This section turns to examine in more detail the application of the legal principles outlined in the preceding section to the facts of this case.

A. The true dispute is between Portugal and Indonesia

206. Portugal contends that Australia has breached obligations owed to it and to the people of East Timor, by failing to respect its position as administering Power of the territory of East Timor, and by failing to observe the rights of the people of East Timor to self-determination, territorial integrity and permanent sovereignty over natural resources.

207. As Portugal itself concedes, the origin of any dispute concerning East Timor which it may have with any other State is the invasion of East Timor by Indonesia, after Portugal's flight from the territory in 1975. Portugal accepts, as it must, that Australia did not participate, either directly or indirectly, in any initial illegality which Indonesia may have then committed (*cf* Memorial, para.2.17). Portugal further concedes that the basis of any dispute over East Timor is the condemnation of the Indonesian intervention by the United Nations General Assembly, in resolution 3485 (XXX) on 12 December 1975 and by the Security Council, in resolution 384 on 22 December 1975; the continued occupation of East Timor by Indonesia; and the reference by the Security Council, in resolution 384, to Portugal as administering Power of the territory. (Application, para 10, pp.7-9). What is more, Portugal accepts that it has only one interest in the territory - that of securing compliance with the principle of self-determination (Memorial, para 3.08). Accordingly, Portugal does not lay claim to any continuing legal entitlement or beneficial interest of its own, relating to the territory.

208. Having regard to these matters, the Court can only deal with this dispute in proceedings to which Indonesia is a party. The Court cannot judge this case without first deciding the rights and obligations, or status and competence of Indonesia in East Timor. As Indonesia is not a party to these proceedings, this case is indistinguishable from the Monetary Gold Case.

209. Portugal calls on the Court to decide if Australia, by entering into the Timor Gap Treaty of 11 December 1989, has failed to respect Portugal's position as administering Power, or the rights of the East Timorese people to self-determination. Before the Court can undertake this task, it must first decide which of two States, Portugal or Indonesia, was at the relevant time - the date the Treaty was concluded - the competent State to deal, by treaty, with the maritime territory of East Timor. Moreover, it is not enough to say that Portugal has some legal interest in relation to the territory - such as the interest to ensure the application of the principle of self-determination to the territory. It is necessary to decide that Indonesia has no legal interest. But, quite apart from Indonesia's own widely recognized claim to sovereignty over the territory, the international community clearly accepts that Indonesia is necessarily and essentially involved in the issue of self-determination. See paras.214-219 below, also Part I, Chapter 2, Section I.

210. Before the Court can decide any matter relating to the rights and obligations of Australia, it would be necessary for it to decide whether Portugal, rather than Indonesia, has the legal capacity to make a treaty of the kind which is in issue here. For it is Indonesia, not Australia, which has taken the place of Portugal as the State claiming competence to make a treaty for East Timor, and it is Indonesia, not Australia, which has thereby committed (if the substance of Portugal's allegations are accepted by the Court) the primary wrong against Portugal, by failing to respect its position as administering Power. Thus, the primary question is not whether Australia has, in some way, incurred international responsibility, but whether or not Indonesia is lawfully present in, and has sovereignty over, East Timor; or whether Indonesia has infringed the position of Portugal as administering Power, and denied the right of the people of East Timor to self-determination.

211. If Portugal failed to satisfy the Court as to any of these matters, its case against Australia would necessarily fail. For there is no other basis for Portugal to argue that the making of the Timor Gap Treaty constituted a breach of

international law on Australia's part. Nor could Portugal put forward any other ground to support its request that the Court enjoin Australia from performing its obligations under the Treaty.

212. Thus, the primary dispute is between Indonesia and Portugal. It directly concerns the legal status of the Indonesian administration of East Timor at and since 11 December 1989, i.e., at the time of and since the making of the Timor Gap Treaty. The question on which this case inevitably turns is whether Indonesia's claim to sovereignty is justified. A decision on Indonesia's claim to sovereignty is, therefore, a prerequisite to any finding of Australian responsibility.

213. Indonesia and some other States have regarded certain acts in East Timor, as for example the consultation of 1976 (para.54 above), as tantamount to the exercise of the right to self-determination by the people of East Timor. But the question here is not whether such acts are to be so regarded. They were acts of Indonesia on which Indonesia now relies to substantiate its claim with respect to East Timor. The point is that the Court cannot decide these matters without Indonesia's presence or consent, because if it is to rule in favour of Portugal's claim, it must, inevitably, decide these issues adversely to Indonesia, and must do so in a way which will inevitably impinge on the legal right which Indonesia would otherwise possess to have the Treaty performed.

B. The international community recognizes that Indonesia and Portugal are the true parties to the dispute

214. The circumstances of the dispute clearly show that the true parties are Portugal and Indonesia, not Australia. This is, indeed, the understanding of the international community, as expressed through the United Nations. Thus, in resolution 36/50 of 24 November 1981, the General Assembly called upon:

> "... all interested parties, namely [*à savoir*] Portugal, as administering Power, and the representatives of the East Timorese people, as well as Indonesia, to cooperate fully with the United Nations with a view to guaranteeing the full exercise of the right to self-determination of the people of East Timor."

215. The resolution exhaustively identified the interested States. Again, by resolution 37/30 of 23 November 1982, the General Assembly requested the Secretary-General to initiate consultations for settlement "with all parties directly concerned", referring thereby to Portugal and Indonesia, as well as the people of East Timor. There was no suggestion then or at any other time on the part of the United Nations organs that Australia was one of the "parties directly concerned". On the other hand, resolution 37/30 constituted an express international recognition of Indonesian involvement in the dispute, an involvement which Portugal has in fact accepted. For Portugal insists that it is pursuant to this resolution that it has cooperated with the Secretary-General. See paragraphs 146 to 152 above concerning negotiations between Indonesia and Portugal. What holds for non-legal ways of settlement holds for an adjudication, for as the Permanent Court stated, the latter "is simply an alternative to the direct and friendly settlement of a dispute" (Free Zones of Upper Savoy and the District of Gex, PCIJ, Series A, No.22, 1929, p.13).

216. Australia is neither "an interested party" nor a party "directly concerned" in the dispute over East Timor, either in relation to the questions of sovereignty, or of self-determination. It cannot be held responsible for the outcome of the dispute: that is a matter for Portugal, Indonesia, the people of East Timor and the United Nations. Thus, Australia could not challenge either directly or through an intervention an agreement between Indonesia and Portugal, under the auspices of the Secretary-General, to the effect that the people of East Timor had already voluntarily accepted integration into Indonesia.

217. On the other hand, had Indonesia chosen to intervene in these proceedings, it would, practically speaking, have become the sole respondent. As the basic issues give rise to a dispute between it and Portugal, Portugal would scarcely have needed to amend its Application. Although Portugal's claims purport to be opposable to Australia only, its focus is on Indonesia. To achieve what Portugal concedes is the purpose of this case - the vindication of the principle of self-determination (Memorial, para 3.08) - Indonesia is both a necessary and sufficient party. For the legal and practical responsibility for complying with that principle rests with Indonesia. Only if Indonesia were a party could Portugal, assuming that it had a right to bring such proceedings on its own behalf or on the behalf of the people of East Timor, win effective relief.

218. Furthermore, as Indonesia is in effective control of East Timor, territory over which it claims sovereignty, its legal interest in the outcome of the dispute is actual. It is not merely a possible beneficiary of any act of self-determination occurring on territory under the control of another State.

219. The conclusion is unavoidable: the Court cannot decide if the principle of self-determination has been violated, with consequences for third parties, unless Indonesia is a party to the proceedings. For there to be any basis whatsoever for Portugal's claim against Australia, Portugal must prove the unlawfulness of Indonesia's claim to sovereignty. It follows that Indonesia's legal interests would not just be affected by a decision in this case, the question of Indonesian sovereignty would form an essential part of "the very subject-matter" of the proceedings as did the interest of Albania in the Monetary Gold Case. The international community itself recognizes that this is now the case.

C. Portugal cannot challenge the effectiveness of the Timor Gap Treaty without Indonesia's consent

220. There is a further reason why the principle of consent precludes the Court from deciding the merits of this case. Portugal apparently concedes (Memorial, para 3.06) that the Court cannot rule on the validity of a bilateral treaty, without the consent of both parties to the treaty. The reason is clear: a decision concerning the entitlements of one party to the treaty will also amount to a decision as to the entitlements of the other party to the treaty. This has been explained above (paras.183 to 190). If the Court were to decide the merits of this case, it would be ruling not only on the entitlements of Australia, but also on those of Indonesia. A judgment of the Court is not a mere *voeu*: it has binding effect. A judgment of the Court that State A cannot lawfully give effect to a bilateral treaty with State B is a judgment that State B has no right that State A give effect to the treaty. The relief which Portugal seeks shows that a ruling in relation to the responsibility of Australia would apply directly and of its own force to Indonesia.

221. Portugal asserts (Memorial, para. 3.06) that this case does not concern the validity of the Treaty, but only the legality of Australia's conduct in relation to it. According to Portugal, this is the only matter which the Court is asked to decide. Even if this were true, a finding of wrongdoing by Australia would, in the circumstances of this case, require a prior finding of wrongdoing on the part

of Indonesia. In truth, however, the distinction which Portugal seeks to make between validity and legality is completely without substance. See paragraphs 7 to 9 above.

222. For if the Court were to decide in favour of Portugal, and Australia did not fulfil its treaty obligations to Indonesia, Indonesia would no doubt complain that this involved a breach of the Treaty. Given that complaint, there are two possibilities. The first possibility is that Indonesia, which is a party to the Statute of the Court, would be bound to accept that Australia was obliged by the Court's order not to give effect to the Treaty. The second possibility is that Indonesia, which is not a party to the proceedings and which is entitled to rely on Article 59 of the Statute, would be entitled to ignore the effect of the Court's order so far as it impinged on its own treaty rights. If the first alternative is the correct one, then the Court's order would effectively bind Indonesia, which it cannot do. If the second alternative is the correct one, then the Court would be imposing inconsistent obligations on Australia, and would risk making an order which was contradictory in its legal effect. Indeed it is not too much to say that in such a case the Court would in effect be inducing a breach of treaty by Australia. This too it cannot, or at the very least should not, do.

223. This argument shows, as clearly as anything can, that the Portuguese claim and submissions logically entail a challenge to the validity of the Timor Gap Treaty, whether that challenge is based on the proposition that the right of self-determination gives rise to an obligation erga omnes or a rule of jus cogens. Essentially, Portugal's contention is that the Treaty does not deal with the rights of Indonesia, but with its own rights as administering Power, or the rights of an entity representing the people of East Timor. A treaty between States A and B about the rights of State C is void inasmuch as it is legally inoperative to affect those rights. What is more, if the Court were to accept Portugal's invitation to declare that, besides creating an obligation erga omnes, the right of self-determination gives rise to a rule of jus cogens, or a peremptory norm, and if the Court were then to find that Australia had contravened that norm in making the Treaty, the Treaty would be void for that reason as well. This follows from Article 53 of the Vienna Convention on Treaties. If the treaty were void in this respect, then how could Portugal say it is not questioning the validity of the treaty? If it is void, then the rights of third parties are clearly in issue and this must trigger the Monetary Gold principle.

D. Australia's position is consequential on the status of Indonesia in 1989

224. As it has now been seen, Portugal's claims against Australia concerning the right to self-determination arise from an assumption that Indonesia denied that right in the period 1975-6. To succeed in its claim, however, Portugal has to go further still. It has also to show that Indonesia is infringing that right today, some 16 years after it first incorporated the territory of East Timor into Indonesia. Portugal's claim depends upon showing an existing infringement of the right to self-determination - at and since the time of the conclusion of the Treaty. It has also to demonstrate that Indonesia is not today in a position to exercise lawfully the attributes of a coastal state so as to conclude an agreement with another State on maritime matters exclusively affecting the territories under their control.

225. This crucial inter-temporal aspect of the case is completely, indeed wilfully, ignored in the Portuguese Application and even in its Memorial. Portugal merely asserts that it:

> "has never abandoned and can never abandon its status as the administering Power of the Territory, and the duties attendant upon that status. It considers itself still to be the repository of the rights of the people of East Timor." (Application, p.9)

See also Memorial, paras.8.13-8.14.

226. It is only by calling into question the status and rights of Indonesia as they currently exist that Portugal can establish the consequential responsibility of Australia for its acts in relation to the Timor Gap Treaty. For if Indonesia's claims to sovereignty over the Territory and to be the State now lawfully able to enter into dealings with other States on behalf of East Timor are sound, then Portugal's claim must fail. Portugal must show that Indonesia's assertions concerning the Territory and its entitlement to make the Treaty were false when the Treaty was made - i.e., in December 1989.

E. Any Australian responsibility being derived from conclusion of a bilateral treaty must be shared with the other party to the Treaty

227. If, contrary to Australia's primary contention, Australia bears any legal

responsibility to Portugal, resulting from the making of the Timor Gap Treaty, that responsibility is shared by it equally and conjointly with Indonesia. The Portuguese Memorial asserts that Portugal's claim concerns only the individual responsibility of Australia (Memorial, para 3.05), on the basis that Portugal challenges only the legality of Australia's acts, not the validity of the Treaty itself (Memorial, para 3.06). As previously shown, this purported distinction is misleading and fails to have regard to the focus of Portugal's Application. In fact, Portugal's claims concern either the individual responsibility of Indonesia alone, or the joint responsibility of Australia and Indonesia.

228. In making the Timor Gap Treaty, Australia and Indonesia engaged in joint action directed to a common purpose - the creation of a provisional arrangement for the exploration and exploitation of petroleum resources in the Timor Gap. If Portugal's case is sustainable, this action constituted identical violations by both States of identical obligations resulting in identical damage. This follows from the nature of the acts (essentially, the making and performing of the Treaty) which Portugal alleges to be wrongful. For in negotiating, concluding and initiating the performance of the Treaty, Australia and Indonesia acted together. Both States shared responsibility for those acts, and for any international wrong to which they gave rise. It is immaterial whether this responsibility is described as "joint" or "concurrent". For whether "joint" or "concurrent", the Court cannot declare Australia's responsibility, without also condemning Indonesia. The Court cannot, therefore, judge this case in the absence of Indonesia.

229. Even entering into the Treaty involved the joint act of Australia and Indonesia. By this act, the two States gave and accepted rights and obligations. Moreover, as has already been mentioned, by establishing the Zone of Cooperation under the joint control of both States (Article 2), Indonesia and Australia created a regime which requires reciprocity of obligation and mutuality of performance. The successful operation of the regime depends entirely on the co-operative participation of both States.

230. Furthermore, if, as Portugal requests (Application, paras 26 & 34(4)), Australia were found liable to make reparation for legal, moral or material damage to Portugal, or to the people of East Timor, then Indonesia would also be liable. For if the making of the Treaty constituted a wrong resulting in liability for reparations, Australia and Indonesia would be jointly liable as co-principals.

231. Although not a party to these proceedings, Indonesia shares with Australia any responsibility for the Timor Gap Treaty. On Portugal's statement of its case, this forms the very subject matter of the proceedings. Hence, there is yet another ground for finding that the Court cannot decide this case: for it cannot decide the liability of Australia without also deciding the liability of Indonesia.

Section IV: Summation

232. The preceding sections of this Chapter have shown that, however the Portuguese claims are characterised, they inevitably require the Court to adjudicate on the legal responsibility of a third State without its consent. The principle of the Monetary Gold case applies. This is so whether the claims of Portugal against Australia are regarded as involving a challenge to the validity of a bilateral treaty or as dependent on establishing a claim against Australia that is consequential on a breach of obligation by a third State. Section I indicated the theoretical possibilities in this regard. Section II discussed applications of the Monetary Gold principle. Section III applied the law to the facts of this case. Those facts show that the central and essential elements in this case as formulated by Portugal require the Court to determine as a necessary precondition to determining the responsibility of Australia the "legal interests" of Indonesia. Those interests, and not those of Australia, form the very subject-matter of the decision in this case.

CHAPTER 2

PORTUGAL HAS NO RIGHT TO AN ADJUDICATION OF ITS CLAIM

233. Portugal claims that Australia has, by its conduct, breached obligations owed to it, in its capacity as administering Power, and to the people of East Timor. In substance, it alleges that Australia owed obligations:

- to respect its power and duties as the administering Power;

- to observe the right of the people of East Timor to self-determination and the related rights (including the right to territorial integrity and unity and to permanent sovereignty over its natural wealth and resources);

- to observe Article 25 of the United Nations Charter and Security Council resolutions 384 and 389; and

- to negotiate with the competent State in matters of common interest and therefore to negotiate with Portugal on maritime areas of direct concern to East Timor.

See Application, paragraphs 2, 3, 27, 30 and 31.

234. By these breaches, Australia has, Portugal asserts, occasioned it and the people of East Timor "particularly serious legal and moral damage" (Application, paragraph 26; Memorial, paragraph 9.03). Portugal contends that Australia will cause material damage should it proceed to the exploitation of petroleum in the Timor Gap.

235. To establish its right to bring this claim, Portugal would need to demonstrate that it has a "sufficient legal interest" in the claim. Simply to identify itself as the "administering Power" - so recognised by the General Assembly - is not enough.

On closer analysis, to establish its right to bring the claim, Portugal would need to establish the following:

(a) that Portugal's own rights are in issue, and that Australia's conduct has contravened those rights;

or

(b) that Portugal's rights are so closely identified with those of the people of East Timor that Portugal derives its right to bring these proceedings from that very identification;

and

(c) that judgment in Portugal's favour will benefit Portugal in a legally relevant way, by directly promoting and protecting the rights of Portugal;

and

(d) that Portugal is in a position to fulfil any judgment, and to respond to any counter-claims and demands that arise from or may be consequential on the Court's judgment.

236. As this chapter shows, Portugal cannot satisfy these requirements. Its own rights are not in issue. Even if Portugal claims that its rights are so identified with those of the people of East Timor that it is entitled to bring this claim, such identification is not accepted by the people of East Timor themselves and the United Nations has noticeably failed to authorize or require Portugal to represent the people of East Timor before the Court in proceedings such as these. Indeed, the United Nations has failed to take other more direct action that could have been available to it, for example, by requesting from the Court an advisory opinion on the legal status of East Timor. In apparent acknowledgement of these difficulties, Portugal also seeks to support its claim that it is entitled to act on the basis that it is performing a "service public international". Section III shows that there is no basis in law for this contention.

Section 1: Portugal cannot justify its claim to act on the basis that its own rights are in issue

237. With its departure from East Timor in 1975, Portugal brought to an end any capacity it had to act as a coastal State in relation to the territory. Since then, Portugal has not been in a position to fulfil the obligations, or enjoy the rights of a coastal State in relation to East Timor. Even if Portugal's conduct in 1975 did not in law constitute abandonment, its adoption of a new constitution in 1976 which no longer included East Timor as a territory under Portuguese sovereignty or administration, constituted clear relinquishment of any territorial claim to East Timor (para.44 above). Hence, Portugal cannot justify its claim to act on the basis that its rights as a coastal State are in issue.

238. Nor can Portugal rely on any alleged interest as administering Power in relation to East Timor. Its departure from the territory and the subsequent Indonesian occupation demonstrated the extent to which Portugal failed to fulfil its responsibilities as administering Power. Since then, it has not been able to make any effective arrangements for East Timor.

239. The proposition that, because Portugal failed to discharge its responsibilities as administering Power, it cannot now call on the Court to judge its claim is in keeping with the remarks of the Court in the Namibia Advisory Opinion. Speaking of a mandate situation, but in words which apply equally to the relationship of an administering Power to a non-self-governing territory, the Court wrote:

> "One of the fundamental principles governing the international relationship thus established is that a party which disowns or does not fulfil its obligations cannot be recognized as retaining the rights which it claims to derive from the relationship." (ICJ Reports 1971, p.46)

240. Having lost control over East Timor, having failed to discharge its responsibilities there and having formally relinquished all sovereign powers over the Territory, Portugal cannot now assert an entitlement to have this claim decided by the Court. The circumstances of the case are very different from those in the US Nationals In Morocco Case (ICJ Reports 1952, p.176) in which this Court recognized the right of the colonial power still in control to bring a claim in respect of the colonial territory. The basic difference is that in that case the colonial power could carry out the judgment of the Court effectively.

Portugal could not implement judgment in its favour in the present case. Effectiveness must, as in other areas of the law, remain the dominant principle if the Court is to avoid creating an impossible conflict between law and fact.

241. Finally, no right which Portugal claims to represent the people and territory of East Timor before the relevant organs of the United Nations could have been contravened by Australia. For nothing that Australia has done prevents such representation, and nothing in a judgment of the Court favourable to Portugal would affect Portugal's status as administering Power. In any event, as paragraphs 243 - 257 below show, Portugal does not have even such a limited right of representation.

Section II: Portugal's rights are not identified with those of the people of East Timor

A. The people of East Timor have rejected Portugal as administering Power

242. Portugal can point to no basis on which its position can be identified with that of the people of East Timor. Its alleged sovereignty has not been accepted by the East Timorese people. Indeed, it was very shortly after Portugal's withdrawal that Portuguese sovereignty was repudiated by political groups in East Timor. At the end of November 1975, in the vacuum created by the withdrawal, FRETILIN proclaimed the independence of the "Democratic Republic of East Timor" and declared itself the Government. In response, the other political parties also declared the independence of the territory, and declared themselves the "Provisional Government of East Timor", as a step on the way to integration with Indonesia (paras.38 and 43 above). Even following military intervention by Indonesia in December 1975, neither side of the political division in the territory acknowledged any role for Portugal. Mr Horta (FRETILIN) said in the debate in the Security Council on 12 April 1976, that his organisation:

> "reject[s] any suggestion of East Timor's being a colony. Further, any suggestion by the United Nations that Portugal was still "the administering Power" is a blatant contradiction of all United Nations principles... The Central Committee of FRETILIN no longer recognize Portuguese sovereignty over East Timor but is willing to

> establish bilateral dialogue as between Government and Government, State and State." (S/P. 1908, p.21)

On this point, the attitude of the "Provisional Government of East Timor" was similar. Referring to the fact that the Portuguese administration had been withdrawn from East Timor, its spokesman pointed out in the same debate that as far as the Provisional Government was concerned:

> "the question of Timor has already been solved by the East Timorese themselves. There was no Portuguese Administering Authority any more in Dili or in Atauro. It has deliberately abandoned the Territory." (S/PV. 1908, p.81)

B. The international community has not accorded Portugal the right to represent the people of East Timor

1. The United Nations

243. In instituting these proceedings, Portugal exceeds whatever limited authority the United Nations has given it with respect to East Timor. The United Nations has referred to Portugal as administering Power for limited purposes only, and has not thereby accorded it the right to represent itself or the people of East Timor in proceedings in this Court.

244. As early as 1973, the General Assembly had withdrawn any general right of Portugal to represent its various overseas territories in the United Nations. (See resolution 3181 (XXVIII) of 17 December 1973 and resolution 3113 (XXVIII) of 12 December 1973.) There was no attempt to resile from that decision prior to December 1975 when the issue of East Timor was raised before the Security Council and the General Assembly. This is consistent with the fact that the Security Council, in resolution 384 (1975) of 22 December 1975, referred to Portugal's position in the past tense ("Regretting that the Government of Portugal did not discharge fully its responsibilities as administering Power in the Territory ...").

245. In the operative part of resolution 384, the Security Council defined Portugal's role as administering Power within the narrowest compass. It was "to co-operate fully with the United Nations so as to enable the people of East Timor to exercise freely their right of self-determination". As the resolution recognized, the key role in finding a solution was to be played by the United Nations.

246. In the General Assembly as well, the authority of the administering Power was similarly narrowly prescribed. In resolution 3485 (XXX) of 12 December 1975 the General Assembly stated that it:

> *"Calls upon* the administering Power to continue to make every effort to find a solution by peaceful means through talks between the Government of Portugal and the political parties representing the people of Portuguese Timor."

In addition, the Assembly, in the same resolution:

> *"Requests* the Government of Portugal to continue its co-operation with the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples."

247. Indeed so little importance was attached to the description of Portugal as administering Power that the Security Council failed to use it at all in resolution 389 (1976). Similarly, in none of resolutions 31/53 of 1 December 1976, 32/34 of 28 November 1977, or 33/39 of 13 December 1978 did the General Assembly refer to Portugal as the administering Power.

248. References to Portugal as the administering Power in later resolutions adopted by the General Assembly do not indicate that the Assembly then intended to confer any additional authority on Portugal to represent, or act on behalf of, the people of East Timor, either in the settlement processes, or elsewhere. The only substantive part of any of these resolutions which requires or authorises action specifically by Portugal appears in resolution 36/50 of 24 November 1981. Operative paragraph 3:

> "*Calls* upon all interested parties, namely Portugal, as the administering Power, and the representatives of the East Timorese people, as well as Indonesia, to co-operate fully with the United Nations with a view to guaranteeing the full exercise of the right to self-determination by the people of East Timor."

249. The role identified for Portugal in this resolution was simply to "co-operate fully with the United Nations", specifically the Special Committee on Decolonization. Portugal was not in any way invited by the General Assembly to act on behalf of the people of East Timor. The representatives of the East Timorese people were named as a distinct party. The resolutions recognized too that the United Nations had assumed the chief responsibility for, and the predominant role in, the settlement processes. The resolutions contained no direction that Portugal should unilaterally take all possible action, whether by instituting proceedings in this Court against a third State not directly concerned in the matter, or otherwise. Indeed, such a direction would have been contrary to the decision, expressed in this and other resolutions, that the United Nations assume the responsibility for finding a settlement to the dispute by consultation and negotiation between the parties directly concerned. Neither at that time nor since has the United Nations placed Portugal in the position where it is entitled to an adjudication of the claims it brings against Australia in this case. What is more, the General Assembly has not reaffirmed any role for Portugal since 1982.

250. One can contrast the absence of any authorisation for Portugal to bring the present proceedings with the specific authorisations granted to the United Kingdom as an absent administering Power to take certain action in relation to Southern Rhodesia. Examples of such specific authorizations include the following:

- Resolution 217 (1965) of 20 November 1965 in which the Security Council expressed its deep concern:

> "with the situation in Southern Rhodesia, considering that the illegal authorities in Southern Rhodesia have proclaimed independence and that the Government of the United Kingdom of Great Britain and Northern Ireland, as the administering Power, looks upon this as an act of rebellion and called upon

the Government of the United Kingdom to quell this rebellion of the racist minority."

- Resolution 221 (1966) of 9 April 1966 in which, following news that oil was being pumped to Rhodesia through the Portuguese port of Beira, the Council called upon

> "the Government of the United Kingdom of Great Britain and Northern Ireland to prevent, by the use of force if necessary, the arrival at Beira of vessels reasonably believed to be carrying oil destined for Southern Rhodesia, and empowers the United Kingdom to arrest and detain the tanker known as the *Joanna V* upon her departure from Beira in the event her oil cargo is discharged there."

- Resolution 328 (1973) of 10 March 1973 in which the Security Council referred to the United Kingdom in the following terms:

> *"Bearing in mind* that the Government of the United Kingdom of Great Britain and Northern Ireland, as the administering Power, has the primary responsibility for putting an end to the illegal racist minority regime and for transferring effective power to the people of Zimbabwe on the basis of the principle of majority rule:
>
> ...
>
> (a) *Urges* the United Kingdom of Great Britain and Northern Ireland to convene as soon as possible a national constitutional conference where genuine representatives of the people of Zimbabwe would be able to work out a settlement relating to the future of the territory;
>
> (b) *Calls upon* the Government of the United Kingdom to take all effective measures to bring about the conditions necessary to enable the people of Zimbabwe to exercise freely and fully their right to self-determination and independence."

251. The contrast between this case and the case of Rhodesia, particularly the difference between the actions of the Security Council in relation to each matter, supports the conclusion that whilst the appropriate organs of the United

Nations may continue to refer to a State as administering Power, though it no longer has control over the territory in question, its rights in that capacity entirely depend on the authority specifically conferred on it by the United Nations. The scope of the authority granted to the United Kingdom in relation to Rhodesia was much more extensive than the very limited authority given to Portugal in relation to East Timor. Portugal along with the other directly concerned parties was only called upon to "co-operate" with the United Nations in the consultation and negotiation processes.

252. Yet Portugal ignores this need for United Nations involvement and asserts that it is incumbent on it as the administering Power to set up "moyens juridiques adéquats, éventuellement avec la coopération et sous la supervision des Nations Unies" (Memorial, para.8.03). But this is a mistaken view and the situation is exactly the reverse. An administering Power with the record of Portugal could not be left to decide on its own the terms of an eventual consultation as to the wishes of the people of East Timor. The United Nations resolutions do not contemplate that Portugal would assume the role now claimed by it in relation to the right of self-determination. Rather, they envisage Portugal acting at all times in co-operation with the United Nations - not taking its own extraneous initiatives.

2. State practice

253. In the absence of United Nations authorization to bring these proceedings, Portugal's capacity as an administering Power to act on behalf of the people of East Timor cannot be established by acts of recognition, cognition and acquiescence. It is clear that the evidence available fails to satisfy the necessary standard of proof.

254. The voting patterns in the General Assembly have shown mounting ambivalence on the part of the international community towards even the limited role envisaged for Portugal in the settlement process (Part I, Chapter 2). Indeed, an increasing number of States have disregarded Portugal's claims in relation to East Timor, and have given express or implicit recognition to the incorporation of East Timor into Indonesia (Part I, Chapter 2, Section III). Even the large number of unexplained votes or abstentions which have not supported the General Assembly's resolutions on East Timor must, to an extent,

be regarded as derogating from Portugal's claimed status. In such circumstances, Portugal simply has no internationally recognized status to bring these proceedings.

255. Nor, in Australia's view, has Portugal taken the action necessary to assert this status. It goes without saying that legal rights denied by other States can only be preserved by adequate and persistent protests by the State whose rights are being denied (Anglo-Norwegian Fisheries Case, ICJ Reports 1951, p.116 at p.138). With regard to States other than Australia, there is no record of any formal protests by Portugal at the express or implied recognition of Indonesia's annexation of East Timor.

256. Even with regard to Australia, Portugal's position has been equivocal. Australia recognized de facto Indonesia's incorporation of East Timor in January 1978. Towards the end of that year, Australia announced that the opening of the Timor Gap negotiations, scheduled for March 1979, would constitute de jure recognition of Indonesia's position. At those stages all that Portugal did was to express "surprise" at Australia's actions (para.370 below), despite the fact that Australia's actions were in conflict with and in complete contradiction to the position Portugal asserts in these proceedings. It was 1985 before any formal Portuguese protest to Australia was made.

257. In order to excuse or justify its apparent silence over the period 1978-1985, Portugal has relied upon the most extraordinary proposition that "la protestation [Portuguese] était déjà implicite dans l'attitude constante du Portugal" (Memorial, paragraph 2.13). Australia contends that this assertion is wrong in law and in fact. Faced with the substantial derogations that were occurring from the position now maintained by Portugal, it could only protect its position by unequivocal protest and statements of its views: there were none. As to the factual reasons for this neglect, they do not lie in any Portuguese belief that the low key role it was playing in the United Nations was sufficient of itself to preserve the position Portugal now maintains. Rather the explanation for its earlier failure lies in the long-established Portuguese policy of total neglect of East Timor and its people which led the General Assembly from 1973 onwards to deny any significant role for Portugal in relation to the territory. The sudden reawakening of interest in East Timor within Portugal in 1985 with the protest to Australia is hardly adequate to establish Portugal's status as claimant in this case.

Section III: Portugal cannot justify its claim to bring this case on the basis that it is performing a "service public international"

258. Portugal also asserts that it has a right to act on behalf of the people of East Timor by reason of what it calls its right to perform a " service public international". Australia denies that such a right exists.

259. There is no principle of general international law which gives Portugal the right to bring this case. To have a right to bring a claim to the Court for decision, a State must be able to show that it has a legal interest in the subject matter. The absence of just such an interest led to the failure of Belgium's claim in the Barcelona Traction Case (ICJ Reports 1970, pp.50-1) as well as to the failure of the applications brought by Ethiopia and Liberia in the South West Africa Cases (ICJ Reports 1966, p.51). Even judges who dissented in the South West Africa Cases accepted that it was necessary for the applicants to show a right to bring the application in the first place. See, e.g., ICJ Reports 1966, pp.387-8 (Judge Jessup); p.443 (Judge Padilla Nervo); p.478 (Judge Forster). For a recent review of the general subject of legal interest, see M'Baye, "L'intérét pour agir devant la cour internationale de justice" 209 Hague Recueil (1988, II), pp.227-341.

260. There is no principle of general international law which would support Portugal's contention that, in bringing this case, it is performing a "service public international" (Application, paras.1, 14, Memorial, paras.5.42, 5.46). The United Nations has not granted Portugal any authority to act on behalf of East Timor, much less the international community. See paragraphs 243 - 257 above; *cf.* Nuclear Tests Case (ICJ Reports 1974, p.390), dissenting opinion of Judge de Castro.

261. Portugal cannot bring these proceedings as a kind of actio popularis, whether pursuant to a "service public international" or otherwise, unless it can show that an entitlement to do so arises from the erga omnes character of the obligations which it asserts. Portugal points to no other basis on which it could rely. The Court has rejected the contention that, in accepting the Court's jurisdiction under Article 36(2) of the Court's Statute, a State acquires the legal

right to bring a claim on any subject of its choosing against any other State which has also accepted the Court's jurisdiction (South West Africa case ICJ Reports 1966, p.42).

262. Even where a broad view of matters of this kind has been admitted, it has been said that "[t]here is no generally established "actio popularis" in international law" (South West Africa ICJ Reports 1966, pp.387-8 (Judge Jessup)). Even if it be assumed that the right of self-determination gives rise to obligations erga omnes, Australia contends that Portugal cannot establish a right to bring proceedings in the nature of an actio popularis. The Court's observations in the Barcelona Traction Case (ICJ Reports 1970, p.32) are not to the contrary. What the Court there said was that "an essential distinction should be drawn between the obligations of a State towards the international community as a whole [obligations erga omnes], and those arising vis-à-vis another State in the field of diplomatic protection". In that case, the Court was concerned only with obligations in the latter category. It did, however, make the comment that in relation to obligations in the first category, being obligations erga omnes, "[s]ome of the corresponding rights of protection have entered into the body of general international law ...; others are conferred by international instruments of a universal or quasi-universal character" (emphasis added). The Court did not say that every obligation erga omnes would support proceedings in the nature of an actio popularis. The matters to which reference was specifically made are essentially different from the right to self-determination which Portugal seeks to vindicate.

263. The right to self-determination gives rise to consequential obligations for third States only where there has been a collective decision by the international community to that effect. To allow States to proceed - assuming a locus standi - in the absence of a collective decision would lead to action of a highly subjective character, and such action might not always take the form of initiating proceedings before the International Court. Thus, the result would be practically chaotic and self-serving. There has been no collective decision which could have given rise to an obligation of the kind which Portugal alleges in this case. See Part III, Chapter 1, Sections II - IV. Portugal cannot, therefore, rely on any obligation arising from the right to self-determination to bring these particular proceedings.

264. It is true that in their dissenting opinions in the South West Africa Cases, Judges Jessup and Tanaka adopted a wider view than did the Court of the right of a State to bring a matter before it. Both judges relied on the special nature of particular treaties to provide a State's entitlement to bring a matter to the Court. (See ICJ Reports 1962, pp.425ff.(separate opinion, Judge Jessup); ICJ Reports 1966, p.386 (dissenting opinion, Judge Jessup); ICJ Reports 1966, p.252 (dissenting opinion, Judge Tanaka.)). But there is no treaty conferring such a right in the present case.

265. As already shown (paras.200-203), Australia has not breached any obligation erga omnes. Such a breach, if any, was committed by Indonesia. There simply was no relevant legal constraint preventing Australia from dealing with Indonesia in relation to East Timor, by entering into the Timor Gap Treaty. See further Part III, Chapter 2.

Section IV: Judgment for Portugal would benefit neither Portugal nor the people of East Timor, and Portugal could not implement any such judgment by fulfilling the responsibilities that would arise therefrom

266. Judgment in Portugal's favour would not benefit Portugal in any legally relevant way. The judgment which Portugal seeks is in fact designed by Portugal to disadvantage Indonesia. These matters are discussed in detail in the following two Chapters, especially paragraphs 271-278, 309-314. It would confer no benefit directly on Portugal (nor the people of East Timor). Portugal's status as administering Power within the United Nations would remain wholly unaffected.

267. Further, since Portugal is not in possession or control of East Timor, and has no authority over the maritime areas offshore, it simply cannot fulfil any judgment, or respond to any counter-claims or other demands which may be made in consequence of the Court's judgment. It is explicit in Portugal's case - in the very terms of its Application - that Australia would have to negotiate a new treaty with Portugal, as coastal State. But if Australia called on Portugal to fulfil its duty, as a coastal State, to negotiate in good faith a maritime boundary treaty, Portugal could not respond. For it would be totally incapable of carrying out the obligations of a coastal State which would flow from such a treaty. In

particular, it could not guarantee to Australia any of the rights which such a treaty might accord, including lack of interference in areas which, pursuant to the treaty, were attributed to Australia as a matter of international law. These matters too are discussed in more detail in the next Chapter.

268. The purpose of Portugal's Application is clear: Portugal brings these proceedings against Australia to provide a basis for the adjudication of its dispute with Indonesia which has not submitted to the Court's jurisdiction. Australia is merely a surrogate. Portugal apparently seeks to deprive Indonesia of the benefits of its annexation of East Timor, by bringing to an end the arrangement which it has made with Australia. It does so not because there is anything wrong with the terms of the Treaty as such, but because the Treaty applies to an area which Indonesia claims by reason of its control over East Timor. The assumption is that a judgment in favour of Portugal would indirectly deprive Indonesia of the fruits of its alleged wrongdoing. But the actual effect of a judgment adverse to Australia in the present case is likely to be the reverse. The respondent State, which Portugal concedes had no involvement or complicity in the annexation of East Timor, would be legally disabled from giving effect to the Treaty, in respect of an area of continental shelf it has consistently claimed as its own. By contrast Indonesia would not be bound by any such judgment and would presumably be free to reassert its view that it has exclusive rights to the greater part of the area. Quite apart from the potential discord this could create, the only possible beneficiary of such a situation would be Indonesia. And there is no reason to suppose that the benefits of this situation would flow, equitably or at all, to the people of East Timor. Hence, even if Portugal could establish a sufficient legal interest, which Australia denies, it still could not establish a right to an adjudication of its claim.

CHAPTER 3

JUDGMENT FOR PORTUGAL CANNOT FULFIL ANY LEGITIMATE OBJECT

269. It is well established that there are inherent limitations on the judicial function. These limitations have been recognized and accepted by both this Court and the Permanent Court of International Justice in a number of different contexts. (See e.g., Free Zones of Upper Savoy and the District of Gex, PCIJ, Series A/B, No. 46, 1932, p.161; Status of Eastern Carelia, PCIJ, Series B, No.5, 1923, p.29; Nuclear Tests Case, ICJ Reports 1974, p.271; Northern Cameroons Case, ICJ Reports 1963, p.30.) The Court has accepted that it, not the parties before it, is "the guardian of its judicial integrity" and that even if a party invites it to do otherwise, the Court has a duty to confine itself to its judicial purpose (Northern Cameroons Case, ICJ Reports 1963, p.29, Western Sahara Case, ICJ Reports 1975, p.21).

270. Portugal, by its Application, invites the Court to travel well beyond the Court's proper role and to deliver a judgment which cannot serve any legitimate object. Thus, even if the Court is satisfied that it has jurisdiction over the case, and that it would be otherwise admissible there are the strongest reasons of judicial propriety why the Court should not decide it.

Section I: Judgment for Portugal would have no legitimate object

A. Judgment for Portugal would not promote the interests allegedly requiring protection

271. It is essential for the proper discharge of the Court's judicial function that the judgments which it gives serve real objects and are capable of practical legal effect. It is not a part of the judicial function to give decisions which are "devoid of object or purpose". (*cf* Western Sahara Case, ICJ Reports 1975, at p.37 and Northern Cameroons Case, ICJ Reports 1963, at p.38.) The Court would exceed its judicial function if it were to decide this case, as its decision could not bring about a resolution of the underlying dispute around which the case centres. The Court has in the past indicated that it would decline "to allow the continuance of proceedings which it knows are bound to be fruitless"

(Nuclear Tests Case, ICJ Reports 1974, p.271).

272. It was for just such a reason that the Court declined to give judgment in the Northern Cameroons Case, (ICJ Reports 1963, p.15). The Republic of Cameroon had made application to the Court for a declaration that the United Kingdom had breached obligations owed by it as trustee under the Northern Cameroons Trusteeship Agreement. The Agreement had previously been terminated by resolution of the United Nations General Assembly, following a plebiscite in which the people of Northern Cameroon had voted to join the Republic of Nigeria rather than the Applicant Republic. The Republic of Cameroon did not, however, ask the Court to review the decision of the General Assembly; it did not challenge the validity of the plebiscite; and it did not ask the Court to find any causal connection between the alleged wrongdoing of the United Kingdom and the outcome of the plebiscite. As a result, the Court found that it was "relegated to an issue remote from reality". It said:

> "If the Court were to proceed and were to hold that the Applicant's contentions were all sound on the merits, it would still be impossible for the Court to render a judgment capable of effective application. ... The United Kingdom would have no right or authority to take any action with a view to satisfying the underlying desires of the Republic of Cameroon." (ICJ Reports 1963, p.33)

As the United Kingdom would not have been able to give any practical effect to a judgment in the Applicant's favour, the Court declined to decide the case.

273. The right to self-determination would not in fact be vindicated by a judgment in Portugal's favour. Portugal asks the Court to make certain declarations, to the effect that, by entering into the Timor Gap Treaty, Australia breached its obligations to respect Portugal's status as administering Power and the right of the people of East Timor to self-determination (Application, paras. 34(1)-(3)). Yet even if made, such declarations would be devoid of practical effect: they would neither bind Indonesia, nor improve the position of the people of East Timor. These considerations also apply to the claim based on the principle of permanent sovereignty over natural resources. The underlying issue cannot be resolved; no judgment in Portugal's favour could settle that issue, let alone enable Portugal to enhance any principle of permanent sovereignty by denying the effectiveness of the Timor Gap Treaty. It is true

that Portugal also seeks reparation, although it alleges no material damage (Application, para. 34(4)). But even if an order for reparation were made, it would not in any way remedy the wrong which such an order would assume. Nor, given its lack of control of the territory, could Portugal ensure that any reparation was applied to the benefit of the people of East Timor. Even an order enjoining Australia from performing its obligations under the Treaty would not avail the people of East Timor (*cf* Application, para.34(5)). On the contrary, by bringing the Timor Gap Treaty to an end, such an order might enhance the position of the alleged wrongdoer (Indonesia), even perhaps to the detriment of the people of East Timor. (See paras.309-314 below.)

274. Examination of the declarations which Portugal seeks shows that they would be without practical object and would tend to promote, rather than diminish, international disagreement. "While judicial settlement may provide a path to international harmony in circumstances of conflict, it is none the less true that the needless continuance of litigation is an obstacle to such harmony" (Nuclear Tests Case, ICJ Reports 1974, p.271).

275. The claims made by Portugal against Australia assume that the underlying issue - the right to self-determination of the East Timorese people - could be resolved by the settlement of differences between Portugal and Australia, whether by negotiation or adjudication. This assumption is clearly false. The resolution of the fundamental issue can be effected only by the participation of all parties concerned - the representatives of East Timor, Indonesia, and Portugal, acting with the United Nations. This is also the understanding of the international community, as shown in United Nations General Assembly resolutions 36/50 of 24 November 1981 and 37/30 of 23 November 1982. See also paras.288-297 below.

276. The implications for the present case are clear. Australia could not, in any practical sense, satisfy the objectives which Portugal says are fundamental to its case. Portugal affirms that its sole interest in these proceedings is to defend the right of the people of East Timor to self-determination (Memorial, para 3.08). But even with a judgment in its favour, Portugal could not achieve its desired end. This could be done only if Indonesia were a party to the proceedings. As the State in effective control of the territory, Indonesia bears the practical responsibility for the well-being of the people of East Timor.

277. Because Indonesia is absent from the proceedings, no judgment in Portugal's favour would be capable of effective legal application. In the absence of Indonesia, the Court simply cannot give any judgment against Australia which would settle or help to settle the issue of self-determination; nor can it, consistently with the principle of consent, annul the Timor Gap Treaty. For this reason alone, it would be contrary to judicial propriety for the Court to decide this case.

278. Unless Portugal can show that a judgment in its favour would be capable of effective legal operation and, for the reasons given, it cannot do so, the Court cannot, consistently with its judicial function, decide the case. As Judge Fitzmaurice said in the Northern Cameroons Case:

> "Evidently a judgment of the Court, even if not capable of effective legal application, could have other uses. It could afford a moral satisfaction. It could act as an assurance to the public opinion of one or other of the parties that something had been done or at least attempted. There might also be political uses to which it could be put. Are these objects of a kind which a judgment of the Court ought to serve? The answer must, I think, be in the negative, if they are the only objects which would be served - that is, if the judgment neither would or could have any effective sphere of legal application." (ICJ Reports 1963, p.107)

This observation has application to this case.

B. The Court cannot require Australia to breach valid treaty obligations owed to a third State

279. Although judgment in Portugal's favour would not vindicate the rights of the people of East Timor, it would adversely affect Australia's own position, particularly in relation to Indonesia. First, judgment in Portugal's favour would expose Australia to inconsistent, though binding, obligations. Secondly, it would deprive Australia of the ability to protect its sovereign rights in the Timor Gap (paras.283-286 below). As to the first matter, Portugal seeks to prevent Australia from meeting its obligations to Indonesia under the Timor Gap Treaty, by asking the Court to bar Australia from carrying out exploration and exploitation activities in the Timor Gap (Application, para 34(5)). If the

Court were to enjoin Australia, as Portugal requests, Australia would be prevented from undertaking the very activities which its obligations under the joint venture arrangement created by the Treaty require. Yet, according to Portugal, the validity of the Treaty is not challenged. If the Treaty is valid, the Court cannot by order terminate or annul it. Even with judgment in Portugal's favour, the Treaty would continue to bind Australia. Thus, to comply with an order enjoining exploration and exploitation, Australia would be compelled to breach the obligations which it owes to Indonesia under the Treaty.

280. The Court cannot provide a solution to this dilemma. It is prevented by Article 59 of the Statute from making any consequential order against Indonesia as a non-party. It is true that Australia could seek Indonesia's agreement to terminate the Treaty, but this possibility only emphasises that Australia alone could not give effect to a judgment in Portugal's favour, without breaching its treaty obligations to Indonesia.

281. A similar situation also arose in the Case of Free Zones of Upper Savoy and the District of Gex. There the Permanent Court declined to give judgment on tariff exemptions, because no judgment on the matter could have taken effect without the subsequent approval of the parties before the Court. The Court said:

> "After mature consideration, the Court maintains its opinion that it would be incompatible with the Statute, and with its position as a Court of Justice to give a judgment which would be dependent for its validity on the subsequent approval of the Parties." (PCIJ, Series A/B, No.46, 1932, p.161)

282. In the present case, the full force and effect of any judgment against Australia would depend on the subsequent approval of Indonesia, which is not a party to the proceedings. The Court should, as a matter of judicial propriety, decline to decide this case on the ground that if Australia were to comply with a judgment against it, it would be compelled to breach binding obligations to Indonesia, unless it could obtain Indonesia's agreement to release Australia from them.

C. Judgment for Portugal would deny Australia's ability to protect its long-asserted sovereign rights

283. Further, if Portugal's application and requests were granted, Australia would be deprived of the ability to protect and enjoy its sovereign rights over maritime areas of the Timor Gap. (See Part III, Chapter 3, Section I for an outline of those rights.) It is self-evident that, as a practical matter, to protect and enjoy its rights in the Timor Gap, Australia must have the agreement of the State which in fact controls the northern area of the Gap adjacent to Australian maritime territory. Since its withdrawal from East Timor in 1975, Portugal has not had such control and has not been in a position to negotiate an effective arrangement with Australia. Certainly, Portugal would not have been in a position to perform any agreement which it might have made with respect to the resources of the Timor Gap. There is no reason to believe that Portugal's position will alter in the foreseeable future. To continue to regard it as a State having any effective control in the area is to ignore reality.

284. In this regard, the artificiality of Portugal's case against Australia is manifest. If Portugal's claim were granted, Australia would be prevented from making any agreement on the matter with the State which is in fact in control of the neighbouring maritime area. Australia would lose its ability effectively to protect and utilise its own rights and resources in its own territory, as it would be pointless for Australia instead, as Portugal seems to require, to enter into a similar Timor Gap Treaty with that State.

285. Prior to December 1989 when the Treaty was made, the United Nations had done nothing through its political organs to preclude any State from entering into an agreement with Indonesia with respect to East Timor. Since then, it has taken no steps to censure the action of States in entering into, and implementing, arrangements with Indonesia involving that territory. There was no indication in 1989, then or in the foreseeable future, that the international community would act so as to alter the practical reality of the East Timorese situation.

286. At the time the Treaty was made, Australia believed it was necessary to protect and make arrangements to utilise its rights and resources in the Timor Gap. Having regard to the conduct of the international community, Australia had every reason to believe it was entitled to do so. The Court has traditionally

refused to rule on the "subjective appreciation" of an organ of a State, even though the dispute had its origins in that organ's beliefs (Asylum Case (Colombia v Peru), ICJ Reports 1950, p.287). Given the absence of any relevant decision by the United Nations, it would be contrary to judicial propriety for the Court to rule on the question whether the Australian Government was justified in its assessment. In these circumstances too, it would also be contrary to judicial propriety to entertain a claim which seeks to deprive Australia of the ability to protect and enjoy its own valuable resources. Portugal misuses the Court's processes in inviting the Court to entertain such an application.

Section II: The dispute over East Timor is to be solved by negotiation between the parties directly concerned

287. Australia contends that the underlying dispute in this case is to be solved by consultation and negotiation between the parties directly concerned (Indonesia, the representatives of the East Timorese people and Portugal) under the auspices of the United Nations. These processes are quite distinct from, and bear no relationship to, the present proceedings, which are accordingly misconceived.

A. Other organs of the United Nations have assumed responsibility for negotiating a settlement of the East Timor question

288. According to Portugal, this case is essentially about the rights of the people of East Timor to self-determination. Australia contends, however, that when the political organs of the United Nations assumed responsibility for this matter, they decided that the dispute should be resolved through the processes of conciliation, consultation and negotiation between Indonesia, representatives of East Timor and Portugal. Portugal's Application and submissions are inconsistent with this decision.

289. Portugal's withdrawal from East Timor in 1975 and the subsequent Indonesian occupation of the territory provide the strongest evidence of Portugal's failure to fulfil its basic duty to take effective measures to protect the

territorial integrity of the non-self-governing territory. These events also show other breaches by Portugal of its primary obligations under Article 73 of the United Nations Charter.

290. As noted already, as early as 1973 the General Assembly had withdrawn any general right of Portugal to represent its overseas territories in the United Nations (resolution 3181(XXVIII), 17 December 1973 and resolution 3113(XXVIII), 12 December 1973). And Portugal's defaults in East Timor and inability to remedy them were clearly recognized by the international community in 1975. The Security Council voiced its regret, in resolution 384 of 22 December 1975, that Portugal "did not discharge fully its responsibilities as administering Power in the Territory under Chapter XI of the Charter". At the same time, the United Nations, through the Security Council and the General Assembly, assumed responsibility for the situation to which Portugal's defaults gave rise, including the matter of self-determination for the people of East Timor. In view of Portugal's loss of control in East Timor, this assumption of responsibility was desirable and indeed, necessary. It was and remains appropriate that responsibility for the resolution of the situation in East Timor should have been taken up by the political organs of the United Nations.

291. By its Charter, the United Nations has a special jurisdiction over decolonization (and the right to self-determination). Under Article 1(2) of the Charter, one of the purposes of the United Nations is "[t]o develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples". This purpose is further developed in Articles 55 and 56 of the Charter which have "direct and particular relevance for non-self-governing territories, which are dealt with in Chapter XI of the Charter" (Western Sahara Case, ICJ Reports 1975, p.31).

292. In the context of decolonization, there is a special jurisdiction possessed by the political organs of the United Nations. Of course, the Court may be asked to seek an Advisory Opinion on an issue of decolonization to assist the Assembly in "the proper exercise of its functions" (Western Sahara Case, ICJ Reports 1975, p.27). Indeed, it is still open to the Assembly to request the Court's opinion on legal aspects of the situation in East Timor. Whether or not this special jurisdiction over decolonization will be exclusive to the political organs of the United Nations in the particular case depends on the issues raised, the nature of the proceedings contemplated, and the entire context. Obviously,

difficulties can arise when an individual State brings before the Court one aspect of a multilateral dispute concerning the future status of a territory. Portugal brings such a controversy before the Court in these proceedings, without the consent and in the absence of the State most directly concerned in the outcome. Australia contends that, in these circumstances, there is no occasion for the Court to interfere with the exercise of the responsibility assumed by the political organs of the United Nations with respect to East Timor.

293. The record, which has already been reviewed in detail, discloses that the United Nations has in fact decided that this particular multilateral dispute should be resolved by consultation, conciliation and negotiation between Portugal and parties other than Australia. In the first place, at the behest of the Security Council, the Secretary-General appointed a Special Representative "for the purpose of making an on-the-spot assessment of the existing situation and of establishing contact with the parties in the Territory and all States concerned". (See Security Council resolution 384 of 22 December 1975; also resolution 389 of 22 April 1976 and General Assembly resolution 32/34 of 28 November 1977.) The General Assembly sought the active involvement of the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples (the Committee of 24). (See resolutions 31/53 of 1 December 1976, 32/34 of 28 November 1977, 33/39 of 13 December 1978, 36/50 of 24 November 1981, and 37/30 of 23 November 1982.) Later, the Assembly specifically requested the Secretary-General "to initiate consultations with all parties directly concerned" for "a comprehensive settlement" of the matter. (See resolution 37/30 of 23 November 1982.)

294. Under the Secretary-General's auspices, consultations between Indonesia and Portugal are continuing. (See paras.146-152 above.) Thus, in his report of 17 September 1990 (A/45/507), the Secretary-General wrote:

> "Both Governments (Portugal and Indonesia) have given me assurances of their continued commitment to achieving a comprehensive and internationally acceptable solution to the question [of East Timor]. I hope, therefore, that it proves possible through continued consultation and negotiation to attain that goal."

295. Since Portugal's withdrawal from East Timor in 1975, the resolutions and actions of the United Nations indicate that it has assumed responsibility for seeking a solution to the East Timor situation and in particular, responsibility for the promotion of the processes of consultation and negotiation between the parties directly concerned - Indonesia, the representatives of East Timor and Portugal. Since 1975, Portugal's role has been strictly limited. The United Nations has only authorised Portugal to co-operate in the consultation and negotiation process. (See paras.243-252 above; also Security Council resolutions 384 of 22 December 1975 and 389 22 April 1976; General Assembly resolutions 3485(XXX) of 12 December 1975 and 36/50 of 24 November 1981.) The same record shows that the United Nations took the view that collective measures of the kind referred to in Article 1 of the Charter were not appropriate in relation to East Timor; and that the situation did not call for sanctions against Indonesia of a kind which would have prevented Australia from concluding the Timor Gap Treaty.

296. These were "decisions" which it was open to the political organs of the United Nations to make. Australia contends that if the Court were to entertain Portugal's claims it would be called upon to pass an adverse judgment on the consistent course of action of the political organs of the United Nations as to the means to be employed to resolve the dispute between Portugal and Indonesia concerning East Timor. There is no bilateral dispute between Portugal and Australia which can be detached from the United Nations discussions on the East Timor question, or from the United Nations decisions concerning the means of its resolution.

297. To decide the case in Portugal's favour would require the Court, in effect, to take decisions that the competent political organs of the United Nations have already refrained from taking. They have done so, it must be presumed, not out of negligence or neglect but as a matter of deliberate political judgment. It is not the function of the Court to take political decisions that the competent organs of the United Nations have deliberately refrained from taking.

B. The subject-matter makes the case unsuitable for adjudication by the Court in these proceedings

298. There is much that is complex about issues of decolonization. In the case of East Timor, the international community is not yet agreed even as to basic

matters, including the extent to which Indonesia's sovereignty should now be recognized (paras.115ff., 162-168, 175-176 above). In these circumstances Australia contends that the subject-matter of these proceedings makes the case unsuitable for adjudication by the Court.

299. The primary dispute over East Timor which lies at the heart of this case is one which is suitable for settlement only by the political organs of the United Nations. It is one of those disputes which cannot be resolved by adjudication in bilateral judicial proceedings between the present parties (*cf* Aegean Sea Continental Shelf Case, ICJ Reports 1978, p.52 (separate opinion, Judge Lachs)). This is not simply because the dispute is concurrently before the political organs of the United Nations, for this alone would not make an adjudication by this Court inappropriate (Nicaragua Case, ICJ Reports 1984, p.433; US Diplomatic and Consular Staff in Tehran, ICJ Reports 1980, pp.21-2). It is because adjudication, in these proceedings, could not be dispositive of the underlying dispute. The primary issue in this case - the legal status of Indonesia's administration of East Timor - depends on complex political, social and economic factors which, in the absence of Indonesia, the Court has neither the ability to ascertain, nor the power to affect. In the absence of Indonesia, the Court cannot make any declarations concerning Indonesia's claims, or directing any consequential action by Indonesia to dispose of the dispute.

300. Furthermore, the underlying issues in this case concern the political relations of many States, of which Australia is but one. In the absence of a collective decision, this is particularly true of the individual decisions of States to recognize Indonesian sovereignty over the territory, or to enter into treaties and other arrangements with Indonesia in relation to East Timor. These considerations further support Australia's contention that it is not appropriate for the Court to attempt to deal with the East Timor question in proceedings of this kind. See also Jennings, The Acquisition of Territory in International Law (1963) p.63.

C. The Court cannot make reliable findings of fact on issues central to the case

301. Australia contends further that, in the absence of Indonesia, the Court is not in a position to make the factual findings on which the outcome of the case depends. In this regard, the present proceedings differ in important respects

from the Nicaragua Case. In that case, the Court held that the evidential difficulties occasioned by the absence of certain other Central American States could be overcome by the proper allocation of the burden of proof (ICJ Reports 1984, p.437). But in its 1986 decision in that case (ICJ Reports 1986, p.25.), the Court said:

> "As to the facts of the case, in principle the Court is not bound to confine its consideration to the material formally submitted to it by the parties... Nevertheless, the Court cannot by its own enquiries entirely make up for the absence of one of the Parties; that absence, in a case of this kind involving extensive questions of fact, must necessarily limit the extent to which the Court is informed of the facts. It would furthermore be an over-simplification to conclude that the only detrimental consequence of the absence of a party is the lack of opportunity to submit argument and evidence in support of its own case. The absent party also forfeits the opportunity to counter the factual allegations of its opponent."

Because of the particular matters at issue and the inseparable involvement of Indonesia in their resolution, the approach of allocating the burden of proof cannot provide an answer in this case.

302. It has already been demonstrated that the Court could not, in this case, avoid ruling directly on Indonesia's claim to sovereignty over the territory. But neither Portugal nor Australia can be expected to have in their possession all those facts on which Indonesia bases its claim. For example, neither party can be expected to have details of the consultation of 1976 (para.54 above). Nor can either State be expected to have access to the geographical, social and political data relevant to the issue of self-determination. These would presumably be in Indonesia's possession. Yet the Court cannot escape deciding these issues if it proceeds to hear the merits. Certainly, it must determine whether or not Indonesia's claim to sovereignty is justified before any question of Australia's responsibility can arise (paras.210-213 above).

303. The position in this case contrasts sharply with that in the Western Sahara Advisory Opinion. There Spain contended that because there were no parties in advisory proceedings who were obliged to furnish the necessary evidence, and that questions involving "the attribution of territorial sovereignty" required an

"exhaustive determination of facts". It followed that "the Court [could] not fulfil the requirements of good administration of justice as regards the determination of the facts" (ICJ Reports 1975, p.28). The Court rejected this contention only because "Mauritania, Morocco and Spain [had] furnished very extensive documentary evidence of the facts which they considered relevant ... and each of these countries, as well as Algeria and Zaire, [had] presented their views on these facts and on the observations of the others". As well, the United Nations Secretary-General had "furnished a dossier" of relevant documents (ICJ Reports 1975, p.29). There is no comparable body of information available to assist the Court in this case. Instead, much of the factual data relevant to the central issues of sovereignty and self-determination can be expected to lie within the knowledge of a State which is not before the Court.

304. Given that the Court has a very limited ability to acquire facts and has no authority to compel evidence from non-parties, the conclusion is virtually inescapable that the Court is not in a position either to assess Indonesia's claim to sovereignty over East Timor, or the issues of self-determination which Portugal says lie at the heart of its claims. Thus, the Court cannot decide the very issues on which Portugal's case depends, including whether Indonesia was legally competent to enter into the Timor Gap Treaty with Australia. If it cannot decide this, the Court cannot decide whether Australia for its part has committed any wrong.

D. The case cannot be suitable for adjudication if the Court's decision could not contribute to the resolution of the dispute with which it is concerned

305. The present proceedings differ from the Nicaragua Case in yet another respect. In the latter case, it was open to the Court to find that "a clarification of the law [could] produce positive results" and the "action of the Court [might] well assist the deliberations of the other organs and intermediaries concerned" (*cf.* Nicaragua Case, ICJ Reports 1986, p.167 (separate opinion, Judge Lachs)). Given the complete absence of the party most directly concerned, the Court can make no such contribution by deciding the merits of this case as against a third State not directly concerned in the underlying dispute (*cf.* Part II, Chapter 1). The Court cannot assist other organs of the United Nations without a full canvassing of the central issues based on adequate access to the relevant factual data. Such a thorough examination is not possible here, because Indonesia is

not before the Court. The Court's judgment cannot bind Indonesia and it cannot assist the people of East Timor by vindicating their right to self-determination (*cf.* paras.271-278, 299). Portugal invites the Court to deprive a State which has no direct concern in the matter of the ability to protect its sovereign rights. It seeks a result which would require Australia to fail to fulfil its treaty obligations to Indonesia. Indeed, judgment in Portugal's favour might benefit the real wrongdoer, Indonesia, to the detriment of the people of East Timor. In these circumstances the case which Portugal brings to this Court is one which the Court cannot decide if it is to confine itself to its judicial function.

CHAPTER 4

PORTUGAL MISUSES THE PROCESSES OF THE COURT

306. There are further reasons of judicial propriety why the Court should not decide this case. Portugal misuses the processes of the Court, by bringing proceedings against Australia to pursue a claim which in fact lies against Indonesia; and by bringing proceedings which may be contrary to the real interests of the people of East Timor.

Section I: Portugal invites the Court to decide Indonesia's rights and responsibilities in its absence and without its consent

307. Although Portugal in terms complains only of Australia's conduct, its real dispute is with Indonesia (paras.206-213 above). Despite appearances, Portugal is in fact asking the Court to decide whether Portugal or Indonesia was legally competent to enter into the Timor Gap Treaty in December 1989. This in turn depends on whether or not Indonesia's claim to sovereignty over East Timor is justified. In the absence of Indonesia, the Court cannot decide these questions, either for the reasons given in Chapter 1 of this Part, or because it would be contrary to judicial propriety to allow Portugal to press claims against Australia which relate more directly to Indonesia's responsibility.

308. Furthermore, although Portugal asserts that it does not challenge the validity of the Timor Gap Treaty, Portugal clearly seeks to bar Australia from giving effect to it. Portugal apparently accepts that the Court cannot, consistently with the principle of consent, rule on the validity of a bilateral treaty without the agreement of both contracting parties. (See paras.183-190, 220-223 above; also Costa Rica v. Nicaragua (1916), in (1917) 11 AJIL 181 and El Salvador v. Nicaragua (1917) 11 AJIL 674.) But this principle also applies so as to preclude the Court from entertaining an application to enjoin performance of bilateral treaty obligations by one party in the absence of the other party, particularly where the grounds relied on relate primarily, or even exclusively, to the wrongful conduct of the absent party. In this case, Portugal asks the Court to enjoin Australia from performing its obligations under the Timor Gap Treaty, in the absence of Indonesia, on grounds which relate primarily, or even exclusively to the wrongful conduct of Indonesia. Here too, Australia contends that it would be contrary to judicial propriety for the Court

to entertain Portugal's Application. Given that the Court has no jurisdiction to declare the Treaty invalid in Indonesia's absence, Australia submits that it would be contrary to judicial propriety to entertain proceedings which are designed, practically speaking, to achieve the same object - to bring the treaty to an effective end, even though Indonesia is not before the Court. Australia contends that, in seeking to impugn the Treaty in the absence of Indonesia, Portugal misuses the Court's processes.

Section II: Judgment for Portugal may advantage Indonesia to the detriment of the people of East Timor

309. Australia has shown (paras.271-278 above) that Portugal cannot, in the absence of Indonesia, vindicate the right to self-determination of the people of East Timor by proceedings in this Court against Australia. It is true that Portugal apparently seeks to deprive Indonesia of the benefit of the performance by Australia of Australia's obligations under the Timor Gap Treaty. Certainly, Australia could not comply with the orders which Portugal seeks and at the same time meet its obligations to Indonesia. It seems likely, in all the circumstances, that this is Portugal's real object in pursuing this case. The orders which Portugal seeks against Australia would apparently deprive Indonesia of a benefit flowing from what Portugal regards as the unlawful annexation of East Timor.

310. But if this is indeed Portugal's aim, it has no regard to the realities of the situation. For Indonesia may well be the only party to the underlying dispute which would in fact benefit from a judgment in Portugal's favour. If the treaty were to terminate on Australia's failure to fulfil its obligations under it, it is possible that Indonesia would claim unilaterally the right to explore and exploit the resources of the Timor Gap without regard to Australia's long-asserted claims. Moreover, Australia would be inhibited from attempting to renegotiate another arrangement with Indonesia. In effect, Indonesia would be at large to pursue its own interests, unencumbered by any agreement with the neighbouring State.

311. Worse still, it may well be that the orders which Portugal seeks are not in fact in the interests of the people of East Timor. In this connection, it should be noted that the Timor Gap Treaty is not intended permanently to delimit the

continental shelf (Article 2(3)). It is intended instead to effect an essentially practical arrangement for the commercial utilisation of the petroleum resources of the Timor Gap (Article 2). The joint venture zone and its attendant arrangements can reasonably be expected to work to the advantage of both Contracting States. These advantages would be lost if each State were to proceed unilaterally. Although the benefits of the Treaty now fall to Indonesia, it does not follow that it is in the interests of the people of East Timor to take them away in the manner which Portugal seeks to do.

312. It is open to Indonesia to ensure that the people of East Timor enjoy an equitable share of the Treaty's benefits by passing on to them an appropriate share of the revenue which Indonesia derives. It is not for Australia unilaterally to require Indonesia to make such an allocation. Rather, it is for the United Nations, especially the General Assembly, to take measures to ensure that Indonesia makes appropriate arrangements for the people of East Timor. The Court is obliged to act on the assumption that the Assembly will faithfully discharge the responsibility which it has assumed towards the people of East Timor.

313. If Portugal's requests were granted, however, the people of East Timor would lose any prospect of benefit from the Treaty. Portugal is not the relevant coastal State with authority over the territory and is not in any position to conclude a similar arrangement with Australia. In light of this, it seems that not only would judgment for Portugal fail to promote the interests of the East Timorese people, it might work against their interests. In these circumstances, it is possible that the interests of the people of East Timor would best be served by refusing, rather than granting Portugal's Application. This is a possibility which the Court must take into account.

314. Pursuant to Chapter XI of the Charter, and especially Article 73, Portugal bears the burden of satisfying the Court that it is in the interests of the people of East Timor that its requests be granted. If it cannot do so, then the Court cannot consistently with its function as the principal judicial organ of the United Nations grant its application. This is an inherent limitation on the judicial function of the Court. Australia contends that the foregoing examination shows that Portugal cannot, in the circumstances of the case, satisfy the Court of this fact and that, for this reason alone, the Court must, as a matter of judicial propriety, decline to entertain Portugal's claim further. At the very least, an

examination of Portugal's claim shows that Portugal cannot fulfil any legitimate purpose by these proceedings. It misuses the processes of the Court in a misconceived attempt to punish Indonesia, to the possible detriment of those which it wishes to protect, and to the certain detriment of Australia, a third State with no specific responsibility for the territory.

Section III: Portugal invites the Court to decide a non-justiciable dispute

315. Finally, Australia contends that, in essence, the case which Portugal brings to the Court is a non-justiciable one. In principle, a case is justiciable only if the jurisdiction of the Court has a basis in law and the merits of the case can be decided in accordance with law. A case is non-justiciable if, for any reason, it cannot be decided according to law. The line between justiciable and non-justiciable cases can be very difficult to draw, but it is accepted nonetheless that such a line must be drawn. (*cf.* Military and Paramilitary Activities in and against Nicaragua, ICJ Reports 1986, p.168 (separate opinion of Judge Lachs); p.240 (dissenting opinion of Judge Oda).)

316. Australia contends that examination of Portugal's case shows that the case is not a justiciable one. This is because the resolution of the dispute requires the participation of all parties directly concerned (and Australia is not one); the underlying dispute is only suitable for resolution by negotiation, not by adjudication in these proceedings; the Court is not in a position to make the factual findings which Portugal's claims would require; and the Court cannot, in the circumstances, make any real contribution to the resolution of the fundamental matters at the heart of the case.

PART III

THE SUBSTANCE OF THE CASE

PART III

THE SUBSTANCE OF THE CASE

317. In this Part, Australia deals with the substance of the Portuguese claim. Even if, contrary to the arguments in Part II, it is open to the Court to deal with the substance of that claim in these proceedings, it is submitted that Australia acted consistently with its international obligations in entering into and implementing the Timor Gap Treaty. The international community, acting through the competent organs of the United Nations, has at no stage imposed on Member States, including Australia, any obligation of non-recognition of the situation brought about by the events of 1975-6 (Chapter 1). Nor has that community imposed on States any obligation not to deal with Indonesia as the State in effective control of East Timor. The manner in which the competent organs of the United Nations have dealt with the situation and the responses of the international community are inconsistent with the existence of any such obligation. There exists no rule of general or customary law which obliged Australia to refrain from asserting its own legal rights over the area covered by the Treaty. On the contrary, in the absence of any duty of non-recognition imposed at the international level, Australia was entitled to recognize and deal with Indonesia as the State in fact governing the territory (Chapter 2). The Treaty relates to a subject of direct and vital concern to Australia and involves the exercise of sovereign rights asserted by Australia under international law well before 1975 (Chapter 3).

CHAPTER 1

THE UNITED NATIONS HAS MADE NO AUTHORITATIVE DETERMINATION OF A BREACH AND HAS IMPOSED NO OBLIGATION OF NON-RECOGNITION ON THIRD PARTIES

Section I: Questions of the implementation of self-determination in a given case involve "a measure of discretion" on the part of the competent United Nations bodies

318. Both the political and the judicial organs of the United Nations have recognized that the exercise of the right of self-determination may have more than one outcome. Possible outcomes include emergence as a sovereign independent State, free association, and integration with an independent State. See General Assembly resolution 1541(XV); also General Assembly resolution 2625 (XXV). For example in relation to integration, principle IX of resolution 1541(XV) declares that:

> "The integration should be the result of the freely expressed wishes of the territory's peoples acting with full knowledge of the change in their status, their wishes having been expressed through informed and democratic processes, impartially conducted and based on universal adult suffrage. The United Nations could, when it deems it necessary, supervise these processes."

The processes to be followed depend on the circumstances of the particular case. As the words "could, when it deems it necessary" indicate, United Nations supervision may be necessary in some, although not all, cases. United Nations approval of the processes will, however, be necessary in every case. The general principles provide guidance, but it is the task of the competent United Nations organs, and especially the General Assembly, to set the specific policies, to make the findings of fact, the determinations and the recommendations which are to govern the particular situation. Indeed, Portugal does not deny this (Memorial, paras. 4.11-4.12; and *cf.* Memorial, chapter V, especially paras.5.38 and 5.58).

319. In the Western Sahara Case, which particularly concerned the right to self-determination, the Court confirmed that the way in which that right is to be exercised in the particular case depends upon the directions given by the United Nations General Assembly. The Court said:

> "The right of self-determination leaves the General Assembly a measure of discretion with respect to forms and procedures by which that right is to be realised.
>
> An advisory opinion of the Court on the legal status of the territory at the time of Spanish colonization and on the nature of any ties then existing with Morocco and with the Mauritanian entity may assist the General Assembly in the future decisions which it is called upon to take ... As to the future action of the General Assembly, various possibilities exist, for instance with regard to consultations between the interested States, and the procedures and guarantees required for ensuring a free and genuine expression of the will of the people ... " (ICJ Reports 1975, p. 36-37)

320. In a Separate Opinion Judge Petren stated:

> "[T]he wide variety of geographical and other data which must be taken into account in questions of decolonization have not yet allowed of the establishment of a sufficiently developed body of rules and practice to cover all the situations which may give rise to problems. In other words, although its guiding principles have emerged, the law of decolonization does not yet constitute a complete body of doctrine and practice. It is thus natural that political forces should be constantly at work rendering more precise and complete the content of that law in specific cases like that of Western Sahara. Thus the General Assembly has reserved to itself the task of determining the methods to be adopted for the decolonization of the territory in accordance with the principles of resolution 1514(XV)." (ICJ Reports 1975, p. 110)

321. The element of discretion and judgment inherent in these often highly charged issues is underlined by the close connection that exists between the right of a people to self-determination and the maintenance of international

peace and security. For this reason alone, it is necessary that the competent organs of the United Nations should decide whether or not Member States should be under specific obligations to take or refrain from taking steps with regard to particular situations in which the right to self-determination arises. In many such circumstances, Article 14 of the Charter will be applicable, pursuant to which the General Assembly may "recommend measures for the peaceful adjustment of any situation ... which it deems likely to impair the general welfare or friendly relations among nations", providing the Security Council is not exercising any of its functions with respect to the situation. The primary functions of the Security Council include the maintenance of international peace and security (Article 24).

322. To summarize, the right to self-determination is peculiarly dependent on the decisions of the United Nations. The reason for this was explained by Hans Blix, who wrote that the right to self-determination:

> "is an example of a rule which, for its proper application to concrete cases, requires international institutions. Which people is entitled to self-determination? If, on the one hand, dangerous fragmentation of States is to be avoided, and, on the other, the rule is to have practical significance, there needs to be a third party to assess the concrete cases and apply the rule. While a political organ like the General Assembly may not be ideal in this role, it seems to be the only one which has assumed it for the time being."
>
> (H Blix, Sovereignty, Aggression and Neutrality (1970), pp.13-14)

In this observation, Blix referred, by way of example, to the identification of peoples as entitled to self-determination. Of course, what he said applies with equal force to other aspects of the self-determination process, such as how a choice is to be made by a people.

323. The United Nations has discharged its responsibility in this regard by deciding such matters as whether or not a territory is a non-self-governing territory to which the right of self-determination applies, what would constitute a valid exercise of the right in the particular territory, and what specific action, if any, should be taken by States, especially by the administering Power or occupying State, to promote the exercise of the right. The key role of the United Nations in this context was highlighted throughout the study, The Right

to Self-Determination, prepared by Aureliu Cristescu as special rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities (E/CN.4/Sub.2/404/rev.1; UN sales number E.80.XIV.3). See especially paragraph 116. For example, the General Assembly has assumed responsibility for deciding whether or not the arrangements proposed by an administering or occupying Power for ascertaining the people's will would constitute a valid act of self-determination. United Nations practice shows that it cannot be assumed that a plebiscite or referendum will be required or accepted as an act of self-determination in every situation. See, for example, resolution 2353(XXII) of 19 December 1967 on Gibraltar and resolution 32/7 of 1 November 1977 on Mayotte. As one writer has said:

> "After 1965 a change in the General Assembly's policy has occurred and it has openly endorsed or disapproved of plebiscites conducted by the administering States themselves, or it has fixed the conditions under which a plebiscite will be considered appropriate for the purposes of the exercise of the right of self-determination by the people of the territory concerned." (A Rigo Sureda, The Evolution of the Right of Self-Determination (1973, p.73)

324. The United Nations has also been called upon to decide whether or not States other than the administering or occupying Power should take (or refrain from taking) certain action in consequence of the failure of that Power (or of the people themselves) to achieve a valid act of self-determination in a particular territory. These occasions are outlined in Appendix A. In practice, the United Nations has called on other States to take steps of this kind in only a few special cases. It has not given States such a direction as a general rule. In the absence of a specific direction, United Nations practice contemplates that States are under no more than the general obligation to "respect" the right of a particular people to self-determination. This does not mean that States are prevented from dealing with the administering or occupying Power in relation to the territory, even though the latter may be in default of its obligations to the territory. These propositions are borne out in the following brief study of the resolutions on self-determination which were adopted by the General Assembly in 1985, after they had been considered by the Fourth Committee. These resolutions are contained in Appendix B.

325. In virtually all the resolutions in 1985, the General Assembly has reaffirmed the right of the people of the territory to self-determination, has reaffirmed the responsibility of the administering Power to promote the economic and social development of the territory, and has reiterated the responsibility of the administering Power to create such conditions as will enable the people of the territory to exercise the right to self-determination. The resolutions do not, as a general rule, limit the dealings which other States may have with the administering Power before self-determination. Even where the General Assembly has expressed its concern that a dispute over the future of a territory be brought to an end, it has not necessarily prohibited other States from dealing with the State in control of the territory. See, for example, resolution 40/50 of 2 December 1985 on the question of Western Sahara, contained in Appendix B.

326. It was only in the two resolutions concerning Namibia (resolutions 40/52 and 40/53) that the General Assembly in 1985 called on States and international organisations to take (or refrain from taking) specific action. This may be contrasted with the general calls made by the Assembly in relation to colonial peoples in other territories which did not contemplate any prohibition on dealings with the State in control of the territory, even though there remained an unexercised right of self-determination in the people of the territory.

327. The practice of the United Nations, as recorded, for example, in the General Assembly's resolutions of 1985, indicates that if States are not to deal with the administering or occupying Power in relation to a non-self-governing territory, the General Assembly will make that decision in clear and unambiguous terms. Other resolutions too support the proposition that the existence of the right to self-determination of a particular people does not of itself prevent States from dealing with the administering Power or occupying State. For this, there must be some specific direction to that effect by the United Nations. See Section IV below and Appendix A.

Section II: The Security Council has made no decision binding on Member States which would prevent Australia from dealing with Indonesia

328. The Security Council adopted only two resolutions with respect to East

Timor - resolution 384 (1975) on 22 December 1975 and resolution 389 (1976) on 22 April 1976. The question whether a resolution of the Security Council is intended to give rise to binding obligations, under Article 25 of the Charter, depends on "the terms of the resolution to be interpreted, the discussion leading to it, the Charter provisions invoked and, in general, all circumstances that might assist in determining the legal consequences of the resolution of the Security Council" (Namibia Advisory Opinion, ICJ Reports, 1971, p. 53).

329. In resolution 384, the Security Council commenced by "deploring", although not condemning, the military intervention by Indonesia in East Timor and in both Security Council resolutions it called on "the Government of Indonesia to withdraw without delay all its forces from the Territory". Neither resolution contained a finding of a breach of the peace, or an act of aggression on Indonesia's part, or any other finding which might have been construed as involving an exercise of the Security Council's enforcement powers under Chapter VII of the Charter. The terms of resolutions 384 and 389 were consistent with the Security Council's intention to act only under Chapter VI. The Security Council's resolutions on East Timor contain nothing which could have been construed as a decision binding on Member States under Article 25 of the Charter, and no decision opposable in law to other States was made. (*cf.* Sonnenfield, Resolutions of the United Nations Security Council (1988), ch. IV; Suy, "Article 25" in J-P Cot and A Pellet, La Charte des Nations Unies (2nd ed, 1991), pp. 471-8.)

330. It is true that, by both resolutions 384 and 389, the Security Council recognized the right of the people of East Timor to self-determination and "called upon" States to respect that right. What the Security Council did not do was call upon States to take specefic action in respect of that right. See para.348. The terms of the resolutions were entirely recommendatory. There was no decision, a prerequisite for the application of Article 25, to which there was in any event no reference. The two resolutions contained no positive finding that the right to self-determination had been denied the people of East Timor and gave no indication that the Security Council was contemplating any measure to restore Portugal to its former position in the territory. They contained no guidance as to the behaviour expected - even less imposed - on third States. Instead, resolution 384 recorded the Security Council's "regret" that "the Government of Portugal did not discharge fully its responsibilities as administering Power in the Territory under Chapter XI of the Charter". It was

apparent that Portugal had failed to assist the people of East Timor towards an orderly act of self-determination, despite its special responsibilities towards the territory and people of East Timor.

331. Whilst the Security Council's two resolutions expressed its concern to uphold the principle of self-determination, it also expressed its concern to be better informed of the facts in East Timor. In both, the Secretary-General was requested to have a special representative go to the territory. In giving their affirmative vote to resolution 389, most States indicated that whilst they supported the general principle of self-determination, they recognized the need to avoid a premature judgment and they expressed the hope that consultation, brokered by the United Nations Secretary-General, would achieve a solution.

Section III: The General Assembly has made no decision binding on Member States which would have prevented Australia from dealing with Indonesia

332. Between 12 December 1975 and 23 November 1982 the General Assembly considered the situation of East Timor on eight occasions. None of the resulting resolutions gave rise to an obligation of the kind which Portugal asserts against Australia. As already noted (para.102 above), the preambular paragraphs of General Assembly resolution 3485 (XXX) of 12 December 1975 did not expressly condemn Indonesia's action. The only reference by any organ of the United Nations to Indonesia's action as a "violation of the territorial integrity of Portuguese Timor" was that contained in operative paragraph 5 of that resolution. The resolution itself was subject to a significant measure of doubt (72 for; 10 against; and 43 abstaining), and its description of the situation was not adopted by the Security Council, nor repeated by the General Assembly.

333. By relying upon Article 11(3) of the Charter in this and in later resolutions (31/53 of 1 December 1976, 32/34 of 28 November 1977 and 33/39 of 13 December 1978), the General Assembly indicated that it regarded the situation as one "likely to endanger international peace and security", thereby falling within Article 33 of the Charter. The Assembly thus indicated that it sought only to engage the recommendatory powers of the Security Council. It did not seek to attract its decision-making powers under Chapter VII. The main object of resolution 3485(XXX) was expressed in the "appeal" which it made to "all parties in Portuguese Timor to respond ... to find a peaceful solution through talks between them and the Government of Portugal in the hope that such talks will ... lead towards the orderly exercise of the right to self-determination by the people of Portuguese Timor".

334. As noted earlier (para.98 above), resolution 3485(XXX) was not adopted without significant dissenting votes, abstentions and absences. There were relatively few States which explained their vote (or abstention). Amongst those that did the view was expressed that the situation in East Timor was not sufficiently clear to warrant express findings of fact. See in this regard the observations of the delegates of India, Japan, the Philippines, Pakistan, Saudi Arabia, Fiji and Sri Lanka referred to in Part 1, Chapter 2.

335. The General Assembly did not again consider the situation in East Timor until after the meeting of the Popular Assembly in Dili on 31 May 1976 and the enactment of the Indonesian law of 17 July 1976, purporting to integrate East Timor into Indonesia. By resolution 31/53 of 1 December 1976, the General Assembly rejected this integration on the ground that "the people of the Territory have not been able to exercise freely their right to self-determination and independence". The Assembly again sought (this time unsuccessfully) to enlist the Security Council's assistance under Article 11(3) of the Charter and requested the United Nations Special Committee on Decolonization to dispatch a visiting mission to the territory as soon as possible. The terms of the resolution were recommendatory and the General Assembly confirmed its position that the Security Council should act under Chapter VI, rather than Chapter VII of the Charter.

336. As already noted (Part I, Chapter 2), the debate on resolution 31/53 was not lengthy. Of the 20 members who voted against the draft, a number indicated that the facts were insufficiently clear to determine whether there had

in fact been a valid act of self-determination resulting in integration with Indonesia. For example, the delegate of Japan expressed the opinion that:

> "whether or not the people of East Timor had exercised their right of *self-determination might still be said to be open to argument.*" (A/C.4/31/SR.16, 5 November 1976)

The delegate of the United States stated that the draft was "unrealistic in the present circumstances prevailing in the Territory and was therefore not constructive" (A/C.4/31/SR.27, 17 November 1976).

337. As previously noted (Part I, Chapter 2), resolutions 32/34 of 28 November 1977 and 33/39 of 13 December 1978 did no more than reaffirm the General Assembly's position. Save that resolution 32/34 requested the Secretary-General to send a special representative to make an on-the-spot assessment of the situation in East Timor and to contact FRETILIN and the Government of Indonesia (as well as the Governments of other States), the resolution was in terms almost identical to resolution 31/5 of 1976. India, Thailand, Indonesia and the Philippines all made explanations of their vote against on the ground that self-determination had been exercised (A/C.4/32/SR.21, 10 November 1977). By the following year (1978) voting support for resolution 33/39 was even less than support for the resolutions of previous years: there were 50 in favour, 31 against, 44 abstaining, and 16 absent. In the Fourth Committee, the delegate of Canada had announced that Canada:

> "recognized the de facto integration of East Timor with Indonesia even though the way in which that integration had taken place had by no means done justice to the principle of self-determination." (A/C.4/33/SR.33, 5 December 1978)

338. The next year, by resolution 34/40 of 12 November 1979, the General Assembly withdrew its judgment that East Timor had not in fact been integrated into Indonesia. Although the preamble reaffirmed the right of all peoples to self-determination, it no longer referred to the prohibition on the use of force contained in Article 2(4) of the Charter. More importantly, resolution 34/40 did not reaffirm the General Assembly's previous resolutions or repeat its requests to the Security Council. By this means the General Assembly indicated that the earlier resolutions were no longer to be regarded as operative.

The basic proposition for which resolution 34/40 stood - though important - was a limited one. It was that the people of East Timor must be enabled freely to determine their own future under the auspices of the United Nations (operative paragraph 2).

339. The debates on resolution 34/40 in 1979 were more extensive than those of previous years concerning East Timor. See Part I, Chapter 2. The delegates of Bangladesh (A/C.4/34/SR.17), India (SR.15), Malaysia (SR.16), the Philippines (SR.16) and Thailand (SR.17) supported Indonesia's claim that a valid act of self-determination had taken place in 1976, when the Popular Assembly had voted in favour of integration with Indonesia. Other delegates also spoke against the draft resolution although they did not go so far as to endorse Indonesia's claims. In the debates on the draft resolution in the Fourth Committee, the delegate of Canada said:

> "that his delegation had strong doubts about the value of the futile and repetitious debate which had taken place on the matter in recent years. The integration of Timor was an accomplished and irreversible fact and an annual succession of Committee resolutions would not change the situation ... While the evolution of events in East Timor had not allowed for an expression of self-determination that would perfectly satisfy all standards, it must be clear that the simplistic statements in the draft resolution did not reflect the complexities of events in Timor: for instance, his delegation did not agree with the description of Portugal as administering Power. The draft resolution focused on general principle at the expense of practical relevance and realities, and its prospects for effective action were nil." (A/C.4/34/SR.24, 5 November 1979)

340. Australia described the draft resolution as "unrealistic" and stated that "[i]t ignored East Timor's incorporation into Indonesia, which was a fact" (A/C.4/34/SR.23). The delegate of France stated that the draft resolution appeared "to ignore the reality of the situation in East Timor". He added that France would abstain, rather than vote against the resolution, "solely because the draft resolution referred to the humanitarian aspects of the problem" (A/C.4/34/SR.23). The delegate of Sweden stated that Sweden:

> "recognized that there was in East Timor today a de facto situation to which there was no realistic alternative. Its vote for [the] draft resolution should therefore be seen solely as an expression of support for its humanitarian aspects." (A/C.4/34/SR.23)

341. The delegate of Japan stated that Japan would vote against the resolution because:

> "The process of decolonization varied according to circumstances prevailing in any given area. What was really important was, not that each and every case of decolonization should comply with an abstract standard, but that the will and desire of the majority of the people should be respected. ... [T]he Government of Indonesia was governing the Territory effectively, and [Japan] had urged the [Fourth] Committee to take due account of that fact. His delegation continued to believe that only in that way could the interests of the people be advanced." (A/C.4/34/SR.16)

342. The delegate of Papua New Guinea stated that "in this particular case, my Government is of the view that there is no need for anything further in that decolonization process in the Territory and that the reality of the situation is that East Timor is now an integral part of the Republic of Indonesia" (A/34/PV.75).

343. Save for encouraging Portugal's new diplomatic initiatives, the General Assembly did no more than confirm its position with respect to East Timor in resolutions 35/27 of 11 November 1980 and 36/50 of 24 November 1981. In neither did the Assembly refer to its past resolutions on East Timor and it refrained from judging Indonesia's actions - let alone imposing a legal obligation on third States consequent upon an adverse judgment on Indonesia's position.

344. Apart from Indonesia itself, the delegates of Japan (A/C.4/35/SR.11), Malaysia (SR.11), Papua New Guinea (SR.13), the Philippines (SR.11), Singapore (SR.11) and Thailand (SR.11) opposed resolution 35/27 (1980) in terms similar to those of the previous year. Sweden announced that it no longer intended to support resolutions on East Timor. Instead, it had determined to abstain for the reason that "the world had been faced with a de facto situation"

(A/C.4/35/SR.23, 3 November 1980). The delegate of France announced that, as previously, France too would abstain. The delegate for France gave the following explanation:

> "[M]any countries in the region of East Timor had taken note of the situation prevailing in the Territory, as France was inclined to do. [But] the draft resolution mentioned the recent initiative of Portugal, an ally of France. The opening of a dialogue between the administering Power and Indonesia would be a step forward towards settlement between the interested parties, but it would deprive the United Nations of any power to decide with respect to East Timor. Therefore, desirous of leaving all options open, France would abstain in the vote." (A/C.4/35/SR.23, 3 November 1980)

345. In the following year (1981), the five Member States of the Association of South -East Asian Nations (ASEAN), as well as India and Japan repeated their opposition to draft resolution 36/50. In the Fourth Committee, the delegate for Oman also agreed that "continued consideration by the Committee of the so-called question was intervention in the internal affairs of [Indonesia]" (A/C.4/36/SR.21, 9 November 1981).

346. As noted in Part I, Chapter 2, the eighth and last resolution of the General Assembly concerning East Timor was passed by the narrowest of margins (50 for; 46 against); and two States which were absent later notified the Secretariat they had intended to vote against. Although resolution 37/30 of 23 November 1982 differed from its immediate predecessors by referring to the Assembly's past resolutions, it did not reaffirm them and certainly it did not reinstate the Assembly's earlier appraisal of the situation in East Timor. Two of the three operative paragraphs were directed to the settlement of the problem, especially through the Secretary-General's mediation. The third was directed to humanitarian relief. In the plenary session of the General Assembly, there was no debate on the resolution. A statement was made by the delegate of Indonesia after the vote had been taken, expressing satisfaction at the narrowness of the vote which, he said, reflected the fact that "only about 30 per cent of all Members continue to question East Timor's integration with Indonesia" (A/37/PV.77, 23 November 1982). There was no challenge to that assessment of the position.

Section IV: The resolutions of the United Nations do not contain any decision which could give rise to the obligation which Portugal asserts against Australia

347. The resolutions of the United Nations fail to support Portugal's contention that Australia was under a legal obligation not to deal with Indonesia with respect to East Timor at the time the Timor Gap Treaty was made. Australia submits that this alone defeats Portugal's case. Having regard to the doubts and disagreements which attended the issue, it was for the relevant organs of the United Nations to decide what measures, if any, should be taken to implement the principle of self-determination. In particular, it was a matter for the General Assembly which after 1976 alone had the carriage of the issue. But there has been no decision by the General Assembly which directs that States should not have dealings with Indonesia with respect to East Timor. The history of the General Assembly's proceedings confirms that there was no decision of the United Nations operative in December 1989 which precluded Australia from making the Timor Gap Treaty with Indonesia.

348. This is the fundamental difference between the approach taken by the United Nations with respect to East Timor and its actions on other occasions where a duty has been imposed on Member States not to recognize or have dealings with the occupying State. Thus, such duties were expressly imposed on Member States by the Security Council in relation to the racist regime in Rhodesia[1], the South African administration in Namibia[2], the "so called independent Transkei"[3], the Turkish Republic of Cyprus[4], Iraq's annexation of Kuwait[5] and Israel's claim to the whole

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[1] In Resolution 216 (1965) the Security Council "decide[d] to call upon all States not to recognize this illegal racist minority regime in Southern Rhodesia and to refrain from rendering any assistance to this illegal regime". In Resolution 277 (1970) the Security Council "decide[d] that Member States shall refrain from recognizing this illegal regime or from rendering any assistance to it".

[2] Invoking Article 25 of the Charter, the Security Council in resolution 269 (1969) called upon all States "to refrain from all dealings with the Government of South Africa purporting to act on behalf of the Territory of Namibia". In Resolution 276 (1970), the Security Council called upon all States "to refrain from any dealings with the Government of South Africa which are inconsistent with operative paragraph 2 of the present resolution. Paragraph 2 declared that "the continued presence of the South African authorities in Namibia is illegal ...". In Resolution 283 (1970) the Security Council requested all States "to refrain from any relations - diplomatic, consular or otherwise- with South Africa implying recognition of the authority of the Government of South Africa over the Territory of Namibia".

[3] By Resolutions 402 (1976) and 407 (1977), the Security Council endorsed the General Assembly's call upon "all Governments to deny any form of recognition to the so-called independent Transkei and to refrain from having any dealings with the so-called independent Transkei or other bantustans".

[4] In Resolution 541 (1983), the Security Council called upon "all States not to recognize any Cypriot State other *than the Republic of Cyprus*". *It reiterated this call in Resolution 550 (1984).*

[5] In Resolution 662 (1990), the Security Council decided that the "annexation of Kuwait by Iraq under any form and whatever pretext has no legal validity, and is considered null and void" and called upon all States "not to

city of Jerusalem.[6] Similarly, the General Assembly has expressed itself equally as directly when seeking to prevent States from recognizing or dealing with an occupying State, or other authority.[7] See also J Dugard, Recognition and the United Nations (1987), pp.90-111 and Appendix A.

349. No resolutions comparable to any of those referred to have been made with respect to East Timor. No express call has been made in any resolution on East Timor that States refrain from recognising, or dealing with Indonesia. The resolutions contain no declaration of a situation of illegality analogous to that made in relation to Namibia. In these circumstances, Portugal cannot show any basis for its contention that the resolutions of the United Nations with respect to East Timor gave rise to an obligation opposable erga omnes which made it unlawful for Australia to conclude the Timor Gap Treaty with Indonesia in December 1989.

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recognize that annexation, and to refrain from any action or dealing that might be interpreted as indirect recognition of the annexation".

[6] In Resolution 478 (1980), the Security Council decided "not to recognise the 'basic law' and such other actions by Israel that, as a result of this law, seek to alter the character and status of Jerusalem" and called upon "(a) all Member States to accept this decision; (b) those States that have established diplomatic missions at Jerusalem to withdraw such missions from the Holy City".

[7] Referring to the Arab territories occupied by Israel in Resolution 3005(XXVII) of 1972, for example, the General Assembly called upon States "not to recognize or co-operate with, or assist in any manner in, any measures undertaken by the occupying Power to exploit the resources of the occupied territories ...". Similarly, for example, in Resolution 33411D(XXX) (1975) relating to the "bantustans" in South Africa, the General Assembly called upon "all Governments and organizations not to deal with any institutions or authorities of the bantustans or to accord any form of recognition to them".

CHAPTER 2

AUSTRALIA WAS ENTITLED TO DEAL WITH INDONESIA AS THE STATE IN ACTUAL AND EFFECTIVE CONTROL OF THE TERRITORY

Section I: In principle, a State is entitled to recognize another State in actual and effective control of particular territory as sovereign over that territory, and to deal with it on that basis

350. There is widespread acceptance among the international community and in the literature that recognition is essentially a political act. By an act of recognition, one State acknowledges that another State or government is in effective control of the territory concerned and, at the same time, it indicates a willingness to enter into dealings with that State or government in respect of the territory. Of its nature, recognition is a discretionary matter for each State, provided that it does not contravene any international legal obligation incumbent on it.

351. This is the accepted view of recognition. The 1936 resolution of the Institute for International Law described recognition as "a free act" of individual States. The former Judge of the Permanent Court and Chief Justice of the United States Supreme Court, Charles Evans Hughes, commented that:

> "the question of the recognition of a foreign government is purely a domestic one for the United States." (Hackworth, Digest of International Law, Vol.I, p.161)

The political nature of an act of recognition is referred to by J Dugard in Recognition and the United Nations (1987), who notes that recognition -

> "occurs when a State indicates its willingness to enter into political relations with another State, such as by the exchange of diplomatic relations and the conclusion of treaties. This is 'an act which lies within the arbitrary decision of the recognising State'." (p.45, quoting Kelsen)

352. This conforms with the view of D P O'Connell, who wrote:

> "recognition is a political action whereby the recognising State indicates a willingness to acknowledge the factual situation and to bring about certain legal consequences of that acknowledgment." (International Law (2nd ed, 1970), Vol.I, pp.127-8)

See also Nguyen Quoc, Daillier and Pellet, Droit international public (3rd ed 1987), p.366; Ch.Rousseau, Droit international public, III, p.528; and J. Verhoeven, La reconnaissance internationale dans la pratique contemporaine (1975), pp.576-583. Verhoeven refers, at p. 617, to the discretionary character of recognition as "une réalité incontestable".

353. Under traditional international law, a State could look to the sovereign in actual possession without the need to enquire into the legality of its possession: H Lauterpacht, Recognition in International Law (1947), p. 101, quoting Vattel. Although this proposition is now subject to the law of the Charter, it remains true that recognition is, in principle, an acknowledgment of the reality of a situation. Generally speaking, the competence of an entity on the international plane is limited by the degree of effective control which it in fact exercises over the territory concerned. See J Touscoz, Le principe d' effectivité dans l'ordre international (1964), pp.200-205. As Chen says:

> "It is a matter of general agreement among international lawyers including proponents of the constitutive doctrine, that recognition cannot be divorced from fact." (The International Law of Recognition (1951), p.54)

354. Australia's decision to conclude the Timor Gap Treaty with Indonesia in December 1989 was a consequence of a decision to recognize the factual reality of the situation in East Timor. By its act of recognition, Australia acknowledged the practical reality in East Timor, and sought to negotiate and conclude a treaty to protect its long asserted legal rights. Without this acknowledgment, Australia would not have been in a position to make the arrangements contained in the Treaty. As a practical matter, Australia could not have avoided the decision to recognize Indonesia, and to negotiate with a view to making a treaty with it on the Timor Gap, if it was to secure and enjoy its sovereign rights there. There was no other State with which it could have

negotiated and concluded an effective agreement. No arrangement with Portugal could have achieved Australia's legitimate object, since Portugal did not control the area in question and there was not the slightest prospect that it would do so in the future.

355. As has already been shown (Part III, Chapter 1), the law of the Charter did not require abstention from the acts of recognition and treaty-making on Australia's part. Of course a decision of a competent organ of the United Nations may create an obligation binding on all States not to recognize a situation. Just as the United Nations may create obligations opposable to all States to take, or refrain from taking, steps with regard to the rights of a people to self-determination, so it may create an obligation opposable to all States to refrain from dealing with, or recognising the authorities of a State in control of a territory, whether on account of a denial of the right of self-determination there, or on account of some other illegality. But none of the resolutions of the Security Council or of the General Assembly gave rise to such obligations. There was no direction by the United Nations in any of its resolutions that States must refrain from recognising or dealing with Indonesia in relation to East Timor. Australia's decision to recognize and to negotiate and conclude a treaty with Indonesia in relation to East Timor did not contravene any United Nations direction, and it is accordingly immaterial whether the resolutions of the United Nations on East Timor were binding, or merely recommendatory (as Australia maintains).

356. Nor can it be argued that, irrespective of the position taken by the competent organs of the United Nations or by member States generally, there was an unexpressed obligation not to recognize the Indonesian control over East Timor, indefinitely and for any purpose. International law does not operate in a vacuum, divorced from the responses of the international community to a situation. No doubt a State should not, by precipitate and unilateral action, seek to pre-empt the international response to a situation. Whether or not such conduct would be unlawful, it might well expose the recognising State to criticism for having acted prematurely. But once the international community has considered a situation, and has adopted a response of a particular kind not involving collective sanctions or a mandatory rule of non-recognition and has maintained that position for some considerable period of time, the position is, and must be, different. In such a case, international law does not impose an

obligation unreal in itself and not reflective of the considered views of States. It does not mandate concerted actions when the consensus that such action requires is completely lacking.

357. As one writer commented, dealing with the prohibition of the acquisition of territory by unlawful use of force:

> "It seems a reasonable corollary to hold that the international community may, in the alternative, eventually signify assent to the new position and thus by recognition create a title. This possibility in no way contradicts the main proposition that force does not of itself create a title, because the international community would from this point of view be exercising a quasi-legislative function."
> (R Y Jennings, The Acquisition of Territory in International Law (Cambridge University Press, 1963), p.60)

The same writer goes on to comment that:

> "non-recognition alone is an attitude which in any case is often maintainable only for a limited period... It seems reasonable, therefore, to suggest that in this matter the international community should be left freedom to employ the traditional, delicate and highly flexible machinery of recognition; the next step along the road of advance would be some sort of collectivisation of the process, possibly through the United Nations itself...
>
> We have thought so far in terms of recognition pure and simple; but it is not to be expected that anything in the nature of a formal recognition of a title to territory will necessarily be thought appropriate by governments in this kind of case. What is rather in point is the various factors of approbation and acceptance that go to make a consolidation of title. Consolidation is an appropriate concept here, because what is required is not only, or even mainly, the acquiescence of the victim of the aggression for an apparent acquiescence is the likely result of the use of force anyway... what is in point is the acquiescence and approbation of third States generally. If, on the other hand, States generally make it clear by non-

> recognition that the position is not considered acceptable, it would seem that conditions for ordinary prescription are not fulfilled." (*ibid.* pp.61-2, footnotes omitted)

See also C.de Visscher, Les effectivités du droit international public, (1967) pp.22-23. As Rousseau notes: "Reconnaitre une situation, ce n'est pas nécessairement l'approuver. La reconnaissance n'est qu'une constatation, non un jugement de valeur" (Ch. Rousseau, Droit international public (1977), III, p.526).

358. The Treaty which is the subject of these proceedings was concluded 14 years after the controversial events had occurred, 13 years after the last consideration of the issue by the Security Council, and 7 years after the last consideration of the issue by the General Assembly. In 1982 the Assembly had done no more than call on the States directly concerned to negotiate with a view to settling the problem - in a resolution which attracted the support of no more than a third of the members of the United Nations.

359. If the Portuguese claims in relation to the scope and gravity of Indonesia's wrong-doing are correct (and it is, of course, not a matter for the Court to determine that in these proceedings), why did the Assembly in 1982 merely call on the parties to negotiate: why did it not call on Indonesia to withdraw immediately and unconditionally? The answer must be that a majority of the Assembly thought that such an outcome was neither credible nor required by the exigencies of the situation. If that was the case in 1982, it must have been even more the case in 1989. Given the views of a majority of the General Assembly in 1982, and the failure of Portugal or any other State to bring the matter before the General Assembly or the Security Council in subsequent years, the position had become clear: no restitution of the pre-1975 position could be contemplated. That being so, it was open to Australia to reach agreement with the only State which was in a position to give effect to that agreement, *viz.* Indonesia.

Section II: There is no independent basis for a duty of non-recognition which would prevent the conclusion of the Timor Gap Treaty

360. Despite the limited and cautious response of the United Nations,

addressed to the "parties directly concerned", Portugal argues that there was an independent legal obligation on third States such as Australia not to deal with Indonesia in relation to East Timor. This argument is apparently put in two ways.

361. First, it seems to be argued that, because Indonesia's occupation of the territory violated international law and, in particular, rules of international law which are valid erga omnes, no third State could thereafter deal with Indonesia in its capacity as governing authority over East Timor without being equally guilty of such a violation.

362. The initial point to be made in response is that there was no binding decision by a competent United Nations authority that Indonesia's occupation of the territory at the relevant time was unlawful. The facts were in dispute and unclear. The passage of time since 1976 itself raised serious questions about whether the United Nations had not concluded that the new situation should be accepted as in conformity with international order, especially having regard to the widely shared views of countries in the region (in particular, the ASEAN countries).

363. In addition, as Australia has already argued, it is not open to the Court to adopt the essential first step in the Portuguese argument, and to hold either that Indonesia's actions in the period 1975-76 were unlawful, or that its claims to governing status in East Timor amounted to nothing even in 1989, when the Treaty was concluded. Neither of these findings is possible in these proceedings because under the Monetary Gold principle, they could only be made consistently with the requirements of the judicial process in proceedings to which Indonesia was a party.

364. But in any event, Portugal seeks to equate the State initially implicated in the alleged wrong-doing and third parties, admittedly not so implicated, but which subsequently find it necessary to deal with that State. Such an equation is simplistic, and cannot be accepted. If there has been any default, it was that of Indonesia which had brought about the situation in East Timor. By virtue of that fact the obligation to promote the right of a people to self-determination must rest primarily with it. That there is a difference between the source of Indonesia's obligation and that of other States is supported by the Court's Advisory Opinion in the Namibia Case. In that case, the Court distinguished

the source of South Africa's obligation from that of Member States of the United Nations. The Court stated that:

> "South Africa, being responsible for having created and maintained a situation which the Court has found to have been validly declared to be illegal, has the obligation to put an end to it. It is therefore under obligation to withdraw its administration from the territory of Namibia... Physical control of a territory, and not sovereignty or legitimacy of title, is the basis of State liability for acts affecting other States." (ICJ Reports 1971, p.54)

365. The legal obligations of other States did not arise *per se* from the illegal situation which South Africa had brought about, but from the Security Council's specific resolutions which were declared to be binding on States (*id.* pp.53-54). But there has been no comparable United Nations resolution with respect to East Timor, and therefore there has been no resulting obligation on other States to take or refrain from taking specific action. There can be no obligation on other States to respond in a particular way to an illegal situation brought about by another State unless there has been a collective decision to that effect. As the Court also said in the Namibia case:

> "The precise determination of the acts permitted or allowed - what measures are available and practicable, which of them should be selected, what scope they should be given and by whom they should be applied - is a matter which lies within the competence of the appropriate political organs of the United Nations acting within their authority under the Charter." (ICJ Reports 1971, p.55)

The need for a collective decision before a third State can incur a duty to act or refrain from acting in response to the wrongdoing of another State is also reflected in the draft Articles on the subject of State responsibility which Riphagen recommended in the International Law Commission. See in particular, Articles 11-14 and commentary thereto in Yearbook of ILC, 1985, Vol.II, pp.12-14.

366. The second form which the Portuguese argument takes (*cf.* para.399 above) is to treat Australia as having an independent and particular obligation to East Timor. Portugal relies repeatedly on the existence of an Australian

obligation to promote (favoriser) respect for the principle of equal rights and self-determination of peoples, relying in particular on the terms of resolution 2625(XXV). But that obligation is not unlimited. It does not mean that third States are to be equated with the States principally involved, on whom the primary obligation falls to implement the principle of self-determination of the people under their control. Portugal, having signally failed itself to promote the principle of self-determination in relation to East Timor, relies on third States to step into its breach. But Australia was never an administering authority of the territory. Its obligation is to respect the outcome of any act of self-determination of the people of the territory, and to co-operate with the competent organs of the United Nations to that end. Thus, in resolution 2625(XXV) under the heading "the principle of equal rights and self-determination of peoples", the duty of every State to promote the realisation of that principle through joint and separate action is linked to the duty to "render assistance to the United Nations in carrying out the responsibilities entrusted to it by the Charter regarding the implementation of the principle".

367. All this Australia has done. But as we have seen, the United Nations in the exercise of the responsibilities referred to in resolution 2625(XXV) has not achieved, and apparently no longer seeks, the withdrawal of Indonesia from the territory. Instead, it regards the matter as one to be resolved by negotiation between the parties directly concerned. Australia is not such a party. It will, as far as it can, facilitate those negotiations and will respect and recognize any internationally acceptable outcome of them. But it is not a colonial administrator of East Timor. It is a third party with its own legitimate claims and interests to uphold and with responsibilities for the economic development of its own people. The obligations to promote respect for self-determination, in a situation not of its own making, go no further than as stated in paragraph 366 above.

Section III: There has been no criticism by the international community, or from competent United Nations bodies, of States (including Australia) which have recognized or dealt with Indonesia in respect of East Timor

368. The practice of States since 1976 shows that they have not been conscious of any restrictions in their dealings with Indonesia in relation to East Timor, whether these restrictions might flow from United Nations resolutions or from general international law. Since 1976 Indonesia has maintained unrestricted diplomatic and consular relations with a large number of States and has become party to numerous bilateral treaties which apply to East Timor (Part I, Chapter 2). A large number of States, including all States neighbouring Indonesia, have expressly recognized the incorporation of East Timor within Indonesia. Many other States have dealt with Indonesia on much the same basis, although they have not found it necessary to make such express statements (Part I, Chapter 2).

369. Nor have there been any complaints by States other than Portugal in relation to the conclusion by Australia of the Timor Gap Treaty. In other words, no State except Portugal has considered Australia's actions as requiring a protest or any other kind of response.

370. Portugal itself has been weak and erratic in its own response to the negotiation and conclusion of the Timor Gap Treaty. Australia announced in 1978 that it would commence negotiations with Indonesia in relation to the Timor Gap. Negotiations commenced in February 1979, but Portugal made no formal objection, by note or minute, to their commencement, though Portugal had earlier expressed "surprise" (in January and December 1978) at Australia's recognition de facto and then de jure of Indonesia's sovereignty over East Timor (Annexes 22 and 23). On the subject of the Timor Gap negotiations, however, there was at that time complete silence.

371. More than seven years passed before Portugal took any further diplomatic or other initiatives in relation to the Timor Gap negotiations. In August 1985 the Portuguese Foreign Ministry issued a communique following remarks by the Australian Prime Minister, Mr Hawke, in an interview and in Parliament, indicating that there had been no change in Australian policy concerning East Timor, and that negotiations with Indonesia on the Timor Gap were continuing. (The Statement is reproduced as Annex III.27 in Vol.V, p.218 of the Portuguese

Memorial.) It was not until September 1985 (when the negotiations for a joint development zone were announced) that Portugal made formal protest concerning the Timor Gap negotiations, a fact which Portugal itself acknowledges. There were further Portuguese notes on 9 and 31 October 1988, 30 October and 13 December 1989 and 11 February 1991, also protesting against Australia's continued negotiation with Indonesia in relation to the Timor Gap. The Notes are set out in Annex 4 to the Portuguese Application instituting these proceedings. The Notes were the limit of Portuguese response. The issue was not raised in the United Nations although Portugal could have done so at any time after 1982.

372. Australia replied to the note of 31 October 1988 on 2 November 1988 (Memorial, Annex III.25, Vol.V, p.210-215) and to the Note of 13 December 1989, in January 1990 (Annex III.26). In each response, Australia rejected Portugal's assertions that it was acting contrary to international law in negotiating with Indonesia. As it stressed in its replies, Australia's recognition of Indonesia as sovereign did not condone the manner in which Indonesia had originally acquired East Timor. Nor did Australia consider its action prejudicial to the rights of the people of East Timor. Australia referred to its efforts to further the interests of the people of East Timor through humanitarian and other assistance. Australia stated clearly that it supported international initiatives to resolve the East Timor situation. It made no concession, however, that Portugal was entitled to bring its claims against Australia to this Court.

Section IV: In concluding the Timor Gap Treaty, Australia impeded neither the negotiation of the issue by the "parties directly concerned" nor any act of self-determination of the people of East Timor that might result from such negotiations

373. In concluding the Timor Gap Treaty, Australia in no way impeded the negotiation of the issue by the parties directly concerned. As noted in Part I, Chapter 2, paragraphs 146-152, negotiations under the auspices of the Secretary-General are continuing between Indonesia and Portugal. Nor would the conclusion and implementation of the Treaty impede that process which in any event has Australia's firm support.

374. Nor would the conclusion and implementation of the Timor Gap Treaty hinder any act of self-determination of the people of East Timor that might result from the negotiations. As has been pointed out above (Chapter 3, para.318), an act of self-determination brings the choice of a number of possible options, including independence or integration (as with Indonesia). (*cf.*, resolution 1541(XV).) Whatever the choice made, the conclusion of the Treaty cannot prevent that choice from being effective. The Treaty does not prevent the exercise at some later date of the right of the people of East Timor freely to choose their future political status, in accordance with arrangements approved by the United Nations.

375. A State can only breach the obligation to respect the right of a people to self-determination if its conduct prevents or hinders the exercise by the people of a non-self-governing territory of their right freely to determine their future political status. The principle of self-determination is not concerned with the validity of exercises of sovereignty prior to self-determination. What Australia has done is make an agreement (on the resources of the Timor Gap) with the State which at the time that agreement was made was in a position to give effect to it. Australia contends that in pursuing such a course, it has not failed to observe any obligation to Portugal or the people of East Timor. By concluding the Timor Gap Treaty with Indonesia, Australia did nothing to affect the ability of the people of East Timor to make a future act of self-determination.

Section V: <u>In concluding the Timor Gap Treaty, Australia has not contravened the principle of permanent sovereignty over natural resources</u>

376. Portugal asserts that by concluding the 1989 Treaty Australia has contravened the right of the people of East Timor to permanent sovereignty over their natural resources (Memorial, paras.8.15-8.21). According to Portugal, these resources extend to the median line dividing the offshore area between Australia and East Timor. But Australia has never accepted these claims concerning the maritime entitlements of East Timor. Indeed, Australia has consistently asserted claims of its own to the area in question. Given that there has been no agreement on the question, the extent of the maritime rights appurtenant to East Timor remains uncertain. It certainly cannot be determined in these proceedings (as Portugal expressly concedes: Memorial, Chapter VII, paras.7.03, 7.07 - 7.08). To do so would directly call into question the legal

rights and claims of a third State, Indonesia, which is not a party to these proceedings. In these circumstances, Portugal cannot assert that a particular portion of the maritime area was "its own", and it cannot therefore demonstrate that the people of East Timor have been deprived of part of their territory or natural resources.

377. The principle of permanent sovereignty over natural resources is a corollary of the principle of self-determination. It has already been shown that the principle of self-determination did not prevent Australia from concluding and implementing the 1989 Treaty, thereby giving effect to its own sovereign rights. The same must be true of the corollary principle of permanent sovereignty over natural resources: to rely on that principle is simply to reiterate the issue in another form.

378. According to Portugal, the conclusion by Australia and Indonesia of the Timor Gap Treaty "has infringed and is infringing the right of the people of East Timor to self-determination, to territorial integrity and unity and its permanent sovereignty over its natural wealth and resources, and is in breach of the obligation not to disregard, but to respect that right, that integrity and that sovereignty" (Application, p.19).

379. As shown in this and the previous chapter, the Treaty in dispute in no way infringes the rights of the people of East Timor. Moreover, it is indeed very difficult to see in what manner this Treaty could be detrimental to those people, even assuming that in exercising their right to self-determination they do in the future become an independent State.

380. If that situation did arise, it would be up to the new State to decide whether to accept or to reject the Treaty. As the Arbitration Tribunal recalled in the dispute between Guinea-Bissau and Senegal:

> "A State born of a process of national liberation has the right to accept or to reject any treaties concluded by the colonial State after the initiation of the process. In this field, the newly independent State enjoys a total and absolute freedom..." ((1989) 83 ILR 1, 26, para.44)

This statement is in conformity with the general rule enunciated in Articles 16 and 24 of the Vienna Convention on the Succession of States in Respect of Treaties of 1978. (The Timor Gap Treaty is not, for the reasons referred to in paragraph 385, a treaty which relates to a boundary or the regime of a boundary within the meaning of Article 11 of that Convention.) But it cannot be assumed that, even if East Timor were to become an independent State, its people would wish to repudiate the Treaty.

CHAPTER 3

THE TIMOR GAP TREATY IS AN EXERCISE OF AUSTRALIA'S SOVEREIGN RIGHTS UNDER INTERNATIONAL LAW

381. In this Chapter, it is argued that Australia's decision to conclude the 1989 Treaty constituted a measure of legitimate practical action which gave effect to Australia's seabed rights in international law. Rather than trying to persuade the competent organs of the United Nations to reconsider their attitude with respect to East Timor, Portugal seeks to limit Australia's rights to protect and enjoy its natural resources.

Section I: Under the Treaty, Australia protects and exercises long-asserted sovereign rights

382. Australia has long asserted sovereign rights over the area of seabed covered by the Treaty. Australia first asserted jurisdiction over its appurtenant continental shelf by Proclamation in 1953. Following that, the Pearl Fisheries Act (No.2) 1953 defined the continental shelf for the purposes of the Act as "the submarine areas contiguous to the coasts of Australia to a depth of not more than 100 fathoms" (approximately 200 metres). The 200 metres isobath was the minimum depth incorporated in the definition of the continental shelf in the 1958 Continental Shelf Convention. In the mid 1950s and 1960s various petroleum permits were issued by Australia over the seabed in the Timor Gap area. A summary of the various assertions by Australia of jurisdiction beyond the median line in the Timor Gap area is set out in a diplomatic note to Portugal of 21 November 1974. This note was sent in response to Portugal's grant of a concession in the area of the Timor Gap. The Note is reproduced as Annex IV-11 in the Portuguese Memorial (Vol.V.p.327-331).

383. As shown on the chart reproduced in Portugal's Memorial (facing page 52), the 200 metres isobath extends almost to the straight-line closure of the delimitation agreed with Indonesia in 1971-72. It lies well north of a median line based on distance between Australia and Indonesia. Beyond the 200 metres isobath, the seabed suddenly drops off into the Timor Trough. Australia's view has always been that this was the limit of the

geomorphological continental shelf. This view was the basis of its negotiations with Indonesia over sea-bed delimitation, both in 1971-2 and more recently in relation to East Timor.

384. After Australia concluded the seabed boundary agreements with Indonesia in 1971-2, it sought to negotiate with Portugal on the remaining area. Australia met with no suggestion that a line drawn along the 200 metre isobath would somehow violate the principle of self-determination. But it proved difficult to interest the then Portuguese Administration in the issue (given its general indifference to East Timor - see paras.28-29 above), and the boundary remained unresolved until Portugal's withdrawal from the territory in 1975. (See Memorial, para. 7.04; also Lumb, "The Delimitation of Maritime Boundaries in the Timor Sea" (1981) 7 Australian Yearbook of International Law 72.) After 1975, Indonesia also made claims to the area, which conflicted with Australia's own claim and its understanding of the relevant law. As a result of these competing claims, no exploration of the area could, as a practical matter, take place.

385. Portugal concedes that this case does not concern the delimitation of the continental shelf. The Treaty is not a maritime delimitation agreement which establishes permanent maritime boundaries (*cf.*. Article 2(3)). It is an agreement on a Zone of Cooperation in an area between East Timor and Northern Australia. It deals solely with exploration for and exploitation of petroleum resources. It should be noted, nonetheless, that the coastline of Australia in the relevant area is considerably longer than that appurtenant to East Timor and that for reasons of history, geomorphology and geography, Australia regards the area covered by the Zone of Cooperation as being an area over which it has sovereign rights in accordance with the relevant rules of international law. (The text of the Treaty is in Annex 2 of Portugal's Application and Annex III.9 of Portugal's Memorial. The history leading to the negotiation of the Treaty is set out in Memorial, paragraphs. 2.01 - 2.12. For an analysis of the Treaty, see Burmester, "The Timor Gap Treaty" [1990] Australian Mining and Petroleum Law Association (AMPLA) Yearbook 233-247, a copy of which has been lodged with the Court.)

386. The Zone of Co-operation consists of three areas. Area A is expressed to be subject to:

> "... joint control by the Contracting States of the exploration for and exploitation of petroleum resources, aimed at achieving optimum commercial utilisation thereof and equal sharing between the two Contracting States of the benefits of the exploitation of petroleum resources ..." (Article 2(2))

387. The form of joint control established under the Treaty is relatively straightforward. In Area A, control is exercised by a Ministerial Council consisting of an equal number of ministers designated by each State, and a Joint Authority responsible to the Council. The Ministerial Council has overall responsibility for matters relating to petroleum exploration and exploitation (Article 6). Its decisions are made by consensus (Article 5(5)). The Joint Authority is responsible for the management of activities including the supervision of contracting corporations in the Area (Article 8). Areas B and C fall within Australian and Indonesian administration respectively. In relation to them, there is provision for a sharing of tax revenues. This reflects the Contracting Parties' understanding that there should be an equal sharing of benefits.

388. In making the Treaty, Australia exercised long-asserted rights over areas of the Timor Sea which it considered to be its own. Nonetheless, the Treaty establishes a co-operative regime which Australia considers to be conducive to international order, and the interests of the people of the region. There is no basis for Portugal's assertion that negotiations with the people of East Timor would not have led to a result as favourable to Australia (Memorial, para. 2.03). On the contrary, the Treaty was concluded by parties at arms length, and represents a reasonable compromise of conflicting claims. It is intended to ensure that petroleum exploration and exploitation in the Timor Sea be conducted on a basis that achieves "optimum commercial utilisation thereof and equal sharing between the two Contracting States of the benefits ..." (Article 2(2)(a)). As Portugal itself acknowledges (Memorial, para. 2.02), the Timor Gap is not without possible economic potential. The Timor Gap agreement is, in Australia's view, a model of how disputes over maritime territory should be resolved by provisional arrangements of a practical nature.

Section II: The Treaty is a measure of practical action to secure Australia's rights and interests under international law

389. In negotiating and concluding the Treaty, Australia evidently sought to secure the enjoyment of those rights over her natural resources which international law confers. The preamble states that the parties entered into the Treaty:

> "Conscious of the need to encourage and promote development of the petroleum resources of the area; [and]
> Desiring that exploration for and exploitation of these resources proceed without delay ... ."

400. Australia, like all States, has a right to enjoy its own natural resources. Australia had no practical alternative but to enter into negotiation with Indonesia to secure some agreement with respect to the Timor Gap, so as to enable Australia to exercise its rights in those areas of the Timor Sea which it claimed.

401. By its Application and submissions, Portugal seeks to prevent Australia from performing its agreement with a neighbouring State concerning maritime areas which belong to Australia, even though Australia cannot, as a practical matter, exercise its rights there without such an agreement. Only Indonesia is in a position to give effect to such an agreement (*cf.*. Application, para.9; Portuguese Constitution of 2 April 1976, as revised in 1989 - Art.293, Annex 8 hereto). There has been no State other than Indonesia with whom Australia could have negotiated a practicable resolution of the competing claims over the seabed in the Timor Sea, so as to allow exploration to proceed.

402. International law does not deny States the ability to take practical action, as Australia has done, to protect their economic interests, even though there may be doubt or disagreement as to the precise legal position. Indeed, such action has been quite common: some occasions are referred to by Lauterpacht in Recognition in International Law, (Cambridge, 1947), pp. 389-90; also pp.121-2, 346-8, 377-8. The Timor Gap Treaty constituted a practical measure of resolving a dispute between Indonesia and Australia, so that Australia could protect its rights and enjoy the resources which belonged to it.

403. Co-operative arrangements of this kind exist for the utilisation of offshore petroleum in other parts of the world. For example, a similar arrangement was adopted under the Frigg Field agreement between the United Kingdom and Norway designed to facilitate exploitation of petroleum deposits overlapping the existing delimitation line in the North Sea. See H Burmester, "The Timor Gap Treaty" [1990] AMPLA Year Book 233, 234; H Fox *et.al.*, Joint Development of Offshore Oil and Gas, (1989), pp. 3-5, 53-114; P C Reid, "Petroleum Development in Areas of International Seabed Boundary Dispute - Means for Resolution", [1985] AMPLA Year Book 544. The Timor Gap Treaty recalls aspects of these other arrangements.

Section III: The Treaty gives effect to Australia's obligations at international law

404. In concluding the Treaty Australia acted in conformity with its obligation under Article 6 of the 1958 Geneva Convention on the Continental Shelf, pursuant to which States sharing the same continental shelf undertake to determine the boundary line by agreement between them. It should also be noted that Article 83(3) of the 1982 Law of the Sea Convention contemplates that when agreement cannot be reached on appropriate maritime delimitation, the relevant States:

> "shall make every effort to enter into provisional arrangements of a practical nature and, during this transitional period, not to jeopardise or hamper the reaching of the final agreement. Such arrangements shall be without prejudice to the final delimitation."

See also Article 74.

405. Consistently with its provisional nature, the Treaty provides for an initial term of operation of 40 years with provision for extension for successive 20 year periods (Article 33) and the Contracting States undertake to continue their efforts to reach agreement on a permanent continental shelf delimitation in the Zone of Co-operation (Article 2(4)). The Timor Gap Treaty is a clear example of just the kind of practical arrangement to which Article 83(3) refers. Further, given its provisional nature and its incorporation of the "sovereignty neutral" principle, the agreement cannot be regarded as adverse to the interests of any State (or the people of East Timor).

406. Having regard to all the circumstances, including the lack of any direction from the United Nations to the contrary, it was incumbent on countries in the region to determine for themselves whether the promotion of co-operative arrangements of the kind represented by the Treaty was desirable, because likely to contribute to the peace and security of the region and ultimately the observance of international law. Australia took full account of these considerations in making the Timor Gap Treaty. By the preamble to the Treaty, Australia and Indonesia affirmed they entered the Treaty:

> "Fully committed to maintaining, renewing and further strengthening the mutual respect, friendship and cooperation between their two countries through existing agreements and arrangements, as well as their policies of promoting constructive neighbourly cooperation; ... [and]
>
> Believing that the establishment of joint arrangements to permit the exploration for and exploitation of petroleum resources in the area will further augment the range of contact and cooperation between the Governments of the two countries and benefit the development of contacts between their peoples".

These expressions of intent are entirely consistent with Australia's earlier agreements with Indonesia in 1971 and 1972.

Section IV: Concluding remarks

407. Portugal challenges the exercise by Australia of its sovereign right to decide whether to enter into negotiations with a neighbour, and if so, when, and subject to what conditions. This is a discretion ordinarily enjoyed by all States. Portugal does so without the benefit of any direction of the General Assembly or Security Council, and without taking steps (which would have been open to it at any time) to bring the matter before the General Assembly or the Security Council for debate and decision. If Portugal's Application was granted, Australia would be prevented from performing an agreement with a neighbouring State which protects its rights and interests in those maritime areas which it regards as its own.

408. The basis upon which Portugal seeks this remedy remains obscure. Portugal claims it does not argue that the Treaty as such is invalid. How then, given a valid Treaty, can one Party be ordered not to perform its obligations under that Treaty? Australia knows of no legal basis upon which the Court could make such an order against it, assuming the Treaty to be valid. Of course, if that assumption is changed so as to permit the remedy - that is to say the Treaty is deemed invalid - Portugal faces an insuperable problem. For a declaration that the Treaty - a bilateral treaty - is invalid inevitably affects the rights of Indonesia, which has not consented to the jurisdiction. The dilemma in which Portugal is placed seems, to Australia, to be inescapable.

409. Unless Portugal can demonstrate that the duties allegedly owed to it or the people of East Timor form part of the jus cogens, so that the Treaty is rendered invalid under Article 53 of the Vienna Convention on the Law of Treaties 1969, there is no relevant basis upon which the Court can enjoin Australia from enforcing the Treaty. But no issue of jus cogens arises in this case, and the Portuguese concession to that effect is plainly correct. It has already been argued that Australia acted lawfully in entering into the Treaty, and that its implementation of the Treaty similarly does not infringe Australia's international obligations (Part III, Chapters 1 and 2). In any event, even if it could be established (as in these proceedings it obviously cannot be) that Indonesia had breached a rule of jus cogens by its conduct in East Timor in 1975-6, it would not follow that Australia also breached a rule having that status by entering into the Treaty in 1989. The position of third States, not parties to any breach of international law but confronted with a factual situation which shows no sign of change, and one which the international community has resolved to treat in a certain way (not involving sanctions or an obligation of non-recognition) is entirely different from the position of the wrong-doing State itself. See paragraphs 202-204 and 364-67 above for elaboration of this elementary distinction. Even if Portugal demonstrates that Australia is subject to other obligations, arising from other treaties or general international law, which are incompatible with its obligations under the Timor Gap Treaty, such a situation would be dealt with according to the rules of State responsibility: *cf.* Article 30(5) of the 1969 Vienna Convention. It would not constitute a basis on which to enjoin Australia from giving effect to the Timor Gap Treaty. Unless a breach of a rule of jus cogens can be clearly shown, Australia remains under the primary duty, referred to in Article 26 of that Convention, to perform its

obligations under the Timor Gap Treaty in good faith, and there is no basis for the Court to interfere in the due performance by Australia of those obligations.

410. If, despite this, the Court were to grant Portugal the remedy it seeks, the practical consequences would be highly injurious to the rights of Australia as a coastal State. It would become practically impossible for Australia to exercise its rights and enjoy its natural resources there. Portugal invites the Court to direct that Australia only negotiate with Portugal on these matters, even though Portugal is incapable of performing any undertakings which it might give in relation to the region. Such negotiations would be futile. By inviting the Court to enjoin Australia from performing the agreement with Indonesia (Application, para.34(5)), Portugal invites the Court to suspend indefinitely Australia's rights over resources which belong to it, contrary to the interests of the people of Australia. This outcome is not in keeping with the basic tenets of international law.

411. Portugal, it will be recalled, did not decide to decolonise its overseas territories until after the coup in Portugal in April 1974. This resulted in widespread chaos and civil conflict in its former colonies. In the case of East Timor, the territory was "completely unprepared for self-governance". Speaking before the United States Senate Foreign Relations Committee on 6 March 1992, the Deputy Assistant Secretary of State for East Asian and Pacific Affairs, Mr Kenneth M Quinn, stated:

> "When the world turned its attention to East Timor in the mid-1970's, self-determination was not a realistic option. ... In 1974, after four centuries of colonial rule, East Timor had 47 elementary schools, 2 middle schools, 1 high school, and no colleges. Now it has 574 elementary schools, 99 middle schools, 14 high schools, and 3 colleges. In 1974, East Timor had 2 hospitals and 14 health clinics. Now it has 10 hospitals and 197 village health centres. In 1974, East Timor had 100 churches. Today it has 518. In 1974, East Timor had 20 kilometres of surfaced roads, all within Dili. Now it has 428 kilometres throughout the province. In 1974, East Timor was plagued with endemic poverty. Today poverty remains a problem , as it does elsewhere in that part of Indonesia, but starvation is extremely rare. The missing economic element is sufficient employment to fulfil rising expectations of newly educated youth.

> But new business investors insist on a peaceful environment. And that remains problematic until the East Timor issue is fully resolved" (Annex 9, pp.13-14, 17-18).

412. Prior to 1980, Portugal took few or no steps to resolve the problem in East Timor, and its activity since then has been partial and erratic. Portugal cannot now load the burden of its defaults onto a third State which is in no way responsible for the situation. Although Australia voted in favour of the early resolution of the situation in East Timor in the United Nations, today Australia, with many other countries, has accepted the reality of Indonesia's authority over East Timor. Australia's entry into the Timor Gap Treaty with Indonesia was a lawful response to the situation that had developed. By entering into the Treaty in December 1989, Australia did not contravene any direction of the United Nations with respect to East Timor, for none had been made. Australia continues to endorse the efforts of the Secretary-General to negotiate a resolution of the situation. As the international community has recognized, these negotiations primarily concern Portugal and Indonesia. Portugal and Indonesia, with the mediation of the Secretary-General, continue to seek a solution to the problem. Australia has also sought to promote the humanitarian treatment of the people of East Timor, and has been generous in the aid which it has directed to East Timor, especially through the Red Cross. If Portugal and Indonesia reach an agreement over East Timor and that agreement is approved by the United Nations, Australia will respect and recognize its outcome. It will abide by any authoritative decision which the United Nations may make with respect to East Timor. Australia's entry into the Timor Gap Treaty is not inconsistent with this. Any new State in East Timor is free to accept, to reject, or to seek to renegotiate the Treaty. In the meantime Australia is fully entitled to enter into arrangements with a State in order to protect and utilise its own resources.

SUBMISSIONS

413. The Government of Australia submits that the Court should adjudge and declare that the Portuguese application be dismissed on the grounds that :

. the Court lacks jurisdiction to decide on the Portuguese claims, or the claims are inadmissible;

. alternatively, the actions of Australia invoked by Portugal do not give rise to any breach of rights appertaining to Portugal under international law on the part of Australia.

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1 June 1992

APPENDICES

APPENDIX A

UNITED NATIONS RESOLUTIONS ON SELF-DETERMINATION CALLING FOR ACTION BY THIRD STATES

SOUTHERN RHODESIA

1. On 11 November 1965, the minority regime in Southern Rhodesia unilaterally declared independence from the United Kingdom. The illegality of the regime was repeatedly emphasized in later resolutions of the Security Council and General Assembly. See Security Council resolutions 216 (1965), 217 (1965), 221 (1966), 232 (1966), 253 (1968), 277 (1970), 288 (1970), 320 (1972), 333 (1973), 409 (1977), 423 (1978), 437 (1978), 445 (1979), 448 (1979); also General Assembly resolutions 2508(XXIV) (1969); 2383(XXIII) (1968). The Security Council regarded the unilateral declaration of independence as having "no legal validity" (resolution 217 (1965), para.3 *cf.*, resolution 288 (1970), para.1).

2. The reason for the illegality of this minority regime was that its existence was incompatible with the right to self-determination. In resolution 2022(XX) (1965), which predated the unilateral declaration of independence by several days, the General Assembly indicated that the intended declaration "would continue the denial to the African majority of their fundamental rights to freedom and independence". The General Assembly also reaffirmed "the right of the people of Southern Rhodesia to freedom and independence and recognise[d] the legitimacy of their struggle for the enjoyment of their rights as set forth in the Charter of the United Nations, the Universal Declaration of Human Rights and...resolution 1514(XV)" (at para.2). This wording was subsequently repeated in numerous resolutions of the General Assembly and the Security Council. See General Assembly resolutions 2508(XXIV) (1969), para.1; 2383(XXIII) (1968); 31/154A (1976); Security Council resolutions 253 (1968); 227 (1970); 318 (1972); 328 (1973); 403 (1977); 424 (1978); 445 (1979); 448 (1979), 460 (1979), 463 (1980). In resolution 2138(XXI) (1966), the General Assembly condemned "any arrangement reached between the administering Power [the United Kingdom] and the illegal racist minority régime which will not recognise the inalienable rights of the people of Zimbabwe to self-determination and independence in accordance with General

Assembly resolution 1514(XV)" and reaffirmed "the obligation of the administering Power to transfer power to the people of Zimbabwe on the basis of universal adult suffrage, in accordance with the principle 'one man, one vote'" (paras. 1-2). See also General Assembly resolutions 2383(XXIII) (1968), para.6; and 31/154A (1976).

3. In resolution 216 (1965), para.2, the Security Council decided to call on States "not to recognize this illegal racist minority regime in Southern Rhodesia and to refrain from rendering any assistance" to it. In resolution 217 (1965), para.6, the Security Council again called upon States "not to recognize this illegal authority and not to entertain any diplomatic or other relations with it". In resolution 277 (1970), para.9 (a), it decided that Member States shall "sever all diplomatic, consular, trade, military and other relations that they may have with the illegal regime in Southern Rhodesia, and terminate any representation that they maintain in the Territory". See also General Assembly resolution 2508(XXIV) (1968), para.9. In resolution 328 (1973), para.7, the Security Council called upon all Governments "to continue to treat the racist minority régime in Southern Rhodesia as wholly illegal" whilst the General Assembly called on all Governments "to discontinue any action which might confer a semblance of legitimacy on the illegal regime" (resolution 31/154B (1976), para.4 (c)).

4. The Security Council also called on States to take other specific measures against Southern Rhodesia, principally involving the implementation of trade embargoes, e.g., resolutions 217 (1965); 232 (1966); 253 (1968); 277 (1970); 333 (1973); 409 (1977). Adoption of these measures by States was in many cases mandatory, and the Security Council on several occasions specifically invoked Article 25 of the Charter of the United Nations, e.g., resolutions 232 (1966), para.6; 253 (1968), paras. 11-12; 288 (1970), para.4; 314 (1972), para.2; 318 (1972); 320 (1972). On several occasions, the Security Council noted that certain States (including Portugal) had acted in violation of the Charter by continuing to offer assistance to the regime in Southern Rhodesia. See resolutions 277 (1970), para.6; 320 (1972); 333 (1973); General Assembly resolution 2383(XXIII), para.4.

5. When the political leaders in Southern Rhodesia purported to conclude an "internal settlement" in March 1978, the Security Council responded by declaring "illegal and unacceptable any internal settlement concluded under the

auspices of the illegal régime and [calling] upon all States not to accord any recognition to such a settlement" (resolution 423 (1978); also 424 (1978)).

NAMIBIA

6. In resolution 2145(XXI) (1966), the General Assembly reaffirmed "that the provisions of General Assembly resolution 1514(XV) are fully applicable to the people of the Mandated Territory of South West Africa and that, therefore, the people of South West Africa have the inalienable right to self-determination, freedom and independence in accordance with the Charter of the United Nations" (para.1); declared that "South Africa had failed to fulfil its obligations in respect of the administration of the Mandated Territory" (para.3); and decided that the Mandate was terminated and that "South Africa has no other right to administer the territory and that henceforth South West Africa comes under the direct responsibility of the United Nations" (para.4). By resolution 2248 (S-V) (1967), the General Assembly established a "United Nations Council for South West Africa" (Namibia) to administer the Territory until independence.

7. The General Assembly and the Security Council later reaffirmed the inalienable right of the people of Namibia to freedom and independence, in conformity with General Assembly resolution 1514(XV). See General Assembly resolutions 2517(XXIV) (1969) and 2678(XXV) (1970); Security Council resolutions 246 (1968); 264 (1969); 276 (1970); 283 (1970).

8. In resolution 264 (1969), the Security Council recognised that the General Assembly had terminated the Mandate of South Africa over Namibia and considered that "the continued presence of South Africa in Namibia is illegal and contrary to the principles of the Charter and the previous decisions of the United Nations" (para.2). In resolution 269 (1969), the Security Council added that the continuing South African occupation of Namibia "constitute[d] an aggressive encroachment on the authority of the United Nations, a violation of the territorial integrity and a denial of the political sovereignty of the people of Namibia" (para.3).

9. In its earliest resolutions on Namibia, the Security Council merely "*invite[d]* all States to exert their influence in order to induce the Government of South Africa to comply with its resolutions (resolutions 245 (1968), para.3; 264 (1969), para.7; *cf.* also resolution 246 (1968), paras. 3-4). However, in resolution 269 (1969), the Security Council called upon "all States to refrain from all dealings with the Government of South Africa purporting to act on behalf of the Territory of Namibia" (para.7). This call was substantially repeated in resolution 276 (1970) in which the Security Council also declared that "the continued presence of the South African authorities in Namibia is illegal and that consequently all acts taken by the Government of South Africa on behalf of or concerning Namibia after the termination of the Mandate are illegal and invalid" (para.2). In resolution 283 (1970), the Security Council outlined in greater detail the measures of non-recognition to be taken by States, requesting "all States to refrain from any relations - diplomatic, consular or otherwise - with South Africa implying recognition of the authority of the Government of South Africa over the Territory of Namibia" (paras. 1-3); calling upon "all States to ensure that companies and other commercial and industrial enterprises owned by, or under direct control of, the State cease all dealings with respect to commercial or industrial enterprises or concessions in Namibia" (paras. 4-7); and requesting "all States to undertake without delay a detailed study and review of all bilateral treaties between themselves and South Africa in so far as these treaties contain provisions by which they apply to the Territory of Namibia (para.8).

10. As South Africa contested the validity and binding force of resolution 276 (1970), the Security Council decided in resolution 284 (1970) to request an advisory opinion of the International Court of Justice on the question, "what are the legal consequences for States of the continued presence of South Africa in Namibia, notwithstanding resolution 276 (1970)?" The Court concluded that the continued presence of South Africa in Namibia was illegal, and that "the member States of the United Nations are ... under obligation to recognize the illegality and invalidity of South Africa's continued presence in Namibia. They are also under obligation to refrain from lending any support or any form of assistance to South Africa with respect to its occupation of Namibia" (*Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) Notwithstanding Security Council resolution 276 (1970)* [1971] ICJ Reports 17, p.54, at para.119). The Court concluded that because of Security Council resolution 276 (1970), "member States [were] under

obligation to abstain from entering bilateral treaty relations with South Africa in all cases in which the Government of South Africa purports to act on behalf of or concerning Namibia", to abstain from sending diplomatic or special missions to South Africa including in their jurisdiction the Territory of Namibia; to make it clear that the maintenance of diplomatic or consular relations with South Africa [did] not imply recognition of its authority with regard to Namibia; and to abstain from entering into economic and other forms of relationship or dealings with South Africa on behalf of or concerning Namibia which may entrench its authority over the Territory (paras. 121-124). These obligations arose *for the reason that* Security Council resolution 276 (1970) "was adopted in conformity with the purposes and principles of the Charter and in accordance with its Articles 24 and 25" (paras. 115, 119). The Court did not find that there would have been any duty of non-recognition in the absence of any Security Council resolution.

11. In resolution 301 (1971), the Security Council expressly agreed with the Court's opinion (para.6) and specifically called upon all States to "abstain from entering into treaty relations with South Africa in all cases in which the Government of South Africa purports to act on behalf of or concerning Namibia" and to "abstain from entering into economic and other forms of relationship or dealings with South Africa on behalf of or concerning Namibia which may entrench its authority" over Namibia. See further para.11. In numerous subsequent resolutions, both the Security Council and the General Assembly

- reaffirmed "the inalienable and imprescriptible right of the people of Namibia to self-determination and independence" (Security Council resolutions 309 (1972); 310 (1972); 319 (1972); 323 (1972) and General Assembly resolutions 31/146 (1976), para.1; S-9/2 (1978), para.2; 33/182A (1978), para.3);

- declared the continued presence of South Africa in the Territory to be illegal (Security Council resolutions 310 (1972), para.2; 366 (1974), para.1; 385 (1976), para.1; 435 (1978), para.2; and 532 (1983), para.1; 539 (1983), para.1; 566 (1985), para.1; 601 (1987), para.1 and General Assembly resolutions 31/146 (1976), para.8; S-9/2 (1978), para.4; 33/182A (1978), para.5);

- declared that actions taken by South Africa with respect to Namibia were "null and void" (Security Council resolution 435 (1978), para.6; 566 (1985), para.4; *cf.* General Assembly resolution 33/182A (1978), para.9 (the decision of South Africa to annex Walvis Bay is "illegal, null and void"). In resolution 439 (1978), the Security Council declared that elections held by South Africa in Namibia were null and void and that "no recognition will be accorded either by the United Nations or any Member States to any representatives or organ established by that process (para.3, *cf.*, resolution 566 (1985), para.4, General Assembly resolutions 31/146 (1976), para.13; 33/182B (1979), para.3; 33/206 (1979), para.5).

THE SOUTH AFRICAN "HOMELANDS"

12. In a number of resolutions, the General Assembly condemned the establishment of "bantustans" by the regime in South Africa (resolutions 2775E(XXVI) (1971); 3411D(XXX) (1975)), as "designed to consolidate the inhuman policies of *apartheid*, to perpetuate white minority domination and to dispossess the African people of South Africa of their inalienable rights in their country", including the right to self-determination (resolutions 3411D(XXX) (1975), para.1; 31/6A (1976), para.1; 32/105N (1977), para.1).

13. The General Assembly has called upon "all Governments and organizations not to deal with any institutions or authorities of the bantustans or to accord any form of recognition to them" (resolutions 3411D(XXX) (1975), para.3; 31/6A (1976), para.3; 32/105N (1977), para.5; 37/69A (1982), para.14). It has also requested States "to take effective measures to prohibit all individuals, corporations and other institutions under their jurisdiction from having any dealings with the so-called independent... bantustans" (resolution 31/6A (1976), para.4; 32/105N (1977), para.6). In resolution 402 (1976), the Security Council endorsed General Assembly resolution 31/6A and called on all States "to deny any form of recognition to the so-called independent Transkei and to refrain from having any dealings with the so-called independent Transkei or other bantustans" (para.1). This endorsement was reaffirmed in resolution 407 (1977). (See also the statement by the President of the Security Council, S/13549 of 21 September 1979.)

TERRITORIES UNDER PORTUGUESE ADMINISTRATION

14. In resolution 1542(XV) (1960), the General Assembly declared the Territories under Portuguese administration to be Non-Self Governing Territories within the meaning of Chapter XI of the Charter of the United Nations. In resolution 180 (1963), the Security Council urgently called upon Portugal to implement "the immediate recognition of the right of the peoples of the Territories under its administration to self-determination and independence" (para.5 (a)) and affirmed that "the policies of Portugal in claiming the Territories under its administration as 'overseas territories' and as integral parts of metropolitan Portugal are contrary to the principles of the Charter and the relevant resolutions of the General Assembly and of the Security Council" (para.2). See also resolutions 183 (1963), para.3; 218 (1965), paras. 2, 4 and 5. In resolution 312 (1972), the Security Council reaffirmed "the inalienable right of the peoples of Angola, Mozambique and Guinea (Bissau) to self-determination and independence, as recognized by the General Assembly in its resolution 1514(XV)..., and recognises the legitimacy of their struggle to achieve that right" (para.1). See also resolution 322 (1972), para.1; and General Assembly resolutions 2270(XXII) (1967), para.1; 2507(XXIV) (1969), paras. 1-2; 2395(XXIII) (1968), paras. 1-2.

15. In resolution 180 (1963), the Security Council requested that "all States should refrain forthwith from offering the Portuguese Government any assistance which would enable it to continue its repression of the peoples of the Territories under its administration, and take all measures to prevent the sale and supply of arms and military equipment for this purpose to the Portuguese Government" (para.6). Similar requests and calls were made in Security Council resolution 218 (1965), para.6; and 312 (1972), para.6; and General Assembly resolutions 2507(XXIV) (1969) 2270(XXII) (1967) and 2395(XXIII) (1968). In resolution 250 (XXIV) (1969) the General Assembly further called upon all States, specialised agencies and international organisations to "increase ... their moral and material assistance to the peoples of the Territories under Portuguese domination who are struggling for their freedom and independence" (para.11). However, neither the Security Council or the General Assembly ever called on States to refuse recognition to the Portuguese administration of those Territories or to refrain from dealing with Portugal in relation to them.

CYPRUS

16. In November 1983, the Turkish community in Cyprus purported to declare an independent Turkish Republic of Northern Cyprus. The Security Council declared this declaration "invalid", on the grounds that it was incompatible with the 1960 Treaty concerning the establishment of the Republic of Cyprus and the 1960 Treaty of Guarantee (resolution 541 (1983)). It called upon all States "not to recognise any Cypriot State other than the Republic of Cyprus" (para.7). In resolution 550 (1984), the Security Council again condemned all secessionist actions as "illegal and invalid" (para.2), and reiterated its call upon all States not to recognise the purported State of the Turkish Republic of Northern Cyprus (para.3).

INVASION OF KUWAIT BY IRAQ

17. The invasion of Kuwait by Iraq in 1990 did not raise the issue of self-determination, but did involve the acquisition of territory of another State by the use of force. In resolution 661 (1990), the Security Council called upon "all States" not to recognise any regime set up by the occupying Power" (para.9 (b)). In resolution 662 (1990), which followed the declaration by Iraq of a "comprehensive and eternal merger" with Kuwait, the Security Council called upon "all States, international organizations and specialized agencies not to recognise that annexation, and to refrain from any action or dealing that might be interpreted as an indirect recognition of the annexation" (para.2). In resolution 664 (1990), the Security Council reaffirmed that the annexation of Kuwait by Iraq is "null and void" (para.3).

ARAB TERRITORIES OCCUPIED BY ISRAEL

18. In 1967, as a result of the Six-Day War, Israel entered into occupation of several Arab territories. They were the Golan Heights (part of Syria); the West Bank of Jordan (including East Jerusalem); and the Gaza Strip and the Sinai Peninsula (parts of Egypt). Parts of the Egyptian territory under Israeli occupation were restored to Egyptian control pursuant to the Egyptian-Israeli Peace Treaty, which came into force on 25 April 1979. Otherwise, Israel continues to occupy these territories.

19. Since 1968, Israel has pursued a policy of establishing Israeli settlements in these occupied territories. Additionally, in 1967 Israel placed the whole of Jerusalem, including East Jerusalem, under a common civil administration. In 1980, the Knesset (the Israeli Parliament) enacted a "basic law" of the State of Israel, which declared "Jerusalem united in its entirety" to be the capital of Israel, and part of the Prime Minister's cabinet was moved to East Jerusalem. The following year, the Knesset enacted a law imposing Israeli law, jurisdiction and administration on the Golan Heights.

20. In resolution 252 (1968), the Security Council considered "that all legislative and administrative measures and actions taken by Israel, including expropriation of land and properties thereon, which tend to change the legal status of Jerusalem are invalid and cannot change that status" (para.2). The Security Council confirmed this in resolutions 267 (1969), para.4 and 298 (1971), para.3. The General Assembly also considered "that these measures are invalid" (resolution 2253 (ES-V) (1967), para.1). Following the enactment by the Knesset of the basic State law in 1980, the Security Council reaffirmed that legislative and administrative measures and actions by Israel "which purport to alter the character and status of the Holy City of Jerusalem have no legal validity" (resolution 476 (1980), para.3), and "are null and void" (para.4; also resolution 478 (1980), para.3).

21. In resolution 446 (1979), the Security Council determined "that the policy and practices of Israel in establishing settlements in the Palestinian and other Arab territories occupied since 1967 have no legal validity" (para.1). This was repeated in the preamble to resolution 452 (1979). In resolution 465 (1980), the Security Council determined "that all measures taken by Israel to change the physical character, demographic composition, institutional structure or status of the Palestinian and other Arab territories occupied since 1967, including Jerusalem, or any part thereof have no legal validity" (para.5). These words were reaffirmed in resolution 471 (1980). The General Assembly also reaffirmed that such measures "are null and void" (e.g., resolution 33/113C, para.6).

22. In resolution 497 (1981), the Security Council decided "that the Israeli decision to impose its laws, jurisdiction and administration in the occupied Syrian Golan heights is null and void and without international legal effect"

(para.1). The General Assembly also declared that "Israel's decision to impose its laws, jurisdiction and administration on the occupied Syrian Golan Heights is null and void and has no legal validity and/or effect whatsoever" (e.g., resolution 37/123A (1982), para.3; resolution 39/146B (1984), para.3).

23. In resolutions affirming the invalidity of Israeli laws and measures, the Security Council emphasized "the inadmissibility of the acquisition of territory by war and the need to work for a just and lasting peace in which every State in the area can live in security" and that "Member States in their acceptance of the Charter of the United Nations have undertaken a commitment to act in accordance with Article 2 of the Charter: preamble to resolution 242 (1967). See also resolutions 252 (1968), 267 (1969), 271 (1969), 298 (1971), 476 (1980), 478 (1980), 497 (1981) and General Assembly resolutions 34/70 (1979), ES 7/2 (1980), 36/120E, 37/123A (1982), 39/146A (1984). The Security Council and General Assembly have also repeatedly expressed the view that the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War of 1949 is applicable to the Israeli occupation of the Arab territories (Security Council resolutions 271 (1969), 446 (1979), 452 (1979), 465 (1980), 469 (1980), 471 (1980), 478 (1980), 592 (1986), 605 (1987), 607 (1988) and General Assembly resolutions 3005(XXVII) (1972), 36/120E (1981), 39/146A (1984)). In resolution 465 (1980), the Security Council expressly determined that "Israel's policy and practices of settling parts of its population and new immigrants in those [occupied] territories constitute a flagrant violation of the Fourth Geneva Convention" (para 5).

24. A further reason that has been advanced for the illegality and invalidity of the Israeli laws and measures is that the Israeli occupation of these territories is inconsistent with the right of the Palestinian people to self-determination. In 1974, in resolution 3236(XXIX), the General Assembly reaffirmed "the inalienable right" of the Palestinian people to self-determination (para.1). In resolution 39/146A (1984), the General Assembly declared that peace in the Middle East must be based on a solution which ensures the withdrawal of Israel from the occupied territories and which "enables the Palestinian people, under the leadership of the Palestine Liberation Organisation, to exercise its inalienable rights, including the right to return and the right to self-determination, national independence and the establishment of its independent

sovereign State in Palestine" (para.3). However, a right of the Palestinian people to self-determination has not been acknowledged by the Security Council.

25. The Security Council has called on Israel "to rescind all such measures already taken and to desist forthwith from taking any further action which tends to change the status of Jerusalem": resolutions 252 (1968), para.3; 267 (1969), para.5; 271 (1969), para 3; 298 (1971), para.4; 446 (1979), para.3; 452 (1979), para.3; 465 (1980), para.6. It has also called on Israel "as the occupying Power" "to desist from taking any action which would result in changing the legal status and geographical nature, and materially affecting the demographic composition of the Arab territories occupied since 1967... and, in particular, not to transfer parts of its own civilian population into the occupied Arab territories" (resolution 476 (1980), para.3; 478 (1983), para.3. See also General Assembly resolutions 2253 (ES-V) (1967), para.1; 2254 (ES-V) (1967), para.2; and 3005(XXVII) (1972), para.2.

26. The Security Council also called on States to take certain other measures in response, such as the call upon all States "not to provide Israel with any assistance to be used specifically in connexion with settlements in the occupied territories" (resolution 465 (1980), para.7; also resolution 471 (1980), para.5).

27. Additionally, resolution 478 (1980), para.5, provides that the Security Council:

> "*Decides* not to recognise the basic law and such other actions by Israel that, as a result of this law, seek to alter the character and status of Jerusalem and calls upon:
>
> (a) All Member States to accept this decision;
> (b) Those States that have established diplomatic missions at Jerusalem to withdraw such missions from the Holy City"

The General Assembly in resolution 33/113C (1978) called upon all States "not to recognise any changes carried out by Israel in the occupied territories and to avoid actions, including those in the field of aid, which might be used by Israel in its pursuit of the policies of annexation and colonization" (para.8). Similarly, in resolution 37/123A (1982), the General Assembly declared that actions taken

by Israel in respect of the Golan Heights "are illegal and invalid and shall not be recognized" (para.5). This declaration was repeated in resolution 39/146B (1984), para.5.

28. More particularly, in resolution 3005(XXVII) (1972), the General Assembly affirmed "the principle of the sovereignty of the population of the occupied territories over their national wealth and resources" (para.4), and called upon "all States, international organisations and specialized agencies not to recognize or co-operate with, or assist in any manner in, any measures undertaken by the occupying Power to exploit the resources of the occupied territories or to effect any changes in the demographic composition or geographic character or institutional structure of those territories" (para.5). This resolution was recalled in resolution 3336(XXIX) (1974), in which the General Assembly reaffirmed that "all measures undertaken by Israel to exploit the human, natural and all other resources, and wealth of the occupied Arab territories are illegal" (para.2). See also resolution 3175(XXVIII) (1973)

APPENDIX B

1985 GENERAL ASSEMBLY RESOLUTIONS ADOPTED ON REPORT OF FOURTH COMMITTEE

VII. RESOLUTIONS ADOPTED ON THE REPORTS OF THE FOURTH COMMITTEE[1]

CONTENTS

40/41. Question of American Samoa

The General Assembly,

Having considered the question of American Samoa,

Having examined the relevant chapters of the report of the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples,[2]

Recalling its resolution 1514 (XV) of 14 December 1960, containing the Declaration on the Granting of Independence to Colonial Countries and Peoples, and all other resolutions and decisions of the United Nations relating to American Samoa, including in particular its resolution 39/31 of 5 December 1984,

Taking into account the statement of the representative of the administering Power relating to American Samoa,[3]

Conscious of the need to promote progress towards the full implementation of the Declaration in respect of American Samoa,

Noting with appreciation the continued participation of the administering Power in the work of the Special Committee in regard to American Samoa, thereby enabling it to conduct a more informed and meaningful examination of the situation in the Territory,

Noting that the first five-year economic development plan for the Territory, implemented by the Development Planning Office of the Government of American Samoa, expired at the end of 1984,

Aware of the special circumstances of the geographical location and economic conditions of the Territory, and bearing in mind the necessity of diversifying and strengthening further its economy as a matter of priority in order to promote economic stability,

Recalling the dispatch in 1981 of a United Nations visiting mission to the Territory,

Mindful that United Nations visiting missions provide an effective means of ascertaining the situation in the small Territories, and expressing its satisfaction at the

[1] For the decisions adopted on the reports of the Fourth Committee, see sect. X.B.6.

[2] *Official Records of the General Assembly, Fortieth Session, Supplement No. 23* (A/40/23), chaps. II, IV and XVI.

[3] *Ibid., Fortieth Session, Fourth Committee, 17th meeting, para. 53.*

willingness of the administering Power to receive visiting missions in the Territories under its administration,

1. *Approves* the chapter of the report of the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples relating to American Samoa;[4]

2. *Reaffirms* the inalienable right of the people of American Samoa to self-determination and independence in conformity with the Declaration on the Granting of Independence to Colonial Countries and Peoples contained in General Assembly resolution 1514 (XV);

3. *Reiterates* the view that such factors as territorial size, geographical location, size of population and limited natural resources should in no way delay the speedy exercise by the people of the Territory of their inalienable right to self-determination and independence in conformity with the Declaration, which fully applies to American Samoa;

4. *Calls upon* the Government of the United States of America, as the administering Power, to take all necessary steps, taking into account the rights, interests and wishes of the people of American Samoa as expressed freely in conditions leading to real self-determination, to expedite the process of decolonization of the Territory in accordance with the relevant provisions of the Charter of the United Nations and the Declaration, and reaffirms the importance of fostering an awareness among the people of American Samoa of the possibilities open to them in the exercise of their right to self-determination and independence;

5. *Takes note* of the elections held on 6 November 1984 and of the fact that the newly elected Governor has stated his intention to recommend legislation establishing clearly the powers and duties of the various government departments in order to avoid conflicts of authority and to ensure sufficient budgetary control;[5]

6. *Reaffirms the responsibility of the administering* Power, under the Charter, to promote the economic and social development of American Samoa, and calls upon the administering Power to intensify its efforts to strengthen and diversify the economy of the Territory and to make it more viable in order to reduce its heavy economic and financial dependence on the United States and to create employment opportunities for the people of the Territory;

7. *Expresses the hope* that the development planning process initiated by the first five-year development plan will be continued, and urges the administering Power, in co-operation with the territorial Government, to strengthen and extend the responsibilities of the Development Planning Office;

8. *Urges* the administering Power to continue to facilitate close relations and co-operation between the peoples of the Territory and the neighbouring island communities and between the territorial Government and the regional institutions in order to enhance further the economic and social welfare of the people of American Samoa;

9. *Urges* the administering Power, in co-operation with the territorial Government, to safeguard the inalienable right of the people of American Samoa to the enjoyment of their natural resources by taking effective measures to ensure their right to own and dispose of those resources and to establish and maintain control of their future development with a view to creating conditions for a balanced and viable economy;

10. *Considers* that the possibility of sending a further visiting mission to American Samoa should be kept under review;

11. *Requests* the Special Committee to continue the examination of this question at its next session, including the possible dispatch of a further visiting mission to American Samoa, *in consultation with the administering* Power, taking into account, in particular, the wishes of the people of the Territory, and to report thereon to the General Assembly at its forty-first session.

99th plenary meeting
2 December 1985

40/42. Question of Guam

The General Assembly,

Having considered the question of Guam,

Having examined the relevant chapters of the report of the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples,[6]

Recalling its resolution 1514 (XV) of 14 December 1960, containing the Declaration on the Granting of Independence to Colonial Countries and Peoples, and all other resolutions and decisions of the United Nations relating to Guam, including in particular its resolution 39/32 of 5 December 1984,

Having heard the statement of the representative of the administering Power relating to Guam,[7]

Noting with appreciation the continued active participation of the administering Power in the work of the Special Committee in regard to Guam, thereby enabling it to conduct a more informed and meaningful examination of the situation in the Territory with a view to accelerating the process of decolonization towards the full and speedy implementation of the Declaration,

Recalling that a Guam Commission on Self-Determination was appointed in February 1984 to deal with the status question in a manner acceptable to the people of the Territory,

Taking note of the statement by the representative of the administering Power that the Department of Defense had authorized the release of some 2,000 hectares of land previously under its control,

Noting the great potential offered for diversifying and developing the economy of the Territory, for example, commercial fishing and agriculture,

Taking note of the steps taken by the territorial Government, with the support of the administering Power, to develop and promote the language and culture of the Chamorro people, who are the indigenous people of the Territory,

Aware of the special circumstances of the geographical location and economic conditions of Guam, and bearing in mind the necessity of diversifying and strengthening further its economy as a matter of priority in order to promote economic stability,

Recalling the dispatch in 1979 of a United Nations visiting mission to the Territory,

Mindful that United Nations visiting missions provide an effective means of ascertaining the situation in the small Territories, and expressing its satisfaction at the willingness of the administering Power to receive visiting missions in the Territories under its administration,

[4] *Ibid., Fortieth Session, Supplement No. 23* (A/40/23), chap. XVI.
[5] *Ibid.*, para. 9.

[6] *Ibid., Supplement No. 23* (A/40/23), chaps. II, IV, VI and XVII.
[7] *Ibid., Fortieth Session, Fourth Committee*, 17th meeting, paras. 55-57.

1. *Approves* the chapter of the report of the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples relating to Guam;[8]

2. *Reaffirms* the inalienable right of the people of Guam to self-determination and independence in conformity with the Declaration on the Granting of Independence to Colonial Countries and Peoples, contained in General Assembly resolution 1514 (XV);

3. *Reaffirms its conviction* that such factors as territorial size, geographical location, size of population and limited natural resources should in no way delay the implementation of the Declaration, which fully applies to Guam;

4. *Reaffirms* the importance of fostering an awareness among the people of Guam of the possibilities open to them with regard to their right to self-determination, and calls upon the administering Power, in co-operation with the territorial Government, to expedite the process of decolonization strictly in accordance with the expressed wishes of the people of the Territory;

5. *Takes note* of the statement by the representative of the administering Power that the Guam Commission on Self-Determination, which was appointed in February 1984 to deal with the status question in a manner acceptable to the people of the Territory for submission to the Congress of the United States of America for approval, hopes to hold a local referendum before the end of 1985;[9]

6. *Takes note* of the statement of the representative of the United States affirming that his Government respects the wish of the Guamanians to control their own destiny both politically and economically;[9]

7. *Reaffirms its strong conviction* that the presence of military bases and installations in the Territory could constitute a major obstacle to the implementation of the Declaration and that it is the responsibility of the administering Power to ensure that the existence of such bases and installations does not hinder the population of the Territory from exercising its right to self-determination and independence in conformity with the purposes and principles of the Charter of the United Nations;

8. *Urges* the administering Power to continue to take all necessary measures not to involve the Territory in any offensive acts or interference against any other States and to comply fully with the purposes and principles of the Charter, the Declaration and the resolutions and decisions of the General Assembly relating to military activities and arrangements by colonial Powers in Territories under their administration;

9. *Reaffirms* the responsibility of the administering Power, under the Charter, for the economic and social development of Guam, and, in this connection, calls upon the administering Power to take all necessary steps to strengthen and diversify the economy of the Territory, with a view to reducing the Territory's economic dependence on the administering Power;

10. *Reiterates* the view that one obstacle to economic development, particularly in the agricultural sector, stems from the fact that large tracts of land are held by the federal authorities, and calls upon the administering Power, in co-operation with the local authorities, to continue the transfer of land to the people of the Territory;

11. *Notes* that a settlement was reached in 1984 between representatives of former Guamanian landowners and the administering Power under which the former will receive $39.5 million in compensation for land taken over by the United States Government from 1944 to 1963, it being the right of individual claimants not to participate in this settlement and continue to press their own claims;

12. *Reiterates its call* upon the administering Power to support measures by the territorial Government aimed at removing constraints to growth in the areas of agriculture and commercial fishing and to ensure their development to the fullest extent;

13. *Urges* the administering Power, in co-operation with the territorial Government, to continue to take effective measures to safeguard and guarantee the right of the people of Guam to their natural resources and to establish and maintain control over their future development, and requests the administering Power to take all necessary steps to protect the property rights of the people of the Territory;

14. *Reaffirms* the importance of further efforts by the territorial Government, with the support of the administering Power, to develop and promote the language and culture of the Chamorro people, who are the indigenous people of the Territory;

15. *Considers* that the possibility of sending a further visiting mission to Guam at an appropriate time should be kept under review;

16. *Requests* the Special Committee to continue the examination of this question at its next session, including the possible dispatch of a further visiting mission to Guam at an appropriate time and in consultation with the administering Power, and to report thereon to the General Assembly at its forty-first session.

99th plenary meeting
2 December 1985

40/43. Question of Bermuda

The General Assembly,

Having considered the question of Bermuda,

Having examined the relevant chapters of the report of the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples,[10]

Recalling its resolution 1514 (XV) of 14 December 1960, containing the Declaration on the Granting of Independence to Colonial Countries and Peoples, and all other resolutions and decisions of the United Nations relating to Bermuda, including in particular its resolution 39/33 of 5 December 1984,

Noting the stated position of the administering Power that it will fully respect the wishes of the people of Bermuda in determining the future constitutional status of the Territory,

Conscious of the need to ensure the full and speedy implementation of the Declaration in respect of the Territory,

Welcoming the continued co-operation of the administering Power in the work of the Special Committee in regard to Bermuda, which contributes to informed consideration of conditions in the Territory with a view to accelerating the process of decolonization for the purpose of the full implementation of the Declaration,

Aware of the special circumstances of the geographical location and economic conditions of Bermuda, and bearing in mind the necessity of diversifying and strengthening further its economy as a matter of priority in order to promote economic stability,

[8] *Ibid., Fortieth Session, Supplement No. 23* (A/40/23), chap. XVII.
[9] *Ibid.*, para. 9.
[10] *Ibid., Supplement No. 23* (A/40/23), chaps. II, IV-VI and XIX.

Mindful that United Nations visiting missions provide an effective means of ascertaining the situation in the small Territories, and expressing its satisfaction at the willingness of the administering Power to receive visiting missions in the Territories under its administration,

1. *Approves* the chapter of the report of the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples relating to Bermuda;[11]

2. *Reaffirms* the inalienable right of the people of Bermuda to self-determination and independence in conformity with the Declaration on the Granting of Independence to Colonial Countries and Peoples, contained in General Assembly resolution 1514 (XV);

3. *Reiterates* the view that such factors as territorial size, geographical location, size of population and limited natural resources should in no way delay the speedy exercise by the people of the Territory of their inalienable right to self-determination and independence in conformity with the Declaration, which fully applies to Bermuda;

4. *Urges* the United Kingdom of Great Britain and Northern Ireland, as the administering Power, taking into account the rights, interests and wishes of the people of Bermuda expressed freely in conditions leading to real self-determination, to continue to take all necessary steps to ensure the full and speedy implementation of resolution 1514 (XV);

5. *Reiterates* that it is the obligation of the administering Power to create such conditions in Bermuda as will enable the people of that Territory to exercise freely and without interference their inalienable right to self-determination and independence in accordance with resolution 1514 (XV), and, in that connection, reaffirms the importance of fostering an awareness among the people of Bermuda of the possibilities open to them in the exercise of that right;

6. *Reaffirms that, in accordance with the relevant provisions* of the Charter of the United Nations and the Declaration contained in resolution 1514 (XV), it is ultimately for the people of Bermuda themselves to determine their own future political status;

7. *Reaffirms its strong conviction* that the presence of military bases and installations in Bermuda could constitute a major obstacle to the implementation of the Declaration and that it is the responsibility of the administering Power to ensure that the existence of such bases and installations does not hinder the population of the Territory from exercising its right to self-determination and independence in conformity with the purposes and principles of the Charter;

8. *Urges* the administering Power to continue to take all necessary measures not to involve the Territory in any offensive acts or interference directed against other States and to comply fully with the purposes and principles of the Charter, the Declaration and the resolutions and decisions of the General Assembly relating to military activities and arrangements by colonial Powers in Territories under their administration;

9. *Urges once again* the administering Power, in co-operation with the territorial Government, to continue to take all effective measures to guarantee the right of the people of Bermuda to own and dispose of their natural resources and to establish and maintain control over their future development with a view to creating conditions for a balanced and viable economy;

10. *Welcomes* the role being played in the Territory by the United Nations Development Programme, specifically in programmes of agriculture, forestry and fisheries, and urges the specialized agencies and all other organizations of the United Nations system to continue to pay special attention to the development needs of Bermuda;

11. *Urges* the administering Power to continue, in co-operation with the territorial Government, the assistance necessary for the employment of the local population in the civil service, particularly at senior levels;

12. *Emphasizes* the desirability of sending a visiting mission to the Territory at the earliest possible opportunity;

13. *Requests* the Special Committee to continue the examination of this question at its next session, including the possible dispatch of a visiting mission to Bermuda at an appropriate time and in consultation with the administering Power, and to report thereon to the General Assembly at its forty-first session.

99th plenary meeting
2 December 1985

[11] *Ibid.*, chap. XIX.

40/44. Question of the British Virgin Islands

The General Assembly,

Having considered the question of the British Virgin Islands,

Having examined the relevant chapters of the report of the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples,[12]

Recalling its resolution 1514 (XV) of 14 December 1960, containing the Declaration on the Granting of Independence to Colonial Countries and Peoples, and all other resolutions and decisions of the United Nations relating to the British Virgin Islands, including in particular its resolution 39/34 of 5 December 1984,

Noting the stated position of the administering Power that it will fully respect the wishes of the people of the British Virgin Islands in determining the future political status of the Territory,

Conscious of the need to ensure the full and speedy implementation of the Declaration in respect of the Territory,

Noting with appreciation the continued active participation of the administering Power in the work of the Special Committee in regard to the British Virgin Islands, thereby enabling it to conduct a more informed and meaningful examination of the situation in the Territory with a view to accelerating the process of decolonization for the purpose of the full implementation of the Declaration,

Reaffirming the responsibility of the administering Power to promote the economic and social development of the Territory,

Noting with concern that during the period under review the international economic crisis caused tourism and its supportive services, the mainstay of the economy, to slow down, and taking note that construction activities increased and that the territorial Government, in its continued efforts to broaden the base of the economy, was re-examining its industrialization programme,

Aware of the special circumstances of the geographical location and economic conditions of the British Virgin Islands, and bearing in mind the necessity of diversifying and strengthening further its economy as a matter of priority in order to promote economic stability,

Welcoming the contribution to the development of the Territory by the United Nations Development Pro-

[12] *Ibid.*, chaps. II, IV, V and XX.

gramme, the United Nations Fund for Population Activities, the United Nations Children's Fund, the United Nations Industrial Development Organization, specialized agencies and other organizations of the United Nations system operating in the Territory, and noting the continued participation of the Territory in the Caribbean Group for Co-operation in Economic Development, as well as in regional organizations, including in particular the Caribbean Development Bank,

Welcoming also the participation of the Territory as an associate member in the work of the United Nations Educational, Scientific and Cultural Organization, the Economic Commission for Latin America and the Caribbean and its subsidiary body, the Caribbean Development and Co-operation Committee, as well as in various other international and regional organizations,

Recalling the dispatch in 1976 of a United Nations visiting mission to the Territory,

Mindful that United Nations visiting missions provide an effective means of ascertaining the situation in the small Territories, and expressing its satisfaction at the willingness of the administering Power to receive visiting missions in the Territories under its administration,

1. *Approves* the chapter of the report of the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples relating to the British Virgin Islands;[13]

2. *Reaffirms* the inalienable right of the people of the British Virgin Islands to self-determination and independence in conformity with the Declaration on the Granting of Independence to Colonial Countries and Peoples, contained in General Assembly resolution 1514 (XV);

3. *Reiterates* the view that such factors as territorial size, geographical location, size of population and limited natural resources should in no way delay the speedy exercise by the people of the Territory of their inalienable right to self-determination and independence in conformity with the Declaration, which fully applies to the British Virgin Islands;

4. *Reiterates* that it is the responsibility of the United Kingdom of Great Britain and Northern Ireland, as the administering Power, to create such conditions in the British Virgin Islands as will enable the people of the Territory to exercise freely and without interference their inalienable right to self-determination and independence in accordance with resolution 1514 (XV), as well as all other relevant resolutions of the General Assembly;

5. *Reaffirms* that it is ultimately for the people of the British Virgin Islands themselves to determine their future political status in accordance with the relevant provisions of the Charter of the United Nations and the Declaration, and, in that connection, reaffirms the importance of fostering an awareness among the people of the Territory of the possibilities open to them in the exercise of their right to self-determination;

6. *Notes* the continuing commitment of the territorial Government to the goal of economic diversification, particularly in the areas of agriculture, fisheries and small industries, and reiterates its call upon the administering Power, in co-operation with the territorial Government, to intensify its efforts in this regard;

7. *Urges* the administering Power, in co-operation with the territorial Government, to safeguard the inalienable right of the people of the British Virgin Islands to the enjoyment of their natural resources by taking effective measures to ensure their right to own and dispose of those resources and to establish and maintain control of their future development;

8. *Urges* the specialized agencies and other organizations of the United Nations system to intensify measures to accelerate progress in the social and economic life of the Territory;

9. *Reiterates* its call upon the administering Power to facilitate the further participation of the British Virgin Islands in various international and regional organizations and in other organizations of the United Nations system;

10. *Considers* that the possibility of sending a further visiting mission to the British Virgin Islands at an appropriate time should be kept under review;

11. *Requests* the Special Committee to continue the examination of this question at its next session, including the possible dispatch of a visiting mission to the British Virgin Islands at an appropriate time and in consultation with the administering Power, and to report thereon to the General Assembly at its forty-first session.

99th plenary meeting
2 December 1985

40/45. Question of the Cayman Islands

The General Assembly,

Having considered the question of the Cayman Islands,

Having examined the relevant chapters of the report of the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples,[14]

Recalling its resolution 1514 (XV) of 14 December 1960, containing the Declaration on the Granting of Independence to Colonial Countries and Peoples, and all other resolutions and decisions of the United Nations relating to the Cayman Islands, including in particular its resolution 39/35 of 5 December 1984,

Noting the stated position of the administering Power that it will fully respect the wishes of the people of the Cayman Islands in determining the future political status of the Territory,

Conscious of the need to ensure the full and speedy implementation of the Declaration in respect of the Territory,

Noting that although the main sectors of the economy of the Cayman Islands, specifically tourism, international finance and real estate, continued to sustain some degree of growth during the period under review, they have been negatively affected by the world economic crisis,

Aware of the special circumstances of the geographical location and economic conditions of the Cayman Islands, and bearing in mind the necessity of diversifying and strengthening further its economy as a matter of priority in order to promote economic stability,

Noting with appreciation the continued contribution of the United Nations Development Programme to the development of the Territory,

Recalling the dispatch in 1977 of a United Nations visiting mission to the Territory,

Mindful that United Nations visiting missions provide an effective means of ascertaining the situation in the small Territories, and expressing its satisfaction at the willingness of the administering Power to receive visiting missions in the Territories under its administration,

1. *Approves* the chapter of the report of the Special Committee on the Situation with regard to the Implemen-

[13] *Ibid.*, chap. XX.

[14] *Ibid.*, chaps. II, IV, V and XXI.

tation of the Declaration on the Granting of Independence to Colonial Countries and Peoples relating to the Cayman Islands;[15]

2. *Reaffirms* the inalienable right of the people of the Cayman Islands to self-determination and independence in conformity with the Declaration on the Granting of Independence to Colonial Countries and Peoples, contained in General Assembly resolution 1514 (XV);

3. *Reiterates* the view that such factors as territorial size, geographical location, size of population and limited natural resources should in no way delay the speedy exercise by the people of the Territory of their inalienable right to self-determination and independence in conformity with the Declaration, which fully applies to the Cayman Islands;

4. *Notes with appreciation* the participation of the United Kingdom of Great Britain and Northern Ireland, as the administering Power, in the work of the Special Committee in regard to the Cayman Islands, thereby enabling it to conduct a more informed and meaningful examination of the situation in the Territory, with a view to accelerating the process of decolonization for the purpose of the full implementation of the Declaration;

5. *Reiterates* that it is the responsibility of the administering Power to create such conditions in the Cayman Islands as will enable the people of the Territory to exercise freely and without interference their inalienable right to self-determination and independence in accordance with resolution 1514 (XV), as well as all other relevant resolutions of the General Assembly;

6. *Reaffirms* that it is ultimately for the people of the Cayman Islands themselves to determine their future political status in accordance with the relevant provisions of the Charter of the United Nations and the Declaration, and, in that connection, reaffirms the importance of fostering an awareness among the people of the Territory of the possibilities open to them in the exercise of their right to self-determination and independence;

7. *Reaffirms* the responsibility of the administering Power to promote the economic and social development of the Territory, and urges it, in co-operation with the territorial Government, to render continuing support, to the fullest extent possible, to the development of programmes of economic diversification which will benefit the people of the Territory;

8. *Takes note* of the statement of the administering Power to the effect that, despite the poor quality of the soil in the Territory, a study conducted by the territorial Government in 1984 revealed some possibilities in the field of poultry, agricultural and pastoral farming;[16]

9. *Urges* the administering Power, in co-operation with the territorial Government, to safeguard the inalienable right of the people of the Territory to the enjoyment of their natural resources by taking effective measures to ensure their right to own and dispose of those resources and to establish and maintain control of their future development;

10. *Calls upon* the specialized agencies and other organizations of the United Nations system, as well as regional institutions such as the Caribbean Development Bank, to continue to take all necessary measures to accelerate progress in the social and economic life of the Cayman Islands;

11. *Notes with appreciation* the continued contribution of the United Nations Development Programme to the development of the Territory;

12. *Considers* that the possibility of sending a further visiting mission to the Cayman Islands at an appropriate time should be kept under review;

13. *Requests* the Special Committee to continue the examination of this question at its next session, including the possible dispatch of a visiting mission to the Cayman Islands at an appropriate time and in consultation with the administering Power, and to report thereon to the General Assembly at its forty-first session.

99th plenary meeting
2 December 1985

[15] *Ibid.*, chap. XXI.
[16] *Ibid.*, para. 9.

40/46. Question of Montserrat

The General Assembly,

Having considered the question of Montserrat,

Having examined the relevant chapters of the report of the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples,[17]

Recalling its resolution 1514 (XV) of 14 December 1960, containing the Declaration on the Granting of Independence to Colonial Countries and Peoples, and all other resolutions and decisions of the United Nations relating to Montserrat, including in particular its resolution 39/36 of 5 December 1984,

Noting the stated position of the administering Power that it will respect the wishes of the people of Montserrat in determining the future political status of the Territory,

Noting the view of the Government of Montserrat that independence was inevitable and desirable and, in that connection, that the territorial Government would prepare programmes of political education by which to increase the people's awareness of the benefits of independence,

Noting with concern that during the period under review the international economic crisis continued to have an adverse effect on the territorial economy and resulted in zero growth in the gross domestic product and a reduction in the rate of growth of employment and incomes,

Welcoming the fact that an increasing number of people from the Territory are being employed in the civil service, particularly at the higher echelon, including the appointment of a national as Chief Medical Officer, and noting the recommendations for salary increases made by the Salaries Commission on public service salaries and conditions,

Welcoming also the contribution to the development of Montserrat by the United Nations Development Programme, the United Nations Children's Fund, specialized agencies and other organizations of the United Nations system operating in the Territory, and noting the continued participation of the Territory in the Caribbean Group for Co-operation in Economic Development, as well as in regional organizations such as the Caribbean Community and its associated institutions, including the Caribbean Development Bank,

Aware of the special circumstances of the geographical location and economic conditions of Montserrat, and bearing in mind the necessity of diversifying and strengthening further its economy as a matter of priority in order to promote economic stability,

Recalling the dispatch in 1975 and 1982 of United Nations visiting missions to the Territory,

Mindful that visiting missions provide an effective means of ascertaining the situation in the small Territories, and expressing its satisfaction at the willingness of

[17] *Ibid., Supplement No. 23 (A/40/23), chaps. II, IV, V and XXII.*

the administering Power to receive visiting missions in the Territories under its administration,

1. *Approves* the chapter of the report of the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples relating to Montserrat;[18]

2. *Reaffirms* the inalienable right of the people of Montserrat to self-determination and independence in conformity with the Declaration on the Granting of Independence to Colonial Countries and Peoples, contained in General Assembly resolution 1514 (XV);

3. *Reiterates* the view that such factors as territorial size, geographical location, size of population and limited natural resources should in no way delay the speedy exercise by the people of the Territory of their inalienable right to self-determination and independence in conformity with the Declaration, which fully applies to Montserrat;

4. *Notes with appreciation* the continued participation of the United Kingdom of Great Britain and Northern Ireland, as the administering Power, in the work of the Special Committee in regard to Montserrat, thereby enabling it to conduct a more informed and meaningful examination of the situation in the Territory with a view to accelerating the process of decolonization for the purpose of the full implementation of the Declaration;

5. *Reiterates* that it is the responsibility of the administering Power to create such conditions in Montserrat as will enable its people to exercise freely and without interference, from a well-informed standpoint as to the available options, their inalienable right to self-determination and independence in accordance with resolution 1514 (XV), as well as all other relevant resolutions of the General Assembly;

6. *Reaffirms* that it is ultimately for the people of Montserrat themselves to determine their future political status in accordance with the relevant provisions of the Charter of the United Nations and the Declaration, and reiterates its call upon the administering Power, in co-operation with the territorial Government, to launch programmes to foster an awareness among the people of the Territory of the possibilities available to them in the exercise of their right to self-determination and independence;

7. *Reaffirms* the responsibility of the administering Power to promote the economic and social development of Montserrat and, in co-operation with the territorial Government, to continue to strengthen the economy and to increase its assistance to programmes of diversification in order to promote the economic and financial viability of the Territory;

8. *Urges* the administering Power to take the necessary measures in co-operation with the territorial Government to restore sustained and balanced growth to the economy of Montserrat and to intensify its assistance in the development of all sectors thereof, which will benefit the people of the Territory;

9. *Also urges* the administering Power, in co-operation with the territorial Government, to take effective measures to safeguard, guarantee and ensure the rights of the people of Montserrat to own and dispose of their natural resources and to establish and maintain control of their future development;

10. *Urges* the administering Power to continue, in co-operation with the territorial Government, the assistance necessary for the employment of the local population in the civil service, particularly at senior levels;

11. *Calls upon* the United Nations system of organizations, as well as donor Governments and regional organizations, to intensify their efforts to accelerate progress in the economic and social life of the Territory;

12. *Considers* that the possibility of sending a further visiting mission to Montserrat at an appropriate time should be kept under review;

13. *Requests* the Special Committee to continue the examination of this question at its next session, including the possible dispatch of a further visiting mission to Montserrat at an appropriate time and in consultation with the administering Power, and to report thereon to the General Assembly at its forty-first session.

99th plenary meeting
2 December 1985

40/47. Question of the Turks and Caicos Islands

The General Assembly,

Having considered the question of the Turks and Caicos Islands,

Having examined the relevant chapters of the report of the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples,[19]

Recalling its resolution 1514 (XV) of 14 December 1960, containing the Declaration on the Granting of Independence to Colonial Countries and Peoples, and all other resolutions and decisions of the United Nations relating to the Turks and Caicos Islands, including in particular its resolution 39/37 of 5 December 1984,

Noting the stated position of the administering Power that it will fully respect the wishes of the people of the Turks and Caicos Islands in determining the future constitutional status of the Territory, and bearing in mind the importance of fostering an awareness among the people of the Territory of the possibilities open to them,

Conscious of the need to ensure the full and speedy implementation of the Declaration in respect of the Territory,

Noting with appreciation the participation of the administering Power in the work of the Special Committee in regard to the Turks and Caicos Islands, thereby enabling it to conduct a more informed and meaningful examination of the situation in the Territory,

Aware of the special circumstances of the geographical location and economic conditions of the Turks and Caicos Islands, and bearing in mind the necessity of diversifying and strengthening further its economy as a matter of priority in order to promote economic stability and to develop a wider economic base for the Territory,

Noting the statement of the administering Power that an experimental farm has been set up on North Caicos to study agricultural techniques,

Welcoming the continuing contribution of the United Nations Development Programme to the development of the Territory,

Recalling the dispatch in 1980 of two United Nations visiting missions to the Territory,

Mindful that United Nations visiting missions provide an effective means of ascertaining the situation in the small Territories, and expressing its satisfaction at the willingness of the administering Power to receive visiting missions in the Territories under its administration,

[18] *Ibid.*, chap. XXII.

[19] *Ibid.*, chaps. II, IV-VI and XXIII.

1. *Approves* the chapter of the report of the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples relating to the Turks and Caicos Islands;[20]

2. *Reaffirms* the inalienable right of the people of the Turks and Caicos Islands to self-determination and independence in conformity with the Declaration on the Granting of Independence to Colonial Countries and Peoples, contained in General Assembly resolution 1514 (XV);

3. *Reiterates* the view that such factors as territorial size, geographical location, size of population and limited natural resources should in no way delay the speedy exercise by the people of the Territory of their inalienable right to self-determination and independence in conformity with the Declaration, which fully applies to the Turks and Caicos Islands;

4. *Reiterates* that it is the obligation of the United Kingdom of Great Britain and Northern Ireland, as the administering Power, to create such conditions in the Turks and Caicos Islands as will enable the people of the Territory to exercise freely and without interference their inalienable right to self-determination and independence in accordance with resolution 1514 (XV), as well as other relevant resolutions of the General Assembly;

5. *Reaffirms* that it is the responsibility of the administering Power under the Charter of the United Nations to develop its dependent Territories economically and socially, and urges the administering Power, in consultation with the territorial Government, to take the necessary measures to promote the economic and social development of the Turks and Caicos Islands and, in particular, to intensify and expand its programme of assistance in order to accelerate the development of the economic and social infrastructure of the Territory;

6. *Emphasizes* that greater attention should be paid to diversification of the economy, which will benefit the people of the Territory;

7. *Recalls* that it is the responsibility of the administering Power, in accordance with the wishes of the people of the Turks and Caicos Islands, to safeguard, guarantee and ensure the inalienable right of the people to the enjoyment of their natural resources by taking effective measures to guarantee their right to own and dispose of those natural resources and to establish and maintain control of their future development;

8. *Takes note* of the statement of the administering Power to the effect that the military facility in the Turks and Caicos Islands was closed in 1984, that the territorial Government now has complete control over the disposition of the land vacated by the base and that the land is now being used for various activities which are beneficial to the economy and the people of the Territory;[21]

9. *Urges* the specialized agencies and other organizations of the United Nations system, as well as such regional institutions as the Caribbean Development Bank, to continue to pay special attention to the development needs of the Turks and Caicos Islands;

10. *Requests* the administering Power, in consultation with the territorial Government, to continue to provide the assistance necessary for the training of qualified local personnel in the skills essential to the development of various sectors of the economy and the society of the Territory;

11. *Considers* that the possibility of sending a further visiting mission to the Turks and Caicos Islands at an appropriate time should be kept under review;

12. *Requests* the Special Committee to continue the examination of this question at its next session, including the possible dispatch of a further visiting mission to the Turks and Caicos Islands at an appropriate time and in consultation with the administering Power, and to report thereon to the General Assembly at its forty-first session.

99th plenary meeting
2 December 1985

40/48. Question of Anguilla

The General Assembly,

Having considered the question of Anguilla,

Having examined the relevant chapters of the report of the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples,[22]

Recalling its resolution 1514 (XV) of 14 December 1960, containing the Declaration on the Granting of Independence to Colonial Countries and Peoples, and all other resolutions and decisions of the United Nations relating to Anguilla, including in particular its resolution 39/39 of 5 December 1984,

Noting the stated position of the administering Power that it will respect the wishes of the people of Anguilla in determining the future political status of the Territory,

Conscious of the need to ensure the full and speedy implementation of the Declaration in respect of the Territory,

Noting with appreciation the continued participation of the administering Power in the work of the Special Committee in regard to Anguilla, thereby enabling it to conduct a more informed and meaningful examination of the situation in the Territory with a view to accelerating the process of decolonization for the purpose of the full implementation of the Declaration,

Reaffirming the responsibility of the administering Power to promote the economic and social development of the Territory,

Noting that during the period under review the economy of Anguilla remained buoyant,

Noting that, as a result of a comprehensive review of the civil service and police force undertaken during 1984, salaries and allowances were increased,

Welcoming the contribution to the development of the Territory by the United Nations Development Programme, specialized agencies and other organizations of the United Nations system operating in Anguilla, and noting the separate illustrative indicative planning figure established for Anguilla by the Programme for the period 1982-1986,

Reiterating the view that the participation of Territories as associate members in organizations of the United Nations system is a part of the overall strategy of accelerating the decolonization process,

Aware of the special circumstances of the geographical location and economic conditions of Anguilla, and bearing in mind the necessity of diversifying and strengthening further its economy as a matter of priority in order to promote economic stability,

Recalling the dispatch in 1984 of a United Nations visiting mission to the Territory

[20] *Ibid.*, chap. XXIII.
[21] *Ibid.*, para. 9.
[22] *Ibid., Supplement No. 23* (A/40/23), chaps. II, IV and XXIV.

Mindful that United Nations visiting missions provide an effective means of ascertaining the situation in the small Territories, and expressing its satisfaction at the willingness of the administering Power to receive visiting missions in the Territories under its administration,

1. *Approves* the chapter of the report of the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples relating to Anguilla;[23]

2. *Reaffirms* the inalienable right of the people of Anguilla to self-determination and independence in conformity with the Declaration on the Granting of Independence to Colonial Countries and Peoples, contained in General Assembly resolution 1514 (XV);

3. *Reiterates* the view that such factors as territorial size, geographical location, size of population and limited natural resources should in no way delay the speedy exercise by the people of the Territory of their inalienable right to self-determination and independence in conformity with the Declaration, which fully applies to Anguilla;

4. *Reiterates* that it is the responsibility of the United Kingdom of Great Britain and Northern Ireland, as the administering Power, to create such conditions in Anguilla as will enable its people to exercise freely and without interference, from a well-informed standpoint as to the available options, their inalienable right to self-determination and independence in accordance with resolution 1514 (XV), as well as all other relevant resolutions of the General Assembly;

5. *Reaffirms* that it is ultimately for the people of Anguilla themselves to determine their future political status in accordance with the relevant provisions of the Charter of the United Nations and the Declaration, and, in that connection, reaffirms the importance of fostering an awareness among the people of the Territory of the possibilities open to them in the exercise of their right to self-determination and independence;

6. *Calls upon* the administering Power to continue, in co-operation with the territorial Government, to strengthen the economy of Anguilla and to increase its assistance to programmes of diversification;

7. *Notes* that, although the Territory was no longer in need of a grant from the administering Power to balance its recurrent budget for 1984, the Government of the United Kingdom agreed to provide a special grant to clear the deficit accumulated between 1977 and 1983;

8. *Urges* the administering Power to take effective measures, in co-operation with the territorial Government, to safeguard, guarantee and ensure the rights of the people of Anguilla to own and dispose of their natural resources and to establish and maintain control over their future development;

9. *Urges* the administering Power to continue, in co-operation with the territorial Government, the assistance necessary for the increased employment of the local population in the civil service, particularly at senior levels;

10. *Reiterates its request* to the administering Power, in the light of the observations, conclusions and recommendations of the United Nations Visiting Mission to Anguilla, 1984,[24] to continue to enlist the assistance of the specialized agencies and other organizations of the United Nations system, as well as other regional and international bodies, in the development and strengthening of the economy of Anguilla;

11. *Calls upon* the administering Power to continue to facilitate the participation of Anguilla in the Economic Commission for Latin America and the Caribbean and its subsidiary body, the Caribbean Development and Co-operation Committee, and in other organizations of the United Nations system, including the Caribbean Group for Co-operation in Economic Development;

12. *Considers that the possibility of sending a further* visiting mission to Anguilla at an appropriate time should be kept under review;

13. *Requests* the Special Committee to continue the examination of this question at its next session, including the possible dispatch of a further visiting mission to Anguilla at an appropriate time and in consultation with the administering Power, and to report thereon to the General Assembly at its forty-first session.

99th plenary meeting
2 December 1985

40/49. Question of the United States Virgin Islands

The General Assembly,

Having considered the question of the United States Virgin Islands,

Having examined the relevant chapters of the report of the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples,[25]

Recalling its resolution 1514 (XV) of 14 December 1960, containing the Declaration on the Granting of Independence to Colonial Countries and Peoples, and all other resolutions and decisions of the United Nations relating to the United States Virgin Islands, including in particular its resolution 39/38 of 5 December 1984,

Noting with appreciation the continued active participation of the administering Power and the representative of the territorial Government in the work of the Special Committee in regard to the United States Virgin Islands, thereby enabling it to conduct a more informed and meaningful examination of the situation in the Territory with a view to accelerating the process of decolonization for the purpose of the full implementation of the Declaration,

Taking into account the statement of the representative of the administering Power that the Territory of the United States Virgin Islands enjoys a large measure of self-government through its elected representatives, namely, the Governor, members of the Legislature and the Territory's non-voting delegate to the United States House of Representatives, and noting the recent general elections in the Territory,

Noting with concern that the economy of the Territory was, as described by the Governor, "temporarily depressed", particularly in the tourist, construction and industrial sectors, as well as in the delivery of government services, and noting that the Territory's industrial development programme would suffer a setback as a result of the announced plan of Martin Marietta Alumina, Inc. for the closure of its aluminium plant in the Territory in 1985,

Welcoming the continued participation of the United States Virgin Islands, as an associate member, in the work of the Economic Commission for Latin America and the Caribbean and its subsidiary bodies, including the Caribbean Development and Co-operation Committee, and noting the participation of a representative of the Territory as a member of the delegation of the administering Power at annual meetings of the Caribbean Group for Co-operation in Economic Development since 1982,

[23] *Ibid.*, chap. XXIV.
[24] A/AC.109/799, sect. IV.

[25] *Official Records of the General Assembly, Fortieth Session, Supplement No. 23 (A/40/23), chaps. II, IV-VI and XXV.*

Noting with satisfaction the statement of the administering Power that it endorsed the policy that representatives of the Territory should participate in forums in which the Territory was the subject of discussion,

Aware of the special circumstances of the geographical location and economic conditions of the United States Virgin Islands, and bearing in mind the necessity of diversifying and strengthening further its economy as a matter of priority in order to promote economic stability,

Recalling the dispatch in 1977 of a United Nations visiting mission to the Territory,

Mindful that United Nations visiting missions provide an effective means of ascertaining the situation in the small Territories, and expressing its satisfaction at the willingness of the administering Power to receive visiting missions in the Territories under its administration,

1. *Approves* the chapter of the report of the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples relating to the United States Virgin Islands;[26]

2. *Reaffirms* the inalienable right of the people of the United States Virgin Islands to self-determination and independence in conformity with the Declaration on the Granting of Independence to Colonial Countries and Peoples, contained in General Assembly resolution 1514 (XV);

3. *Reiterates* the view that such factors as territorial size, geographical location, size of population and limited natural resources should in no way delay the speedy exercise by the people of the Territory of their inalienable right to self-determination and independence in conformity with the Declaration, which fully applies to the United States Virgin Islands;

4. *Reiterates* that it is the responsibility of the administering Power to create such conditions in the United States Virgin Islands as will enable the people of the Territory to exercise freely and without interference their inalienable right to self-determination and independence in conformity with resolution 1514 (XV), as well as all other relevant resolutions of the General Assembly;

5. *Reaffirms* that it is ultimately for the people of the United States Virgin Islands themselves to determine their future political status in accordance with the relevant provisions of the Charter of the United Nations and the Declaration, and, in that connection, reaffirms the importance of fostering an awareness among the people of the Territory of the possibilities open to them in the exercise of their right to self-determination;

6. *Notes* that the Select Committee, established by the Legislature of the United States Virgin Islands in 1983 to ascertain the views of the people of the Territory on their future status and to make recommendations in that regard, conducted public hearings from March to August 1984 and submitted its report to the Sixteenth Legislature in January 1985;[27]

7. *Also notes* that the Legislature endorsed the report, which included, *inter alia*, a recommendation that a referendum on the status issue should be held on 4 November 1986, in conjunction with the next general election, for people of the United States Virgin Islands to choose between a variety of status options including independence, statehood, free association, incorporated territory, *status quo* or a compact of federal relations;[27]

8. *Further notes* that the Legislature decided to appoint a new committee to continue the process of public hearings in order to ensure that the people of the United States Virgin Islands were fully aware of the implications of the various status options by the time of the referendum;[27]

9. *Urges* the administering Power, in co-operation with the territorial Government, to strengthen the economy of the Territory by taking additional measures of diversification in all fields and developing an adequate infrastructure with a view to reducing the economic dependence of the Territory on the administering Power;

10. *Reaffirms* the responsibility of the administering Power under the Charter to promote the economic and social development of the United States Virgin Islands;

11. *Urges* the administering Power, in co-operation with the Government of the United States Virgin Islands, to safeguard the inalienable right of the people of the Territory to the enjoyment of their natural resources by taking effective measures to guarantee their right to own and dispose of those resources and to establish and maintain control of their future development;

12. *Urges* the administering Power to seek in the Caribbean Group for Co-operation in Economic Development a status for the territorial Government similar to that of other dependent Territories within the Group;

13. *Calls upon* the administering Power to facilitate further the participation of the United States Virgin Islands in various regional intergovernmental bodies and organizations, particularly in their central organs, and in other organizations of the United Nations system;

14. *Urges* the administering Power to continue to take all necessary measures to comply fully with the purposes and principles of the Charter, the Declaration and the relevant resolutions and decisions of the General Assembly relating to military activities and arrangements by colonial Powers in Territories under their administration;

15. *Considers* that the possibility of sending a further visiting mission to the United States Virgin Islands at an appropriate time should be kept under review;

16. *Requests* the Special Committee to continue the examination of this question at its next session, including the possible dispatch of a further visiting mission to the United States Virgin Islands at an appropriate time and in consultation with the administering Power, and to report thereon to the General Assembly at its forty-first session.

99th plenary meeting
2 December 1985

[26] *Ibid.*, chap. XXV.
[27] *Ibid.*, para. 10.

40/50. Question of Western Sahara

The General Assembly,

Having considered in depth the question of Western Sahara,

Recalling the inalienable right of all peoples to self-determination and independence, in accordance with the principles set forth in the Charter of the United Nations and in General Assembly resolution 1514 (XV) of 14 December 1960 containing the Declaration on the Granting of Independence to Colonial Countries and Peoples,

Recalling its resolution 39/40 of 5 December 1984 on the question of Western Sahara,

Having examined the relevant chapter of the report of the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples,[28]

Taking note of the report of the Secretary-General on the question of Western Sahara,[29]

[28] *Ibid., Supplement No. 23* (A/40/23), chap. X.
[29] A/40/692 and Corr.1.

Recalling resolution AHG/Res.104 (XIX) on Western Sahara,[30] adopted by the Assembly of Heads of State and Government of the Organization of African Unity at its nineteenth ordinary session, held at Addis Ababa from 6 to 12 June 1983,

1. *Reaffirms that the question of Western Sahara is a* question of decolonization which remains to be completed on the basis of the exercise by the people of Western Sahara of their inalienable right to self-determination and independence;

2. *Reaffirms also* that the solution of the question of Western Sahara lies in the implementation of resolution AHG/Res.104 (XIX) of the Assembly of Heads of State and Government of the Organization of African Unity, which establishes ways and means for a just and definitive political solution to the Western Sahara conflict;

3. *Again requests*, to that end, the two parties to the conflict, the Kingdom of Morocco and the Frente Popular *para la Liberación de Saguia el-Hamra y de Río de Oro*, to undertake direct negotiations, in the shortest possible time, with a view to bringing about a cease-fire to create the necessary conditions for a peaceful and fair referendum for self-determination of the people of Western Sahara, a referendum without any administrative or military constraints, under the auspices of the Organization of African Unity and the United Nations;

4. *Welcomes* the efforts of the current Chairman of the Assembly of Heads of State and Government of the Organization of African Unity and the Secretary-General of the United Nations to promote a just and definitive solution of the question of Western Sahara;

5. *Invites the current Chairman of the Assembly of* Heads of State and Government of the Organization of African Unity and the Secretary-General of the United Nations to exert every effort to persuade the two parties to the conflict, the Kingdom of Morocco and the Frente Popular para la Liberación de Saguia el-Hamra y de Río de Oro, to negotiate, in the shortest possible time and in conformity with resolution AHG/Res.104 (XIX) and the present resolution, the terms of a cease-fire and the modalities for organizing the said referendum;

6. *Reaffirms* the determination of the United Nations to co-operate fully with the Organization of African Unity with a view to implementing the relevant decisions of that organization, in particular resolution AHG/Res.104 (XIX);

7. *Requests* the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples to continue to consider the situation in Western Sahara as a matter of priority and to report thereon to the General Assembly at its forty-first session;

8. *Invites* the Secretary-General of the Organization of African Unity to keep the Secretary-General of the United Nations informed of the progress achieved in the implementation of the decisions of the Organization of African Unity relating to Western Sahara;

9. *Invites* the Secretary-General to follow the situation in Western Sahara closely with a view to the implementation of the present resolution and to report thereon to the General Assembly at its forty-first session.

99th plenary meeting
2 December 1985

[30] For the text, see resolution 38/40, para. 1.
[31] *Official Records of the General Assembly, Fortieth Session, Supplement No. 23* (A/40/23), chap. VIII.

40/51. Information from Non-Self-Governing Territories transmitted under Article 73 *e* of the Charter of the United Nations

The General Assembly,

Having examined the chapter of the report of the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples relating to the information from Non-Self-Governing Territories transmitted under Article 73 *e* of the Charter of the United Nations[31] and the action taken by the Committee in respect of that information,

Having also examined the report of the Secretary-General on the question,[32]

Recalling its resolution 1970 (XVIII) of 16 December 1963, in which it requested the Special Committee to study the information transmitted to the Secretary-General in accordance with Article 73 *e* of the Charter and to take such information fully into account in examining the situation with regard to the implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples, contained in General Assembly resolution 1514 (XV) of 14 December 1960,

Recalling also its resolution 39/41 of 5 December 1984, in which it requested the Special Committee to continue to discharge the functions entrusted to it under resolution 1970 (XVIII),

1. *Approves* the chapter of the report of the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples relating to the information from Non-Self-Governing Territories transmitted under Article 73 *e* of the Charter of the United Nations;

2. *Reaffirms* that, in the absence of a decision by the General Assembly itself that a Non-Self-Governing Territory has attained a full measure of self-government in terms of Chapter XI of the Charter, the administering Power concerned should continue to transmit information under Article 73 *e* of the Charter with respect to that Territory;

3. *Requests* the administering Powers concerned to transmit, or continue to transmit, to the Secretary-General the information prescribed in Article 73 *e* of the Charter, as well as the fullest possible information on political and constitutional developments in the Territories concerned, within a maximum period of six months following the expiration of the administrative year in those Territories;

4. *Requests* the Special Committee to continue to discharge the functions entrusted to it under General Assembly resolution 1970 (XVIII), in accordance with established procedures, and to report thereon to the Assembly at its forty-first session.

99th plenary meeting
2 December 1985

40/52. Activities of foreign economic and other interests which are impeding the implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples in Namibia and in all other Territories under colonial domination and efforts to eliminate colonialism, apartheid and racial discrimination in southern Africa

The General Assembly,

Having considered the item entitled "Activities of foreign economic and other interests which are impeding the

[32] A/40/629.

implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples in Namibia and in all other Territories under colonial domination and efforts to eliminate colonialism, *apartheid* and racial discrimination in southern Africa",

Having examined the chapter of the report of the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples relating to the item,[33]

Taking into consideration the relevant chapters of the report of the United Nations Council for Namibia,[34]

Recalling its resolutions 1514 (XV) of 14 December 1960, containing the Declaration on the Granting of Independence to Colonial Countries and Peoples, 2621 (XXV) of 12 October 1970, containing the programme of action for the full implementation of the Declaration, and 35/118 of 11 December 1980, the annex to which contains the Plan of Action for the Full Implementation of the Declaration, as well as all other resolutions of the United Nations relating to the item,

Reaffirming the solemn obligation of the administering Powers under the Charter of the United Nations to promote the political, economic, social and educational advancement of the inhabitants of the Territories under their administration and to protect the human and natural resources of those Territories against abuses,

Reaffirming that any economic or other activity which impedes the implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples and obstructs efforts aimed at the elimination of colonialism, *apartheid* and racial discrimination in southern Africa and other colonial Territories is in direct violation of the rights of the inhabitants and of the principles of the Charter and all relevant resolutions of the United Nations,

Reaffirming that the natural resources of all Territories under colonial and racist domination are the heritage of the peoples of those Territories and that the exploitation and depletion of those resources by foreign economic interests, in particular in Namibia, in association with the occupying régime of South Africa, constitute a direct violation of the rights of the peoples and of the principles of the Charter and all relevant resolutions of the United Nations,

Recalling the relevant provisions of the consensus on Namibia adopted by the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples at its extraordinary session held at Tunis from 13 to 17 May 1985,[35]

Bearing in mind the relevant provisions of the Economic Declaration and other documents of the Seventh Conference of Heads of State or Government of Non-Aligned Countries, held at New Delhi from 7 to 12 March 1983,[36] and of the Final Document of the Extraordinary Ministerial Meeting of the Co-ordinating Bureau of Non-Aligned Countries on the question of Namibia, held at New Delhi from 19 to 21 April 1985,[37]

Taking into account the relevant provisions of the Declaration and Programme of Action contained in the Final Document adopted by the United Nations Council for Namibia at its extraordinary plenary meetings held at Vienna from 3 to 7 June 1985,[38]

Noting with profound concern that the colonial Powers and certain States, through their activities in the colonial Territories, have continued to disregard United Nations decisions relating to the item and that they have failed to implement, in particular, the relevant provisions of General Assembly resolutions 2621 (XXV) of 12 October 1970 and 39/42 of 5 December 1984, by which the Assembly called upon the colonial Powers and those Governments that had not yet done so to take legislative, administrative or other measures in respect of their nationals and the bodies corporate under their jurisdiction that own and operate enterprises in colonial Territories, particularly in Africa, which are detrimental to the interests of the inhabitants of those Territories, in order to put an end to such enterprises and to prevent new investments that run counter to the interests of the inhabitants of those Territories,

Condemning the intensified activities of those foreign economic, financial and other interests which continue to exploit the natural and human resources of the colonial Territories and to accumulate and repatriate huge profits to the detriment of the interests of the inhabitants, particularly in the case of Namibia, thereby impeding the realization by the peoples of the Territories of their legitimate aspirations for self-determination and independence,

Strongly condemning the support which the racist minority régime of South Africa continues to receive from those foreign economic, financial and other interests which are collaborating with the régime in the exploitation of the natural and human resources of the international Territory of Namibia, in the further entrenchment of its illegal racist domination over the Territory and in the strengthening of its system of *apartheid*,

Strongly condemning the investment of foreign capital in the production of uranium and the collaboration by certain Western and other countries with the racist minority régime of South Africa in the nuclear field which, by providing that régime with nuclear equipment and technology, enables it to develop nuclear and military capabilities and to become a nuclear Power, thereby promoting South Africa's continued illegal occupation of Namibia,

Reaffirming that the natural resources of Namibia, including its marine resources, are the inviolable and incontestable heritage of the Namibian people and that the exploitation of those resources by foreign economic interests under the protection of the illegal colonial administration, in violation of the Charter, of the relevant resolutions of the General Assembly and the Security Council and of Decree No. 1 for the Protection of the Natural Resources of Namibia,[39] enacted by the United Nations Council for Namibia on 27 September 1974, and in disregard of the advisory opinion of the International Court of Justice of 21 June 1971,[40] is illegal, contributes to the maintenance of the illegal occupation régime and is a grave threat to the integrity and prosperity of an independent Namibia,

Concerned about the conditions in other colonial Territories, including certain Territories in the Caribbean and the Pacific Ocean regions, where foreign economic, financial and other interests continue to deprive the indigenous populations of their rights over the wealth of their countries, and where the inhabitants of those Territories

[33] *Official Records of the General Assembly, Fortieth Session, Supplement No. 23* (A/40/23), chap. V.
[34] *Ibid., Supplement No. 24* (A/40/24), part two, chap. II, sect. C, and chap. IX, sect. C.
[35] *Ibid., Supplement No. 23* (A/40/23), chap. IX, para. 12.
[36] A/38/132-S/15675 and Corr.1 and 2, annex.
[37] A/40/307-S/17184 and Corr.1, annex.
[38] See *Official Records of the General Assembly, Fortieth Session, Supplement No. 24* (A/40/24), para. 513.
[39] *Ibid., Thirty-fifth Session, Supplement No. 24* (A/35/24), vol. I, annex II.
[40] *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), Advisory Opinion, I.C.J. Reports, 1971*, p. 16.

continue to suffer from a loss of land ownership as a result of the failure of the administering Powers concerned to restrict the sale of land to foreigners, despite the repeated appeals of the General Assembly,

Conscious of the continuing need to mobilize world public opinion against the involvement of foreign economic, financial and other interests in the exploitation of natural and human resources, which impedes the independence of colonial Territories and the elimination of racism, particularly in southern Africa, and emphasizing the importance of action by local authorities, trade unions, religious bodies, academic institutions, mass media, solidarity movements and other non-governmental organizations, as well as individuals, in exercising pressure on transnational corporations to refrain from any investment or activity in the Territory of Namibia, in encouraging a policy of systematic divestment of any financial or other interest in corporations doing business with South Africa and in counteracting all forms of collaboration with the occupation régime in Namibia,

1. *Reaffirms* the inalienable right of the peoples of dependent Territories to self-determination and independence and to the enjoyment of the natural resources of their Territories, as well as their right to dispose of those resources in their best interests;

2. *Reiterates* that any administering or occupying Power that deprives the colonial peoples of the exercise of their legitimate rights over their natural resources or subordinates the rights and interests of those peoples to foreign economic and financial interests violates the solemn obligations it has assumed under the Charter of the United Nations;

3. *Reaffirms* that, by their depletive exploitation of natural resources, the continued accumulation and repatriation of huge profits and the use of those profits for the enrichment of foreign settlers and the perpetuation of colonial domination and racial discrimination in the Territories, the activities of foreign economic, financial and other interests operating at present in the colonial Territories, particularly in southern Africa, constitute a major obstacle to political independence and racial equality, as well as to the enjoyment of the natural resources of those Territories by the indigenous inhabitants;

4. *Condemns* the activities of foreign economic and other interests in the colonial Territories impeding the implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples, contained in General Assembly resolution 1514 (XV), and the efforts to eliminate colonialism, *apartheid* and racial discrimination;

5. *Condemns* the policies of Governments that continue to support or collaborate with those foreign economic and other interests engaged in exploiting the natural and human resources of the Territories, including, in particular, illegally exploiting Namibia's marine resources, violating the political, economic and social rights and interests of the indigenous peoples and thus obstructing the full and speedy implementation of the Declaration in respect of those Territories;

6. *Strongly condemns* the collusion of the Governments of certain Western and other countries with the racist minority régime of South Africa in the nuclear field, and calls upon those and all other Governments to refrain from supplying that régime, directly or indirectly, with installations that might enable it to produce uranium, plutonium and other nuclear materials, reactors or military equipment;

7. *Requests* the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples to continue to monitor closely the situation in the remaining colonial Territories so as to ensure that all economic activities in those Territories are aimed at strengthening and diversifying their economies in the interests of the indigenous peoples, at promoting the economic and financial viability of those Territories and at speeding their accession to independence, and, in that connection, requests the administering Powers concerned to ensure that the peoples of the Territories under their administration are not exploited for political, military and other purposes detrimental to their interests;

8. *Strongly condemns* those Western and all other countries, as well as the transnational corporations, which continue their investments in, and supply of armaments and oil and nuclear technology to, the racist régime of South Africa, thus buttressing it and aggravating the threat to world peace;

9. *Calls upon* all States, in particular certain Western States, to take urgent, effective measures to terminate all collaboration with the racist régime of South Africa in the political, diplomatic, economic, trade, military and nuclear fields and to refrain from entering into other relations with that régime in violation of the relevant resolutions of the United Nations and of the Organization of African Unity;

10. *Calls once again upon* all Governments that have not yet done so to take legislative, administrative or other measures in respect of their nationals and the bodies corporate under their jurisdiction that own and operate enterprises in colonial Territories, particularly in Africa, which are detrimental to the interests of the inhabitants of those Territories, in order to put an end to such enterprises and to prevent new investments that run counter to the interests of the inhabitants of those Territories;

11. *Calls upon* all States to terminate, or cause to have terminated, any investments in Namibia or loans to the racist minority régime of South Africa and to refrain from any agreements or measures to promote trade or other economic relations with that régime;

12. *Requests* all States that have not yet done so to take effective measures to end the supply of funds and other forms of assistance, including military supplies and equipment, to the racist minority régime of South Africa, which uses such assistance to repress the people of Namibia and their national liberation movement;

13. *Strongly condemns* South Africa for its continued exploitation and plundering of the natural resources of Namibia, leading to the rapid depletion of such resources, in complete disregard of the legitimate interests of the Namibian people, for the creation in the Territory of an economic structure dependent essentially upon its mineral resources and for its illegal extension of the territorial sea and its proclamation of an economic zone off the coast of Namibia;

14. *Declares* that all activities of foreign economic interests in Namibia are illegal under international law and that consequently South Africa and all the foreign economic interests operating in Namibia are liable to pay damages to the future lawful Government of an independent Namibia;

15. *Calls upon* those oil-producing and oil-exporting countries that have not yet done so to take effective measures against the oil companies concerned so as to terminate the supply of crude oil and petroleum products to the racist régime of South Africa;

16. *Reiterates* that the exploitation and plundering of the marine and other natural resources of Namibia by South African and other foreign economic interests, inclu-

ding the activities of those transnational corporations which are engaged in the exploitation and export of the Territory's uranium ores and other resources, in violation of the relevant resolutions of the General Assembly and the Security Council and of Decree No. 1 for the Protection of the Natural Resources of Namibia, are illegal, contribute to the maintenance of the illegal occupation régime and are a grave threat to the integrity and prosperity of an independent Namibia;

17. *Condemns* the plunder of Namibian uranium, and calls upon the Governments of all States, particularly those whose nationals and corporations are involved in the mining or enrichment of, or traffic in, Namibian uranium, to take all appropriate measures in compliance with the provisions of Decree No. 1 for the Protection of the Natural Resources of Namibia, including the practice of requiring negative certificates of origin, to prohibit and prevent State-owned and other corporations, together with their subsidiaries, from dealing in Namibian uranium and from engaging in uranium prospecting activities in Namibia;

18. *Requests* the Governments of the Federal Republic of Germany, the Netherlands and the United Kingdom of Great Britain and Northern Ireland, which operate the Urenco uranium enrichment plant, to have Namibian uranium specifically excluded from the Treaty of Almelo,[41] which regulates the activities of Urenco;

19. *Requests all States to take legislative, administrative* and other measures, as appropriate, in order effectively to isolate South Africa politically, economically, militarily and culturally, in accordance with General Assembly resolutions ES-8/2 of 14 September 1981, 36/121 B of 10 December 1981, 37/233 A of 20 December 1982, 38/36 A of 1 December 1983 and 39/50 A of 12 December 1984;

20. *Calls once again upon* all States to discontinue all economic, financial and trade relations with the racist minority régime of South Africa concerning Namibia and to refrain from entering into any relations with South Africa, purporting to act on behalf of or concerning Namibia, which may lend support to its continued illegal occupation of that Territory;

21. *Invites* all Governments and organizations of the United Nations system, having regard to the relevant provisions of the Declaration on the Establishment of a New International Economic Order, contained in General Assembly resolution 3201 (S-VI) of 1 May 1974, and of the Charter of Economic Rights and Duties of States, contained in Assembly resolution 3281 (XXIX) of 12 December 1974, to ensure, in particular, that the permanent sovereignty of the colonial Territories over their natural resources is fully respected and safeguarded;

22. *Urges* the administering Powers concerned to take effective measures to safeguard and guarantee the inalienable right of the peoples of the colonial Territories to their natural resources and to establish and maintain control over their future development, and requests the administering Powers to take all necessary steps to protect the property rights of the peoples of those Territories;

23. *Calls upon* the administering Powers concerned to abolish all discriminatory and unjust wage systems and working conditions prevailing in the Territories under their administration and to apply in each Territory a uniform system of wages to all the inhabitants without any discrimination;

24. *Requests* the Secretary-General to undertake, through the Department of Public Information of the Secretariat, a sustained and broad campaign with a view to informing world public opinion of the facts concerning the pillaging of natural resources in colonial Territories and the exploitation of their indigenous populations by foreign monopolies and, in respect of Namibia, the support they render to the racist minority régime of South Africa;

25. *Appeals* to mass media, trade unions and other non-governmental organizations, as well as individuals, to co-ordinate and intensify their efforts to mobilize international public opinion against the policy of the *apartheid* régime of South Africa and to work for the enforcement of economic and other sanctions against that régime and for encouraging a policy of systematic divestment in corporations doing business in South Africa;

26. *Requests* the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples to continue to examine this question and to report thereon to the General Assembly at its forty-first session.

99th plenary meeting
2 December 1985

40/53. Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples by the specialized agencies and the international institutions associated with the United Nations

The General Assembly,

Having considered the item entitled "Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples by the specialized agencies and the international institutions associated with the United Nations",

Recalling the Declaration on the Granting of Independence to Colonial Countries and Peoples, contained in its resolution 1514 (XV) of 14 December 1960, and the Plan of Action for the Full Implementation of the Declaration, contained in the annex to its resolution 35/118 of 11 December 1980, as well as all other relevant resolutions adopted by the General Assembly on this subject, including in particular resolution 39/43 of 5 December 1984,

Having examined the reports submitted on the item by the Secretary-General,[42] the Economic and Social Council[43] and the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples,[44]

Recalling also its resolutions ES-8/2 of 14 September 1981 and 39/50 of 12 December 1984 on the question of Namibia,

Taking into account the relevant provisions of the Paris Declaration on Namibia and the Programme of Action on Namibia,[45] adopted at the International Conference in Support of the Struggle of the Namibian People for Independence, and the Declaration and Programme of Action contained in the Final Document adopted by the United Nations Council for Namibia at its extraordinary plenary meetings held at Vienna from 3 to 7 June 1985,[38]

Bearing in mind the relevant provisions of the Political Declaration adopted by the Seventh Conference of Heads of State or Government of Non-Aligned Countries, held at

[41] United Nations, *Treaty Series*, vol. 795, No. 11326, p. 308.

[42] A/40/318 and Add.1.

[43] *Official Records of the General Assembly, Fortieth Session, Supplement No. 3* (A/40/3/Rev.1), chaps. I and VI.

[44] *Ibid., Supplement No. 23* (A/40/23), chap. VII.

[45] See *Report of the International Conference in Support of the Struggle of the Namibian People for Independence, Paris, 25-29 April 1983* (A/CONF.120/13), part three.

New Delhi from 7 to 12 March 1983,[36] the Final Document of the Extraordinary Ministerial Meeting of the Co-ordinating Bureau of Non-Aligned Countries on the question of Namibia, held at New Delhi from 19 to 21 April 1985,[37] and other documents of the Co-ordinating Bureau,

Aware that the struggle of the people of Namibia for self-determination and independence is in its crucial stage and has sharply intensified as a consequence of the stepped-up aggression of the illegal colonialist régime of Pretoria against the people of the Territory and the increased general support rendered to that régime by certain Western countries, and the so-called policy of constructive engagement, coupled with efforts to deprive the Namibian people of their hard-won victories in the liberation struggle, and that it is therefore incumbent upon the entire international community decisively to intensify concerted action in support of the people of Namibia and their sole and authentic representative, the South West Africa People's Organization, for the attainment of their goal,

Concerned that the policy of "constructive engagement" with the *apartheid* régime of South Africa, linked with the economic and military collaboration maintained by some Western countries and Israel with Pretoria, has only encouraged and strengthened the racist régime in its continued illegal occupation and massive militarization and exploitation of Namibia in violation of the relevant resolutions and decisions of the United Nations,

Gravely concerned at the continued imperialist and neo-colonialist support for South Africa's oppressive and aggressive policies in Namibia and with respect to independent States in southern Africa, in particular the front-line States, as exemplified by the discussions and resolutions of the Security Council,

Conscious of the worsening of the situation in southern Africa because of South Africa's racist policies of oppression, aggression and occupation, which constitute a clear threat to world peace and security,

Deeply conscious of the continuing critical need of the Namibian people and their national liberation movement, the South West Africa People's Organization, and of the peoples of other colonial Territories for concrete assistance from the specialized agencies and other organizations of the United Nations system in their struggle for liberation from colonial rule and in their efforts to achieve and consolidate their national independence,

Deeply concerned that, although there has been progress in the extension of assistance to refugees from Namibia, the action taken hitherto by the organizations concerned in providing assistance to the people of the Territory through their national liberation movement, the South West Africa People's Organization, still remains inadequate to meet the urgent and growing needs of the Namibian people,

Reaffirming the responsibility of the specialized agencies and other organizations of the United Nations system to take all the necessary measures, within their respective spheres of competence, to ensure the full and speedy implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples and other relevant resolutions of the United Nations, particularly those relating to the provision of moral and material assistance, on a priority basis, to the peoples of the colonial Territories and their national liberation movements,

Expressing its firm belief that closer contacts and consultations between the specialized agencies and other organizations of the United Nations system on the one hand and the Organization of African Unity and the South West Africa People's Organization on the other will help those agencies and organizations to overcome procedural and other difficulties which have impeded or delayed the implementation of some assistance programmes,

Recalling its resolution 39/50 C of 12 December 1984 requesting all specialized agencies and other organizations and conferences of the United Nations system to grant full membership to the United Nations Council for Namibia as the legal Administering Authority for Namibia,

Expressing its appreciation to the General Secretariat of the Organization of African Unity for the continued co-operation and assistance it has extended to the specialized agencies and other organizations of the United Nations system in connection with the implementation of the relevant resolutions of the United Nations,

Expressing its appreciation also to the Governments of the front-line States for the steadfast support extended to the people of Namibia and their national liberation movement, the South West Africa People's Organization, in their just and legitimate struggle for the attainment of freedom and independence, despite increased armed attacks by the forces of the racist régime of South Africa, and aware of the particular needs of those Governments for assistance in that connection,

Commending the continued substantial contribution of the United Nations Educational, Scientific and Cultural Organization to the implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples and the effective support it provides to the liberation movements in educating the populations of colonial Territories concerning self-determination and independence,

Noting the support given by the specialized agencies and other organizations of the United Nations system to the implementation of the Nationhood Programme for Namibia, in accordance with General Assembly resolution 32/9 A of 4 November 1977,

Deploring the continued links with and assistance rendered to South Africa by certain specialized agencies in the financial, economic, technical and other fields in contravention of the relevant resolutions of the United Nations, thus enhancing neo-colonialist practices in the system of international relations,

Gravely concerned at the continued collaboration between the International Monetary Fund and the Government of South Africa in disregard of relevant General Assembly resolutions, in particular resolution 37/2 of 21 October 1982,

Mindful of the imperative need to keep under continuous review the activities of the specialized agencies and other organizations of the United Nations system in the implementation of the various United Nations decisions relating to decolonization,

Bearing in mind the importance of the activities of non-governmental organizations aimed at putting an end to the assistance which is still being rendered to South Africa by some specialized agencies, and taking into account the consultations held by the Special Committee with non-governmental organizations and the relevant conclusions and recommendations on the seminars held by the Special Committee with non-governmental organizations at Port Moresby from 4 to 7 March 1985 and at Havana from 8 to 10 April 1985,[44]

1. *Approves* the chapter of the report of the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence

[44] *Official Records of the General Assembly, Fortieth Session, Supplement No. 23* (A/40/23), chap. II, annex I.

to Colonial Countries and Peoples relating to the question;[47]

2. *Reaffirms* that the specialized agencies and other organizations and institutions of the United Nations system should continue to be guided by the relevant resolutions of the United Nations in their efforts to contribute, within their spheres of competence, to the full and speedy implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples, contained in General Assembly resolution 1514 (XV);

3. *Reaffirms also* that the recognition by the General Assembly, the Security Council and other United Nations organs of the legitimacy of the struggle of colonial peoples to exercise their right to self-determination and independence entails, as a corollary, the extension by the specialized agencies and other organizations of the United Nations system of all the necessary moral and material assistance to those peoples and their national liberation movements;

4. *Expresses its appreciation* to those specialized agencies and other organizations of the United Nations system which have continued to co-operate in varying degrees with the United Nations and the Organization of African Unity in the implementation of General Assembly resolution 1514 (XV) and other relevant resolutions of the United Nations, and urges all the specialized agencies and other organizations of the United Nations system to accelerate the full and speedy implementation of the relevant provisions of those resolutions;

5. *Expresses its concern* that the assistance extended thus far by certain specialized agencies and other organizations of the United Nations system to the colonial peoples, particularly the people of Namibia and their national liberation movement, the South West Africa People's Organization, is far from adequate in relation to the actual needs of the peoples concerned;

6. *Requests* all specialized agencies and other organizations and bodies of the United Nations system, in accordance with the relevant resolutions of the General Assembly and the Security Council, to take all necessary measures to withhold from the racist régime of South Africa any form of co-operation and assistance in the financial, economic, technical and other fields and to discontinue all support to that régime until the people of Namibia have exercised fully their inalienable right to self-determination, freedom and national independence in a united Namibia and until the inhuman system of *apartheid* has been totally eradicated;

7. *Reiterates its conviction* that the specialized agencies and other organizations and bodies of the United Nations system should refrain from taking any action which might imply recognition of, or support for, the legitimacy of the domination of the Territory of Namibia by the racist régime of South Africa;

8. *Regrets* that the World Bank and also the International Monetary Fund continue to maintain links with the racist régime of Pretoria, as exemplified by the continued participation of South Africa in the work of both agencies, and expresses the view that the two agencies should put an end to all links with the racist régime;

9. *Strongly condemns* the persistent collaboration between the International Monetary Fund and South Africa in disregard of repeated resolutions to the contrary by the General Assembly, and calls upon the International Monetary Fund to put an end to such collaboration and not to grant any new loans to the racist régime of South Africa;

10. *Urges once again* the executive heads of the World Bank and the International Monetary Fund to draw the particular attention of their governing bodies to the present resolution with a view to formulating specific programmes beneficial to the peoples of the colonial Territories, particularly Namibia;

11. *Requests* the specialized agencies and other organizations of the United Nations system to render or continue to render, as a matter of urgency, all possible moral and material assistance to the colonial peoples struggling for liberation from colonial rule, bearing in mind that such assistance should not only meet their immediate needs but also create conditions for development after they have exercised their right to self-determination and independence;

12. *Requests once again* the specialized agencies and other organizations of the United Nations system to continue to provide all moral and material assistance to the newly independent and emerging States so as to enable them to achieve genuine economic independence;

13. *Reiterates its recommendation* that the specialized agencies and other organizations of the United Nations system should initiate or broaden contacts and co-operation with the colonial peoples and their national liberation movements directly or, where appropriate, through the Organization of African Unity, and review, and introduce greater flexibility in, their procedures with respect to the formulation and preparation of assistance programmes and projects so as to be able to extend the necessary assistance without delay to help the colonial peoples and their national liberation movements in their struggle to exercise their inalienable right to self-determination and independence in accordance with General Assembly resolution 1514 (XV);

14. *Recommends* that a separate item on assistance to national liberation movements recognized by the Organization of African Unity should be included in the agenda of future high-level meetings between the General Secretariat of the Organization of African Unity and the secretariats of the United Nations and other organizations of the United Nations system with a view to strengthening further the existing measures of co-ordination of action to ensure the best use of available resources for assistance to the peoples of the colonial Territories;

15. *Urges* the specialized agencies and other organizations of the United Nations system that have not already done so to include in the agenda of the regular meetings of their governing bodies a separate item on the progress they have made in the implementation of General Assembly resolution 1514 (XV) and the other relevant resolutions of the United Nations;

16. *Urges* the specialized agencies and other organizations and institutions of the United Nations system to extend, as a matter of priority, substantial material assistance to the Governments of the front-line States in order to enable them to support more effectively the struggle of the people of Namibia for freedom and independence and to resist the violation of their territorial integrity by the armed forces of the racist régime of South Africa directly or, as in Angola and Mozambique, through puppet traitor groups in the service of Pretoria;

17. *Notes with satisfaction* the arrangements made by several specialized agencies and other organizations of the United Nations system which enable representatives of the national liberation movements recognized by the Organization of African Unity to participate fully as observers in the proceedings relating to matters concerning their

[47] *Ibid.*, chap. VII.

respective countries, and calls upon those agencies and organizations that have not yet done so to follow this example and to make the necessary arrangements without delay;

18. *Urges the specialized agencies and other organizations* and institutions of the United Nations system to assist in accelerating progress in all sectors of the national life of colonial Territories, particularly in the development of their economies;

19. *Requests* the specialized agencies to abide by Security Council resolution 566 (1985) of 19 June 1985, in which the Council condemned the racist régime of South Africa for its installation of a so-called interim Government in Namibia and declared that action to be illegal and null and void;

20. *Recommends* that all Governments should intensify their efforts in the specialized agencies and other organizations of the United Nations system of which they are members to ensure the full and effective implementation of General Assembly resolution 1514 (XV) and other relevant resolutions of the United Nations and, in that connection, should accord priority to the question of providing assistance on an emergency basis to the peoples of the colonial Territories and their national liberation movements;

21. *Reiterates its proposal*, under article III of the Agreement between the United Nations and the International Monetary Fund,[48] for the urgent inclusion in the agenda of the Board of Governors of the Fund of an item dealing with the relationship between the Fund and South Africa, and further reiterates its proposal that, in pursuance of article II of the Agreement, the relevant organs of the United Nations should participate in any meeting of the Board of Governors called by the Fund for the purpose of discussing the item, and urges the Fund to discuss its relationship with South Africa at its annual meeting, in compliance with the above-mentioned Agreement, and to report to the Secretary-General of the United Nations on the action taken;

22. *Draws the attention* of the specialized agencies and other organizations of the United Nations system to the Plan of Action for the Full Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples, contained in the annex to General Assembly resolution 35/118, in particular to those provisions calling upon the agencies and organizations to render all possible moral and material assistance to the peoples of the colonial Territories and to their national liberation movements;

23. *Urges* the executive heads of the specialized agencies and other organizations of the United Nations system, having regard to the provisions of paragraphs 13 and 22 above, to formulate, with the active co-operation of the Organization of African Unity where appropriate, and to submit, as a matter of priority, to their governing and legislative organs concrete proposals for the full implementation of the relevant United Nations decisions, in particular specific programmes of assistance to the peoples of the colonial Territories and their national liberation movements;

24. *Requests* the Secretary-General to continue to assist the specialized agencies and other organizations of the United Nations system in working out appropriate measures for implementing the relevant resolutions of the United Nations and to prepare for submission to the relevant bodies, with the assistance of those agencies and organizations, a report on the action taken in implementation of the relevant resolutions, including the present resolution, since the circulation of his previous report;

25. *Requests* the Economic and Social Council to continue to consider, in consultation with the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples, appropriate measures for co-ordination of the policies and activities of the specialized agencies and other organizations of the United Nations system in implementing the relevant resolutions of the General Assembly;

26. *Requests* the specialized agencies to report periodically to the Secretary-General of the United Nations on their implementation of the present resolution;

27. *Requests* the Special Committee to continue to examine this question and to report thereon to the General Assembly at its forty-first session.

99th plenary meeting
2 December 1985

40/54. United Nations Educational and Training Programme for Southern Africa

The General Assembly,

Recalling its earlier resolutions on the United Nations Educational and Training Programme for Southern Africa, in particular resolution 39/44 of 5 December 1984,

Having considered the report of the Secretary-General[49] containing an account of the work of the Advisory Committee on the United Nations Educational and Training Programme for Southern Africa and the administration of the Programme for the period from 1 October 1984 to 15 October 1985,

Recognizing the valuable assistance rendered by the Programme to the peoples of South Africa and Namibia,

Noting with satisfaction that educational and technical assistance for southern Africa has become a growing concern of the international community,

Fully recognizing the need at this critical juncture in southern Africa to provide educational opportunities and counselling to a greater number of student refugees in a wide variety of professional, cultural and linguistic disciplines, as well as opportunities for vocational and technical training and for advanced studies at graduate and post-graduate levels in the priority fields of study,

Strongly convinced that the continuation and expansion of the Programme is essential in order to meet the increasing demand for educational and training assistance to students from South Africa and Namibia,

1. *Endorses* the report of the Secretary-General on the United Nations Educational and Training Programme for Southern Africa;

2. *Commends* the Secretary-General and the Advisory Committee on the United Nations Educational and Training Programme for Southern Africa for their continued efforts to promote generous contributions to the Programme and to enhance co-operation with governmental, intergovernmental and non-governmental agencies involved in educational and technical assistance for southern Africa;

3. *Expresses its appreciation* to all those that have supported the Programme by providing contributions, scholarships or places in their educational institutions;

[48] See *Agreements between the United Nations and the Specialized Agencies and the International Atomic Energy Agency* (United Nations publication, Sales No. E/F.61.X.1), p. 61.

[49] A/40/781.

4. *Appeals* to all States, institutions, organizations and individuals to offer greater financial and other support to the Programme in order to secure its continuation and steady expansion.

99th plenary meeting
2 December 1985

40/55. Offers by Member States of study and training facilities for inhabitants of Non-Self-Governing Territories

The General Assembly,

Recalling its resolution 39/45 of 5 December 1984,

Having considered the report of the Secretary-General on offers by Member States of study and training facilities for inhabitants of Non-Self-Governing Territories,[50] prepared pursuant to General Assembly resolution 845 (IX) of 22 November 1954,

Considering that more scholarships should be made available to the inhabitants of Non-Self-Governing Territories in all parts of the world and that steps should be taken to encourage applications from students in those Territories,

1. *Takes note* of the report of the Secretary-General;

2. *Expresses its appreciation* to those Member States that have made scholarships available to the inhabitants of Non-Self-Governing Territories;

3. *Invites* all States to make or continue to make generous offers of study and training facilities to the inhabitants of those Territories that have not yet attained self-government or independence and, wherever possible, to provide travel funds to prospective students;

4. *Urges* the administering Powers to take effective measures to ensure the widespread and continuous dissemination in the Territories under their administration of information relating to offers of study and training facilities made by States and to provide all the necessary facilities to enable students to avail themselves of such offers;

5. *Requests* the Secretary-General to report to the General Assembly at its forty-first session on the implementation of the present resolution;

6. *Draws the attention* of the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples to the present resolution.

99th plenary meeting
2 December 1985

[50] A/40/718.

APPENDIX C

SOME DOUBLE TAX TREATIES CONCLUDED WITH INDONESIA SINCE 1976 CONTAINING A TERRITORIAL CLAUSE

(i) Agreement between the Government of Australia and the Government of the Republic of Indonesia for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and Capital, 22 April 1992. Article 3(1)(a)(i) provides -

> "the term 'Indonesia' means the territory under the sovereignty of the Republic of Indonesia and such parts of the continental shelf and the adjacent seas over which the Republic of Indonesia has sovereignty, sovereign rights as well as other rights in accordance with the 1982 United Nations Convention on the Law of the Sea."

(ii) Agreement between the Government of the Republic of Indonesia and the Government of the Republic of Austria for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and Capital, 24 July 1986. Article 3(1)(a)(i) provides -

> "the term 'Indonesia' comprises the territory of the Republic of Indonesia as defined in its laws and the adjacent areas over which the Republic of Indonesia has sovereign rights or jurisdiction in accordance with the provisions of the United Nations Convention on the Law of the Sea, 1982."

(iii) Agreement between the Kingdom of Belgium and the Republic of Indonesia for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and on Capital, 13 November 1973. Article 3(1((b) provides -

> "the term 'Indonesia' comprises the territory of the Republic of Indonesia and the parts of the sea bed and sub-soil under the adjacent seas, over which the Republic of Indonesia has sovereign rights in accordance with international law."

(iv) Convention between Canada and the Republic of Indonesia for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and Capital, 16 January 1979. Article 3(1)(a)(ii) provides -

> "the term 'Indonesia' comprises the territory of the Republic of Indonesia as defined in its laws and parts of the continental shelf and adjacent seas, over which the Republic of Indonesia has sovereignty, sovereign rights or other rights in accordance with international law."

(v) Convention between the Government of the Kingdom of Denmark and the Government of the Republic of Indonesia for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income, 28 December 1985. Article 3(1)(c) provides -

> "the term 'Indonesia' comprises the territory of the Republic of Indonesia as defined in its laws and such parts of the continental shelf and adjacent seas, over which the Republic of Indonesia has sovereignty, sovereign rights or other rights in accordance with international law."

(vi) Agreement between the Republic of Indonesia and the Republic of Finland for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income, 15 October 1987. Article 3(1)(a) provides -

> "the term 'Indonesia' comprises the territory of the Republic of Indonesia as defined in its laws and the adjacent areas over which the Republic of Indonesia has sovereign rights or jurisdiction in accordance with the provisions of the United Nations Convention on the Law of the Sea, 1982."

(vii) Convention between the Government of the French Republic and the Government of the Republic of Indonesia for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and Capital, 14 September 1979. Article 3(1)(c) provides -

> "the term 'Indonesia' comprises the territory of the Republic of Indonesia as defined in its laws and parts of the continental shelf and adjacent seas, over which the Republic of Indonesia has sovereignty, sovereign rights or other rights in accordance with international law."

(viii) Agreement between the Federal Republic of Germany and the Republic of Indonesia for the Avoidance of Double Taxation with respect to Taxes on Income and Capital, 2 September 1977. Article 3(1)(b) provides -

> "the term 'Indonesia' comprises the territory of the Republic of Indonesia as defined in its laws and parts of the continental shelf and adjacent seas, over which the Republic of Indonesia has sovereignty, sovereign rights or other rights in accordance with international law."

(ix) Agreement between the Republic of Indonesia and the Republic of India for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income, 7 August 1987. Article 3(1)(a) provides -

> "the term 'Indonesia' comprises the territory of the Republic of Indonesia as defined in its laws and the adjacent areas over which the Republic of Indonesia has sovereignty, sovereign rights or jurisdiction in accordance with International Law, particularly the provisions of the United Nations Convention on the Law of the Sea, 1982."

(x) Agreement between Japan and the Republic of Indonesia for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income, 3 March 1982. Article 3(1)(a) provides -

> "the term 'Indonesia' comprises the territory of the Republic of Indonesia as defined in its laws and parts of the continental shelf and adjacent seas, over which the Republic of Indonesia has sovereignty, sovereign rights or other rights in accordance with international law."

(xi) Agreement between the Republic of Indonesia and the Republic of Korea for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income, signed at Jakarta on 10 November 1988. Article 3(1)(a)(i) provides -

> "the term 'Indonesia' comprises the territory of the Republic of Indonesia as defined in its laws and parts of the continental shelf and adjacent seas, over which the Republic of Indonesia has sovereignty, sovereign rights or other rights in accordance with international law."

(xii) Agreement between the Kingdom of the Netherlands and the Republic of Indonesia for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and Capital, 5 March 1973. Article 3(1)(c) provides -

> "the term 'Indonesia' comprises the territory of the Republic of Indonesia and the parts of the seabed and sub-soil under the adjacent seas, over which the Republic of Indonesia has sovereign rights in accordance with international law."

(xiii) Agreement between the Government of the Republic of Indonesia and the Government of New Zealand for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income, 25 March 1987. Article 3(1)(a)(ii) provides -

> "the term 'Indonesia' comprises the territory of the Republic of Indonesia as defined in its laws and the adjacent areas over which the Republic of Indonesia has sovereign rights or jurisdiction in accordance with the provisions of the United Nations Convention on the Law of the Sea, 1982."

(xiv) Convention between the Republic of Indonesia and the Kingdom of Norway for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and Capital, 19 July 1988. Article 3(1)(a) provides -

> "the term 'Indonesia' comprises the territory of the Republic of Indonesia as defined in its laws and the adjacent areas over which the Republic of Indonesia has sovereign rights or jurisdiction in accordance with the provisions of the United Nations Convention on the Law of the Sea, 1982."

(xv) Agreement between the Government of the Republic of the Philippines and the Government of the Republic of Indonesia for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income, 18 June 1981. Article 3(1)(ii) provides -

> "the term 'Indonesia' comprises the territory of the Republic of Indonesia as defined in its laws and such parts of the continental shelf and adjacent seas, over which the Republic of Indonesia has sovereignty, sovereign rights or other rights in accordance with international law."

(xvi) Convention between the Government of the Kingdom of Sweden and the Government of the Republic of Indonesia for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income, 28 February 1989. Article 3(1)(a)(i) provides -

> "the term 'Indonesia' comprises the territory of the Republic of Indonesia as defined in its laws and the adjacent areas over which the Republic of Indonesia has sovereign rights or jurisdiction in accordance with the provisions of the United Nations Convention on the Law of the Sea, 1982."

(xvii) Agreement between the Swiss confederation and the Republic of Indonesia for the Avoidance of Double Taxation with respect to Taxes on Income, 29 August 1989. Article 3(1)(a) provides -

> "the term 'Indonesia' comprises the territory of the Republic of Indonesia as defined in its laws and the adjacent areas over which the Republic of Indonesia has sovereign rights or jurisdiction in accordance with international law."

(xviii) Agreement between the Government of the Republic of Indonesia and the Government of the Kingdom of Thailand for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and on Capital, signed at Bangok on 25 March 1981. Article 3(1)(a) provides -

> "the term 'Indonesia' comprises the territory of the Republic of Indonesia as defined in its laws and parts of the continental shelf and adjacent seas, over which the Republic of Indonesia has sovereignty, sovereign rights or other rights in accordance with international law."

(xix) Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Republic of Indonesia for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and Capital, 13 March 1974. Article 3(1)(b) provides -

> "the term 'Indonesia' means the territory of the Republic of Indonesia and the parts of the seabed and subsoil under the adjacent seas over which the Republic of Indonesia has sovereign rights in accordance with international law."

(xx) Agreement between the Government of the United States of America and the Government of the Republic of Indonesia for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income, 11 July 1988. Article 3(1)(a) provides -

> "the term 'Indonesia' comprises the territory of the Republic of Indonesia and the adjacent seas which the Republic of Indonesia has sovereignty, sovereign rights or jurisdictions in accordance with the provisions of the 1982 United Nations Convention on the Law of the Sea."

ANNEXES

A. Historical Documents

B. Australian Statements

Joint Communique, 18 March 1975 UDT - Fretilin Coalition (reproduced from Jolliffe, East Timor: Nationalism and Colonialism (1978) p.339)

Communique from the FRETILIN-UDT Coalition

JOINT COMMUNIQUE, ISSUED BY THE COALITION REVOLUTIONARY FRONT OF INDEPENDENT EAST TIMOR AND TIMORESE DEMOCRATIC UNION

The Revolutionary Front Of Independent East Timor (FRETILIN) and the Timorese Democratic Union (UDT) are the legitimate representatives of the people of East Timor, because of our intransigent defence of the right of the people to national independence. We insist that independence is the only possible way for real liberation of the people from exploitation and oppression of any form.

FRETILIN and UDT are interpreting the will of the overwhelming majority of the People of East Timor for National Independence, thus we reject strongly any other form of domination and our position is—INDEPENDENCE OR DEATH!

FRETILIN and UDT also reject any questioning of the right of the people to independence implied in a referendum, a so-called "act of free choice": nobody should ask a slave if he wants to be free! This means that the position of the coalition is unshakeable and we shall fight to the death for national independence, the legitimate right of all nations in the world.

Due to the economic and political limitations and with a deep sense of realities, the coalition has proposed the following program towards full independence:

1. A transitional government to be formed by a High Commissioner, representing the President of the Portuguese Republic and to consist of: equal representation of the Portuguese Government, FRETILIN and UDT. During this period a reform of all internal administrative and political structures will take place.

2. The minimum period of the transitional government will be three years; this period can be extended if this is determined by the circumstances.

3. General elections for a Constitutional Assembly will take place after the process of decolonization has been completed.

The transitional government will be responsible for the implementation of the program of Reconstruction and Development of the country.

The transitional government will endeavour to promote friendship, goodwill and cooperation with all countries of the world, but particularly with Australia and Indonesia for the peace and security of the whole region.

Dili, 18th March 1975.—
Central Committee of FRETILIN,
Francisco Xavier do Amaral
—President—
Central Committee of UDT,
Francisco Lopes da Cruz
—President—

Annex 2

Summary of outcome of Macau talks, 26-28 June 1975, (reproduced from (1975) 46 AFAR 413)

Portuguese Timor: Macao meeting

On 10 July, following talks in Macao from 26 to 28 June, the Portuguese Council of Revolution approved a constitutional law which outlined the decolonisation process to be followed in Portuguese Timor.

Portuguese Ministers and officials and representatives of two of the three Portuguese Timorese political associations met in Macao from 26 to 28 June to discuss the decolonisation of Portuguese Timor. The Portuguese delegation was led by Dr Almeida Santos, Minister for Inter-Territorial Co-ordination, and included, among others, Major Vitor Alves, Minister of State without Portfolio. Of the three political associations in Portuguese Timor, APODETI (favouring integration with Indonesia) and UDT (pro-independence) attended. FRETILIN (pro-independence) boycotted the talks.

A communique issued at the end of the talks re-affirmed the right of the people of Portuguese Timor to self-determination and the principle that it was up to the people of Timor to define the political future of the territory. The meeting discussed a draft constitutional law on the decolonisation of Portuguese Timor. This was approved by the Council of the Revolution in Lisbon on 10 July. The law provides for the following:

(a) a 'deliberative' High Commissioner's Council to be headed by a Portuguese High Commissioner assisted by five 'joint secretaries'—three Timorese (perhaps one from each of the political associations) and two Portuguese nominees. The High Commissioner would have a casting vote;

(b) a consultative Government Council consisting of two representatives nominated by each of the thirteen regional councils (yet to be established) and four members to be nominated by each political association, 38 members in all;

(c) elections for a Popular Assembly in October 1976;

(d) the termination of Portuguese sovereignty in October 1978, but with provision for adjusting this date to accord with the 'genuine wishes of the people of Timor'.

Letter from Indonesian Permanent Representative to the Secretary-General, including Proclamation, 30 November 1975 by UDT APODETI and other Parties following Fretilin UDI - UN Doc.A/C.4/808, and Corr.1

ASSEMBLY

A/C.4/808
4 December 1975

ORIGINAL: ENGLISH

Thirtieth session
FOURTH COMMITTEE
Agenda item 23 and 88

IMPLEMENTATION OF THE DECLARATION ON THE GRANTING OF INDEPENDENCE TO COLONIAL COUNTRIES AND PEOPLES

QUESTION OF TERRITORIES UNDER PORTUGUESE ADMINISTRATION

QUESTION OF TIMOR

Letter dated 4 December 1975 from the Permanent Representative of Indonesia addressed to the Secretary-General

I have the honour to enclose herewith the statement which has been issued in Jakarta on 4 December 1975 by the Indonesian Minister of Information on behalf of the Government of Indonesia on the latest developments in Portuguese Timor. The joint proclamation by four political parties in Portuguese Timor, APODETI, UDT, KOTA and the Partido Trabalhista, on the integration of Portuguese Timor into the Republic of Indonesia issued at Batugade (Portuguese Timor) on 30 November 1975 is also enclosed.

I would be extremely grateful if Your Excellency would have it so directed that this letter and both enclosures are circulated as documents of the United Nations General Assembly under item 88 of the agenda of its thirtieth regular session.

(Signed) Chaidir ANWAR SANI
Ambassador
Permanent Representative

ANNEX

Statement of the Government of Indonesia on the current developments in Portuguese Timor*

1. The Government of Indonesia wishes in regard to the current developments in Portuguese Timor, to reiterate its position of consistently supporting the decolonization policy of the Portuguese Government, which should be conducted in an appropriate, orderly and peaceful manner. The implementation of the decolonization process in such a manner, apart from constituting a generally acceptable principle, will also ensure the maintenance of the national stability of Indonesia - which is closely linked with the Territory by common borders - and the general stability of the South-East Asian region.

2. A proper, orderly and peaceful process of decolonization would ensure that all segments of the population of Portuguese Timor could voice, without pressure in any form whatsoever, their aspirations with regard to their own future.

3. It should also be emphasized that the Indonesian Government is firmly resolved to exercise its legitimate right to defend its territorial integrity, sovereignty and its right to protect the security of the life and property of its citizens.

4. As long as the process of decolonization has not been completed, the Indonesian Government respects the rights and obligations of the Portuguese Government as the sole authority in the Territory.

5. The Government of Indonesia, based upon the aforementioned considerations, expresses its willingness - if and when so requested by all parties concerned - to participate in endeavours to smooth the process of decolonization in the Territory. Those considerations have also moved the Government of Indonesia to fully support the results of the Macau meeting and the understanding reflected in the "Rome Memorandum". a/

6. In the meanwhile, the decolonization process in the Territory has taken a very critical turn. Acts of terror, torture and brutality have been committed by the Frente Revolucionária Timor Lesk Independente (FRETILIN) against other groups in Portuguese Timor, who entertain different views with regard to their future. Those other groups have taken up arms to defend themselves against the use of armed force by FRETILIN. These developments occur in the face of Portugal's incapacity to restore peace and general order and to preserve the fundamental rights of the people in the area.

7. It should be recalled that the Government of Indonesia has once offered its good offices to assist the Portuguese Government in restoring security and general

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* Text transmitted as an unofficial translation.

a/ See A/C.4/802, annex.

/...

order in the Territory of Portuguese Timor, with a view to enabling the process of decolonization to be conducted in an appropriate, orderly and peaceful manner.

8. It should furthermore be recalled that since the use of armed force by FRETILIN against other groups of the people of Portuguese Timor, there has been a great influx of tens of thousands of refugees from areas afflicted by great disturbance and sufferings, into the bordering territories of Indonesia. Moved by humanitarian considerations, the Government and people of Indonesia have provided these refugees with protection, shelter, food, clothing and health care.

9. It should furthermore be noted that the Government of Indonesia and its 130 million people have exercised great restraint in the face of mortar attacks directed against Indonesian territory, incursions into Indonesian territory, robbery in Indonesian territory and other kinds of serious provocations committed by FRETILIN, resulting in the sacrifice of countless lives and property of our population. Such a situation, aggravated by the presence of tens of thousands of refugees, has gravely disturbed the national stability and endangered the security of Indonesia.

10. The process of decolonization in that Territory, which since the beginning has proceeded in an inappropriate, disorderly and unpeaceful manner, has culminated in the so-called "independence declaration" by FRETILIN. This unilateral act by FRETILIN has rendered difficult the implementation of the "Rome Memorandum", whereas the Portuguese Government, which is responsible for the Territory of Timor and the situation therein, has stated at the United Nations that it is not capable of overcoming the situation in Portuguese Timor.

11. The Indonesian Government can therefore fully understand and consider normal the proclamation made subsequently, on 30 November 1975 by the other political parties in the Territory viz. the União Democrática de Timor (UDT), the Associação Popular Democrática Timorense (APODETI), KOTA and the Partido Trabalhista (Labour Party) which jointly, on behalf of the people of Portuguese Timor, freed themselves from colonialism by integrating their Territory into the State of Indonesia (see enclosure).

12. In view of these developments in Portuguese Timor the Government of Indonesia wishes to make the following declaration:

(a) It deeply regrets the unilateral action of FRETILIN which has declared the independence of Portuguese Timor without due regard to the wishes of the other political parties in the Territory which also represent the voice of the people.

(b) It respects the right of the people to sympathize with, and has a profound understanding of the declaration of UDT, APODETI, KOTA and the Partido Trabalhista which, on behalf of the people in Portuguese Timor, have proclaimed themselves as integrated with Indonesia.

(c) It calls upon all the parties concerned in Portuguese Timor to undertake serious efforts for the attainment of the implementation of decolonization in Portuguese Timor in a normal, orderly and peaceful manner.

(d) It will take the necessary measures to ensure the safety of its national territory, to defend the sovereignty of the State and to protect the population from external harassment. On the basis of the principles of anti-colonialism and imperialism and the principle of humanitarianism, the Indonesian Government and people have the moral obligation to protect the people in the Territory of Timor so that the process of decolonization can be realized in accordance with the aspirations and wishes of the entire people of Portuguese Timor.

(e) It calls upon the entire Indonesian people in general and those living in the areas bordering Portuguese Timor in particular to increase their vigilance.

A7

Enclosure

PROCLAMATION

After having carefully studied the unilateral action by FRETILIN in issuing its so-called "Proclamation of Independence", of Portuguese Timor and the attitude of the Portuguese Government concerning it, which clearly contradicts the real wish of the people of Portuguese Timor to exercise an act of self-determination on the future of Portuguese Timor, we the peoples of Portuguese Timor represented in APODETI, UDT, KOTA and the Partido Trabalhista, hereby state the following:

1. We are strongly against the unilateral action by FRETILIN as it clearly violates the principles of decolonization agreed upon by the Portuguese Government and the three political parties of Portuguese Timor.

2. It has been evident so far that FRETILIN has not shown a genuine desire for a peaceful solution of the problem of Portuguese Timor. For example, FRETILIN refused to participate in the Macau meeting. Precisely at this stage, during which all peace-loving parties are doing their best to bring about the holding of negotiations such as the Rome meeting between Portugal and Indonesia recently which produced a Memorandum of Understanding, the readiness of the Australian Government to provide a venue for the talks subsequently, efforts by the Indonesian Government to send specially its Foreign Minister, Mr. Adam Malik, to Atambua within the framework of implementing the spirit of the Rome meeting, and our statement to the Portuguese Government, all these good efforts have again been sabotaged by FRETILIN with its unilateral action. This ill-intentioned attitude on the part of FRETILIN has forced us, the people of Portuguese Timor, to act.

3. The new situation created by the unilateral action of FRETILIN has excluded the possibility of finding a way out through a peaceful solution to determine the future of Portuguese Timor in accordance with the real wishes of Portuguese Timor.

4. After having been forcibly separated from the strong links of blood, identity, ethnic and moral culture with the people of Indonesia by the colonial power of Portugal for more than 400 years, we deem it is now the right moment for the people of Portuguese Timor to re-establish formally these strong ties with the Indonesian nation.

5. In the name of God the Almighty, we therefore solemnly declare the independence and integration of the whole former colonial Territory of Portuguese Timor with the Republic of Indonesia, which is in accordance with the real wishes of the entire people of Portuguese Timor.

/...

6. We also urge the Indonesian Government and people to take steps immediately to protect the lives of the people who now regard themselves as Indonesians, yet are still suffering due to the terror and fascist practices of the FRETILIN gang, armed and supported by the Portuguese Government.

Done at Balibo, 30 November 1975

Signed by the following persons:

On behalf of UDT:

Guilherme Maria GONCALVES

Alexandrino BORROMEU

On behalf of APODETI:

Francisco X. Lopes da CRUZ

Domingo de OLIVEIRA

On behalf of KOTA:

Jose MARTINS

On behalf of Partido Trabalhista

Domingos C. PEREIRA

UNITED NATIONS

GENERAL ASSEMBLY

Distr.
GENERAL

A/C.4/808/Corr.1
9 December 1975

ORIGINAL: ENGLISH

Thirtieth session
FOURTH COMMITTEE
Agenda items 23 and 88

IMPLEMENTATION OF THE DECLARATION ON THE GRANTING OF INDEPENDENCE TO COLONIAL COUNTRIES AND PEOPLES

QUESTION OF TERRITORIES UNDER PORTUGUESE ADMINISTRATION

QUESTION OF TIMOR

Letter dated 4 December 1975 from the Permanent Representative of Indonesia addressed to the Secretary-General

Corrigendum

On the last page of the document, the signatures should read

On behalf of UDT:

Francisco X. Lopes da CRUZ

Domingo de OLIVEIRA

On behalf of KOTA:

Jose MARTINS

On behalf of APODETI:

Guilherme Maria GONCALVES

Alexandrino BORROMEU

On behalf of Partido Trabalhista:

Domingos C. PEREIRA

75-28144

Press Release, Embassy of Indonesia, Canberra, 14 December 1975

PRESS RELEASE

The following is an unofficial translation of the statement of the Government of Indonesia on the question of East Timor as issued in Jakarta on December 14, 1975.

1. The pending crisis in Portuguese Timor is the result of measures taken by the government of Portugal to maintain colonialism in its new form in the territory. Portugal has made use of a local political faction, Fretilin, to support the implementation of its colonial plan in its new form with the argument of decolonisation. For this purpose, the entire colonial military strength in Portuguese Timor(Topaz), unimpaired and including all provisions and war equipments, have been put at the disposal of Fretilin in order to terrorise its political enemies.

2. The colonial scheme of Portugal has been proven by various events and successive happenings as follows :

A. At the time when Portugal issued invitations to all political parties in Portuguese Timor to attend the Macao Conference on June 26-28, 1975, Fretilin has intentionally refused to attend. Nevertheless, the government of Portugal has not taken any measures whatsoever, a fact which is contrary to its own statement that Portugal will take severe actions against any group absent at the conference, thus considered hampering the process of decolonisation.

B. As a follow-up of the provocations towards UDT to stage the coup d'etat on August 11, 1975, the colonial government in Portuguese Timor has prepared the necessary steps to pave the way for Fretilin to control the entire territory of Portuguese Timor by force with the use of the colonial troops whose stipend were still pa by the colonial government of Portuguese Timor together with all their replenishment, provisions and military equipments.

C. In the turbulent conditions which ensued, the governmen of Portuguese Timor did not exert itself to restore the security of the territory, but stepped aside to the island of Atauro. Besides, Fretilin has many times violated the sovereignty of the Republic of Indonesia with assaults and attacks which resulted in victims of people and properties of the population.

D. In all its consultations with Indonesia, Portugal has been protruding all the time with the aim of strengthening the position of Fretilin. This fact has been evidenced by the mission of Dr. Almeida Santos on August 29 to September 1, 1975 and on September 11, 1975 in Jakarta, thus intentionally failing to reach agreement because of the sinister plans of Portugal to hand over pow in the territory of Portuguese Timor to Fretilin.

E. Portugal has supported the unilateral declaration of independence by Fretilin as conveyed by Minister Victor Crespo to the Indonesian Ambassador in Lisbon, Mr Ben Mangrengsay, on the same day of November 28, 1975, a fact which was later denied by the government of Portugal.

3. The terrorism done by Fretilin towards the people of Portu Timor in Maubisse, Ainaro, Railaco and other areas, constitutes typical aspects of colonialism to subjugate the people's resistance such as the slaughtering of more than 500 people by the colonial authority in Portuguese Timor in the area of Viqueque in 1959.

4. The resistance of people, led by Apodeti, UDT, Kota and Trabalista, is consequently not more than the struggle against colonialism and isnot to resist any force in the territory which desires independence.

5. The volunteers who at the request of Apodeti, UDT, Kota and Trabalista are assisting their brothers in Portuguese Timor, can not possibly be hindered by the government considering the various violations, the malintentions and the measures taken by Portugal as well as Fretilin to intentionally impose their will by force on the people. The accusations launched by some quarters as if the government of the Republic of Indonesia has intervened militarily in the territory of Portuguese Timor are whatsoever without any foundation. The government of the Republic of Indonesia is not in the position to involve its armed forces in said territory due to the existence of pre-requirements and firm procedures under the stipulations of the 1945 Constitution of the Republic of Indonesia.

6. The demand of the supporters of the U.N. resolution to withdraw what they call "Indonesian troops" has no bearing at all with the prevailing conditions. The United Nations should consider the voice and aspirations of the people to fight colonialism in Portuguese Timor instead of stirring into commotion the accusations of the socalled "military intervention".

7. With the beginning of the restoration of security and order in Portuguese Timor by the joint forces of Apodeti, UDT, Kota and Trabalista, the attention of the U.N. should be even aimed at the question of the implementation of the right of self-determination of the people in Portuguese Timor.

8. In connection with the resolution on the question of Portuguese Timor as submitted by Mozambique, Guinea Bissau cs in the U.N., Indonesia is of the opinion that said resolution is ill-addressed or miscarried in the event Indonesia is referred to it.

9. Indonesia appreciates the attitude taken by countries which are able to recognise the point of view as put by Indonesia and raise in conformity with Indonesia in facing said resolution. On the other hand, Indonesia feels very disappointed in the attitude of a number of friendly countries, in particular those situated in the neighbourhood of the territory of Portuguese Timor which indeed gave their support to said resolution or took an indifferent attitude towards it.

The above statement has been announced by Mr. Mashuri, Minister of Information of the Republic of Indonesia, on December 14, 1975 in Jakarta.

Canberra, December 16, 1975.

Annex 5

Documents concerning the Regional Popular Assembly, Dili, 31 May 1976 and Petition to Indonesia - UN Doc.S/12097

ASSEMBLY COUNCIL

S/12097
18 June 1976

ORIGINAL: ENGLISH

GENERAL ASSEMBLY
Thirty-first session
Item 24 of the preliminary list*
IMPLEMENTATION OF THE DECLARATION ON THE GRANTING OF INDEPENDENCE TO COLONIAL COUNTRIES AND PEOPLES

SECURITY COUNCIL
Thirty-first year

Letter dated 15 June 1976 from the Deputy Permanent Representative of Indonesia to the United Nations addressed to the Secretary-General

I have the honour to enclose herewith the texts of the following communications concerning developments in East Timor:

1. Cable dated 1 June 1976 sent by the Provisional Government of East Timor to the Secretary-General of the United Nations, the Chairman of the Special Committee on Decclonization, and Mr. Vittorio Winspeare Guicciardi, the Special Envoy of the Secretary-General (annex I);

2. Cable dated 7 June 1976 sent by the Provisional Government of East Timor to the Secretary-General of the United Nations, the Chairman of the Special Committee on Decolonization, and Mr. Vittorio Winspeare Guicciardi, the Special Envoy of the Secretary-General (annex II);

3. Cables dated 8 June 1976 sent by the Provisional Government of East Timor to the Secretary-General of the United Nations, the Chairman of the Special Committee on Decolonization, and Mr. Vittorio Winspeare Guicciardi, the Special Envoy of the Secretary-General (annex III);

4. Statement made by Mr. Arnaldo dos Reis Araujo, Chief Executive of the Provisional Government of East Timor, on 7 June 1976 on the occasion of presenting to President Suharto the petition of the people of East Timor addressed to the Government and people of the Republic of Indonesia (annex IV);

5. Statement made by H.E. President Suharto on 7 June 1976 in response to the address presented by the delegation of the Provisional Government of East Timor (annex V).

* A/31/50.

ANNEX I

Cable dated 1 June 1976 sent by the Provisional Government of East Timor to the Secretary-General of the United Nations, the Chairman of the Special Committee on Decolonization, and Mr. Vittorio Winspeare Guicciardi, the Special Envoy of the Secretary-General

1. On 31 May 1976, on behalf of the people of East Timor, the Popular Representative Assembly democratically expressed its view on their future, an occasion to which we had extended Your Excellency our invitation to H.E. Mr. Vittorio Winspeare Guicciardi, the Special Committee of 24, and the Security Council, orally as well as by cable.

2. The occasion was witnessed by the representatives of foreign Governments to Indonesia and 40 foreign journalists from Jakarta, including Indonesian journalists.

3. On the basis of existing regulations in East Timor, the Popular Representative Assembly consists of 37 members properly elected so as to represent the wishes of the people of East Timor in accordance with living realities in the country as well as with the identity and cultural traditions of the people. The process of election was democratic and free from any form of pressure.

4. The decision of the Popular Representative Assembly takes the form of a petition directed to the Government and people of the Republic of Indonesia for the latter to accept East Timor as an integral part of the Republic of Indonesia.

5. The petition has been made with complete free will and with full awareness of the future of East Timor without any form of coercion from outside.

6. We request your good offices to persuade the Government of the Republic of Indonesia to accept immediately our petition for integration so as to ensure the future of the people of East Timor, which has been uncertain for quite some time, and to alleviate their sufferings.

7. We also request your assistance in transmitting this petition to Members of the United Nations and to appropriate agencies of the United Nations.

8. Your advice concerning the successful implementation of self-determination by the people of East Timor towards integration with the Republic of Indonesia will be highly appreciated.

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I would be grateful if Your Excellency would arrange for these communications to be published as an official document of the General Assembly under item 24 of the preliminary list of items to be included in the provisional agenda of the thirty-first session, and of the Security Council.

(Signed) August MARPAUNG
Ambassador
Deputy Permanent Representative

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ANNEX II

Cable dated 7 June 1976 sent by the Provisional Government of East Timor to the Secretary-General of the United Nations, the Chairman of the Special Committee on Decolonization, and Mr. Vittorio Winspeare Guicciardi, the Special Envoy of the Secretary-General

Excellency,

With reference to previous cable of the Provisional Government of East Timor relating to the decision taken by the open and plenary session of the Popular Representative Assembly on 31 May 1976, I have the honour to inform you that a 44-member delegation consisting of members of the Popular Representative Assembly and high functionaries of the Provisional Government of East Timor today, Monday, 7 June 1976, submitted to H.E. Mr. Suharto, the President of the Republic of Indonesia, at his palace in Jakarta the decision of the Popular Representative Assembly taken at its session on 31 May 1976. This decision, which takes the form of a petition, reads as follows:

"Petition

With the blessing of God Almighty, we, on behalf of the entire people of East Timor, in witness of the resolution passed by the open and plenary session of the Popular Representative Assembly of the Territory of East Timor on 31 May 1976 in Dili, which in fact constitutes a realization of the aspiration of the people of East Timor as inscribed in the Proclamation of integration of East Timor on 30 November 1975 in the town of Balibó, do hereby resolve to urge the Government of the Republic of Indonesia to accept, in the shortest possible time, and to undertake constitutional measures for the full integration of the people and territory of East Timor into the unitary state of the Republic of Indonesia without any referendum.

Done at the city of Dili on the
31st day of May 1976

The Chief Executive of the Provisional
Government of East Timor

(Signed) Arnaldo dos Reis Araujo
Chairman of the Popular
Representative Assembly

(Signed) Guilherme M. Gonçalves

Accept, Excellency, our highest consideration.

Mario Carrascalão
Head of Liaison Office of the Provisional
Government of East Timor, Jakarta"

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ANNEX III

Cables dated 8 June 1976 sent by the Provisional Government of East Timor to the Secretary-General of the United Nations, the Chairman of the Special Committee on Decolonization, and Mr. Vittorio Winspeare Guicciardi, the Special Envoy of the Secretary-General

A.

"United Nations Secretary-General H.E. Kurt Waldheim and Chairman United Nations Special Committee on Decolonization

Having informed you on the proceedings of and decision adopted by the Popular Representative Assembly in Dili on 31 May 1976 in my previous cable, I regret very much that no positive reply has been given to my invitation to attend the said session.

However, we would like to draw to your attention that the Government of Indonesia is sending a mission to East Timor on 24 June to make an on-the-spot assessment.

This will provide another opportunity for you or a mission of the Special Committee on Decolonization to come to Dili to see for yourselves the firm determination of our people to be reunited with Indonesia. The Provisional Government of East Timor for its part will render its full co-operation in this regard. We are aware and we are appreciative of the fact that the Committee on Decolonization is considering sending a mission to East Timor in the near future. It is our earnest hope that this is also the position of the Secretary-General of the United Nations.

Highest consideration.

Arnaldo dos Reis Araujo
c/o Liaison Office of the
Provisional Government of
East Timor in Jakarta"

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B.

"Following yesterday's cable, I have the honour to inform you that today, Tuesday, 8 June, the delegation of East Timor paid a call on the leadership of the People's Consultative Assembly, the House of Representatives and that of the five factions. In his statement before the session of the Indonesian House of Representatives, Mr. Arnaldo dos Reis Araujo, Chief Executive of the Provisional Government of East Timor, inter alia, reported that on 7 June the delegation submitted to President Soeharto a petition representing the total will and aspiration of the people of East Timor to be integrated with the Republic of Indonesia as soon as possible. He said it was for the same reason that his delegation appeared before the session of the House of Representatives to convey the sincere wishes of the people of East Timor to the people of Indonesia through the members of this important body. Mr. Araujo further elaborated on the process of the adoption of the petition by the Popular Representative Assembly of East Timor during its first session. The wish to be integrated with their brothers in Indonesia was not a new phenomenon, he added, but it has been kindling in the heart of each and every son of East Timor. The biggest uprising broke out in 1959 in Viqueque, where the people demanded to be integrated with the territory of Indonesia. However, this uprising was crushed by the Portuguese colonialists and any aspiration for integration with Indonesia was always smothered. Everything akin to Indonesia and knowledge of Indonesia had to be abandoned. Part of the people of East Timor previously thought that Indonesia was the western part of Timor; however, they have since realized that they and the people of Indonesia were one big family who inhabited the thousands of islands in the archipelago. He said further: 'We the people of East Timor are ready for integration with Indonesia; everyone can see and sense how impatient we get awaiting that historic reunion. We have invited the United Nations Special Committee on Decolonization, foreign embassies and journalists in Jakarta to come to Dili and see for themselves how determined we are to be reunited with our brothers. With the same objective in mind, we extend our invitation to the distinguished members of this house to come to East Timor to observe the firm determination of our people to be reunited in the big family of Indonesia.' Concluding his statement, Mr. Araujo requested the House to convey to the Indonesian Government and people that the people of Timor were becoming impatient from waiting for the Indonesian decision with regard to the question of integration and called upon them to accept the petition without further delay in order to accelerate the process of complete integration.

Accept, Excellency, our highest consideration.

Mario Viegas Carrascalão
Liaison Office of the
Provisional Government of
East Timor"

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ANNEX IV

Statement made by Mr. Arnaldo dos Reis Araujo, Chief Executive of the Provisional Government of East Timor, on 7 June 1976 on the occasion of presenting to President Suharto the petition of the people of East Timor addressed to the Government and people of the Republic of Indonesia

Your Excellency, President of the Republic of Indonesia,
Honourable members of the Parliament,
Distinguished Ministers,
Ladies and Gentlemen,

It is a great pleasure for us, the representatives of the people of East Timor, to be here, since today for us marks a day of happiness and joyfulness. This is a happy occasion for us because not only are we able to meet each other but also we have the chance to know all of the officials of the Indonesian Government. Moreover, the greatest pleasure for the representatives of East Timor is to meet Your Excellency, President Suharto, in your capacity as the Chief Executive of the Republic of Indonesia, and also the opportunity for us to visit Jakarta, the capital of the Republic of Indonesia, a chance for which we have been waiting for many years.

The main purpose of our visit is to express the will and the wish of the people of East Timor. It is our intention, as the representatives of the people of East Timor, to present our petition for integration of East Timor with Indonesia. We are firmly determined to maintain our subsequent future development together with the rest of the Indonesian people. On this very occasion, I hereby submit the petition to Your Excellency, the President and the Chief Executive of the Government of the Republic of Indonesia.

Excellency,

The wish to integrate with Indonesia has long been alive in the hearts of the people of East Timor. The long struggle of the people of East Timor against colonial rule is the reality of the inner desire and the wish and the will of the people in the Territory. Our struggle was inspired by the similarity of ethnic and cultural backgrounds existing between the East Timorese and Indonesian people, particularly those who are geographically located on the eastern part of Indonesia. The challenge of the various obstacles faced by the East Timorese people did not weaken this desire, but on the contrary, it strengthened their wishes until the day came when all the political parties, for example, UDT, APODETI, KOTA and TRABALHISTA, consolidated themselves and were able to control the majority of the territory and to proclaim the integration with Indonesia on 30 November 1975. This signified that the people of East Timor were in consensus to integrate with the country and the people of Indonesia.

/...

Excellency,

The people of East Timor elected their representatives democratically, based on the various socio-cultural customs among the people. On 31 May 1976 those elected representatives convened a meeting in Dili and decided to reiterate the desire of the East Timorese people to reunite with the country and the people of Indonesia. We, the representatives of the people of East Timor who are present on this occasion, have been authorized by all the Timorese people to submit the petition to integrate with Indonesia.

Excellency,

On this special occasion we earnestly hope that Your Excellency will have not the slightest doubt that our petition to integrate with Indonesia is the realization of our deepest desire to become Indonesians. For this reason, we, as the representatives of the people of East Timor, request that the Indonesian Government under the guidance of Your Excellency, and also all the Indonesian people, take the necessary steps in order to accomplish the petition, which is as follows:

Petition

With the blessing of God Almighty, we, on behalf of the entire people of East Timor, in witness of the resolution passed by the open and plenary session of the Popular Representative Assembly of the Territory of East Timor on 31 May 1976 in Dili, which in fact constitutes a realization of the aspiration of the people of East Timor as inscribed in the Proclamation of integration of East Timor on 30 November 1975 in the town of Balibó, do hereby resolve to urge the Government of the Republic of Indonesia to accept, in the shortest possible time, and to undertake constitutional measures for the full integration of the people and the territory of East Timor into the unitary state of the Republic of Indonesia without any referendum.

Done at the city of Dili
on the 31st day of May 1976

Chief Executive of the
Provisional Government
of East Timor

(Signed) Arnaldo dos Reis Araujo

Chairman of the Popular
Representative Assembly
of East Timor

(Signed) Guilherme Maria Gonçalves

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Excellency,

We, the representatives of East Timor, humbly request that Your Excellency and the people of Indonesia take this petition into the necessary consideration with the hope that it can be implemented within as short a time as possible. On this occasion we also appeal to the international community to acknowledge the important events which have occurred in East Timor. The people of East Timor have determined their own future through their representatives in Dili on 31 May 1976.

Excellency,

We are officially submitting the petition of the Timorese people to Your Excellency, so that we, and the entire people of East Timor, are able to extend the invitation immediately to all the officials and the members of the Indonesian Parliament to visit East Timor in order to make on-the-spot assessment of the real wishes of the people on the territory.

In conclusion, Your Excellency Mr. President, honourable members of Parliament, other distinguished Ministers, ladies and gentlemen, on behalf of the entire people of East Timor, we express our sincere thanks and great appreciation to all of you for this opportunity to submit this petition.

Thank you.

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ANNEX V

Statement made by H.E. President Suharto on 7 June 1976 in response to the address presented by the delegation of the Provisional Government of East Timor

Distinguished Mr. Arnaldo dos Reis Araujo, Chief Executive of the Government of East Timor,

My dear Brothers, members of the delegation of the people of East Timor,

First of all, I would like to convey my warmest welcome to the capital of the Republic of Indonesia to all my dear brothers, delegates of the people of East Timor.

Your arrival in Jakarta now not only constitutes an important event, but also a historic occasion in our nationhood.

You have come here to carry out the task of the whole people of East Timor, namely to submit the firm determination of the people of East Timor to reintegrate themselves with their half-brothers in the State of the Republic of Indonesia who already became independent three decades ago.

I do not feel as though I am greeting strangers today. I feel that I am meeting my own brothers again, who were separated for a long time. We were separated for hundreds of years by the artificial barriers of the colonial Governments. We were separated by force within our own backyards, separated against our will from our own brothers.

We were forced to be separated by ill fate.

But we will now be together again thanks to our struggle; we are now strongly determined to stay together bound by moral ties that will not be affected by hundreds of years of separation.

A similar fate in the past, similar ideals and a common resolve to build jointly a better tomorrow are the fundamental elements of a nation. These essential elements of the will to live together form the bonds of unity as a nation, undisturbed by other factors such as differences in language, colour or religious beliefs. Many of the modern nations which are strong and advanced nowadays, too, as a matter of fact, originated from nations located far away from their present homeland. On the contrary, there are nations which were once united but have now become divided into two or more parts. This clearly shows that the will and the ability to stay united are the only factor in building a nation.

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We, too, the Indonesian nation with a population of 130 million, have our differences: we live on small islands with different local dialects, we adhere to different customs, we have colourful and beautiful local cultures, and yet we still retain other differences as well. But we are, nevertheless, determined to become one Indonesian nation and will remain so for the rest of our long future history.

We have no intention of removing those differences, because such an effort would be against fate: useless and futile.

We once were splintered into communal groups which not only felt disunited, but in many instances even perpetuated disunity. We had also been divided into different kingdoms. All of this was merely the result of foreign colonial politics and interests. Without dividing us, they would not be able to dominate this vast and densely populated archipelago.

This archipelago was once united, with an area approximately the size of the present territory of the unitary State of the Republic of Indonesia. History noted the famous Sriwijaha Kingdom, as well as the well-known Majapahit Kingdom.

But history should also take note of an inglorious chapter and a misfortune that befell us. For three and a half centuries we were a colonialized nation, our soul was oppressed and our body exploited. As I have mentioned earlier, we were separated from our own brothers, we were splintered into small groups. But the heritage of sharing one common destiny had never disappeared. The spirit to become independent had never been quenched.

During the entire period of colonial domination, the Indonesian nation had always fought against foreign colonialists and wanted to become a free, independent and honourable nation again. Our history is full of big and small heroes as well as thousands of minor and unknown heroes. The history of Indonesia registered the struggles to be free from foreign domination throughout this entire vast archipelago. We have our heroine: Cut Nyak Dhien, and other heroes: Teuku Umar, Imam Bonjol, Diponegoro, Hasanudin, Pattimura and many others. They fought against foreign colonialists to liberate and to advance their societies. We also have heroines in other fields who shared the same objective of their struggle: Ibu Kartini, Dewi Sartika and so forth.

If the previous struggles were for the most part manifested through armed conflicts and carried out separately, later on at the beginning of this century the struggle of the Indonesian people began to search for more nationalistic and for new methods, namely modern organizational means. Thus the Budi Utomo was established in 1908, which is now known as the national reawakening day. Since then many Indonesian organizations began to emerge and were followed by political parties, which have actually one identical aim: independence.

In 1928 the nationalistic platform became even stronger with the enunciation of the youths' solemn oath. The Indonesian people was firmly determined to have one nation, one fatherland and one language, Indonesian. The struggle towards the independence of Indonesia was expanding and became more clear.

The whole series of struggles during those hundreds of years finally reached its climax during the independence war in 1945. We gained our independence through armed struggle and we defended it heroically through heavy sacrifices and hardships, and some of its bitterness resulting from those struggles can still be found up to now.

We proclaimed the independence of Indonesia as our own responsibility and as a result of our own struggle at that time not one single country recognized our independence. But independence is not solely a question of recognition by others, and also not by the international community. Independence is primarily a question of determination and decision; if we can show that we want independence, then the world - even though late - will eventually recognize it.

But the struggle of Indonesia was far from finished. In the following years after the recognition of independence, we were still splintered. Thus emerged several Federal States created by the colonial government which, at that very moment, still tried to maintain its domination in this land. Furthermore, the question of West Irian was also delayed and only in 1969 did it come back into the fold of the Republic of Indonesia.

Such history clearly demonstrates that the Indonesian nation had struggled hard towards its national independence which is unified and intact, and in this history, Indonesia can claim to be the pioneer of national independence struggles in the region of South-East Asia. We had already started our struggle long before the dominated African nations were awake and gained their independence such as today.

There is not the slightest doubt that Indonesia is anti-colonialist. Indonesia strongly supports the struggle of every colonialized people to determine its own future. The first sentence of our Constitution clearly stipulates: "That in reality, independence is the right of every nation and, therefore, colonialism in this world must be abolished because it is not in conformity with humanity and justice."

Three hundred and fifty years under foreign domination made us one of the nations which fully understands the significance of misery. Hundreds of years of hard struggles and another five years during the independence war have made us a nation which deeply comprehends and highly respects the meaning of independence.

It is true that the principal trait of the present twentieth century is that this is the century of independence for all nations and during these coming years we will witness the drawing to a close of colonialism, which is now fast decaying.

But certainly Indonesia, which is anti-colonialist, will not commit the same bad mistakes as the colonialists. We do not have any territorial ambition and we do not have the inclination to dominate other people. But our stand on the question of self-determination is clear: we will help those peoples who want to determine their own destiny and future.

(...

Thus when the Portuguese Government announced its decolonization policy towards East Timor we quickly supported it without any hesitation. It depends entirely on the aspirations of the people of East Timor for their own future.

But the act of self-determination also has a clear objective: namely, to promote and to distribute equally people's welfare. Progress and prosperity will not materialize if from the early stages there exist armed conflicts between groups in the society. Armed struggles always bring about spiritual and material suffering, and create fear and suppression. In such an atmosphere it would be impossible for the people to express their will quietly, in conformity with their inner feelings.

Indonesia will always support and help every process of decolonization and self-determination which is fair and orderly, not only in East Timor but also in other parts of the world.

We were therefore deeply concerned when the process of decolonization and self-determination for the people of East Timor was compelled to go through armed conflicts amongst the people of East Timor themselves. We were equally worried when the FRETILIN used force to suppress and terrorize other groups which differ in their views regarding the future of East Timor.

Now we begin to feel relieved because the armed conflicts have ceased. Thus the people of East Timor can properly contemplate and decide on their own future, without fear and coercion. This is what actually constitutes a proper process of decolonization and self-determination, orderly and peacefully, enabling the accommodation of all views and desires of the whole people of East Timor.

We will highly honour and sincerely accept any decision whatever made through such a process by our brothers, the people of East Timor.

We know now the decision you have made.

In an atmosphere of peace and order, you have reconfirmed the proclamation of integration of East Timor into Indonesia which was officially announced in Balibó on last November 30th.

I herewith accept the petition for such integration.

We accept it with our most sincere gratitude for the confidence which the people of East Timor conferred upon Indonesia. We also accept it with a sense of humanitarian responsibility, responsibility towards history, towards our independence, principles and ideals, and towards our inner self.

This is indeed a historic moment: historic for the people of East Timor, historic for the people of Indonesia.

The decision we make, therefore, must be the right one.

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Pancasila and the Constitution of the Republic of Indonesia affirm that Indonesia is a State based on the sovereignty of the people. Whatever our action is should be with the knowledge and the concurrence of the entire people. The problem of integration is a very important matter and of great historical significance. The people of Indonesia, therefore, must now be certain and approve it.

It is for this particular reason that before the integration of East Timor into the unitary State of the Republic of Indonesia becomes official, allow us, distinguished Chief Executive of the Provisional Government of East Timor, the Government of the Republic of Indonesia, to permit the Indonesian people once again to ascertain the wishes of the people of East Timor. With the consent of our brothers in East Timor, we would like to send a team consisting of several personalities of the Government of the Republic of Indonesia and the House of People's Representatives of the Republic of Indonesia, and also representatives of various public organizations.

This does not signify that we do not have faith in the proclamation of Balibó; neither does it mean that we are not convinced by the petition that I have just received today, nor that we are doubtful about you, all the heroic leaders of the people whom we admire, but only to allow the sovereign Indonesian people to see for themselves and to have frank and open talks with their own brothers there. Thus a quick and firm decision can then be taken on the integration.

Distinguished Chairman and delegates of the people of East Timor,

The people of East Timor is opening a new chapter in history, after suffering for hundreds of years under the yoke of foreign colonialism. The people of East Timor will join their own brothers in the unitary State of the Republic of Indonesia who have also fought for hundreds of years for its independence and who have been independent for 30 years.

We will accept you as what we are now, with all our joy and sorrow; with all our development efforts in which we are now busily engaged we are convinced that you will join us in our present condition. Indonesia has made Pancasila its State principle and philosophy of life, a philosophy of life which actually existed already for centuries in the soil and minds of Indonesia. Indonesia also has the 1945 Constitution, which is based on Pancasila, and on the fact that it is a unitary State.

Therefore, after the official integration, we will ask all of you to strive shoulder-to-shoulder in jointly building our common destiny, a destiny that will bring progress, prosperity and social justice for the whole Indonesian people, within a unitary State based on Pancasila and the 1945 Constitution mentioned earlier.

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Annex 6

Declaration on Establishment of a Provisional Government of East Timor, 17 December 1975 - UN Doc.A/31/42

ASSEMBLY COUNCIL

A/31/42*
S/11923
30 December 1975

ORIGINAL: ENGLISH

GENERAL ASSEMBLY
Thirty-first session
IMPLEMENTATION OF THE DECLARATION ON THE GRANTING OF INDEPENDENCE TO COLONIAL COUNTRIES AND PEOPLES
QUESTION OF TERRITORIES UNDER PORTUGUESE ADMINISTRATION

SECURITY COUNCIL
Thirtieth year

Letter dated 22 December 1975 from the Permanent Representative of Indonesia to the United Nations addressed to the Secretary-General

I have the honour to enclose herewith a Declaration on the Establishment of a Provisional Government of the Territory of East Timor which was promulgated by four political parties in the Territory, APODETI, UDT, KOTA and TRABALHISTA, on 17 December 1975.

I should be grateful if Your Excellency would direct that this letter and the enclosure be circulated as a document of the General Assembly, under the items entitled "Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples" and "Question of Territories under Portuguese administration", and of the Security Council.

(Signed) Ch. ANWAR SANI
Ambassador
Permanent Representative

* For information concerning the new system of numbering General Assembly documents, see A/31/INF/1.

ANNEX

Declaration on the Establishment of a Provisional Government of the Territory of East Timor

Consonant with the resolute determination of the people of East Timor expressed in the Proclamation issued by the political parties of APODETI, UDT, KOTA and TRABALHISTA on 30 November 1975;

In view of the fact that the capital of East Timor and practically the entire territory of East Timor has been liberated from terrorist influence;

Further in view of the fact that there exists a vacuum of authority in East Timor due to the incapacity and irresponsibility of Portugal;

We, on behalf of the people of East Timor, declare the establishment of a provisional government of the Territory of East Timor to ensure the maintenance of government and the administration of law and order, so as to restore normal life to the people of East Timor.

Done at Dili, 17 December 1975

On behalf of APODETI

(Signed) Arnaldo de Araujo

On behalf of KOTA

(Signed) Domingus Pareira

On behalf of UDT

(Signed) F. X. Lopes da Cruz

On behalf of Partido TRABALHISTA

(Signed) Januario dos Reis Cota

Annex 7

Cable from Australian Embassy, Lisbon containing translation of part of interview by Portuguese Foreign Minister given to Expresso, 10 May 1980

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U N C L A S S I F I E D

TIMOR

FOLLOWING IS OUR TRANSLATION OF PART OF INTERVIEW GIVEN BY FOREIGN MINISTER FREITAS DO AMARAL TO WEEKLY NEWSPAPER EXPRESSO (UNDERLINE ONE) ON 10 MAY:

QUOTE

EXPRESSO: EAST TIMOR IS AFRAID THAT THE PORTUGUESE GOVERNMENT WILL ESTABLISH CONTACTS WITH THE INDONESIAN AUTHORITIES WITH A VIEW TO AGREEING TO THAT TERRITORY'S INTEGRATION INTO INDONESIA.

FREITAS DO AMARAL: WE CANNOT DO THAT. I WILL BEGIN BY SAYING THAT WE ARE PARTICULARLY AWARE OF THE PROBLEM OF EAST TIMOR BOTH IN ITS HUMAN ASPECTS AND IT POLITICAL ASPECTS. WE ALSO HAVE A VERY CLEAR REFERENCE TO THIS MATTER IN THE A.D.'S ELECTORAL PROGRAM.

AS TO THE EFFORTS TO FIND A SOLUTION, THERE HAS BEEN NO INITIATIVE FROM THE GOVERNMENTS WHICH PRECEDED US AND I CONSIDER IT A SERIOUS MATTER THAT OF THE FIVE CONSTITUTIONAL GOVERNMENTS BEFORE US, NONE TOOK ANY INITIATIVE TO RESOLVE THIS PROBLEM WHOSE HUMAN AND POLITICAL ASPECTS ARE SO DELICATE AND SO SERIOUS. WE HAVE DECIDED TO DO SOMETHING AND THE FIRST QUESTION WHICH WE FACE IS THIS: THERE ARE IN TIMOR HUMANITARIAN PROBLEMS WHICH OBLIGE US TO TAKE A DECISION, TO TRY TO SOLVE THEM AND THIS WILL IN ANY CASE OBLIGE US TO GET IN TOUCH WITH THE INDONESIAN AUTHORITIES.

EXPRESSO: YOU ARE REFERRING TO THE CASE OF THE THREE THOUSAND FAMILIES ABOUT WHOM INDONESIA HAS ASKED HOLLAND TO MAKE AN APPROACH TO THE PORTUGUESE GOVERNMENT FOR THEM TO BE ACCEPTED INTO PORTUGAL.

FREITAS DO AMARAL: THAT IS ONE EXAMPLE. SIMILARLY THERE ARE OTHER PORTUGUESE OR FORMER PORTUGUESE WHO ARE THERE AND WHO ALSO WANT TO COME TO PORTUGAL. THERE ARE ALSO OTHER PEOPLE IN A CRITICAL PHYSICAL SITUATION. WE CANNOT RESOLVE THESE PROBLEMS WITHOUT ENTERING INTO CONTACT WITH THE INDONESIAN AUTHORITIES. BUT AT THE

.../2

INWARD CABLEGRAM

2-O.LB3939

SAME TIME, WE DO NOT WISH TO ESTABLISH ANY CONTACT WHICH COULD BE INTERPRETED EITHER BY INDONESIA OR BY THE INTERNATIONAL COMMUNITY AS RECOGNITION - EVEN THOUGH ONLY DE FACTO - OF INDONESIA AS THE LEGITIMATE HOLDER OF SOVEREIGNTY OVER THE TERRITORY OF EAST TIMOR. SO A PROBLEM WHICH AT THE OUTSET IS HUMANITARIAN, CHANGES INTO A PROBLEM OF A POLITICAL CHARACTER.

MOREOVER, THERE IS ARTICLE 307 OF THE CONSTITUTION, WHICH WE RESPECT AND WHICH REFERS TO THE PROMOTION OF ACTS AND EFFORTS TOWARDS GUARANTEEING THE RIGHT OF SELF DETERMINATION AND INDEPENDENCE OF EAST TIMOR. AS TO THIS OTHER ASPECT, THE CONSTITUTION ATTRIBUTES RESPONSIBILITY JOINTLY TO THE PRESIDENT OF THE REPUBLIC AND TO THE GOVERNMENT. CONSEQUENTLY THE GOVERNMENT CANNOT ACT ALONE AND WILL HAVE TO HAVE A COMMON LINE OF CONDUCT WITH THE PRESIDENT. FOR ALL THESE REASONS AND GIVEN THE SENSITIVITY AND DELICACY OF THE QUESTION, IT WAS SUGGESTED THAT A COMMITTEE BE NOMINATED WITH TWO DELEGATES FROM THE PRESIDENCY OF THE REPUBLIC AND TWO FROM THE GOVERNMENT TO STUDY THE POLITICAL PROBLEMS INVOLVED IN THE CASE AND TO ADVISE THE PRESIDENT AND THE GOVERNMENT. THIS IDEA HAS BEEN ACCEPTED IN PRINCIPLE AND THE PEOPLE WHO WILL MAKE UP THIS COMMITTEE HAVE ALREADY BEEN APPOINTED.

EXPRESSO: BUT THE COMMITTEE IS STILL NOT FUNCTIONING.

FREITAS DO AMARAL: IT WAS NECESSARY TO NOMINATE THE POPLE AND ONLY AFTER THIS HAD BEEN FORMALISED WILL IT BEING TO OPERATE. WE WANT IT TO ACT QUICKLY SO THAT WE CAN BE INFORMED SOON ON THE LINE OF ACTION TO FOLLOW.

MOREOVER, WE NEED FOR DIPLOMATIC REASONS TO TAKE URGENT INITIATIVES. THE SITUATION OF PORTUGAL IN THE UNITED NATIONS ON THE SUBJECT OF EAST TIMOR DETERIORATED SOMEWHAT IN 1979. WHAT HAPPENED IN THE GENERAL ASSEMBLY IN SEPTEMBER OF LAST YEAR WAS SYMPTOMATIC. THERE WERE INDICATIONS OF A LARGE MOVEMENT AWAY FROM VOTING WITH PORTUGAL ON ITS CLAIM FOR RESPONSIBILITY WITH REGARD TO EAST TIMOR. THIS MOVEMENT IS TOWARDS SUPPORTING INDONESIA AND CONSIDERING THE CASE CLOSED. AT THE TIME, PORTUGAL UNDERTOOK A SUCCESSFUL INITIATIVE IN ORDER THAT THIS SHOULD NOT HAPPEN BUT MOST OF THE COUNTRIES WHO AGREED TO VOTE AGAIN WITH PORTUGAL GAVE US TO UNDERSTAND THAT IT WOULD BE THE LAST TIME THEY WOULD DO SO IF, IN THE MEANTIME, PORTUGAL DID NOT TAKE SOME NEW INITIATIVE. WE THEREFORE HAVE TO GO TO THE NEXT GENERAL ASSEMBLY IN A POSITION WHERE, NATURALLY NOT HAVING RESOLVED THE WHOLE PROBLEM, WE CAN, HOWEVER, SHOW THE INTERNATIONAL COMMUNITY THAT WE ARE INTERESTED IN RESOLVING IT AND THAT WE ARE TAKING CONCRETE STEPS IN THIS DIRECTION.

I WOULD ADD THAT THE SERIES OF REPORTS THAT HAVE BEEN PUBLISHED, ACCORDING TO WHICH A MEETING IS PLANNED BETWEEN THE

.../3

DEPARTMENT OF FOREIGN AFFAIRS

INWARD CABLEGRAM

3-O.LB3939

MINISTERS OF FOREIGN AFFAIRS OF PORTUGAL AND INDONESIA, ARE COMPLETELY FALSE.

EXPRESSO: ARE YOU REFERRING TO THE MEETING WHICH THE PRESS ANNOUNCED WOULD BE ON 19TH OF THIS MONTH IN PARIS?

FREITAS DO AMARAL: THERE IS NO BASIS FOR THAT. WE HAVE NOT MADE ANY APPROACH IN THAT DIRECTION NOR WAS ANY APPROACH MADE TO US BY INDONESIA.

EXPRESSO: BUT WHAT ARE THE CONCRETE STEPS, IN YOUR OPINION.

FREITAS DO AMARAL: AS THESE STEPS HAVE TO BE AGREED WITH THE PRESIDENT OF THE REPUBLIC, IT WOULD NOT BE CORRECT TO REVEAL THEM AT THE MOMENT.

UNQUOTE.

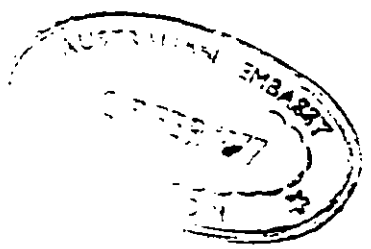
ACTION: DEP FOREIGN AFFAIRS

PRIME MINISTER
FOREIGN MINISTER
MIN+DEP DEFENCE
DEP P M AND CABINET
ONA
JIO

Annex 8

Portuguese Constitutions 1976, Art.307 and 1989, Art.293

CONSTITUTION of the PORTUGUESE REPUBLIC



OFFICE OF THE
SECRETARY OF STATE FOR MASS COMMUNICATION
DIRECTORATE GENERAL FOR INFORMATION AND DIFFUSION

PREAMBLE

On 25 April 1974 the Armed Forces Movement, setting the seal on the Portuguese people's long resistance and interpreting its deep-seated feelings, overthrew the Fascist Régime.

The liberation of Portugal from dictatorship, oppression and colonialism represented a revolutionary change and an historic new beginning in Portuguese society.

The Revolution restored fundamental rights and freedoms to the people of Portugal. In the exercise of those rights and freedoms, the people's legitimate representatives have met to draw up a Constitution that meets the country's aspirations.

The Constituent Assembly affirms the Portuguese people's decision to defend their national independence, safeguard the fundamental rights of citizens, establish the basic principles of democracy, secure the primacy of the rule of law in a democratic state and open the way to a socialist society, respecting the will of the Portuguese people and keeping in view the building of a freer, more just and more fraternal country.

The Constituent Assembly, meeting in plenary session on 2 April 1976, approves and decrees the following Constitution of the Portuguese Republic.

ARTICLE 307

Independence of Timor

1. Portugal shall remain bound by its responsibility, in accordance with international law, to promote and safeguard the right to independence of Timor Leste.

2. The President of the Republic, assisted by the Council of the Revolution, and the government shall be competent to perform all acts necessary to achievement of the aims set forth in the foregoing paragraph.

PORTUGAL

CONSTITUTIONS OF THE COUNTRIES OF THE WORLD

Editors
ALBERT P. BLAUSTEIN & GISBERT H. FLANZ

PORTUGAL

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Constitution of the Portuguese Republic

2ND REVISION

1989

DIRECÇÃO-GERAL DA COMUNICAÇÃO SOCIAL

Embassy advise 6/91 no revisions

Artigo 293.º

(Autodeterminação e independência de Timor Leste)

1. Portugal continua vinculado às responsabilidades que lhe incumbem, de harmonia com o direito internacional, de promover e garantir o direito à autodeterminação e independência de Timor Leste.

2. Compete ao Presidente da República e ao Governo praticar todos os actos necessários à realização dos objectivos expressos no número anterior.

ARTICLE 293

Self-determination and independence of East Timor

1. Portugal shall remain bound by her responsibilities under international law to promote and safeguard the right to self-determination and independence of East Timor.

2. The President of the Republic and the Government shall have the powers to perform all acts necessary for achieving the aims set forth in the preceding paragraph.

Statement by Kenneth Quinn, United States Deputy Assistant Secretary of State, 6 March 1992, to United States Senate Foreign Relations Committee

EAST TIMOR, INDONESIA AND U.S. POLICY

STATEMENT

BY

KENNETH M. QUINN

DEPUTY ASSISTANT SECRETARY OF STATE

FOR

EAST ASIAN AND PACIFIC AFFAIRS

BEFORE THE

SENATE FOREIGN RELATIONS COMMITTEE

MARCH 6, 1992

MR. CHAIRMAN, MEMBERS OF THE COMMITTEE, I APPRECIATE THIS OPPORTUNITY TO PRESENT OUR VIEWS ON THE SITUATION IN EAST TIMOR AND U.S. POLICY REGARDING THE INDONESIAN GOVERNMENT'S HANDLING OF THE VIOLENT INCIDENT IN DILI LAST NOVEMBER.

THE DILI AFFAIR

WE ARE HERE TODAY PRINCIPALLY OUT OF CONCERN OVER THE TRAGIC EVENT IN DILI LAST NOVEMBER 12. ON THAT DAY, INDONESIAN ARMY AND POLICE UNITS FIRED ON UNARMED CIVILIANS ENGAGED IN A POLITICAL DEMONSTRATION, KILLING AND WOUNDING SCORES OF PEOPLE.

THE UNITED STATES GOVERNMENT HAS LONG BEEN CONCERNED ABOUT THE HUMAN RIGHTS SITUATION IN EAST TIMOR. OFFICERS FROM OUR EMBASSY IN JAKARTA HAVE GONE THERE FREQUENTLY OVER THE YEARS. BOTH AMBASSADOR MONJO AND FORMER AMBASSADOR WOLFOWITZ HAVE VISITED EAST TIMOR. FOUR EMBASSY TEAMS HAVE BEEN THERE SINCE NOVEMBER 12; THE MOST RECENT VISITATION WAS IN MID FEBRUARY.

OUR DIALOGUE WITH THE INDONESIAN GOVERNMENT ABOUT EAST TIMOR IS LONGSTANDING AND HAS FREQUENTLY BEEN AT THE HIGHEST LEVELS. SHORTLY AFTER THE NOVEMBER 12 INCIDENT, BOTH INDONESIAN FOREIGN MINISTER ALATAS AND SECRETARY BAKER WERE IN SEOUL ATTENDING AN APEC MINISTERIAL MEETING. BOTH THE SECRETARY AND ASSISTANT SECRETARY SOLOMON IMMEDIATELY DISCUSSED

PRELIMINARY REPORTS OF THE INCIDENT DIRECTLY WITH THE MINISTER; AND SECRETARY BAKER SENT MINISTER ALATAS A LETTER OF CONCERN SHORTLY THEREAFTER.

THE UNITED STATES HAS PUBLICLY CONDEMNED THE DILI INCIDENT. NO PROVOCATION COULD HAVE WARRANTED SUCH A WANTON MILITARY REACTION; THE EXCESSIVE USE OF FORCE WAS UNJUSTIFIED AND REPREHENSIBLE. WE IMMEDIATELY CALLED FOR A COMPLETE AND CREDIBLE INVESTIGATION LEADING TO APPROPRIATE PUNISHMENTS FOR THOSE WHO RESORTED TO OR CONDONED SUCH DEADLY USE OF FORCE. WE CLEARLY CONVEYED OUR VIEWS AT HIGH LEVELS IN BOTH JAKARTA AND WASHINGTON.

MR. CHAIRMAN, WE SHARE THE CONGRESS' DEEP CONCERN AND DISAPPROVAL OF THE VIOLENCE OF NOVEMBER 12, AS WELL AS THE DESIRE TO SEE THAT THOSE ACCOUNTABLE FOR THE MASSACRE ARE PUNISHED, THAT JUSTICE IS DONE, AND THAT STEPS ARE TAKEN TO ENSURE THAT NO SUCH INCIDENT RECURS.

THE ISSUES NOW REQUIRING U.S. POLICY JUDGMENTS ARE THESE: HOW CAN THE U.S. BEST HELP TO ENSURE THAT OUR GOALS OF ACCOUNTABILITY AND A JUST RESOLUTION OF THE INCIDENT ARE REALIZED, AND THAT THE WELL-BEING OF THE PEOPLE OF EAST TIMOR IS IMPROVED?

WE HAVE BEEN ENCOURAGED BY THE FACT THAT THE INDONESIAN GOVERNMENT HAS ALSO CHARACTERIZED THE INCIDENT AS A TRAGEDY. SENIOR LEADERS ARE WELL AWARE THAT THE WORLD IS WATCHING. THEY UNDERSTAND THAT THEIR POSITIVE INTERNATIONAL REPUTATION, OF WHICH THEY ARE PROUD, IS ON THE LINE. OUR HOPE AND EXPECTATION HAS BEEN THAT INDONESIA WOULD MOVE VIGOROUSLY TO FIND THE FACTS, ASSESS RESPONSIBILITY, APPROPRIATELY PUNISH THOSE RESPONSIBLE, AND TAKE STEPS TO PREVENT SUCH AN EVENT FROM OCCURING AGAIN.

AS OF TODAY, OUR EXPECTATIONS HAVE BEEN PARTIALLY FULFILLED. PRESIDENT SOEHARTO PROMPTLY FORMED A NATIONAL INVESTIGATORY COMMISSION WHICH DELIVERED A PRELIMINARY REPORT ON DECEMBER 26. THE REPORT CLEARLY ANSWERED TWO KEY QUESTIONS IN THE AFFIRMATIVE: 1) WAS EXCESSIVE FORCE USED?; AND 2) SHOULD THE MILITARY PERSONNEL INVOLVED BE PUNISHED? WHILE WE LOOK FORWARD TO THE FINAL REPORT TO PROVIDE ADDITIONAL DETAIL, WE AND MOST OTHER CONCERNED FOREIGN OBSERVERS -- INCLUDING AUSTRALIA, JAPAN, AND THE EC -- HAVE JUDGED THE PRELIMINARY REPORT TO BE A SERIOUS AND RESPONSIBLE EFFORT BY THE GOVERNMENT OF INDONESIA. THE REPORT CONFRONTS THE TOUGHEST ISSUES, AND DIRECTLY REFUTES MANY OF THE INITIAL ASSERTIONS ABOUT THE EVENT PUT FORWARD BY THE INDONESIAN ARMED FORCES:

-- IT RAISES THE OFFICIAL CASUALTY TOTALS TO REALISTIC LEVELS, FLATLY CONTRADICTING FIGURES ANNOUNCED EARLIER BY THE INDONESIAN ARMED FORCES.

-- IT MAKES THE KEY DETERMINATION THAT EXCESSIVE FORCE WAS USED AND THAT SOME TROOPS WERE CLEARLY "OUT OF CONTROL".

-- IT ALSO FINDS THAT THIS INCIDENT WAS NOT THE RESULT OF GOVERNMENT POLICY.

-- AND IT ASSERTS THAT THOSE WHO VIOLATED THE LAW MUST BE PROSECUTED.

WE HAVE ALSO BEEN ENCOURAGED BY PRESIDENT SOEHARTO'S FOLLOW-UP ACTIONS:

-- ON RECEIVING THE PRELIMINARY FINDINGS WHICH WERE CRITICAL OF HIS ARMY, THE PRESIDENT IMMEDIATELY MADE THE REPORT PUBLIC AND EXTENDED HIS DEEP APOLOGY TO THE FAMILIES OF INNOCENT VICTIMS. HE HAS PUBLICLY APOLOGIZED ON THREE OCCASIONS.

-- THE PRESIDENT RELIEVED OF THEIR DUTIES TWO GENERAL OFFICERS -- THE REGIONAL AND PROVINCIAL MILITARY COMMANDERS. LOWER-LEVEL OFFICERS IN THE CHAIN OF COMMAND HAVE ALSO BEEN REPLACED.

-- HE ORDERED FORMATION OF A MILITARY "COUNCIL OF HONOR" TO RECOMMEND ARMY PUNISHMENTS AND REFORMS, WITH THE INTENTION THAT SUCH AN INCIDENT MUST NEVER HAPPEN AGAIN IN INDONESIA. ON FEBRUARY 27 THE INDONESIAN ARMY ANNOUNCED THAT SIX SENIOR OFFICERS WILL BE DISCIPLINED, WITH THREE OF THEM DISMISSED FROM THE

SERVICE; EIGHT OTHER OFFICERS AND ENLISTED MEN WILL BE COURT-MARTIALED; AND FIVE MORE REMAIN UNDER INVESTIGATION.

-- PRESIDENT SOEHARTO ORDERED ARMED FORCES COMMANDER GENERAL TRY SUTRISNO TO ACCOUNT FOR MISSING PERSONS.

-- AND HE ORDERED INCREASED EFFORTS TO IMPROVE THE WELL-BEING OF THE TIMORESE PEOPLE.

WE HAVE MONITORED THE SITUATION IN EAST TIMOR CLOSELY SINCE NOVEMBER 12. FOUR TEAMS FROM EMBASSY JAKARTA HAVE VISITED THE PROVINCE SINCE THE INCIDENT. THE MOST RECENT VISIT, IN MID FEBRUARY, REAFFIRMED THE FINDINGS OF EARLIER TEAMS THAT THERE IS NO EVIDENCE TO SUBSTANTIATE ALLEGATIONS OF ADDITIONAL KILLINGS SINCE NOVEMBER 12. THE TEAM ALSO CONFIRMED EARLIER REPORTS THAT, WHILE TENSIONS IN DILI CONTINUE, THEY HAVE EASED FROM NOVEMBER. ECONOMIC AND SOCIAL LIFE HAVE RETURNED TO NORMAL; HOWEVER, SECURITY IS TIGHT, REPORTEDLY BECAUSE OF CONCERNS THAT A GROUP OF POLITICAL ACTIVISTS IS EN ROUTE DILI ON A PORTUGUESE SHIP.

AS OF MID FEBRUARY, FOURTEEN CIVILIANS REMAINED HOSPITALIZED AS A RESULT OF WOUNDS RECEIVED; 77 OTHERS HAD RECOVERED SUFFICIENTLY TO BE RELEASED. TWENTY-FOUR CIVILIANS WHO WERE IN DETENTION IN DILI IN MID FEBRUARY ON CHARGES RELATED TO THE DEMONSTRATION HAVE REPORTEDLY BEEN RELEASED IN RECENT DAYS. EIGHT OTHERS REMAIN IN DETENTION IN DILI AND WILL

BE TRIED ON CRIMINAL CHARGES. SOME DETAINEES WERE ABUSED IN THE DAYS IMMEDIATELY AFTER NOVEMBER 12. WE UNDERSTAND THAT SUCH MISTREATMENT HAS CEASED.

SOME HAVE CRITICIZED THE GOVERNMENT PRELIMINARY REPORT OVER THE MATTER OF PROVOCATION. EYEWITNESSES DIFFERED GREATLY ON THIS ISSUE. THE REPORT SAYS THAT SOME WITNESSES DENIED THERE WAS ANY PROVOCATIONS; OTHERS ALLEGE THAT SIGNIFICANT PROVOCATIONS OF THE MILITARY DID OCCUR. THE REPORT CONCLUDES THAT PROVOCATION DID OCCUR, BUT IT DOES MAKE THE CRITICAL POINT THAT, REGARDLESS, THE RESPONSE OF THE MILITARY WAS EXCESSIVE AND UNJUSTIFIABLE. WE HAVE BEEN APPALLED AT CALLOUS AND INAPPROPRIATE "BLAME THE VICTIM" COMMENTS BY SOME IN THE INDONESIAN MILITARY. BUT I SHOULD SAY AGAIN THAT, LIKE THE INCIDENT ITSELF, SUCH COMMENTS -- IN OUR ESTIMATION -- DO NOT REFLECT THE POLICY OR APPROACH OF THE SENIOR LEADERS OF THE INDONESIAN GOVERNMENT.

THE PUNISHMENT PHASE IS NOW BEGINNING. WE WILL CLOSELY MONITOR THE INDONESIAN GOVERNMENT'S EFFORTS TO FOLLOW THROUGH ON THE NATIONAL COMMISSION'S JUDGMENTS OF RESPONSIBILITY; AND WE WILL CONTINUE TO WATCH THE HUMAN RIGHTS SITUATION IN EAST TIMOR WITH CARE. I MUST ADD THAT, IN OUR VIEW, THE INTEREST OF TRUTH AND OF AMELIORATION OF THE SITUATION IN EAST TIMOR IS BEST SERVED BY A POLICY OF MORE, NOT LESS, ACCESS.

EAST TIMOR: HUMAN RIGHTS

HUMAN RIGHTS ISSUES HAVE BEEN, AND WILL REMAIN, AN IMPORTANT ELEMENT OF OUR CONTINUING DIALOGUE AND GOOD WORKING RELATIONS WITH THE INDONESIAN GOVERNMENT. AS OUR ANNUAL HUMAN RIGHTS REPORT MAKES CLEAR, INDONESIA'S RECORD IS MIXED; BUT, PRIOR TO LAST FALL, THE TREND IN EAST TIMOR IN RECENT YEARS HAD BEEN POSITIVE.

LOOKING BACK, THE FIRST YEARS IMMEDIATELY AFTER PORTUGAL'S 1974 DECISION TO DECOLONIZE EAST TIMOR WERE TRAUMATIC. A BLOODY CIVIL WAR ERUPTED AS SEVERAL TIMORESE FACTIONS COMPETED TO GAIN CONTROL OF THE AREA. WHEN THE MARXIST FRETILIN (EAST TIMOR NATIONAL LIBERATION FRONT) FACTION GAINED THE ASCENDANCY, INDONESIA INVADED TO KEEP EAST TIMOR OUT OF MARXIST HANDS. MANY INNOCENT CIVILIANS WERE UNDOUBTEDLY CAUGHT IN THE CROSSFIRE DURING THE CIVIL WAR AND LATER, AS THE INDONESIAN ARMY ATTEMPTED TO CRUSH THE WELL-ARMED AND WELL-ORGANIZED FRETILIN INSURGENTS. AS THE INSURGENCY CONTINUED INTO THE 1980S, SO DID HUMAN RIGHTS VIOLATIONS, ALTHOUGH AT A REDUCED RATE. WE HAVE RECEIVED NO REPORTS IN RECENT YEARS, HOWEVER, OF INCIDENTS ON THE SCALE OF WHAT TOOK PLACE ON NOVEMBER 12.

ONE OF THE REAL TRAGEDIES OF LAST FALL'S EVENTS IS THE SETBACK THEY GAVE TO RECENT PROGRESS. FORTUNATELY, THE INDONESIAN GOVERNMENT APPEARS SET TO RESUME A POSITIVE COURSE.

AS ALREADY NOTED, PRESIDENT SOEHARTO HAS PUBLICLY APOLOGIZED TO THE FAMILIES OF INNOCENT VICTIMS. HE HAS INSTRUCTED THAT CIVIC ACTION OR "TERRITORIAL" OPERATIONS AND OTHER EFFORTS TO IMPROVE THE WELL-BEING OF THE EAST TIMORESE PEOPLE BE STEPPED UP. HE HAS ORDERED THE ARMY TO PUNISH THOSE AT FAULT AND TO INSTITUTE REFORMS SO THAT SUCH A TRAGEDY CAN NOT HAPPEN AGAIN. THE PUNISHMENTS HAVE ALREADY BEGUN.

FOLLOWING THE ARRIVAL IN LATE 1989 OF A NEW MILITARY COMMANDER FOR EAST TIMOR, GENERAL WAROUW, WE NOTICED A MARKED DECLINE IN HUMAN RIGHTS ABUSES. GENERAL WAROUW DEVELOPED A COOPERATIVE RELATIONSHIP WITH EAST TIMOR GOVERNOR CARRASCALAO AND WITH BISHOP BELO OF THE CATHOLIC CHURCH. HE BEGAN TO EMPHASIZE "TERRITORIAL OPERATIONS" -- THAT IS, CIVIC ACTION EFFORTS IN THE VILLAGES -- RATHER THAN COMBAT OPERATIONS. AT ABOUT THE SAME TIME, EAST TIMOR WAS OPENED TO OUTSIDE VISITORS.

THE IMPROVING ATMOSPHERE CHANGED LAST FALL, HOWEVER, WHEN DISCUSSIONS BETWEEN INDONESIA AND PORTUGAL UNDER THE U.N. SECRETARY GENERAL'S AUSPICES BROUGHT TENTATIVE AGREEMENT FOR A VISIT TO EAST TIMOR BY A PORTUGUESE PARLIAMENTARY DELEGATION. THAT NEWS RAISED THE HOPES OF ANTI-INTEGRATIONIST ELEMENTS. IT ALSO LED TO INCREASED INDONESIAN SECURITY OPERATIONS. THAT COMBINATION OF FACTORS HEIGHTENED TENSIONS. WHEN PORTUGAL CANCELLED THE VISIT AT THE LAST MINUTE BECAUSE OF A DISPUTE OVER THE CREDENTIALS OF A FOREIGN JOURNALIST, FRUSTRATIONS AMONG ANTI-INTEGRATIONISTS IN EAST TIMOR HEIGHTENED.

THOSE FRUSTRATIONS FOUND EXPRESSION ON NOVEMBER 12, DURING THE VISIT OF A U.N. OFFICIAL TO DILI WHICH COINCIDED WITH A COMMEMORATION SERVICE FOR THE DEATH TWO WEEKS EARLIER OF AN ANTI- INTEGRATIONIST WHO DIED AS A RESULT OF A CONFRONTATION WITH PRO-INTEGRATIONIST FORCES. DURING A MARCH THROUGH CITY STREETS, ANTI-INDONESIA DEMONSTRATORS WERE VOCAL AND A FEW WERE VIOLENT. AN ARMY MAJOR WAS STABBED. IT APPEARS THAT LOCAL MILITARY UNITS THEN TOOK REVENGE. THE INDONESIAN GOVERNMENT COMMISSION HAS JUDGED THAT THE REACTION OF SOME TROOPS "EXCEEDED ACCEPTABLE NORMS," AND THEIR ACTIONS HAVE BEEN WIDELY CONDEMNED — BY OURSELVES AND BY THE INTERNATIONAL COMMUNITY.

MORE RECENTLY, WE, JAPAN, AUSTRALIA, AND MANY OTHER GOVERNMENTS HAVE BEEN ENCOURAGED BY THE INDONESIAN EFFORTS TO DIRECTLY ADDRESS THIS SITUATION. THE EC, CURRENTLY UNDER THE LEADERSHIP OF PORTUGAL, STATED ON FEBRUARY 13 THAT IT IS ENCOURAGED BY THE PRELIMINARY REPORT AND THE ACTIONS TAKEN BY JAKARTA. THESE EFFORTS ARE CLEARLY THOSE OF A GOVERNMENT THAT IS SEEKING TO BE RESPONSIVE TO HUMAN RIGHTS CONCERNS. THOSE FEW NATIONS WHICH SUSPENDED AID PROGRAMS HAVE EITHER LIFTED THE SUSPENSIONS OR ARE CONSIDERING DOING SO.

I RECOGNIZE THAT SOME PEOPLE BELIEVE JAKARTA'S RESPONSE TO THESE EVENTS HAS BEEN INADEQUATE AND THAT DIPLOMATIC SUASION IS INSUFFICIENT. THEY URGE THAT WE CUT U.S. SECURITY OR ECONOMIC ASSISTANCE TO INDONESIA. SUCH A COURSE, IN OUR VIEW, WOULD NOT PRODUCE THE DESIRED RESULTS WHICH WE ALL SEEK AND COULD HAVE

NEGATIVE CONSEQUENCES: FOR U.S-INDONESIA RELATIONS; FOR OUR LIMITED INFLUENCE IN INDONESIA; AND MOST IMPORTANTLY, FOR THE PEOPLE OF EAST TIMOR.

IT IS IMPORTANT TO ENCOURAGE, NOT DISCOURAGE, CONSTRUCTIVE TRENDS IN THE HUMAN RIGHTS SITUATION IN INDONESIA. SOME ELEMENTS WITHIN THE INDONESIAN GOVERNMENT INITIALLY RESISTED PRESIDENT SOEHARTO'S RESPONSE TO NOVEMBER 12. THEY WANTED TO CONFRONT INTERNATIONAL OPINION BY WHITEWASHING THE DILI EPISODE. THOSE RECALCITRANT FORCES WOULD LIKELY BE REINFORCED BY A RESPONSE ON OUR PART WHICH DENIGRATED PRESIDENT SOEHARTO'S EFFORTS.

ALSO, TO CUT OFF PROGRAMS SUCH AS IMET TRAINING, WHICH HELP TO PROMOTE DEMOCRATIC VALUES AND RESPECT FOR HUMAN RIGHTS, WOULD NOT FOSTER SUCH GOALS, BUT RATHER WOULD MARKEDLY REDUCE OUR INFLUENCE AND ROLE AS AN INTERLOCUTOR.

OUR WELCOME ACCESS TO SENIOR OFFICIALS IN JAKARTA IS PARTICULARLY IMPORTANT WHEN IT COMES TO LOBBYING EFFECTIVELY ON IMPORTANT HUMAN RIGHTS ISSUES SUCH AS EAST TIMOR. MORE BROADLY, OUR ENGAGEMENT WITH INDONESIA NEEDS TO BE SUSTAINED, NOT HINDERED. INDONESIA IS THE WORLD'S FOURTH-LARGEST NATION; IT IS THE WORLD'S LARGEST ISLAMIC COMMUNITY. I WOULD NOTE THAT AT A TIME OF RESURGENCE OF ISLAMIC FUNDAMENTALISM — WHICH SEEKS TO EXCLUDE WESTERN INFLUENCE FROM THE MIDDLE EAST — THE

INDONESIAN GOVERNMENT, IN DRAMATIC CONTRAST, IS FIRMLY COMMITTED TO RELIGIOUS TOLERANCE FOR THE COUNTRY'S BUDDHIST, HINDU, AND CHRISTIAN MINORITIES.

AN INDONESIAN GOVERNMENT THAT WE HAVE BEEN ABLE TO WORK WITH PRODUCTIVELY ON A BROAD RANGE OF ISSUES IS NOW ASSUMING CHAIRMANSHIP OF THE NON-ALIGNED MOVEMENT; AND INDONESIA IS A LEADING MEMBER OF THE ASSOCIATION OF SOUTHEAST ASIAN NATIONS (ASEAN). INDONESIA IS AN IMPORTANT REGIONAL POWER. JAKARTA'S ACTIVISM AND COOPERATION WERE ESSENTIAL IN OUR EFFORTS TO RESOLVE THE CONFLICT IN CAMBODIA; AND ITS SUPPORT FOR U.N. RESOLUTIONS AND SANCTIONS AGAINST IRAQ DURING DESERT STORM WERE SIGNIFICANT -- ESPECIALLY IN VIEW OF IRAQ'S EFFORTS TO GAIN SUPPORT IN INDONESIA FROM MUSLIM FUNDAMENTALISTS. OUR ECONOMIC RELATIONS WITH INDONESIA ARE IMPORTANT AND GROWING; INDONESIA'S PROGRESS IN DEREGULATING ITS ECONOMY AND SUSTAINING GROWTH HAVE FACILITATED EXPANDED TWO-WAY TRADE (NOW $6 BILLION) AND U.S. AND INVESTMENT ($2.5 BILLION). OUR TRADE WITH INDONESIA IS NOW GREATER THAN THAT WITH ALL OF EASTERN EUROPE.

SUCH POLITICAL AND ECONOMIC INTERESTS NOTWITHSTANDING, IF INDONESIA WERE A HUMAN RIGHTS PARIAH WHICH HAD ORDERED A MASSACRE AND DISREGARDED WORLD OPINION, I COULD BETTER UNDERSTAND AN ARGUMENT FOR DEMONSTRATING OUR OPPROBRIUM BY CUTTING OFF SECURITY AND ECONOMIC ASSISTANCE. BUT THE GOVERNMENT OF INDONESIA HAS ACCEPTED THAT THE NOVEMBER INCIDENT

WAS A TRAGEDY, HAS TAKEN RESPONSIBILITY FOR THE ACTIONS OF ITS TROOPS, HAS ALREADY ANNOUNCED PUNISHMENTS FOR SOME SENIOR MILITARY OFFICERS, IS PREPARING TO BRING OTHER WRONGDOERS TO TRIAL, AND IS WORKING TO ENSURE THAT SUCH VIOLENT USE OF FORCE BY ITS TROOPS DOES NOT RECUR. IT SEEMS EVIDENT THAT CONTINUING COOPERATIVE ENGAGEMENT, NOT RETRIBUTION, BEST SERVES THE HUMAN RIGHTS GOALS WE ALL SEEK.

ONE WAY WE CAN HELP IN THIS PROCESS IS THROUGH OUR IMET PROGRAM, THE ONLY SECURITY ASSISTANCE WE PLAN TO PROVIDE INDONESIA IN FISCAL YEAR 1992. AMONG IMET'S GOALS ARE TO INCREASE MILITARY PROFESSIONALISM AND TO EXPOSE STUDENTS TO UNIVERSAL STANDARDS OF HUMAN RIGHTS. I SHOULD NOTE THAT A RECENT GAO INVESTIGATION OF THE EVENTS OF LAST NOVEMBER FOUND THAT NO IMET TRAINEES WERE INVOLVED IN THE INCIDENT -- WHILE SEVERAL HAVE BEEN PROMINENT IN THE ONGOING CORRECTIVE EFFORTS. THE U.N. HUMAN RIGHTS COMMISSION SPECIAL RAPPORTEUR WHO WAS IN DILI AT THE TIME OF THE NOVEMBER 12 TRAGEDY LATER HIGHLIGHTED TO US THE IMPORTANCE OF INTERNATIONAL TRAINING FOR INCREASING HUMAN RIGHTS SENSITIVITY AMONG THE INDONESIAN MILITARY. YET SOME WOULD CUT OUR IMET PROGRAM. OUR EXPRESSIONS OF GRAVE CONCERN WERE APPROPRIATE IN NOVEMBER AND WERE NOT IGNORED. WHAT IS NEEDED NOW IS ENCOURAGEMENT FOR FURTHER REFORM.

EAST TIMOR: HISTORY AND STATUS

THE UNDERLYING ISSUE IN THE NOVEMBER 12 INCIDENT IS THE STATUS OF EAST TIMOR, A CHRISTIAN ENCLAVE OF 750,000. AS THIS HEARING IS INTENDED TO DEAL WITH ALL ASPECTS OF EAST TIMOR, INCLUDING THE UNITED STATES' RESPONSE TO INDONESIA'S INVASION IN 1975 AND INCORPORATION OF THE PROVINCE IN 1976, LET ME MENTION A FEW RELEVANT ASPECTS OF THE HISTORICAL RECORD.

AFTER THE APRIL 1974 LEFTIST COUP IN PORTUGAL, LISBON DECIDED TO RAPIDLY DECOLONIZE ITS OVERSEAS EMPIRE. THIS RESULTED IN WIDESPREAD CHAOS, CIVIL CONFLICT AND FOREIGN INTERVENTION IN PORTUGAL'S FORMER COLONIES. ANGOLA AND MOZAMBIQUE ENDURED SEVENTEEN YEARS OF MARXIST RULE AND BRUTAL CIVIL WAR THAT HAS ONLY ENDED WITHIN THE PAST YEAR.

EAST TIMOR COULD HAVE SUFFERED A SIMILIAR FATE. WHEN THE NEW PORTUGUESE GOVERNMENT IN 1974 DECIDED TO DECOLONIZE, EAST TIMOR WAS COMPLETELY UNPREPARED FOR SELF-GOVERNANCE. FOUR CENTURIES OF COLONIALISM HAD LEFT EAST TIMOR WITH ONE HIGH SCHOOL, FEWER THAN TEN COLLEGE GRADUATES, AND A LITERACY RATE UNDER 10 PERCENT. PORTUGAL AND INDONESIA HELD DISCUSSIONS ABOUT THE COLONY'S FUTURE, BUT A CIVIL WAR ERUPTED THERE BEFORE ANY AGREEMENT WAS REACHED. THE COMBATANTS WERE: FRETILIN, WHICH SOUGHT IMMEDIATE CREATION OF AN INDEPENDENT MARXIST STATE; ANOTHER GROUP THAT ADVOCATED IMMEDIATE INTEGRATION INTO

INDONESIA; AND A THIRD, WHICH PREFERRED A GRADUAL DECOLONIZATION PROCESS.

PORTUGAL'S LEFTIST GOVERNMENT ABRUPTLY WITHDREW IN AUGUST 1975, HANDING OVER TO FRETILIN WEAPONS WHICH WERE THEN USED TO GAIN THE UPPER HAND. IN THE FACE OF A FRETILIN MILITARY VICTORY AND THE DECLARATION OF AN INDEPENDENT MARXIST STATE, INDONESIA INVADED IN DECEMBER OF 1975 -- AND INDICATED IT DID SO AT THE REQUEST OF THE EAST TIMORESE FACTIONS OPPOSED TO FRETILIN.

WHEN THE WORLD TURNED ITS ATTENTION TO EAST TIMOR IN THE MID-1970S, SELF-DETERMINATION WAS NOT A REALISTIC OPTION. THE CHOICE WAS MARXIST RULE BY FRETILIN OR ACTION BY INDONESIA. NEITHER HAD A MANDATE FROM THE BALLOT BOX.

IT IS IMPORTANT TO RECALL THAT, SINCE PRESIDENT SOEHARTO ROSE TO POWER IN THE MID-1960S, INDONESIA HAS NOT HAD AN EXPANSIONIST AGENDA; EAST TIMOR IS THE ONLY ADDITION TO WHAT WAS ONCE DUTCH COLONIAL TERRITORY. INDONESIA CONSIDERS THAT ITS TAKEOVER OF EAST TIMOR WAS FORCED ON IT BY THE THREAT OF A MARXIST INSURGENCY. THE POLITICAL CONTEXT HERE IS SIGNIFICANT: THE ANNEXATION OF EAST TIMOR OCURRED AMIDST ACTIVE COMMUNIST INSURGENCIES IN MUCH OF SOUTHEAST ASIA AS THE U.S. DEPARTED FROM VIETNAM, AND WITH MEMORIES OF AN ATTEMPTED 1965 COMMUNIST TAKEOVER IN INDONESIA STILL FRESH.

IN THE MINDS OF INDONESIAN LEADERS, WHOSE BEDROCK PRINCIPLE IS THE UNITY OF THEIR ARCHIPELAGIC COUNTRY, ONCE EAST TIMOR HAD BEEN INCORPORATED, ITS STANDING BECAME A SYMBOL OF THE INTEGRITY OF THE NATION. THOSE LEADERS LOOK AT THE HUNDREDS OF DISTINCT ETHNIC GROUPS AND LANGUAGES WITHIN INDONESIA, AND AT THE PRESENCE OF SEVERAL MAJOR RELIGIONS. THEY RECALL REGIONAL REBELLIONS FROM THE 1950S; AND THEY FEAR THAT LOOSENING EVEN ONE THREAD OF THE NATIONAL FABRIC COULD STIMULATE OTHER SUCCESSIONIST THREATS.

EVEN BEFORE INDEPENDENCE, INDONESIAN LEADERS HAD BEGUN WEAVING THAT UNIFYING FABRIC. THEY CHOSE MALAY, A MINOR TRADING LANGUAGE, RATHER THAN MAJORITY JAVANESE TO BE THE NATIONAL LANGUAGE. THEY PROMOTED RELIGIOUS FREEDOM FOR CHRISTIAN, HINDU, AND BUDDHIST POPULATIONS SCATTERED THROUGHOUT THE ARCHIPELAGO, DESPITE A MUSLIM MAJORITY. TO THIS DAY, INDONESIAN LEADERS STRONGLY RESIST ANY ADVOCACY OF AN ISLAMIC STATE. A NUMBER OF RADICAL MUSLIMS HAVE BEEN PROSECUTED OVER THE YEARS FOR PROMOTING SUCH A COURSE. INDONESIA'S LEADERS HAVE STRESSED UNITY BECAUSE OF THEIR NATION'S IMMENSE DIVERSITY. THEY CONTINUE TO INSIST ON IT TODAY.

IN 1976, U.S. POLICY-MAKERS DECIDED TO ACCEPT INDONESIA'S INCORPORATION OF EAST TIMOR AS AN ACCOMPLISHED FACT. THEY JUDGED THAT NOTHING THE UNITED STATES OR THE WORLD WAS PREPARED TO DO COULD CHANGE THAT FACT. THUS, TO OPPOSE INDONESIA'S INCORPORATION WOULD HAVE HAD LITTLE IMPACT ON THE SITUATION.

WITH SUCH REALITY IN MIND, PREVIOUS ADMINISTRATIONS FASHIONED A POLICY WHICH HAS BEEN FOLLOWED CONSISTENTLY ON A BIPARTISAN BASIS:

-- WE ACCEPT INDONESIA'S INCORPORATION OF EAST TIMOR, WITHOUT MAINTAINING THAT A VALID ACT OF SELF-DETERMINATION HAS TAKEN PLACE.

CLEARLY, A DEMOCRATIC PROCESS OF SELF-DETERMINATION WOULD HAVE BEEN MORE CONSISTENT WITH OUR VALUES; BUT THE REALITIES OF 1975 DID NOT INCLUDE THAT ALTERNATIVE. ACCEPTING THE ABSORPTION OF EAST TIMOR INTO INDONESIA WAS THE ONLY REALISTIC OPTION.

SINCE THEN, WE HAVE MAINTAINED A CONSTRUCTIVE DIALOGUE WITH THE INDONESIAN GOVERNMENT DESIGNED TO PROMOTE THE WELL-BEING OF THE PEOPLE OF EAST TIMOR. INCLUDED IN THIS HAS BEEN AN ON-GOING HUMAN RIGHTS DIALOGUE. THAT DIALOGUE IS GENERALLY PRIVATE AND IS CONDUCTED AT HIGH LEVELS; IT IS THOSE CHARACTERISTICS THAT HAVE MADE IT EFFECTIVE.

POLITICALLY, WE SUPPORT DISCUSSIONS BETWEEN INDONESIA AND PORTUGAL UNDER THE AUSPICES OF THE U.N. SECRETARY GENERAL, AS WERE MANDATED BY THE U.N. GENERAL ASSEMBLY IN 1982. WE BELIEVE SUCH A DIALOGUE CONTINUES TO BE THE MOST PROMISING AVENUE FOR RESOLVING THE EAST TIMOR ISSUE. WE ARE PLEASED THAT SUCH A

DIALOGUE BETWEEN INDONESIA AND PORTUGAL AT THE U.N. HUMAN RIGHTS COMMISSION MEETINGS, WHICH JUST CONCLUDED IN GENEVA, LED TO A CONSTRUCTIVE AND BALANCED CHAIRMAN'S STATEMENT CONCERNING HUMAN RIGHTS IN EAST TIMOR.

ECONOMICALLY, OUR CONSTRUCTIVE RELATIONSHIP WITH INDONESIA HAS ALLOWED US TO EXTEND ASSISTANCE TO ALL INDONESIANS, WHICH ESPECIALLY BENEFITS THE EAST TIMORESE. ON A PER CAPITA BASIS, WE HAVE PROVIDED MORE THAN TWICE AS MANY A.I.D. PROJECT DOLLARS TO EAST TIMOR SINCE 1988 AS TO THE REST OF INDONESIA.

ADDITIONALLY, INDONESIA HAS, ON A PER CAPITA BASIS, FUNNELLED OVER SIX TIMES AS MUCH OF ITS OWN ECONOMIC DEVELOPMENT BUDGET INTO EAST TIMOR AS TO ANY OTHER PROVINCE. IN 1991, EAST TIMOR RECEIVED ABOUT $170 MILLION IN INDONESIAN GOVERNMENT GRANTS. THE $170 MILLION, ONE MIGHT NOTE, IS, IN NOMINAL TERMS, ALMOST EXACTLY 100 TIMES THE AVERAGE YEARLY DEVELOPMENT EXPENDITURE FOR EAST TIMOR IN THE LAST DAYS OF COLONIAL RULE, ALL OF WHICH WAS IN THE FORM OF REPAYABLE LOANS.

THE RESULTS OF SUCH RECENT INVESTMENT ARE STRIKING:

— IN 1974, AFTER FOUR CENTURIES OF COLONIAL RULE, EAST TIMOR HAD 47 ELEMENTARY SCHOOLS, 2 MIDDLE SCHOOLS, 1 HIGH SCHOOL, AND NO COLLEGES. NOW IT HAS 574 ELEMENTARY SCHOOLS, 99 MIDDLE SCHOOLS, 14 HIGH SCHOOLS, AND 3 COLLEGES.

-- IN 1974, EAST TIMOR HAD 2 HOSPITALS AND 14 HEALTH CLINICS. NOW IT HAS 10 HOSPITALS AND 197 VILLAGE HEALTH CENTERS.

-- IN 1974, EAST TIMOR HAD 100 CHURCHES. TODAY IT HAS 518.

-- IN 1974, EAST TIMOR HAD 20 KILOMETERS OF SURFACED ROADS, ALL WITHIN DILI. NOW IT HAS 428 KILOMETERS THROUGHOUT THE PROVINCE.

-- IN 1974, EAST TIMOR WAS PLAGUED WITH ENDEMIC POVERTY. TODAY, POVERTY REMAINS A PROBLEM, AS IT DOES ELSEWHERE IN THAT PART OF INDONESIA, BUT STARVATION IS EXTREMELY RARE.

THE MISSING ECONOMIC ELEMENT IS SUFFICIENT EMPLOYMENT TO FULFILL RISING EXPECTATIONS OF NEWLY EDUCATED YOUTH. BUT NEW BUSINESS INVESTORS INSIST ON A PEACEFUL ENVIRONMENT. AND THAT REMAINS PROBLEMATIC UNTIL THE EAST TIMOR ISSUE IS FULLY RESOLVED.

CONCLUSION

IN CONCLUSION, MR. CHAIRMAN, LET ME REITERATE OUR MAJOR POLICIES FOR DEALING WITH THE SITUATION IN EAST TIMOR:

1) WE INTEND TO WORK COOPERATIVELY WITH THE INDONESIAN GOVERNMENT TO PROMOTE DEVELOPMENT AND RESPECT FOR HUMAN RIGHTS IN THE PROVINCE; AND

PORTUGUESE TIMOR

Senator WILLESEE—Mr President, you will recall that during question time Senator Gietzelt asked me a question and I intimated that, on the generality of the question he was asking me, I had prepared some notes. They are fairly long notes, and Senator Gietzelt agreed that I should answer the question at the end of question time.

The Government has viewed with concern widespread reports that Indonesia is involved in military intervention in Portuguese Timor. The position of the Australian Government is clear. We deplore the fighting in the border areas. We continue to believe that a solution to the problems in Portuguese Timor should be sought through peaceful means and free of external intervention. Indonesia has been told of our views in this regard and urged to pursue her interests through diplomatic means. If there is one ray of hope in a gloomy situation, it is the possibility that talks will at last get under way. The Indonesian Foreign Minister has agreed to meet with his Portuguese counterpart in Europe this week. Freilin and UDT have also signified in recent days their willingness to hold separate talks with the Portuguese. We hope that Apodeti will also agree to talks with the Portuguese, and that all three parties will reconsider their present refusal to talk to each other.

The Australian Government strongly supports resolution of the conflict in Portuguese Timor by peaceful means through which the will of the people will be expressed. We have made numerous representations to this effect to the Portuguese, to the Indonesians, and to the representatives of Freilin who have visited Australia. I have very recently instructed the Australian Ambassadors in Lisbon and Jakarta to reiterate to the Portuguese and Indonesian Governments our firm hope that the talks between these two governments later this week result in a positive and constructive outcome. Were all the parties to wish it, the Government would be prepared to offer an Australian venue for round-table talks. That the situation in Portuguese Timor has come to its present pass is, of course, cause for deep regret. It reflects, above all, the immaturity of Timor's own aspiring political leaders, who in less than eighteen months have succeeded in wrecking Portugal's decolonisation program, sharply polarising political opinions through the territory, and finally plunging the territory into violent civil war. The past 18 months have turned out to be a graveyard of all those earlier hopes that the Timorese politicians, representing a small Western-educated elite, would shelve their differences for the sake of the territory at large.

Nor can the Portuguese escape their share of the responsibility. Portugal is the administering power, but it was very much weakness of purpose on the part of the Portuguese administration which allowed the UDT 'show of force' in early August to develop into a probably unintended coup and thus provoked the Fretilin counter-coup. It seems that Timor, like Angola, has become part of the debris of the Portuguese revolution. From the time of the overthrow of the Caetano regime in Lisbon and the subsequent decision of the Portuguese to shed their overseas territories, the Australian Government had hoped that the decolonisation process in Portuguese Timor could proceed in an orderly fashion which allowed the people of the territory to decide their own future. We had hoped that Portugal would remain in control for a period long enough for the political consciousness of the people to develop to the point where there was a substantial measure of agreement regarding the future.

The need for orderly progress had also been of paramount importance in view of the interest of the countries of the region, particularly Indonesia but also Australia and other regional countries, in ensuring that the territory would not emerge in a way which would have an unsettling effect on the region. These hopes which the Government had worked hard to see realized have unhappily not been borne out. Portugal's inability, or reluctance to retain control opened the way to a struggle for supremacy among a number of essentially immature, rival political factions. From this struggle the Fretilin group, aided by the Timorese army units and by access to Portuguese arms, emerged as being stronger than its rivals.

The Australian Government had still hoped—and acted accordingly—that agreement on the future of the territory could have been reached by negotiation between Portugal and the main contending factions. But the meeting scheduled for 20 September did not take place, at least in part because of the intransigence of Fretilin, which has continued to claim to the United Nations and the world in general that it is the only authentic and legitimate voice of Portuguese Timor. Fretilin has since agreed that it will speak to the Portuguese—but not, yet, to the other parties. So has UDT: but UDT, too, is now attempting to lay down preconditions, while at one stage in their approach to talks the overriding concern of the Portuguese seemed to be with the fate of the Portuguese prisoners held by UDT. Fretilin has certainly now said that it continues to recognise Portuguese sovereignty and the right of Portugal to preside over the decolonisation process.

It is in this situation of drift, of Fretilin's refusal to accept that UDT or Apodeti has anything further to contribute to the decolonisation process, and of Portugal's regrettable inability to reassert its authority in the territory, that we view the various policy pronouncements, newspaper reports and the like from Jakarta and Timor itself. Were there substance in these reports, the Australian Government would be extremely disappointed, and we have so informed the Indonesian authorities. The Australian Government has urged that Indonesia pursue her interests through diplomatic means. We have told the Indonesians that we remain opposed to the use of armed force. We have also said that we are firm in the view that the people of Portuguese Timor should be allowed to determine their own future. We have urged the Indonesian authorities to reaffirm their own public commitment to the principle of self-determination in Portuguese Timor.

Indonesia can, of course, point to the presence of over 40 000 refugees in her territory—some 7 per cent of Portuguese Timor's entire population. She can correctly claim that Fretilin has established its present position of supremacy because it controlled the army and not necessarily because it had overwhelming popular support. Indonesia can argue, as indeed we ourselves have been inclined to argue, that before the recent troubles UDT was vying with, and possibly exceeding, Fretilin in terms of popular support. All this is not to excuse Indonesia's reported actions but perhaps goes some way towards explaining them. We should not lose sight of Indonesia's concern about order and stability in Portuguese Timor, which is located in the middle of the Indonesian archipelago. It is necessary that we, the Portuguese and the parties in Timor should recognise the importance of the Indonesian interest in the territory, just as other countries in the region do.

No more than Indonesia, can Australia accept any one party's claim to be the only true representative of Portuguese Timor. Fretilin may have prevailed over its rivals in the initial round of fighting and skirmishing, but it has established no right thereby to speak for all Timorese. These matters should not be settled by force of arms. What if the Timorese army had decided to side with the UDT, or with Apodeti, or had staged a purely military coup? Of course, nor can UDT or Apodeti claim to speak for the people of Portuguese Timor simply because they are not attempting to demonstrate some military capacity in conflict with Fretilin. These matters, I repeat, should not be settled by force. The Australian Government does not pretend to know what the people of Portuguese Timor want. But we do want them to have the opportunity to say what they want. The need in our view, is to get all the parties round the table for talks. The Australian Government is doing what it can to help such talks on their way.

Senator COTTON (New South Wales)—Mr President, I seek leave to move a motion that the Senate take note of the paper.

The PRESIDENT—Is leave granted? There being no objection, leave is granted.

Senator COTTON—I move:

That the Senate take note of the paper.

This is an interesting statement about a very serious matter. It is the first definitive statement that the Senate has received from the Minister for Foreign Affairs (Senator Willesee) on this subject. It seems to me to emphasise once again the very substantial need for a solid debate on this issue and on the total foreign affairs policy of this Government. Accordingly, I seek leave to continue my remarks later.

Leave granted; debate adjourned.

Annex 11

Statement by Minister for Foreign Affairs, 29 November 1975

Nº	DATE
M82	29 November 1975

EAST TIMOR: UNILATERAL DECLARATION OF INDEPENDENCE

The Australian Government does not recognise the unilateral declaration of independence for East Timor made by FRETILIN leaders in Dili on 28 November. Commenting on the declaration, the Foreign Minister, the Hon. Andrew Peacock, said today that the Australian Government was bound to continue to recognise Portuguese sovereignty in Portuguese Timor.

The Government strongly supported the resolution of the conflict in Timor by peaceful means through which the will of the people could be expressed.

The Australian Government's view remained that talks between the Timorese parties and Portugal offered the best hope of bringing an end to the continuing bloodshed in Timor and of restoring an orderly process of decolonisation in the territory, which would enable the people of the territory to decide their own future. It was in the hope of facilitating these talks that the Australian Government had recently reiterated the offer of an Australian venue for them. Mr Peacock regretted that, because of differences of approach among the Timorese parties, it had not so far been possible to arrange these talks.

The Australian Government could not accept claims by any one of the three main Timorese parties to be the only true representatives of Portuguese Timor. In the Government's view the other Timorese parties could certainly not be expected to recognise the FRETILIN declaration of 28 November, which would only serve to sharpen divisions within the territory and thus to increase the sufferings of the people.

Statement by Minister for Foreign Affairs, 7 December 1975

The Minister for Foreign Affairs in the caretaker Government, Mr A. S. Peacock, said on 7 December that the Australian Government deeply regretted the course which events in East Timor had taken.

'It is tragic for the Timorese and a matter for serious concern to the countries of the region that the decolonisation process has broken down so completely,' he said.

'While the Australian Government fully appreciates the gravity of the problems posed for the Indonesian Government by the breakdown of administration in East Timor, the continuation of fighting by the competing parties, and the movement of 40,000 refugees into its territory, we had hoped—and have pressed—that there would not be a recourse to the use of force by our neighbour. As recently as 4 December our Ambassador in Jakarta again made it clear that this was our view.

'The present Liberal and National Country Party Government inherited the Timor crisis at the eleventh hour. We believe—and it is a matter of record, not of hindsight—that a more positive role by Australia in the earlier stages—a strong regional initiative, for example—was possible, desirable, and might have had very beneficial results.

'Since coming to office we have co-sponsored and vigorously supported a draft resolution in the United Nations reaffirming the right of self-determination of the Timorese, urging the need for a peaceful settlement, calling for a revival of talks among the conflicting parties, and proposing that the Government of Portugal should request a United Nations visiting mission to East Timor.

'While we appreciate the strains which events impose on the Fretilin spokesman, Mr Horta, we must reject any suggestion that Australia has "betrayed" the Timorese, or is responsible in any way for the present recourse to force. It is the Portuguese who are the colonial power. Portugal's own internal disarray has been a major contributing factor.

'In the absence of any attempt to ascertain the will of the East Timorese, the equating of Fretilin's cause with that of the East Timorese people cannot be accepted. Further, the Australian Government believes that Fretilin's earlier refusal to participate in talks with the other parties and its unilateral declaration of independence on 28 November have not helped either the peaceful resolution of the crisis or its own cause.

'It is obvious that the initiatives open to the Australian Government are limited. The options have closed almost to vanishing po: .. We shall, however, continue our efforts to gain support for the United Nations resolution. We shall be ready to resume humanitarian aid as soon as practicable. We shall continue to consult closely with countries of the region to explore other possible regional initiatives. But there is unfortunately no way of recovering the opportunities that were allowed to slip away months ago,' Mr Pea··ck added.

Statement by Minister for Foreign Affairs, 8 December 1975

East Timor: Call for ceasefire

The Minister for Foreign Affairs in the caretaker Government, Mr A. S. Peacock, said on 8 December that the Government was continually watching the development of events in East Timor.

Mr Peacock recalled that the tragedy of East Timor had really begun with the intense political difficulties which Portugal had experienced over recent months. This had led to the fact that successive Portuguese Governments had been unable to exercise sufficient influence in East Timor with the result that the Macau program for decolonisation had broken down. This had in turn precipitated a situation of disorder in the territory, leading, among other things, to the flight of some 40,000 refugees across the border into Indonesian Timor. This sudden and large influx of refugees had caused the Indonesian Government great difficulties. Conflict between the various political groups in the territory had begun simultaneously and fighting had gone on intermittently over the past few weeks. This had led to the recent unilateral declaration of independence by the Fretilin party, a declaration which had been followed by a declaration by other political groups that East Timor was a part of Indonesia. The whole situation had culminated in the attack upon and capture of Dili.

Indonesia's stated objective, Mr Peacock continued, was the restoration of law and order, a task which Portugal had been unable to carry out, as a necessary pre-condition to a proper expression by the Timorese people of their own wishes regarding their political future. While this objective was laudable, the means chosen by Indonesia to achieve it was a matter for deep regret and concern on the part of the Australian Government. On a number of occasions in the past, the Australian Ambassador in Jakarta had been instructed to point out to the Indonesian Government that the use of force was not an appropriate means to settle the problem of East Timor. The last occasion on which the Ambassador had made this point to the Indonesian authorities had been on 4 December 1975. The Australian Government did not condone the attack upon Dili which had just taken place. 'We do not regard the use of force as an appropriate means of solving international problems', he said.

The Australian Government, Mr Peacock continued, had just learned that Portugal intended to complain to the Security Council of the United Nations about Indonesia's action over East Timor. The Government understood that the Security Council was likely to meet during the course of this week to discuss the question. The Australian Government would seek to be represented when the Security Council met for this purpose. Its representative there would press for a call by the Security Council for an immediate cease-fire—as indeed we do now'. Its representative would also express the strong view that the Timorese people should have the opportunity to exercise their right of self-determination. Australia would support the despatch of United Nations observers to East Timor to see that an appropriate process of self-determination took place. Australia would expect that if Indonesia appeared before the Security Council, Indonesia would respond to the international concern which had been aroused over the fate of the people in the territory and would explain clearly her motives and intentions.

Mr Peacock said that the Australian Government would be asking its Ambassador in Jakarta to explain to the Indonesian authorities the views which Australia would seek to present to the Security Council. The Ambassador would also be instructed to tell the Indonesian Government once again that the use of force in East Timor was not an appropriate way to solve the problems of the territory.

In the midst of the tragedy of East Timor, Mr Peacock continued, Australia stood ready to provide aid as soon as the situation on the ground permitted. 'We are approaching the Indonesian Government in this sense with a request for assurances about the security of Australian personnel that would be involved', he said.

The Minister concluded by saying that when the Fourth Committee of the United Nations General Assembly resumed its discussion of East Timor that night the Australian representative would repeat Australia's call for an immediate ceasefire and wish to see a process of self-determination applied under proper United Nations supervision.

Annex 14

Statement by Minister for Foreign Affairs, 11 December 1975

East Timor: Talks in Jakarta

Australia was pursuing several vigorous initiatives to restore peace in East Timor, the Minister for Foreign Affairs in the caretaker Government, Mr A. S. Peacock, announced on 11 December.

Mr Peacock said that in Jakarta on 10 December the Australian Ambassador, Mr R. A. Woolcott, had called on the Indonesian Foreign Minister, Mr A. Malik, to inform him of the Australian Government's views on the problem of East Timor.

The Ambassador had told Mr Malik that the Australian Government was strongly opposed to the use of force in Timor and that force was not the appropriate way to solve the problems of the territory.

On instructions, Mr Woolcott had also raised with Mr Malik the question of humanitarian assistance to East Timor, as Mr Peacock had foreshadowed in his statement of 8 December. The Indonesian Foreign Minister was informed that Australia was eager to resume humanitarian aid and that Australia hoped that the International Red Cross operations would start again as soon as possible.

Mr Malik's response was encouraging and Mr Peacock said that the Australian authorities would be following the question up with Indonesia. The Government's hope was that Australian aid would continue to be be provided through the ICRC (International Committee for the Red Cross). Mr Peacock said that there was clearly an urgent need for aid activities in East Timor to resume.

He repeated that the Government would adopt a generous approach to the problem of refugees from East Timor, should it arise. This would accord with the attitude traditionally adopted by Liberal-National Country Party Governments.

Mr Peacock also referred to the active role which the Australian delegation was playing in the United Nations Fourth (Decolonisation) Committee, where the situation in East Timor had been under review for the last ten days.

He recalled in this regard that Australia, along with eight other countries of our region, had been co-sponsoring a resolution in the Fourth Committee last week which the Government had hoped would be a positive contribution in the search for a peaceful settlement in East Timor. In the event, the resolution could not be brought to the vote mainly because of protracted discussion of other items and the efforts of a number of other delegations of countries outside the region to press for amendments.

Mr Peacock said that the Australian Government had much regretted this development. The regional text had been overtaken by events of the weekend. There were now two new draft resolutions before the Committee, one of which reflected the views of states which were critical of Indonesia and another draft co-sponsored by a group of Asian states, which did not seek to apportion blame.

Mr Peacock noted, however, that the object of both resolutions would be to bring about a restoration of conditions in East Timor which would allow the withdrawal of Indonesian forces and permit the process of self-determination to resume. Discussion of the two draft resolutions would continue tomorrow.

Meanwhile, outside the Fourth Committee, consultations have begun among members of the Security Council concerning Portugal's request for a Security Council meeting to discuss the Timor issue.

The Australian request to appear before the Security Council had been lodged with the United Kingdom, which occupies the Presidency of the Security Council this month. The Minister said that in its approach to the Security Council Australia would be urging on the Council the need to move quickly to bring about United Nations involvement in the problem of East Timor as soon as possible.

While Australia held no fixed views on what form this involvement might take, the Government felt that the easiest and quickest course would be to despatch a representative of the Secretary-General to the territory to report back on conditions there and to make recommendations for further action by the Security Council, he said.

Mr Peacock added that Australia would also be urging that the Council provide for an immediate end to hostilities and the establishment of conditions for a withdrawal of Indonesian forces and a resumption of the process of self-determination, with appropriate United Nations participation.

Annex 15

Statement by Minister for Foreign Affairs, 12 December 1975

East Timor: U.N. resolution

The Minister for Foreign Affairs in the caretaker Government, Mr A. S. Peacock, said on 12 December it was hoped that the passage of a resolution on East Timor in the Fourth Committee of the United Nations General Assembly would help to lead the way back to peaceful methods of solving the problems of that territory.

Mr Peacock said that the resolution, if confirmed by the General Assembly itself, would open the way for consideration of the question of Timor in the Security Council, which had been marking time pending the outcome of discussion in the Assembly.

Mr Peacock noted that the Fourth Committee had approved the resolution the previous day by a vote of sixty-nine states (including Australia) in favour, eleven states (including Indonesia) against, with thirty-eight abstentions.

Australia had supported the resolution because it had a number of positive features, which had been absorbed from an earlier draft resolution that the Australian delegation had co-sponsored and which retained their force and validity.

Foremost among those positive features was an appeal to the parties in East Timor to join in talks to end the strife in the territory and lead towards the orderly exercise of the right of self-determination by the Timorese people.

The resolution also called upon Indonesia to withdraw its armed forces, urged the right for the people of East Timor freely to exercise their right to self-determination and independence, and requested the Special Committee of Twenty-four on Decolonisation to send a fact-finding mission to the territory as soon as possible.

Mr Peacock said that he understood the reasons why Indonesia had opposed the resolution. To some extent Australia shared those misgivings.

'Not least we understand Indonesia's view that it is necessary to have peace and order in the territory to facilitate the expression of the views of the people of Timor of their own wishes for the future. Nevertheless we cannot agree that the use of force is an appropriate means of settling the problem of East Timor,' he said.

The spotlight would now turn to the Security Council. The Council, as the United Nations body charged with primary responsibility for the maintenance of international peace and security, would have an important responsibility to work for a resumption of the process of peaceful and agreed decolonisation in East Timor. For this purpose the active co-operation of all parties to the dispute, and of all members of the Council, would be necessary.

Mr Peacock recalled that Australia, although not a member of the Council, would be seeking the right to take part in the debate there.

The delegation's instructions would be to continue the efforts it had been pressing in the Fourth Committee to bring about a ceasefire and a resumption of the process of peaceful decolonisation—with appropriate United Nations involvement—leading towards the exercise of the right of self-determination.

Annex 16

Statement by Minister for Foreign Affairs, 23 December 1975

East Timor: U.N. decision welcomed

The Minister for Foreign Affairs, Mr A. S. Peacock, welcomed on 23 December the action of the United Nations Security Council in approving, by a unanimous fifteen votes in favour, a compromise resolution on East Timor.

Mr Peacock said that the Council's move was a step in the right direction—a return to peaceful processes in the decolonisation of East Timor.

Its unanimous agreement on the resolution was particularly welcome, in view of earlier fears that differences between some member states of the United Nations might be hard to resolve.

He identified the main features of the resolution as:

- a call for respect for the territorial integrity of the territory and the right of its people to self-determination;
- a call upon Indonesia to withdraw its forces;
- a call upon Portugal for co-operation with the United Nations to enable the people of the territory to exercise their right to self-determination; and
- a request to the Secretary-General to send a special representative to the territory to assess the situation and establish contact with all the parties and all states concerned.

The Minister recalled that it had been a consistent objective of Australian policy, as expressed by him and by the Australian delegation in New York, that the Council should ask for the appointment of a special representative.

It was therefore a matter of particular satisfaction to him that the Council had now done this.

It was more than ever important that efforts in the direction of a peaceful solution should be pursued energetically, he said.

The next move lay with the Secretary-General of the United Nations, who would now be preparing to appoint a special representative. Mr Peacock said he hoped that it would be possible for this person, once appointed, to leave for East Timor as soon as possible.

It was also essential that, to enable him to discharge his responsibilities—which involved questions of concern to the countries of the Asian region—the special representative should have the co-operation of the political parties in East Timor and of the Portuguese and Indonesian authorities.

It was encouraging, he said, that the representatives of Indonesia and Portugal had already made statements in the Security Council giving assurances of co-operation. If the Timorese political parties followed suit, as he hoped they would, the prospects for progress would improve.

On the basis of the special representative's report, the Secretary-General would be making recommendations to the Council for further action. This was a most useful provision, the Minister said, because it meant that when the Council resumed consideration of the Timor problem it would have a first-hand report on which to base its discussions.

Statement by Minister for Foreign Affairs, 29 December 1975

East Timor: Use of force opposed

The Minister for Foreign Affairs, Mr A. S Peacock, said on 29 December that the Australian Government had noted the broadcasts from Fretilin sources over the weekend reporting renewed fighting in East Timor. These reports appeared to have received confirmation in press reports from Indonesia. The Australian Government had reminded the Indonesian authorities of Australia's opposition to the use of force in East Timor.

Mr Peacock noted that the reports of renewed fighting had come within a few days of the adoption by the United Nations Security Council of a resolution which expressed the Council's concern about the conflict in East Timor and in which the Security Council had agreed to the appointment of a special representative of the Secretary-General to proceed to the territory to assess the situation there. The Australian Government had welcomed this decision by the Security Council which had accorded with proposals that Australia itself had made in the statement delivered by its representative to the Council on 16 November. The Australian delegation in New York had worked hard for the adoption of a constructive decision by the Security Council: it had been particularly gratifying that the resolution had been passed unanimously by the Council.

Australia was therefore disappointed at the report that the new authorities in Dili had requested the Secretary-General to postpone the planned visit of his representative. The Australian Government's position is clear: it believed that the Secretary-General's representative should leave for East Timor forthwith and that he should be admitted without delay or prevarication.

Mr Peacock added that the Australian Government was also anxious that the International Red Cross Teams should be permitted to return to East Timor to resume their humanitarian relief programs. The Australian Government had made several approaches to the Indonesian authorities in this regard.

It was imperative that all parties should provide immediately the guarantees necessary to enable the International Red Cross to resume its operations in East Timor. The Australian Government was very keen to resume and step up its own contributions to the relief effort, and, as before, would channel its assistance through the International Red Cross.

The Minister recalled that, in regard to Timorese refugees, he had already made clear that the Government would wish to adopt a generous attitude should a refugee situation arise. The problems facing possible refugees further underlined the need for the International Red Cross Teams to return to the territory as soon as possible. It was in this area that Australia's diplomatic effort would continue to be concentrated.

The Minister concluded that allegations that the Australian Government had turned its back on the Timor situation were unfounded. Australia had indeed been more active than any other country, in the region or outside it, in trying to bring about a peaceful settlement in East Timor. This applied to Portugal, nominally the administering power. Mr Peacock recalled in this regard that, while Australia had no formal responsibilities for East Timor, it had through its successful work in the United Nations, through the Government's unequivocal calls for the cessation of hostilities, and through our proposals for the appointment of a United Nations special representative for East Timor, played a positive and constructive role in trying to resolve the present crisis. Australia had also been very positive in the humanitarian area where Australia's official contributions for relief have far exceeded contributions forthcoming so far from any other source.

Finally, the Government was endeavouring to press Indonesian authorities, and through them Apodeti and UDT, to allow the recommencement of all relief efforts beginning with the immediate resumption of the programs administered by the International Red Cross.

Statement by Minister for Foreign Affairs, 4 March 1976 (extract from statement to Parliament on foreign policy matters)

Turning to East Timor, the situation in Timor has been a matter of deep concern to the Government. We have been active in trying to secure a peaceful settlement. It is a matter for regret that events have not moved more quickly towards that end. The Government came to office some time after events had come to a head in Timor. Despite this, and despite the previous Government's inaction, we have taken a number of initiatives and put ourselves very firmly on record in terms of what we believe should happen in Timor. We have made it clear that we cannot condone the Indonesian resort to force and we have carefully avoided favouring any of the parties in Timor or endorsing their claims.

In short, the Government believes that there should be a cessation of hostilities, thus putting an end to the bloodshed; a resumption of international humanitarian aid, preferably through the return to East Timor of the International Committee of the Red Cross Society; a withdrawal of Indonesian forces; and a genuine act of self determination. I underlined the importance which the Government attaches to all these points during my talks with Mr Malik in Jakarta on 19 and 20 January. Furthermore, in line with this policy, the Government has supported resolutions adopted during December by the United Nations General Assembly and the Security Council. We have strongly supported sending a United Nations special representative to East Timor. We welcomed his visit to Darwin. We deeply regretted that his stay in Darwin did not lead to his being able to visit Fretilin held areas in Timor. The Government did what it could to assist, including the provision of Australian Telecommunications Commission facilities to supplement the radio facilities of the Portuguese corvettes. It is to be noted that Mr Winspeare was able to have discussions with Fretilin representatives in Darwin. The Secretary-General of the United Nations has told us that the mission can be reactivated in the event that Fretilin finds itself able to make secure arrangements for a further visit to Timor.

The Government now looks forward to the resumed Security Council debate in which we shall again be seeking to participate. The Government is aware that there is a feeling in some quarters in Australia that we should take our opposition to Indonesian action in Timor to the length of a breach of the relationship which has developed between the 2 countries. In reply I say that the Government will continue to put its views on Timor most firmly to the Indonesian Government. The Government believes that the relations between the 2 countries are such as to allow a frank airing of views and the existence of quite serious differences, but we have no intention of allowing a breakdown in relations. This would not help the Timorese, and it would not help Australia. Indeed, I should say that I regret that Timor has become a matter almost of ideological dispute, generating some unreasonable demands and some unrealistic proposals rather than, as it should be, a matter demanding a constructive and humanitarian approach directed towards the problem of Timorese suffering.

Annex 19

Answer to Question in Parliament by Minister for Foreign Affairs, 1 June 1976

EAST TIMOR: SELF DETERMINATION

Dr J. F. CAIRNS—I ask the Minister for Foreign Affairs: Does the Australian Government intend to protest to Indonesia and to the United Nations at the obvious and planned failure of the Government of Indonesia to be associated with any act of self determination for the people of East Timor, and against what in fact is the blatant denial of this right to the people of East Timor?

Mr PEACOCK—The Government's record is well known. Since this Government was elected—again in marked contrast to our predecessors—we have been protesting, and not merely protesting verbally but making representations both to the Indonesian Government and earlier to Portuguese authorities. We have also long held and have constantly stated, both here and in the United Nations since we came into office, our policy on Timor relating to self determination, the withdrawal of forces and the resumption of humanitarian aid. We have also said, and again in the United Nations, that observation of the process of self determination in East Timor should best be carried out by the United Nations. In the event, regrettably no indication was forthcoming from the United Nations that it would be involved in yesterday's meeting in East Timor. We accordingly decided that it would be appropriate for us not to attend. Some form of United Nations participation and observation, I believe, is essential and we would welcome this development, in accordance with the line we have taken since being elected to Government. In particular, we are hopeful that the United Nations special representative will soon be able to visit East Timor, again in accordance with his mandate, to reassess the situation in the territory. We hope he will be able to undertake this assessment not only in the light of the outcome of yesterday's meeting in Dili but also with a view to assessing all shades of opinion in the territory. But without that United Nations participation, this Government did not believe it could lend its presence to what took place as a further act in this tragic affair.

Annex 20

Statement by Minister for Foreign Affairs, 20 July 1976

THE HON. ANDREW PEACOCK M.P.

M43 20 July 1976

EAST TIMOR

The Minister for Foreign Affairs, Mr Andrew Peacock, said today that the Government had long held the view that the process of decolonisation in East Timor should be based on a proper act of self-determination, preferably carried out with the observation and participation of the United Nations.

"In the case of the consultative acts carried out in East Timor on 31 May and 24 June there must still be uncertainty about how extensive and representative the exercise of self-determination has been," he said.

Mr Peacock recalled that Indonesia had invited the United Nations to send its representative to East Timor, and had renewed the invitation on several occasions. In doing so, Indonesia and the PGET gave assurances of freedom of movement in all thirteen districts of the territory.

"We ourselves made repeated representations to the United Nations seeking a return visit by Mr Winspeare-Guicciardi," he said. "We encouraged other governments to make similar representations."

"We informed the Secretary-General that if FRETILIN were able to name an accessible venue in East Timor for a meeting with Mr Winspeare-Guicciardi and if all parties had given satisfactory assurances of safety, Australia would have been prepared to consider a request from the United Nations for help with transport."

The Minister said that the Government regretted, in all these circumstances, that further efforts were not made by the United Nations to play a more decisive role.

"The present situation is that Indonesia has moved, without United Nations involvement, to integrate East Timor as its twenty-seventh province," he said. "But in the circumstances Australia cannot regard the broad requirements for a satisfactory process of decolonisation as having been met."

20 January 1978 – The Minister for Foreign Affairs, the Hon. Andrew Peacock, announced today that the Government has decided to accept East Timor as part of Indonesia. Mr Peacock said that, like most Australians, the Government deeply regretted that events in East Timor since August 1975 had caused so much human suffering. He said:

The humanitarian issues arising from the conflict had been and remained a major concern of the Government. The need to direct emergency assistance to the people of East Timor led the Government in 1976 to direct funds through the Indonesian Red Cross for relief work in East Timor. This followed the breakdown of negotiations for access to the territory by the International Committee of the Red Cross. The Government has also discussed arrangements with the Indonesian Government for the reunion with their families of Timorese refugees in Australia.

Mr Peacock said that in political terms the events which culminated in the Indonesian Government's decision in late 1975 to intervene in East Timor had created a most difficult and complex problem. He noted that the situation by then had already developed over a period. In referring to the facts as they faced the Government when it came to power in December 1975, Mr Peacock recalled the confused political situation in Portugal in 1974 and that the Portuguese Government had committed itself to decolonisation in East Timor. The policy had never been effectively administered and the resources required had at all times been beyond the Portuguese Government's means and resolve. The consequences of the failure of this policy in East Timor had been tragic. The attempted coup by the UDT, the subsequent armed takeover by Fretilin and the ensuing military and political confusion had led directly to the Indonesian decision to intervene. The Minister said:

That decision and the events that followed continue to attract criticism both here and overseas. Those issues are indeed very real and have never been susceptible to ready solution.

The Australian Government had deplored these developments, above all the use of force by Indonesia. Mr Peacock said:

The Government has made clear publicly its opposition to the Indonesian intervention and has made this known to the Indonesian Government. Since November 1975 the Government has made every effort to seek a peaceful solution of the problem. In this it has espoused neither the ambitions of any particular East Timorese political movement nor the position of the Indonesian Government. Movement for international intervention whether by the United Nations or other countries has never gained the required support. Since November 1975 the Indonesian Government has continued to extend its administrative control over the territory of East Timor. This control is effective and covers all major administrative centres of the territory.

In conclusion Mr Peacock noted that the future progress of family reunion and the rehabilitation of Timor were important ingredients in a practical contribution to the peace of the area. He emphasised that in order to pursue these objectives Australia will need to continue to deal directly with the Indonesian Government as the authority in effective control. He said:

This 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.

Annex 22

Cable from Australian Embassy, Lisbon, 24 January 1978 reporting conversation with Sr Villas-Boas

O.LB 1949 JS2/TG
TOR 0605 25.1.78

O.LB 1949 1630 24.1.78 CLA

TO.
PP CANBERRA/2482

RP.
RR JAKARTA/548

FM. LISBON / FILE 202/1 REF O.CH625361

C O N F I D E N T I A L

EAST TIMOR

VILLAS-BOAS, DIRECTOR GENERAL IN FOREIGN MINISTRY, CALLED ME IN TODAY TO DISCUSS MINISTER'S STATEMENT.

2. HE BEGAN BY REFERRING TO REPORTS IN LISBON PRESS AT WEEKEND THAT OUR MINISTER HAD ANNOUNCED DE FACTO RECOGNITION OF INDONESIA'S INCORPORATION OF EAST TIMOR. HE SAID THAT HIS GOVERNMENT WAS 'SURPRISED' AT THESE REPORTS AND ASKED FOR CLARIFICATION. I SAID THAT THE MINISTER HAD ISSUED A STATEMENT ON 20 JANUARY AND, SINCE THIS WAS PUBLICLY AVAILABLE, I ASSUMED THAT HIS EMBASSY IN AUSTRALIA WOULD HAVE TRANSMITTED THE TEXT. VILLAS-BOAS SAID THAT HIS EMBASSY HAD FORWARDED WHAT APPEARED TO BE EXCERPTS FROM A STATEMENT. I OFFERED HIM A COPY OF THE FULL TEXT WHICH HE READ.

3. VILLAS-BOAS SAID THAT HIS GOVERNMENT'S SURPRISE AT THE STATEMENT AROSE FROM THE FACT THAT PORTUGAL WAS THE ADMINISTERING POWER AND THE U.N. RECOGNISED THIS STATUS. HE ADDED THAT THE AUSTRALIAN STATEMENT APPEARED TO IGNORE THIS POSITION. (AT NO POINT DID HE ALLUDE TO THE REFERENCES TO PORTUGAL'S ROLE IN THE MINISTER'S STATEMENT). HE SAID THAT HE HAD BEEN INSTRUCTED TO REGISTER HIS GOVERNMENT'S 'SURPRISE' AND ASKED THAT IT BE CONVEYED TO THE AUSTRALIAN GOVERNMENT. I UNDERTOOK TO DO THIS.

4. I SAID THAT I HAD NOT RECEIVED ANY SPECIFIC INSTRUCTIONS FROM MY GOVERNMENT BUT WOUD LIKE TO MAKE TWO PERSONAL OBSERVATIONS. FIRSTLY THE AUSTRALIAN GOVERNMENT HAD CONSISTENTLY DEPLORED THE USE OF FORCE IN THE SITUATION. SECONDLY THE GOVERNMENT AND PEOPLE HAD BEEN DEEPLY CONCERNED WITH HUMANITARIAN ISSUES AND THE ONLY PRACTICAL WAY IN WHICH SUFFERING COULD BE RELIEVED WAS BY DEALING WITH THE AUTHORITY WHICH HAD EFFECTIVE CONTROL. VILLAS-BOAS INTERPOSED AT THIS STAGE WITH THE INFORMAL COMMENT THAT HE PERSONALLY WAS AWARE OF THE IMPORTANCE WHICH WE PLACED ON RELATIONS WITH INDONESIA. I TOOK THIS OPPORTUNITY TO DRAW ON THE MINISTER'S STATEMENT OF 12 OCTOBER (YOUR O.CH625361) AND EARLIER REFERENCES TO THE SHARED NEED FOR PEACE AND STABILITY IN THE REGION.

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DEPARTMENT OF FOREIGN AFFAIRS

INWARD CABLEGRAM

2. O.LB 1949

5. VILLAS-BOAS STILL SPEAKING PERSONALLY CONCEDED THAT PORTUGAL DID NOT HAVE THE RESOURCES TO RESTORE ITS SOVEREIGNTY IN TIMOR AND THAT THE U.N. WAS UNLIKELY TO TAKE ANY EFFECTIVE ACTION. HOWEVER, HIS GOVERNMENT FELT STRONGLY THAT THE INDONESIAN VOTING 'EXERCISE' WAS COMPLETELY INADEQUATE AND THAT THE TIMORESE SHOULD BE GIVEN A PROPER OPPORTUNITY TO EXERCISE THEIRRIGHT TO SELF DETERMINATION.

6. IN CONVEYING HIS GOVERNMENT'S 'SURPRISE' I HAD THE IMPRESSION THAT VILLAS-BOAS WAS CONDUCTING A RITUAL PERFORMANCE. I DOUBT IF THERE IS ANY NEED TO RESPOND AT THIS STAGE, AND SUBJECT TO YOUR VIEWS, WOULD NOT PROPOSE ANY FURTHER ACTION UNLESS THE PORTUGUESE FOLLOW THE MATTER UP.

SELLARS

ACTION: DEP FOREIGN AFFAIRS

PRIME MINISTER
FOREIGN MINISTER
MIN + DEP DEFENCE
DEP P M AND CABINET
ONA
JIC

ACTION: SEA
EUR

SEC DEPSECS EX MCO FAS(SEP) FAS(NSA) FAS(WES)
FAS(DEF) DP DC FAS(NUC) FAS(IOC) IO FAS(PCR) INF
FAS(ECO) FAS(LT) FAS(MFS) FAREP(S M P)
BANGKOK HONG KONG KUALA LUMPUR MANILA PORT MORESBY
RANGOON SINGAPORE WASHINGTON MOSCOW NEW YORK UN

Cable from Australian Embassy, Lisbon, 20 December 1978 reporting conversation with Sr Villas-Boas

O.LB2757 VBV1/--
TOR 0648 21.12.78

O.LB2757 1945 20.12.78 CLA

TO.
PP CANBERRA/3090

RP.
RR JAKARTA/559 NEW YORK UN/345

FM. LISBON / FILE 202/1 REF O.LB2752

C O N F I D E N T I A L

TIMOR - FORMAL RECOGNITION OF INCORPORATION

VILLAS-BOAS , DIRECTOR GENERAL OF POLITICAL AFFAIRS IN THE FOREIGN MINISTRY, CALLED ME IN 20 DECEMBER TO DISCUSS MINISTER'S REPORTED STATEMENT ON FORMAL RECOGNITION OF EAST TIMOR INCORPORATION IN INDONESIA.

2. VILLAS-BOAS SAID THAT HE HAD BEEN INSTRUCTED TO EXPRESS HIS GOVERNMENT'S SURPRISE THAT IT HAD NOT BEEN ADVISED IN ADVANCE ABOUT THE APPARENT DE JURE RECOGNITION BY AUSTRALIA OF INDONESIA'S INCORPORATION OF EAST TIMOR. HE SAID THAT OUR TWO COUNTRIES WERE IN FRIENDLY RELATIONS AND THAT SUCH ADVANCE INFORMATION MIGHT HAVE BEEN EXPECTED.

3. I RESPONDED THAT, WHEN AUSTRALIA HAD ANNOUNCED ITS DE FACTO RECOGNITION LAST JANUARY, IT HAD NOT AT THAT TIME FOREWARNED THE PORTUGUESE GOVERNMENT. I ADDED THAT THE MINISTER, AT HIS PRESS CONFERENCE ON 15 DECEMBER, HAD INDICATED THAT AUSTRALIA WAS PREPARED TO ENTER INTO NEGOTIATIONS WITH INDONESIA TO DEFINE THE SEABED BOUNDARY IN THOSE AREAS WHICH REMAINED UNDEFINED. THE MINISTER HAD INDICATED THAT THE QUESTION OF FORMAL RECOGNITION OF INDONESIAN INCORPORATION OF EAST TIMOR HAD NOT BEEN SPECIFICALLY DISCUSSED WITH THE INDONESIAN FOREIGN MINISTER. I ADDED THAT AUSTRALIA HAD NOT YET ACCORDED DE JURE RECOGNITION TO INDONESIAN INCORPORATION BUT IT WOULD FOLLOW FROM THE COMMENCEMENT OF NEGOTIATIONS WITH INDONESIA ON THE SEABED BOUNDARY ADJACENT TO EAST TIMOR THAT AUSTRALIA WAS PREPARED TO GIVE DE JURE RECOGNITION TO THE INCORPORATION.

4. I STRESSED TO VILLAS-BOAS THE MINISTER'S COMMENT THAT OUR EXPRESSED WILLINGNESS TO ENTER INTO NEGOTIATIONS ON THE SEABED BOUNDARY DID NOT ALTER IN ANY WAY THE OPPOSITION WHICH THE GOVERNMENT HAS CONSISTENTLY EXPRESSED ABOUT THE MANNER OF INDONESIA'S INCORPORATION OF EAST TIMOR.

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INWARD CABLEGRAM

2 - O.LB2757

5. VILLAS-BOAS ASSERTED WITH SOME WARMTH THAT PORTUGAL REMAINED THE ''FORMAL ADMINISTRATING POWER'' IN EAST TIMOR. HE ADDED THAT, FOR REASONS WHICH WERE WELL UNDERSTOOD, PORTUGAL COULD NOT ACHIEVE A SOLUTION TO THE PRESENT SITUATION IN EAST TIMOR AND HAD TURNED THE PROBLEM OVER TO THE U.N. HE ADDED THAT PORTUGAL COULD NOT ABDICATE ITS RESPONSIBILITY FOR ITS TERRITORY. HE QUOTED TO ME ARTICLE 307 OF THE PORTUGUESE CONSTITUTION WHICH STATED THAT ''PORTUGAL SHALL REMAIN BOUND ... TO PROMOTE AND SAFEGUARD THE RIGHT TO INDEPENDENCE OF EAST TIMOR''. HE SAID THAT THE PORTUGUESE GOVERNMENT WOULD ''PATIENTLY AND CONFIDENTLY'' PURSUE A COURSE DESIGNED TO ACHIEVE THIS OBJECTIVE.

6. VILLAS-BOAS WENT ON TO SAY THAT PORTUGAL DID NOT HAVE A CLOSED MIND ABOUT DISCUSSING THE MATTER WITH INDONESIA. HE REITERATED WHAT HE HAD MENTIONED IN AN EARLIER DISCUSSION (OUR TELEGRAM O.LB2604 OF 26 OCTOBER 1978) THAT DURING THE GENERAL ASSEMBLY IN SEPTEMBER THE INDONESIAN DELEGATION HAD TAKEN THE INITIATIVE IN SEEKING A MEETING BETWEEN DR MOCHTAR AND HIS FOREIGN MINISTER GAGO. UNFORTUNATELY THE PROGRAMS OF THE TWO FOREIGN MINISTERS WERE SUCH THAT IT WAS NOT POSSIBLE TO ARRANGE A MEETING. VILLAS-BOAS ADDED THAT, IF A MEETING WERE ARRANGED, THE DISCUSSIONS WOULD, IN THE FIRST INSTANCE, BE INFORMAL AND EXPLORATORY. I TRIED TO DRAW HIM OUT ON WHAT THE PORTUGUESE WOULD SEEK TO ACHIEVE AT SUCH DISCUSSIONS BUT HE WOULD NOT GO BEYOND SAYING THAT THE PEOPLE OF EAST TIMOR MUST BE GIVEN AN OPPORTUNITY TO FREELY CHOOSE THEIR FUTURE DESTINY.

7. I HAD THE IMPRESSION FROM THIS DISCUSSION AND FROM PREVIOUS TALKS WITH VILLAS-BOAS THAT THE PORTUGUESE GOVERNMENT WILL NOT READILY RELINQUISH ITS CLAIM TO EAST TIMOR UNTIL THEY ARE SATISFIED THAT THE ASPIRATIONS OF THE EAST TIMORESE HAVE BEEN FREELY EXPRESSED. AS LONG AS FRETILIN CONTINUES TO BE ACTIVE IN THE FORMER PORTUGUESE COLONIES, I THINK IT LIKELY THAT ATTEMPTS WILL BE MADE TO CONTINUE TO KEEP THE TIMOR ITEM BEFORE THE U.N.

8. VILLAS-BOAS SAID THAT HIS GOVERNMENT WAS ALSO CONCERNED ABOUT THE PLIGHT OF EAST TIMOR REFUGEES. HE NOTED THAT THIS QUESTION WAS COMPLETELY SEPARATE FROM THE POLITICAL ISSUE OF EAST TIMOR AND HIS GOVERNMENT WAS PLANNING TO LOOK INTO IT IN THE NEAR FUTURE. VILLAS-BOAS' COMMENTS ON THIS ARE IN FOLLOWING CABLE.

... SELLARS

.../3

Note Verbale by Department of Foreign Affairs of Indonesia on Diplomatic and Consular Accreditation, and list of Multilateral and Double Taxation Agreements entered into by Indonesia since 1976

DEPARTMENT OF FOREIGN AFFAIRS
REPUBLIC OF INDONESIA

NOTE VERBALE
Number: 217/92/29

The Department of Foreign Affairs of the Republic of Indonesia presents its compliments to whom it may concerned and has the honour to confirm that no state which is accredited to Indonesia has qualified the terms of either its diplomatic or consular accreditation, in any way, particularly in respect of East Timor and the fact of East Timor's integration into the state of the Republic of Indonesia.

The Department of Foreign Affairs of the Republic of Indonesia avails itself of this opportunity to renew to those concerned the assurances of its highest consideration.

Jakarta, 4 May 1992

A75

CSA 1617
FSA 7875/7

DEPARTEMEN LUAR NEGERI
REPUBLIK INDONESIA

Jakarta, 6 April 1992

No. 177/92/29.

Dear Ms. Pead,

With reference to your letter dated 3 March 1992 regarding your request for information in order preparation of your defence to the action initiated by Portugal against Australia in the International Court of Justice concerning the Timor Gap Treaty, please find enclosed the following materials:

a. A list of Multilateral Treaties which Indonesia has adhered into since 1976, and

b. A lists of Bilateral Double Taxation Agreement entered into by Indonesia since 1976.

Furthermore, I am also pleased to inform you that, there is no single country so far that has qualified its diplomatic or consular accreditation to exclude East Timor.

I hope this information will be of some assistance to you.

Yours Sincerely

[illegible]sky D. Wahyu
Deputy Director

Ms. J. Pead
A/g Minister,
Australian Embassy,
JAKARTA

CSN 1617
FJA 7875/2

List of Multilateral Treaties Indonesia has adhered to since 1976

No.	Date	Convention	Status
1.	03 September 1976	Single Convention on Narcotic Drugs, 1961	Ratification
		Protocol Amending the Single Convention on Narcotic Drugs, 1961	Signature, 25 March 1972
2.	23 November 1976	Amendments to article 10, 16, 17, 18, 20, 28, 31 and 32 of the Convention on the International Maritime Organization, 1977.	Acceptance
3.	04 May 1977	Amendments to articles 34 and 55 of the Constitution of the World Health Organization, 1973.	Acceptance
4.	18 February 1977	Agreement establishing the International Fund for Agricultural, 1976.	Signature
5.	11 January 1977	Convention on a Code of Conduct for Liner Conferences.	Ratification
6.	20 September 1977	International Sugar Agreement, 1973.	Acceptance Resolution No.2, 18 June 1976
7.	30 December 1977	Extension of the International Sugar Agreement, 1973.	Acceptance
8.	28 December 1977	International Sugar Agreement, 1977.	Signature
9.	24 May 1978	Amendments to articles 24 and 25 of the Constitution of the World Health Organization, 1976.	Acceptance
10.	31 August 1978	Agreement Establishing the International Tea Prosotion Association, 1977.	Ratification
11.	11 January 1978	Agreement Establishing the South East Asia Tin Research and Development Centre, 1977.	Ratification
12.	28 September 1979	Constitution of the United Nations Industrial Development Organization, 1979.	Signature
13.	17 March 1980	International Natural Rubber Agreement, 1979.	Signature
14.	24 February 1981	Common Fund for Commodities, 1980.	Signature
15.	04 June 1982	Vienna Convention on Diplomatic Relations, 1961	Accession
		Optional Protocol to the Vienna Convention on Diplomatic Relations concerning Acquisition of Nationality, 1961.	
		Vienna Convention on Consular Relations, 1963	
		Optional Protocol to the Vienna Convention on Consular Relations concerning Acquisition of Nationality, 1963.	
		Convention on Special Missions, 1969.	
16.	07 October 1981	Convention on the Recognition and Enforcement of Foreign Arbitral Awards.	Accession
17.	03 September 1982	Extension of the International Coffee Agreement 1976.	Acceptance
18.	03 August 1982	International Convention for the Suppression of Counter Feiting Currency, 1929.	Ratification
19.	29 July 1983	Amendment to the Title and Substantive Provisions of the Convention on the International Maritime Organization, 1977.	Acceptance
20.	29 July 1983	Amendment to the Convention on the International Maritime Organization relating to the	Acceptance

FJA 7875/3 Page 02

No.	Date	Convention	Status
21.	29 July 1983	Amendment to Article 17, 18, 20 and 31 of the Convention on the International Organization, 1977.	Acceptance
22.	13 September 1983	Statutes of the International Centre for Genetic Engineering and Biotechnology, 1983.	Signature
23.	30 June 1983	International Coffee Agreement, 1983.	Signature
24.	07 January 1983	Asian and Pacific Development Centre, 1982.	Signature
25.	13 September 1984	Convention on the Establishing of all Forms of Discrimination against Women, 1979.	Ratification Signature, 29 July 1980
26.	31 August 1984	International Agreement on Jute and Jute Products, 1982.	Accession
27.	13 June 1984	International Tropical Timber Agreement, 1983.	Ratification
28.	31 December 1984	International Sugar Agreement, 1984.	Signature
29.	23 October 1985	Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, 1984.	Signature
30.	29 April 1985	Constitution of the Asia-Pacific Telecommunity	Accession
31.	16 May 1986	International Convention against Apartheid in Sports, 1985.	Signature
32.	03 February 1986	United Nations Convention on the Law of the Sea 1982.	Ratification
33.	26 January 1987	United Nations Convention on Conditions for Registration of Ships, 1986.	Signature
34.	06 July 1988	Amendments to articles 24 and 25 of the Constitution of the World Health Organization, 1976.	Acceptance
35.	21 July 1988	Montreal Protocol on Substances that Deplete the Ozone Layer, 1987.	Signature
36.	11 October 1989	Customs Convention on Containers, 1972.	Accession
37.	11 October 1989	Customs Convention on the International Transport of Goods Under Cover of TIR Corner (TIR Convention), 1975.	Accession
38.	27 March 1989	United Nations Convention againts Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988.	Signature
39.	29 September 1989	Extension with Modifications of the International Coffee Agreement, 1983.	Acceptance Resolution No. 347
40.	26 January 1990	Convention on the Rights of Children, 1989.	Signature
41.	07 January 1992	Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction, 1972.	Ratification Signature, 20 June 1972.

Note : No state parties have lodged objections against Indonesia's adherence to the above mentioned treaties.

No.	STATE	SIGNED	NAME OF TREATY
1.	Austria	Vienna July 24, 1986	"Agreement between the Government of the Republic of Indonesia and the Government of the Republic of Austria for Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and Capital".
2.	Belgium	Brussels November 13, 1973	"Agreement between the Republic of Indonesia and the Kingdom of Belgium for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and on Capital".
3.	Bulgaria	Sofia January 11, 1982	"Agreement between the Government of Indonesia and the Government of the Republic of Bulgaria for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income".
4.	Canada	Jakarta January 16, 1979	"Convention between the Government of the Republic of Indonesia and the Government of Canada for Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income".
5.	Denmark	Jakarta December 26, 1985	"Convention between the Government of the Republic of Indonesia and the Government of the Kingdom of Denmark for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income".
6.	France	Jakarta September 14, 1979	"Convention between the Government of the Republic of Indonesia and the Government of the French Republic for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and Capital".
7.	Finland	Jakarta October 15, 1987	"Agreement between the Republic of Indonesia and the Republic of Finland for the Avoidance of Double Taxation and the Prevention Fiscal Evasion with respect to Taxes on Income".
8.	Germany (GDR)	Jakarta March 16, 1987	"Agreement between the Government of the Indonesia and the Government of the German Democratic Republic for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income". (Unification Treaty, GDR-GFR, 31.0
9.	Germany (FRG)	Bonn, October 30, 1990	"Agreement between the Republic of Indonesia and the Republic of Germany for Avoidance of Double Taxation with respect to Taxes on Income and Capital".
10.	Great Britain	Jakarta March 13, 1974	"Agreement between the Government of the Republic of Indonesia and the Government of the United Kingdom of Great Britian and Northern Ireland for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and Capital.

No.	STATE	SIGNED	NAME OF TREATY
11.	Hungary	Jakarta October 19, 1989	"Agreement between the Government of the Republic of Indonesia and the Government o Hungarian People's Republic for the Avoidance of Double Taxation and the Preventio Evasion with Respect to Taxes on Income."
12.	India	Jakarta August 7, 1987	"Agreement between the Republic of Indonesia and the Republic of India for Avoidanc Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income."
13.	Italia	Jakarta February 18, 1990	"Agreement between the Government of the Republic of Indonesia and the Government o Republic for the Avoidance of Double Taxation with Respect to Taxes on Income and Prevention of Fiscal Evasion."
14.	Japan	Tokyo March 3, 1982	"Agreement between the Republic of Indonesia and Japan for the Avoidance of Double and the Prevention of Fiscal Evasion with Respect to Taxes Income."
15.	Korea	Jakarta November 10, 1988	"Agreement between the Republic of Indonesia and the Republic of Korea for the Avoi Dcuble Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Inco
16.	Malaysia	Kuala Lumpur September 12, 1991	"Agreement between the Government of the Republic of Indonesia and the Government o for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Res Taxes on Income."
17.	Netherlands	Kuala Lumpur July 22, 1991 (resives Agreement of 1973	"Protocol Amending the Agreement between the Republic of Indonesia and the Kingdom Netherlands for the Avoidance of Double Taxation and the Prevention of Fiscal Evas Respect to Taxes on Income and on Capital with Protocol, signed at Jakarta on 5 Ma
18.	New Zaeland	Wellington March 25, 1987	"Agreement between the Government of the Republic of Indonesia and the Government o Zaeland for the Avoidance of the Double Taxation and the Prevention of Fiscal Evas Respect to Taxes on Income."
19.	Norway	Jakarta July 19, 1988	"Convention between the Republic of Indonesia and the Kingdom of Norway for the Avo Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Inco Capital."
20.	Pakistan	Islamabad October 7, 1990	"Agreement between the Government of the Republic of Indonesia and the Government o Islamic Republic of Pakistan for the Avoidance of Double Taxation and the Preventi Fiscal Evasion with Respect to Taxes on Income."
21.	Philippines	Manila June 18, 1991	"Agreement between the Government of the Republic of Indonesia and the Government o Phillippines for the Avoidance of Double Taxation and the Prevention of Fiscal Eva Respect to Taxes on Income."
22.	Saudi Arabia	Riyad March 9, 1991 (GIA - Saudi Airlines)	"Agreement between the Republic of Indonesia and the Kingdom of Saudi Arabia for Re Exemption of Taxes and Customs Duties on the Activities of Air Transport Enterpris two Countries."
23.	Singapore	Singapore May 18, 1990	"Agreement between the Republic of Indonesia and the Republic of Singapore for Avoi Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Inco

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No.	STATE	SIGNED	NAME OF TREATY
4.	Sweden	Jakarta February 28, 1989	"Convention between the Republic of Indonesia and the Kingdom of Sweden for the Av of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on
5.	Switzerland	Bern August 29, 1986	"Agreement between the Republic of Indonesia and the Swiss Confederation for the Avoidance of Double Taxation with Respect to Taxes on Income."
6.	Thailand	Bangkok March 25, 1991	"Agreement between the Government of the Republic of Indonesia and for Avoidance o Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Inc
7.	United States of America	Jakarta July 11, 1988	"Convention between the Government of the Republic of Indonesia and the Government the USA for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion Respect to Taxes on Income."

Le: all these agreements contain a territorial application clause

Security Council Resolutions 384(1975) of 22 December 1975 and 389 (1976) of 22 April 1976

SECURITY COUNCIL RESOLUTIONS

Resolution 384 (1975) of 22 December 1975

The Security Council,

Having noted the contents of the letter of the Permanent Representative of Portugal (S/11899),

Having heard the statements of the representatives of Portugal and Indonesia,

Having heard representatives of the people of East Timor,

Recognizing the inalienable right of the people of East Timor to self-determination and independence in accordance with the principles of the Charter of the United Nations and the Declaration on the Granting of Independence to Colonial Countries and Peoples, contained in General Assembly resolution 1514 (XV) of 14 December 1960,

Noting that General Assembly resolution 3485 (XXX) of 12 December 1975, *inter alia*, requested the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples to send a fact-finding mission to East Timor,

Gravely concerned at the deterioration of the situation in East Timor,

Gravely concerned also at the loss of life and conscious of the urgent need to avoid further bloodshed in East Timor,

Deploring the intervention of the armed forces of Indonesia in East Timor,

Regretting that the Government of Portugal did not discharge fully its responsibilities as administering Power in the Territory under Chapter XI of the Charter,

1. *Calls upon* all States to respect the territorial integrity of East Timor as well as the inalienable right of its people to self-determination in accordance with General Assembly resolution 1514 (XV);
2. *Calls upon* the Government of Indonesia to withdraw without delay all its forces from the Territory;
3. *Calls upon* the Government of Portugal as administering Power to co-operate fully with the United Nations so as to enable the people of East Timor to exercise freely their right to self-determination;
4. *Urges* all States and other parties concerned to co-operate fully with the efforts of the United Nations to achieve a peaceful solution to the existing situation and to facilitate the decolonization of the Territory;

5. *Requests* the Secretary-General to send urgently a special representative to East Timor for the purpose of making an on-the-spot assessment of the existing situation and of establishing contact with all the parties in the Territory and all States concerned in order to ensure the implementation of the present resolution;
6. *Further requests* the Secretary-General to follow the implementation of the present resolution and, taking into account the report of his special representative, to submit recommendations to the Security Council as soon as possible;
7. *Decides* to remain seized of the situation.

Resolution 389 (1976) of 22 April 1976

The Security Council,

Recalling its resolution 384 (1975) of 22 December 1975,

Having considered the report of the Secretary-General of 12 March 1976 [1],

Having heard the statements of the representatives of Portugal and Indonesia,

Having heard the statements of representatives of the people of East Timor,

Reaffirming the inalienable right of the people of East Timor to self-determination and independence in accordance with the principles of the Charter of the United Nations and the Declaration on the Granting of Independence to Colonial Countries and Peoples, contained in General Assembly resolution 1514 (XV) of 14 December 1960,

Believing that all efforts should be made to create conditions that will enable the people of East Timor to exercise freely their right to self-determination,

Noting that the question of East Timor is before the General Assembly,

Conscious of the urgent need to bring to an end the continued situation of tension in East Timor,

Taking note of the statement by the representative of Indonesia [2],

1. *Calls upon* all States to respect the territorial integrity of East Timor, as well as the inalienable right of its people to self-determination in accordance with General Assembly resolution 1514 (XV);
2. *Calls upon* the Government of Indonesia to withdraw without further delay all its forces from the Territory;
3. *Requests* the Secretary-General to have his Special Representative continue the assignment entrusted to him under paragraph 5 of Security Council resolution 384 (1975) and pursue consultations with the parties concerned;
4. *Further requests* the Secretary-General to follow the implementation of the present resolution and submit a report to the Security Council as soon as possible;

5. *Calls upon* all States and other parties concerned to co-operate fully with the United Nations to achieve a peaceful solution to the existing situation and to facilitate the decolonization of the Territory;
6. *Decides* to remain seized of the situation.

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[1] *Official Records of the Security Council, Thirty-first Year, Supplement for January, February and March 1976*, document S/12011.
[2] *Ibid., Thirty-first Year*, 1909th meeting.

General Assembly Resolutions

3485(XXX)	(12 December 1975)	72(Australia):10:43
31/53	(1 December 1976)	68:20:49 (Australia)
32/34	(28 November 1977)	67:26:47 (Australia)
33/39	(13 December 1978	59:31(Australia):44
34/40	(21 November 1979)	62:31(Australia):45
35/27	(11 November 1980)	58:35(Australia):46
36/50	(24 November 1981)	54:42(Australia):46
37/30	(23 November 1982)	50:46(Australia):50

3485 (XXX). Question of Timor

The General Assembly,

Recognizing the inalienable right of all peoples to self-determination and independence in accordance with the principles of the Charter of the United Nations and of the Declaration on the Granting of Independence to Colonial Countries and Peoples, contained in its resolution 1514 (XV) of 14 December 1960,

Having examined the chapter of the report of the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples relating to the question of Timor,[86]

Having heard the statements of the representatives of Portugal, as the administering Power,[87] concerning developments in Portuguese Timor and the implementation with regard to that Territory of the relevant provisions of the Charter and the Declaration, as well as those of General Assembly resolution 1541 (XV) of 15 December 1960,

Bearing in mind the responsibility of the administering Power to undertake all efforts to create conditions enabling the people of Portuguese Timor to exercise freely their right to self-determination, freedom and independence and to determine their future political status in accordance with the principles of the Charter and the Declaration, in an atmosphere of peace and order,

Mindful that all States should, in conformity with Article 2, paragraph 4, of the Charter, refrain in their international relations from the threat or use of force against the territorial integrity or national independence of any State, or from taking any action inconsistent with the purposes and principles of the Charter,

Deeply concerned at the critical situation resulting from the military intervention of the armed forces of Indonesia in Portuguese Timor,

1. *Calls upon* all States to respect the inalienable right of the people of Portuguese Timor to self-determination, freedom and independence and to determine their future political status in accordance with the principles of the Charter of the United Nations and the Declaration on the Granting of Independence to Colonial Countries and Peoples;

2. *Calls upon* the administering Power to continue to make every effort to find a solution by peaceful means through talks between the Government of Portugal and the political parties representing the people of Portuguese Timor;

3. *Appeals* to all the parties in Portuguese Timor to respond positively to efforts to find a peaceful solution through talks between them and the Government of Portugal in the hope that such talks will bring an end to the strife in that Territory and lead towards the orderly exercise of the right of self-determination by the people of Portuguese Timor;

4. *Strongly deplores* the military intervention of the armed forces of Indonesia in Portuguese Timor;

5. *Calls upon* the Government of Indonesia to desist from further violation of the territorial integrity of Portuguese Timor and to withdraw without delay its armed forces from the Territory in order to enable the people of the Territory freely to exercise their right to self-determination and independence;

6. *Draws the attention* of the Security Council, in conformity with Article 11, paragraph 3, of the Charter, to the critical situation in the Territory of Portuguese Timor and *recommends that it* take urgent action to protect the territorial integrity of Portuguese Timor and the inalienable right of its people to self-determination;

7. *Calls upon* all States to respect the unity and territorial integrity of Portuguese Timor;

8. *Requests* the Government of Portugal to continue its co-operation with the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples and requests the Committee to send a fact-finding mission to the Territory as soon as possible, in consultation with the political parties in Portuguese Timor and the Government of Portugal.

2439th plenary meeting
12 December 1975

[86] *Ibid.*, 2168th meeting.

[87] *Ibid., Thirtieth Session, Supplement No. 23* (A/10023/Rev.1), chap. VIII.
[87] *Ibid., Thirtieth Session, Fourth Committee*, 2178th, 2184th and 2185th meetings.

RESOLUTION 3485 (XXX)

FOR 72 AGAINST 10
ABSTAINED 43 ABSENT

COUNTRY	FOR	AGAINST	ABSTAINED	ABSENT
AFGHANISTAN			X	
ALBANIA	X			
ALGERIA	X			
ARGENTINA			X	
AUSTRALIA	X			
AUSTRIA			X	
BAHAMAS			X	
BAHRAIN	X			
BANGLADESH	X			
BARBADOS	X			
BELGIUM			X	
BENIN		X		
BHUTAN			X	
BOLIVIA	X			
BOTSWANA	X			
BRAZIL	X			
BULGARIA	X			
BURMA				X
BURUNDI	X			
BYELORUSSIAN SSR	X			
CAMBODIA				X
CANADA			X	
CAPE VERDE				X
CENTRAL AFRICAN REPUBLIC				X
CHAD	X			
CHILE			X	
CHINA	X			
COLOMBIA			X	
COMOROS				X
CONGO				X
COSTA RICA			X	
CUBA	X			
CYPRUS	X			
CZECHOSLOVAKIA	X			
DEMOCRATIC YEMEN	X			
DENMARK			X	
DOMINICAN REPUBLIC				X
ECUADOR	X			
EGYPT			X	
EL SALVADOR	X			
EQUATORIAL GUINEA	X			
ETHIOPIA	X			
FIJI	X			
FINLAND			X	
FRANCE			X	
GABON	X			
GAMBIA	X			
GERMAN DEMOCRATIC REPUBLIC	X			
GERMANY, FEDERAL REPUBLIC			X	
GHANA	X			
GREECE	X			
GRENADA	X			
GUATEMALA			X	
GUINEA	X			
GUINEA-BISSAU	X			
GUYANA	X			
HAITI	X			
HONDURAS				X
HUNGARY	X			
ICELAND	X			
INDIA		X		
INDONESIA		X		
IRAN		X		
IRAQ			X	
IRELAND			X	
ISRAEL			X	
ITALY			X	
IVORY COAST	X			
JAMAICA	X			
JAPAN		X		
JORDAN			X	
KENYA	X			
KUWAIT	X			
LAOS	X			
LEBANON				X
LESOTHO	X			
LIBERIA	X			
LIBYAN ARAB REPUBLIC				X
LUXEMBOURG			X	
MADAGASCAR	X			
MALAWI	X			
MALAYSIA		X		
MALDIVES				X
MALI	X			
MALTA				X
MAURITANIA			X	
MAURITIUS			X	
MEXICO	X			
MONGOLIA	X			
MOROCCO			X	
MOZAMBIQUE	X			
NEPAL	X			
NETHERLANDS			X	
NEW ZEALAND			X	
NICARAGUA			X	
NIGER	X			
NIGERIA	X			
NORWAY			X	
OMAN			X	
PAKISTAN	X			
PANAMA			X	
PAPUA NEW GUINEA				X
PARAGUAY			X	
PERU	X			
PHILIPPINES		X		
POLAND	X			
PORTUGAL	X			
QATAR		X		
ROMANIA	X			
RWANDA	X			
SAO TOME AND PRINCIPE				X
SAUDIA ARABIA			X	
SENEGAL	X			
SIERRA LEONE	X			
SINGAPORE			X	
SOMALIA				X
SOUTH AFRICA				X
SPAIN			X	
SRI LANKA			X	
SUDAN			X	
SURINAM				X
SWAZILAND	X			
SWEDEN	X			
SYRIAN ARAB REPUBLIC			X	
THAILAND		X		
TOGO	X			
TRINIDAD AND TOBAGO	X			
TUNISIA				X
TURKEY			X	
UGANDA	X			
UKRAINIAN SSR	X			
USSR	X			
UNITED ARAB EMIRATES	X			
UNITED KINGDOM			X	
UNITED REPUBLIC OF CAMEROON	X			
UNITED REPUBLIC OF TANZANIA	X			
UNITED STATES			X	
UPPER VOLTA	X			
URUGUAY			X	
VENEZUELA	X			
YEMEN				X
YUGOSLAVIA			X	
ZAIRE			X	
ZAMBIA	X			

31/53. Question of Timor

The General Assembly,

Recognizing the inalienable right of all peoples to self-determination and independence in accordance with the principles of the Charter of the United Nations and of the Declaration on the Granting of Independence to Colonial Countries and Peoples, contained in its resolution 1514 (XV) of 14 December 1960,

Recalling its resolution 3485 (XXX) of 12 December 1975 and Security Council resolutions 384 (1975) of 22 December 1975 and 389 (1976) of 22 April 1976,

Having examined the chapter of the report of the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples relating to the Territory,[43]

Bearing in mind that part of the Political Declaration adopted by the Fifth Conference of Heads of State or Government of Non-Aligned Countries, held at Colombo from 16 to 19 August 1976, relating to the question of East Timor,[44]

Having heard the statement of the representative of Portugal,[45]

Having also heard the statement of the representative of the Frente Revolucionária de Timor Leste Independente,[46]

Mindful that all States should, in conformity with Article 2, paragraph 4, of the Charter of the United Nations, refrain in their international relations from the threat or use of force against the territorial integrity or national independence of any State, or in any other manner inconsistent with the purposes of the United Nations,

Deeply concerned at the critical situation resulting from the military intervention of the armed forces of Indonesia in East Timor,

1. *Reaffirms* the inalienable right of the people of East Timor to self-determination and independence and the legitimacy of their struggle to achieve that right;

2. *Reaffirms* its resolution 3485 (XXX) and Security Council resolutions 384 (1975) and 389 (1976);

3. *Affirms* the principles stated in that part of the Political Declaration adopted by the Fifth Conference of Heads of State or Government of Non-Aligned Countries relating to the question of East Timor;

4. *Strongly deplores* the persistent refusal of the Government of Indonesia to comply with the provisions of General Assembly resolution 3485 (XXX) and Security Council resolutions 384 (1975) and 389 (1976);

5. *Rejects* the claim that East Timor has been integrated into Indonesia, inasmuch as the people of the Territory have not been able to exercise freely their right to self-determination and independence;

6. *Calls upon* the Government of Indonesia to withdraw all its forces from the Territory;

7. *Draws the attention* of the Security Council, in conformity with Article 11, paragraph 3, of the Charter of the United Nations, to the critical situation in the Territory of East Timor and recommends that it should take all effective steps for the immediate implementation of its resolutions 384 (1975) and 389 (1976) with a view to securing the full exercise by the people of East Timor of their right to self-determination and independence;

8. *Requests* the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples to keep the situation in the Territory under active consideration, to follow the implementation of the present resolution, to dispatch to the Territory as soon as possible a visiting mission with a view to the full and speedy implementation of the Declaration and to report to the General Assembly at its thirty-second session.

9. *Decides* to include in the provisional agenda of its thirty-second session an item entitled "Question of East Timor".

85th plenary meeting
1 December 1976

[43] *Ibid.*, chap. XII.
[44] A/31/197, annex I, para. 36.
[45] *Official Records of the General Assembly, Thirty-first Session, Fourth Committee*, 13th meeting, paras. 1-5.
[46] *Ibid.*, paras. 7-23.

RESOLUTION 31/53

FOR 68 AGAINST 20
ABSTAINED 49 ABSENT 9

COUNTRY	FOR	AGAINST	ABSTAINED	ABSENT
AFGHANISTAN			X	
ALBANIA	X			
ALGERIA	X			
ANGOLA				X
ARGENTINA			X	
AUSTRALIA			X	
AUSTRIA			X	
BAHAMAS			X	
BAHRAIN			X	
BANGLADESH		X		
BARBADOS	X			
BELGIUM			X	
BENIN	X			
BHUTAN			X	
BOLIVIA			X	
BOTSWANA	X			
BRAZIL	X			
BULGARIA	X			
BURMA				X
BURUNDI	X			
BYELORUSSIAN SSR	X			
CANADA			X	
CAPE VERDE	X			
CENTRAL AFRICAN REPUBLIC	X			
CHAD	X			
CHILE		X		
CHINA	X			
COLOMBIA	X**			
COMOROS				X
CONGO	X			
COSTA RICA			X	
CUBA	X			
CYPRUS	X			
CZECHOSLOVAKIA	X			
DEMOCRATIC KAMPUCHEA	X			
DEMOCRATIC YEMEN	X			
DENMARK			X	
DJIBOUTI	-	-	-	-
DOMINICAN REPUBLIC			X	
ECUADOR	X			
EGYPT			X	
EL SALVADOR			X	
EQUATORIAL GUINEA	X			
ETHIOPIA	X			
FIJI			X	
FINLAND			X	
FRANCE			X	
GABON	X			
GAMBIA	X			
GERMAN DEMOCRATIC REPUBLIC	X			
GERMANY FEDERAL REPUBLIC			X	
GHANA	X			
GREECE	X			
GRENADA	X**			
GUATEMALA			X	
GUINEA	X			
GUINEA-BISSAU	X			
GUYANA	X			
HAITI			X	
HONDURAS			X	
HUNGARY	X			
ICELAND	X			
INDIA		X		
INDONESIA		X		
IRAN		X		
IRAQ			X	
IRELAND			X	
ISRAEL			X	
ITALY			X	
IVORY COAST	X			
JAMAICA	X			
JAPAN		X		
JORDAN		X		
KENYA	X			
KUWAIT			X	

COUNTRY	FOR	AGAINST	ABSTAINED	ABSENT
LAOS PEOPLES DEMOCRATIC REPUBLIC	X			
LEBANON			X	
LESOTHO	X			
LIBERIA	X			
LIBYAN ARAB JAMAHIRIYA				X
LUXEMBOURG			X	
MADAGASCAR	X			
MALAWI	X			
MALAYSIA		X		
MALDIVES			X	
MALI	X			
MALTA				X
MAURITANIA		X		
MAURITIUS	X			
MEXICO	X			
MONGOLIA	X			
MOROCCO		X		
MOZAMBIQUE	X			
NEPAL			X	
NETHERLANDS			X	
NEW ZEALAND			X	
NICARAGUA		X		
NIGER				X
NIGERIA				X*
NORWAY	X**			
OMAN		X		
PAKISTAN			X	
PANAMA	X			
PAPUA NEW GUINEA			X	
PARAGUAY			X	
PERU			X	
PHILIPPINES		X		
POLAND	X			
PORTUGAL	X			
QATAR			X	
ROMANIA	X			
RWANDA	X			
SAMOA	-	-	-	-
SAO TOME AND PRINCIPE	X			
SAUDIA ARABIA		X		
SENEGAL	X			
SEYCHELLES				X
SIERRA LEONE	X			
SINGAPORE			X	
SOMALIA	X**			
SOUTH AFRICA				X
SPAIN			X	
SRI LANKA			X	
SUDAN			X	
SURINAM		X		
SWAZILAND	X			
SWEDEN	X			
SYRIAN ARAB REPUBLIC			X	
THAILAND		X		
TOGO	X			
TRINIDAD AND TOBAGO	X			
TUNISIA		X		
TURKEY		X		
UGANDA	X			
UKRAINIAN SSR	X			
USSR	X			
UNITED ARAB EMIRATES			X	
UNITED KINGDOM			X	
UNITED REPUBLIC OF CAMEROON	X			
UNITED REPUBLIC OF TANZANIA	X			
UNITED STATES		X		
UPPER VOLTA	X			
URUGUAY		X		
VENEZUELA			X	
VIET NAM	-	-	-	-
YEMEN			X	
YUGOSLAVIA			X	
ZAIRE			X	
ZAMBIA	X			

* Later advised the Secretariat it had intended to vote in favour.
** Later advised the Secretariat they had intended to abstain.

32/34. Question of East Timor

The General Assembly,

Recognizing the inalienable right of all peoples to self-determination and independence in accordance with the principles of the Charter of the United Nations and of the Declaration on the Granting of Independence to Colonial Countries and Peoples, contained in its resolution 1514 (XV) of 14 December 1960,

Having examined the chapter of the report of the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples relating to the Territory,[44]

Having heard the statements of the representatives of Portugal[45] and Indonesia,[46]

Having also heard the statements of the representatives of the Frente Revolucionária de Timor Leste Independente,[47]

Mindful that all States should, in conformity with Article 2, paragraph 4, of the Charter, refrain in their international relations from the threat or use of force against the territorial integrity or national independence of any State, or in any other manner inconsistent with the purposes of the United Nations,

Deeply concerned at the continuing critical situation in the Territory, resulting from the persistent refusal on the part of the Government of Indonesia to comply with the provisions of the resolutions of the General Assembly and the Security Council,

Recalling its resolutions 3485 (XXX) of 12 December 1975 and 31/53 of 1 December 1976 and Security Council resolutions 384 (1975) of 22 December 1975 and 389 (1976) of 22 April 1976,

1. *Reaffirms* the inalienable right of the people of East Timor to self-determination and independence, and the legitimacy of their struggle to achieve that right;

2. *Reaffirms* its resolutions 3485 (XXX) and 31/53 and Security Council resolutions 384 (1975) and 389 (1976);

3. *Rejects* the claim that East Timor has been integrated into Indonesia, inasmuch as the people of the Territory have not been able to exercise freely their right to self-determination and independence;

4. *Requests* the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples to keep the situation in the Territory under active consideration, to follow the implementation of the present resolution, to dispatch to the Territory as soon as possible a visiting mission with a view to the full and speedy implementation of the Declaration and to report thereon to the General Assembly at its thirty-third session;

5. *Requests* the Secretary-General in consultation with the Chairman of the Special Committee, in the meantime to send urgently a special representative to East Timor for the purpose of making a thorough, on-the-spot assessment of the existing situation in the Territory and of establishing contact with the representatives of the Frente Revolucionária de Timor Leste Independente and the Government of Indonesia, as well as the Governments of other States concerned, in order to prepare the ground for a visiting mission of the Special Committee, and to report thereon to the Special Committee;

6. *Draws the attention* of the Security Council, in conformity with Article 11, paragraph 3, of the Charter of the United Nations, to the critical situation in the Territory of East Timor and recommends that it should take all effective steps for the implementation of its resolutions 384 (1975) and 389 (1976) with a view to securing the full exercise by the people of East Timor of their right to self-determination and independence;

7. *Calls upon* the Government of Indonesia and the leadership of the Frente Revolucionária de Timor Leste Independente to facilitate the entry into East Timor of the International Committee of the Red Cross and other relief organizations in order to assist the people of the Territory;

8. *Decides* to include in the provisional agenda of its thirty-third session the item entitled "Question of East Timor".

83rd plenary meeting
28 November 1977

[44] *Official Records of the General Assembly, Thirty-second Session, Supplement No. 23* (A/32/23/Rev.1), vol. II, chap. X.
[45] *Ibid., Thirty-second Session, Fourth Committee,* 12th meeting, paras. 22-26.
[46] *Ibid.,* 19th meeting, paras. 4-58.
[47] *Ibid.,* 11th meeting, paras. 135-155, and 20th meeting, paras. 101-130.

RESOLUTION 32/34

FOR 67 AGAINST 26
ABSTAINED 47 ABSENT 9

COUNTRY	FOR	AGAINST	ABSTAINED	ABSENT
AFGHANISTAN			X	
ALBANIA	X			
ALGERIA	X			
ANGOLA	X			
ARGENTINA			X	
AUSTRALIA			X	
AUSTRIA			X	
BAHAMAS			X	
BAHRAIN			X	
BANGLADESH		X		
BARBADOS	X			
BELGIUM			X	
BENIN	X			
BHUTAN			X	
BOLIVIA			X	
BOTSWANA	X			
BRAZIL	X			
BULGARIA	X			
BURMA			X	
BURUNDI	X			
BYELORUSSIAN SSR	X			
CANADA			X	
CAPE VERDE	X			
CENTRAL AFRICAN REPUBLIC	X			
CHAD	X			
CHILE		X		
CHINA	X			
COLOMBIA			X	
COMOROS	X			
CONGO	X			
COSTA RICA			X	
CUBA	X			
CYPRUS	X			
CZECHOSLOVAKIA	X			
DEMOCRATIC KAMPUCHEA				X
DEMOCRATIC YEMEN	X			
DENMARK			X	
DJIBOUTI			X	
DOMINICAN REPUBLIC			X	
ECUADOR	X			
EGYPT		X		
EL SALVADOR			X	
EQUATORIAL GUINEA	X			
ETHIOPIA	X			
FIJI			X	
FINLAND			X	
FRANCE			X	
GABON	X			
GAMBIA	X			
GERMAN DEMOCRATIC REPUBLIC	X			
GERMANY, FEDERAL REPUBLIC			X	
GHANA	X			
GREECE	X			
GRENADA	X			
GUATEMALA			X	
GUINEA	X			
GUINEA-BISSAU	X			
GUYANA	X			
HAITI	X			
HONDURAS			X	
HUNGARY	X			
ICELAND	X			
INDIA		X		
INDONESIA		X		
IRAN		X		
IRAQ		X		
IRELAND			X	
ISRAEL				X*
ITALY			X	
IVORY COAST			X	
JAMAICA	X			
JAPAN		X		
JORDAN		X		
KENYA	X			
KUWAIT			X	
LAOS PEOPLES DEMOCRATIC REPUBLIC	X			
LEBANON			X	
LESOTHO	X			
LIBERIA	X			
LIBYAN ARAB JAMAHIRIYA				X
LUXEMBOURG			X	
MADAGASCAR	X			
MALAWI			X	
MALAYSIA		X		
MALDIVES		X		
MALI	X			
MALTA				X
MAURITANIA		X		
MAURITIUS				X
MEXICO	X			
MONGOLIA	X			
MOROCCO		X		
MOZAMBIQUE	X			
NEPAL			X	
NETHERLANDS			X	
NEW ZEALAND			X	
NICARAGUA		X		
NIGER	X			
NIGERIA	X			
NORWAY			X	
OMAN		X		
PAKISTAN			X	
PANAMA	X			
PAPUA NEW GUINEA			X	
PARAGUAY			X	
PERU			X	
PHILIPPINES		X		
POLAND	X			
PORTUGAL	X			
QATAR			X	
ROMANIA	X			
RWANDA	X			
SAMOA			X	
SAO TOME AND PRINCIPE	X			
SAUDIA ARABIA		X		
SENEGAL	X			
SEYCHELLES				X
SIERRA LEONE	X			
SINGAPORE		X		
SOMALIA				X
SOUTH AFRICA				X
SPAIN			X	
SRI LANKA			X	
SUDAN			X	
SURINAM		X		
SWAZILAND	X			
SWEDEN	X			
SYRIAN ARAB REPUBLIC		X		
THAILAND		X		
TOGO	X			
TRINIDAD AND TOBAGO	X			
TUNISIA		X		
TURKEY		X		
UGANDA	X			
UKRAINIAN SSR	X			
USSR	X			
UNITED ARAB EMIRATES			X	
UNITED KINGDOM			X	
UNITED REPUBLIC OF CAMEROON	X			
UNITED REPUBLIC OF TANZANIA	X			
UNITED STATES		X		
UPPER VOLTA	X			
URUGUAY		X		
VENEZUELA			X	
VIET NAM	X			
YEMEN				X
YUGOSLAVIA			X	
ZAIRE		X		
ZAMBIA	X			

* Later advised the Secretariat it had intended to abstain.

33/39. Question of East Timor

The General Assembly,

Recognizing the inalienable right of all peoples to self-determination and independence in accordance with the principles of the Charter of the United Nations and of the Declaration on the Granting of Independence to Colonial Countries and Peoples, contained in its resolution 1514 (XV) of 14 December 1960,

Recalling its resolutions 3485 (XXX) of 12 December 1975, 31/53 of 1 December 1976 and 32/34 of 28 November 1977 and Security Council resolutions 384 (1975) of 22 December 1975 and 389 (1976) of 22 April 1976,

Having examined the chapter of the report of the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples relating to the Territory,[51]

Having heard the statements made on the subject of East Timor, including the statement by the representative of the Frente Revolucionária de Timor Leste Independente,[52]

Deeply concerned at the continuing critical situation in the Territory, resulting from the persistent refusal on the part of the Government of Indonesia to comply with the provisions of the relevant resolutions of the General Assembly and the Security Council,

Bearing in mind the part of the Declaration of the Conference of Ministers for Foreign Affairs of Non-Aligned Countries, held at Belgrade from 25 to 30 July 1978, relating to East Timor,[53]

Mindful that all States should, in conformity with Article 2, paragraph 4, of the Charter, refrain in their international relations from the threat or use of force against the territorial integrity or national independence of any State, or in any other manner inconsistent with the purposes of the United Nations,

1. *Reaffirms* the inalienable right of the people of East Timor to self-determination and independence, and the legitimacy of their struggle to achieve that right;

2. *Reaffirms* its resolutions 3485 (XXX), 31/53 and 32/34 and Security Council resolutions 384 (1975) and 389 (1976);

3. *Requests* the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples to keep the situation in the Territory under active consideration, to follow the implementation of the present resolution, to dispatch to the Territory as soon as possible a visiting mission with a view to the full and speedy implementation of the Declaration and to report thereon to the General Assembly at its thirty-fourth session;

4. *Draws the attention* of the Security Council, in conformity with Article 11, paragraph 3, of the Charter of the United Nations, to the critical situation in the Territory of East Timor and recommends that it take all effective steps for the implementation of its resolutions 384 (1975) and 389 (1976) with a view to securing the full exercise by the people of East Timor of their right to self-determination and independence;

5. *Decides* to include in the provisional agenda of its thirty-fourth session the item entitled "Question of East Timor".

81st plenary meeting
13 December 1978

[50] T. H. Bingham and S. M. Gray, *Report on the Supply of Petroleum and Petroleum Products to Rhodesia* (London, Her Majesty's Stationery Office for the Foreign and Commonwealth Office, 1978).

[51] *Official Records of the General Assembly, Thirty-third Session, Supplement No. 23* (A/33/23/Rev.1), vol. II, chap. X.

[52] *Ibid., Thirty-third Session, Fourth Committee*, 21st meeting, paras. 10-27.

[53] A/33/206, annex I, para. 133.

34/40. Question of East Timor

The General Assembly,

Recognizing the inalienable right of all peoples to self-determination and independence in accordance with the principles of the Charter of the United Nations and of the Declaration on the Granting of Independence to Colonial Countries and Peoples, contained in its resolution 1514 (XV) of 14 December 1960,

Bearing in mind the part of the Political Declaration adopted by the Sixth Conference of Heads of State or Government of Non-Aligned Countries, held at Havana from 3 to 9 September 1979, relating to East Timor,[54]

Having examined the chapter of the report of the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples relating to the Territory,[55]

Having heard the statements of the representatives of Portugal,[56] as the administering Power, and Indonesia,[57]

Having also heard the statements of the petitioners,[58] including the representative of the Frente Revolucionária de Timor Leste Independente,[59]

1. *Reaffirms* the inalienable right of the people of East Timor to self-determination and independence, in accordance with the Declaration on the Granting of Independence to Colonial Countries and Peoples;

2. *Declares* that the people of East Timor must be enabled freely to determine their own future, under the auspices of the United Nations;

3. *Expresses its deepest concern* at the suffering of the people of East Timor as a result of the situation now prevailing in the Territory;

4. *Calls upon* all parties concerned to facilitate the entry into the Territory of international relief aid in order to alleviate the suffering of the people of East Timor;

5. *Requests* the United Nations Children's Fund and the Office of the United Nations High Commissioner for Refugees to render, within their respective fields of competence, all possible assistance to the people of East Timor, particularly the children and those seeking to leave for another country for purposes of family reunion;

6. *Requests* the Secretary-General to follow the implementation of the present resolution and to report thereon to the General Assembly at its thirty-fifth session;

7. *Decides* to include in the provisional agenda of its thirty-fifth session the item entitled "Question of East Timor".

75th plenary meeting
21 November 1979

[54] See A/34/542, annex, sect. I, para. 155.

[55] *Official Records of the General Assembly, Thirty-fourth Session, Supplement No. 23* (A/34/23/Rev.1), chap. XI.

[56] *Ibid., Thirty-fourth Session, Fourth Committee*, 13th meeting, paras. 9-12.

[57] *Ibid.*, 3rd, 6th, 10th, 13th, 14th and 17th meetings.

[58] *Ibid.*, 13th meeting, paras. 24-50; 14th meeting, paras. 32-47; 16th meeting, paras. 97-107; 17th meeting, paras. 5-28 and 18th meeting, paras. 4-21; and *ibid., Fourth Committee, Sessional Fascicle*, corrigendum.

[59] *Ibid.*, 14th meeting, paras. 25-37.

RESOLUTION 33/39

FOR 59 AGAINST 31
ABSTAINED 44 ABSENT 16

COUNTRY	FOR	AGAINST	ABSTAINED	ABSENT
AFGHANISTAN	X			
ALBANIA	X			
ALGERIA	X			
ANGOLA	X			
ARGENTINA			X	
AUSTRALIA		X		
AUSTRIA			X	
BAHAMAS			X	
BAHRAIN			X	
BANGLADESH		X		
BARBADOS	X			
BELGIUM			X	
BENIN	X			
BHUTAN			X	
BOLIVIA			X	
BOTSWANA	X			
BRAZIL	X			
BULGARIA	X			
BURMA			X*	
BURUNDI	X			
BYELORUSSIAN SSR	X			
CANADA			X	
CAPE VERDE	X			
CENTRAL AFRICAN REPUBLIC	X			
CHAD	X			
CHILE		X		
CHINA	X			
COLOMBIA			X	
COMOROS				X
CONGO	X			
COSTA RICA				X
CUBA	X			
CYPRUS	X			
CZECHOSLOVAKIA	X			
DEMOCRATIC KAMPUCHEA				X
DEMOCRATIC YEMEN	X			
DENMARK			X	
DJIBOUTI				X
DOMINICA	-	-	-	-
DOMINICAN REPUBLIC			X	
ECUADOR				X
EGYPT		X		
EL SALVADOR			X	
EQUATORIAL GUINEA				X
ETHIOPIA	X			
FIJI			X	
FINLAND			X	
FRANCE			X	
GABON			X	
GAMBIA	X			
GERMAN DEMOCRATIC REPUBLIC	X			
GERMANY, FEDERAL REPUBLIC			X	
GHANA	X			
GREECE	X			
GRENADA	X			
GUATEMALA		X		
GUINEA	X			
GUINEA-BISSAU	X			
GUYANA	X			
HAITI	X			
HONDURAS			X	
HUNGARY	X			
ICELAND				X
INDIA		X		
INDONESIA		X		
IRAN		X		
IRAQ		X		
IRELAND			X	
ISRAEL			X	
ITALY			X	
IVORY COAST			X	
JAMAICA	X			
JAPAN		X		
JORDAN		X		
KENYA	X			
KUWAIT			X	
LAO PEOPLES DEMOCRATIC REPUBLIC			X	
LEBANON			X	
LESOTHO	X			
LIBERIA	X			
LIBYAN ARAB JAMAHIRIYA				X
LUXEMBOURG			X	
MADAGASCAR	X			
MALAWI	X			
MALAYSIA		X		
MALDIVES		X		
MALI	X			
MALTA				X
MAURITANIA		X		
MAURITIUS	X			
MEXICO	X			
MONGOLIA	X			
MOROCCO		X		
MOZAMBIQUE	X			
NEPAL			X	
NETHERLANDS			X	
NEW ZEALAND			X	
NICARAGUA		X		
NIGER	X			
NIGERIA			X	
NORWAY			X	
OMAN		X		
PAKISTAN			X	
PANAMA			X	
PAPUA NEW GUINEA		X		
PARAGUAY		X		
PERU			X	
PHILIPPINES		X		
POLAND				X
PORTUGAL	X			
QATAR		X		
ROMANIA				X
RWANDA	X			
SAINT LUCIA	-	-	-	-
SAMOA			X	
SAO TOME AND PRINCIPE	X			
SAUDIA ARABIA		X		
SENEGAL	X			
SEYCHELLES			X	
SIERRA LEONE	X			
SINGAPORE		X		
SOLOMON ISLANDS				X
SOMALIA				X
SOUTH AFRICA				X
SPAIN			X	
SRI LANKA			X	
SUDAN			X	
SURINAM		X		
SWAZILAND	X			
SWEDEN	X			
SYRIAN ARAB REPUBLIC		X		
THAILAND		X		
TOGO	X			
TRINIDAD AND TOBAGO	X			
TUNISIA		X		
TURKEY		X		
UGANDA	X			
UKRAINIAN SSR	X			
USSR	X			
UNITED ARAB EMIRATES			X	
UNITED KINGDOM			X	
UNITED REPUBLIC OF CAMEROON	X			
UNITED REPUBLIC OF TANZANIA	X			
UNITED STATES		X		
UPPER VOLTA	X			
URUGUAY		X		
VENEZUELA			X	
VIETNAM				X
YEMEN				X
YUGOSLAVIA			X	
ZAIRE		X		
ZAMBIA	X			
ZIMBABWE	-	-	-	-

* Later advised the Secretariat it had intended to abstain.

RESOLUTION 34/40

FOR 62 AGAINST 31
ABSTAINED 45 ABSENT 14

COUNTRY	FOR	AGAINST	ABSTAINED	ABSENT
AFGHANISTAN	X			
ALBANIA	X			
ALGERIA	X			
ANGOLA	X			
ARGENTINA			X	
AUSTRALIA		X		
AUSTRIA			X	
BAHAMAS			X	
BAHRAIN			X	
BANGLADESH		X		
BARBADOS	X			
BELGIUM			X	
BENIN	X			
BHUTAN			X	
BOLIVIA			X	
BOTSWANA	X			
BRAZIL	X			
BULGARIA				X
BURMA			X	
BURUNDI	X			
BYELORUSSIAN SSR	X			
CANADA			X	
CAPE VERDE	X			
CENTRAL AFRICAN REPUBLIC	X			
CHAD	X			
CHILE		X		
CHINA	X			
COLOMBIA		X		
COMOROS				X
CONGO	X			
COSTA RICA	X			
CUBA	X			
CYPRUS	X			
CZECHOSLOVAKIA			X	
DEMOCRATIC KAMPUCHEA				X
DEMOCRATIC YEMEN	X			
DENMARK			X	
DJIBOUTI				X
DOMINICA				X
DOMINICAN REPUBLIC			X	
ECUADOR				X
EGYPT		X		
EL SALVADOR			X	
EQUATORIAL GUINEA	X			
ETHIOPIA	X			
FIJI			X	
FINLAND			X	
FRANCE			X	
GABON			X	
GAMBIA	X			
GERMAN DEMOCRATIC REPUBLIC				X
GERMANY, FEDERAL REPUBLIC			X	
GHANA	X			
GREECE	X			
GRENADA	X			
GUATEMALA			X	
GUINEA	X			
GUINEA-BISSAU	X			
GUYANA	X			
HAITI	X			
HONDURAS		X		
HUNGARY			X	
ICELAND	X			
INDIA		X		
INDONESIA		X		
IRAN	X			
IRAQ		X		
IRELAND			X	
ISRAEL			X	
ITALY			X	
IVORY COAST			X	
JAMAICA	X			
JAPAN		X		
JORDAN		X		
KENYA	X			
KUWAIT			X	

COUNTRY	FOR	AGAINST	ABSTAINED	ABSENT
LAO PEOPLES DEMOCRATIC REPUBLIC	X			
LEBANON			X	
LESOTHO	X			
LIBERIA	X			
LIBYAN ARAB JAMAHIRIYA				X
LUXEMBOURG			X	
MADAGASCAR	X			
MALAWI	X			
MALAYSIA		X		
MALDIVES		X		
MALI	X			
MALTA				X
MAURITANIA			X	
MAURITIUS				X
MEXICO	X			
MONGOLIA	X			
MOROCCO			X	
MOZAMBIQUE	X			
NEPAL			X	
NETHERLANDS			X	
NEW ZEALAND		X		
NICARAGUA	X			
NIGER	X			
NIGERIA			X	
NORWAY			X	
OMAN		X		
PAKISTAN			X	
PANAMA			X	
PAPUA NEW GUINEA		X		
PARAGUAY		X		
PERU			X	
PHILIPPINES		X		
POLAND				X
PORTUGAL	X			
QATAR		X		
ROMANIA			X	
RWANDA	X			
SAINT LUCIA	X			
SAMOA			X	
SAO TOME AND PRINCIPE	X			
SAUDIA ARABIA		X		
SENEGAL	X			
SEYCHELLES	X			
SIERRA LEONE	X			
SINGAPORE		X		
SOLOMON ISLANDS				X
SOMALIA				X
SOUTH AFRICA				X
SPAIN			X	
SRI LANKA			X	
SUDAN		X		
SURINAM		X		
SWAZILAND	X			
SWEDEN	X			
SYRIAN ARAB REPUBLIC		X		
THAILAND		X		
TOGO	X			
TRINIDAD AND TOBAGO	X			
TUNISIA		X		
TURKEY		X		
UGANDA	X			
UKRAINIAN SSR	X			
USSR	X			
UNITED ARAB EMIRATES			X	
UNITED KINGDOM			X	
UNITED REPUBLIC OF CAMEROON			X	
UNITED REPUBLIC OF TANZANIA	X			
UNITED STATES		X		
UPPER VOLTA	X			
URUGUAY		X		
VENEZUELA			X	
VIETNAM	X			
YEMEN		X		
YUGOSLAVIA			X	
ZAIRE		X		
ZAMBIA	X			
ZIMBABWE	-	-	-	-

35/27. Question of East Timor

The General Assembly,

Recognizing the inalienable right of all peoples to self-determination and independence in accordance with the principles of the Charter of the United Nations and of the Declaration on the Granting of Independence to Colonial Countries and Peoples, contained in its resolution 1514 (XV) of 14 December 1960,

Considering that the international community is celebrating in 1980 the twentieth anniversary of the Declaration,

Bearing in mind that the Fifth[31] and Sixth[32] Conferences of Heads of State or Government of Non-Aligned Countries, held at Colombo and Havana in 1976 and 1979, respectively, reaffirmed the right of the people of East Timor to self-determination and independence,

Having examined the chapter of the report of the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples, relating to the Territory,[33] and other relevant documents,[34]

Taking into consideration the recent communiqué of the Council of Ministers of Portugal, issued on 12 September 1980,[35] in which the administering Power reaffirmed the right of the people of East Timor to self-determination,

Taking also into consideration the diplomatic initiative taken by the Government of Portugal with a view to finding a comprehensive solution to the problem of East Timor,

Deeply concerned at the continued suffering of the people of East Timor as a result of the hostilities still prevailing in the Territory,

Having heard the statements of the representatives of Portugal,[36] as the administering Power, and Indonesia,[37]

Having also heard the statements of various East Timorese petitioners and representatives of non-governmental organizations,[38] as well as the representative of the Frente Revolucionária de Timor Leste Independente,[39]

1. *Reaffirms* the inalienable right of the people of East Timor to self-determination and independence, in accordance with the Declaration on the Granting of Independence to Colonial Countries and Peoples;

2. *Declares* that the people of East Timor must be enabled freely to determine their own future within the framework of the United Nations;

3. *Welcomes* the diplomatic initiative taken by the Government of Portugal as a first step towards the free exercise by the people of East Timor of their right to self-determination and independence, and urges all parties directly concerned to co-operate fully with a view to creating the conditions necessary for the speedy implementation of General Assembly resolution 1514 (XV);

4. *Expresses its deepest concern* at the continued suffering of the people of East Timor as a result of the situation still prevailing in the Territory;

5. *Requests* the United Nations Children's Fund, the World Food Programme and the Office of the United Nations High Commissioner for Refugees to render, within their respective fields of competence, all possible assistance to the people of East Timor, particularly the children;

6. *Requests* the Secretary-General to follow the implementation of the present resolution and to report to the General Assembly at its thirty-sixth session on all aspects of the situation in East Timor, in particular the political developments concerning the situations referred to in paragraphs 1 to 4 above;

7. *Decides* to include in the provisional agenda of its thirty-sixth session the item entitled "Question of East Timor".

57th plenary meeting
11 November 1980

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[31] See A/31/197, annex I, para. 36.
[32] See A/34/542, annex, sect. I, para. 155.
[33] *Official Records of the General Assembly, Thirty-fifth Session, Supplement No. 23* (A/35/23/Rev.1), chap. X.
[34] A/AC.109/622, 623 and 634.
[35] A/C.4/35/2, annex.
[36] *Official Records of the General Assembly, Thirty-fifth Session, Fourth Committee*, 11th meeting, paras. 34-38.
[37] *Ibid.*, 19th meeting, paras. 32-52.
[38] *Ibid.*, 9th, 11th, 12th, 16th and 17th meetings.
[39] *Ibid.*, 14th meeting, paras. 3-11.

RESOLUTION 35/27

FOR 58 AGAINST 35
ABSTAINED 46 ABSENT 15

COUNTRY	FOR	AGAINST	ABSTAINED	ABSENT
AFGHANISTAN	X			
ALBANIA	X			
ALGERIA	X			
ANGOLA	X			
ANTIGUA AND BARBUDA	-	-	-	-
ARGENTINA		X		
AUSTRALIA		X		
AUSTRIA			X	
BAHAMAS			X	
BAHRAIN			X	
BANGLADESH		X		
BARBADOS	X			
BELGIUM			X	
BELIZE	-	-	-	-
BENIN	X			
BHUTAN			X	
BOLIVIA		X		
BOTSWANA	X			
BRAZIL	X			
BULGARIA				X
BURMA			X	
BURUNDI	X			
BYELORUSSIAN SSR	X			
CANADA		X		
CAPE VERDE	X			
CENTRAL AFRICAN REPUBLIC	X			
CHAD	X			
CHILE		X		
CHINA	X			
COLOMBIA		X		
COMOROS				X
CONGO	X			
COSTA RICA			X	
CUBA	X			
CYPRUS	X			
CZECHOSLOVAKIA			X	
DEMOCRATIC KAMPUCHEA		X		
DEMOCRATIC YEMEN	X			
DENMARK			X	
DJIBOUTI				X
DOMINICA				X
DOMINICAN REPUBLIC			X	
ECUADOR			X	
EGYPT		X		
EL SALVADOR		X		
EQUATORIAL GUINEA	X			
ETHIOPIA	X			
FIJI			X	
FINLAND			X	
FRANCE			X	
GABON			X	
GAMBIA				X
GERMAN DEMOCRATIC REPUBLIC				X
GERMANY, FEDERAL REPUBLIC			X	
GHANA	X			
GREECE	X			
GRENADA	X			
GUATEMALA		X		
GUINEA	X			
GUINEA-BISSAU	X			
GUYANA	X			
HAITI	X			
HONDURAS		X		
HUNGARY			X	
ICELAND	X			
INDIA		X		
INDONESIA		X		
IRAN	X			
IRAQ		X		
IRELAND			X	
ISRAEL			X	
ITALY			X	
IVORY COAST			X	
JAMAICA	X			
JAPAN		X		
JORDAN		X		
KENYA	X			
KUWAIT				X

COUNTRY	FOR	AGAINST	ABSTAINED	ABSENT
LAO PEOPLES DEMOCRATIC REPUBLIC	X			
LEBANON				X
LESOTHO			X	
LIBERIA	X			
LIBYAN ARAB JAMAHIRIYA				X
LUXEMBOURG			X	
MADAGASCAR	X			
MALAWI	X			
MALAYSIA		X		
MALDIVES		X		
MALI	X			
MALTA				X
MAURITANIA			X	
MAURITIUS			X	
MEXICO				X*
MONGOLIA	X			
MOROCCO			X	
MOZAMBIQUE	X			
NEPAL			X	
NETHERLANDS			X	
NEW ZEALAND		X		
NICARAGUA	X			
NIGER	X			
NIGERIA			X	
NORWAY			X	
OMAN		X		
PAKISTAN			X	
PANAMA			X	
PAPUA NEW GUINEA		X		
PARAGUAY				X
PERU			X	
PHILIPPINES		X		
POLAND			X	
PORTUGAL	X			
QATAR		X		
ROMANIA			X	
RWANDA	X			
SAINT LUCIA	X			
SAINT VINCENT AND THE GRENADINES				X
SAMOA			X	
SAO TOME AND PRINCIPE	X			
SAUDIA ARABIA		X		
SENEGAL	X			
SEYCHELLES	X			
SIERRA LEONE	X			
SINGAPORE		X		
SOLOMON ISLANDS				X
SOMALIA			X	
SOUTH AFRICA				X
SPAIN			X	
SRI LANKA			X	
SUDAN		X		
SURINAM		X		
SWAZILAND	X			
SWEDEN			X	
SYRIAN ARAB REPUBLIC		X		
THAILAND		X		
TOGO	X			
TRINIDAD AND TOBAGO	X			
TUNISIA		X		
TURKEY		X		
UGANDA	X			
UKRAINIAN SSR	X			
USSR	X			
UNITED ARAB EMIRATES			X	
UNITED KINGDOM			X	
UNITED REPUBLIC OF CAMEROON			X	
UNITED REPUBLIC OF TANZANIA	X			
UNITED STATES		X		
UPPER VOLTA	X			
URUGUAY		X		
VENEZUELA			X	
VIETNAM	X			
VINUATU	-	-	-	-
YEMEN		X		
YUGOSLAVIA			X	
ZAIRE			X	
ZAMBIA	X			
ZIMBABWE	X			

* Later advised the Secretariat it had intended to vote in favour.

36/50. Question of East Timor

The General Assembly,

Recognizing the inalienable right of all peoples to self-determination and independence in accordance with the principles of the Charter of the United Nations and of the Declaration on the Granting of Independence to Colonial Countries and Peoples, contained in its resolution 1514 (XV) of 14 December 1960,

Bearing in mind that the Fifth[16] and Sixth[17] Conferences of Heads of State or Government of Non-Aligned Countries, held at Colombo and Havana in 1976 and 1979, respectively, reaffirmed the right of the people of East Timor to self-determination and independence,

Having examined the chapter of the report of the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples relating to East Timor[18] and other relevant documents,[19]

Deeply concerned at the suffering of the people of East Timor and at reports of the critical situation resulting from the new outbreak of famine in the Territory,

Taking note of the report of the Secretary-General on the question of East Timor,[20]

Recalling the communiqué of the Council of Ministers of Portugal, issued on 12 September 1980,[21] in which the administering Power pledged to undertake broad initiatives with a view to ensuring the full and speedy decolonization of East Timor,

Having heard the statement of the representative of Portugal,[22] as the administering Power,

Having heard the statements of the representative of the Frente Revolucionária de Timor Leste Independente,[23] the liberation movement of East Timor, and of various East Timor petitioners, as well as of the representatives of non-governmental organizations,[24]

1. *Reaffirms* the inalienable right of the people of East Timor to self-determination and independence, in accordance with General Assembly resolution 1514 (XV);

2. *Declares* that the people of East Timor must be enabled freely to determine their own future on the basis of the relevant General Assembly resolutions and internationally accepted procedures;

3. *Calls upon* all interested parties, namely Portugal, as the administering Power, and the representatives of the East Timorese people, as well as Indonesia, to co-operate fully with the United Nations with a view to guaranteeing the full exercise of the right to self-determination by the people of East Timor;

4. *Notes* the initiative taken by the Government of Portugal, as stated in the communiqué of the Council of Ministers of Portugal issued on 12 September 1980, and invites the administering Power to continue its efforts with a view to ensuring the proper exercise of the right to self-determination and independence by the people of East Timor, in accordance with General Assembly resolution 1514 (XV), and to report to the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples on the progress of its initiative;

5. *Expresses its deepest concern* at the reports of the critical situation resulting from the new outbreak of famine in East Timor and calls upon all specialized agencies and other organizations of the United Nations system, in particular the World Food Programme, the United Nations Children's Fund and the Office of the United Nations High Commissioner for Refugees, immediately to assist, within their respective fields of competence, the people of the Territory;

6. *Notes with satisfaction* the humanitarian aid given by some Member States and relief organizations to the people of East Timor and calls upon all Governments concerned to continue this aid with a view to alleviating the suffering of the people of the Territory;

7. *Requests* the Special Committee to keep the situation in the Territory under active consideration and to follow the implementation of the present resolution;

8. *Requests* the Secretary-General to follow the implementation of the present resolution and to report thereon to the General Assembly at its thirty-seventh session;

9. *Decides* to include in the provisional agenda of the thirty-seventh session the item entitled "Question of East Timor".

70th plenary meeting
24 November 1981

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[16] See A/31/197, annex I, para. 36.

[17] See A/34/542, annex, sect. I, para. 155.

[18] *Official Records of the General Assembly, Thirty-sixth Session, Supplement No. 23* (A/36/23/Rev.1), chap. X.

[19] A/36/160; A/AC.109/663.

[20] A/36/598.

[21] A/C.4/35/2, annex.

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[22] *Official Records of the General Assembly, Thirty-sixth Session, Fourth Committee*, 9th meeting, paras. 45-48.

[23] *Ibid.*, 11th meeting, paras. 31-49.

[24] *Ibid.*, 9th-11th and 15th meetings.

RESOLUTION 36/50

FOR 54 AGAINST 42
ABSTAINED 46 ABSENT 15

COUNTRY	FOR	AGAINST	ABSTAINED	ABSENT
AFGHANISTAN	X			
ALBANIA	X			
ALGERIA	X			
ANGOLA	X			
ANTIGUA AND BARBUDA				X
ARGENTINA		X		
AUSTRALIA		X		
AUSTRIA			X	
BAHAMAS			X	
BAHRAIN		X		
BANGLADESH		X		
BARBADOS	X			
BELGIUM			X	
BELIZE	X			
BENIN	X			
BHUTAN			X	
BOLIVIA		X		
BOTSWANA	X			
BRAZIL	X			
BULGARIA				X
BURMA			X	
BURUNDI	X			
BYELORUSSIAN SSR	X			
CANADA		X		
CAPE VERDE	X			
CENTRAL AFRICAN REPUBLIC	X			
CHAD	X			
CHILE		X		
CHINA	X			
COLOMBIA		X		
COMOROS		X		
CONGO	X			
COSTA RICA				X
CUBA	X			
CYPRUS	X			
CZECHOSLOVAKIA			X	
DEMOCRATIC KAMPUCHEA		X		
DEMOCRATIC YEMEN	X			
DENMARK			X	
DJIBOUTI				X
DOMINICA				X
DOMINICAN REPUBLIC		X		
ECUADOR			X	
EGYPT		X		
EL SALVADOR		X		
EQUATORIAL GUINEA			X	
ETHIOPIA	X			
FIJI			X	
FINLAND			X	
FRANCE			X	
GABON			X	
GAMBIA		X		
GERMAN DEMOCRATIC REPUBLIC				X
GERMANY, FEDERAL REPUBLIC			X	
GHANA			X	
GREECE	X			
GRENADA	X			
GUATEMALA		X		
GUINEA	X			
GUINEA-BISSAU	X			
GUYANA	X			
HAITI	X			
HONDURAS		X		
HUNGARY			X	
ICELAND	X			
INDIA		X		
INDONESIA		X		
IRAN	X			
IRAQ		X		
IRELAND			X	
ISRAEL			X	
ITALY			X	
IVORY COAST			X	
JAMAICA			X	
JAPAN		X		
JORDAN		X		
KENYA	X			
KUWAIT		X		

COUNTRY	FOR	AGAINST	ABSTAINED	ABSENT
LAO PEOPLES DEMOCRATIC REPUBLIC				X
LEBANON				X
LESOTHO	X			
LIBERIA			X	
LIBYAN ARAB JAMAHIRIYA				X
LUXEMBOURG			X	
MADAGASCAR	X			
MALAWI	X			
MALAYSIA		X		
MALDIVES		X		
MALI	X			
MALTA				X
MAURITANIA			X	
MAURITIUS				X
MEXICO	X			
MONGOLIA				X
MOROCCO			X	
MOZAMBIQUE	X			
NEPAL			X	
NETHERLANDS			X	
NEW ZEALAND		X		
NICARAGUA	X			
NIGER				X
NIGERIA			X	
NORWAY			X	
OMAN		X		
PAKISTAN			X	
PANAMA			X	
PAPUA NEW GUINEA		X		
PARAGUAY		X		
PERU			X	
PHILIPPINES		X		
POLAND			X	
PORTUGAL	X			
QATAR		X		
ROMANIA			X	
RWANDA	X			
SAINT LUCIA	X			
SAINT VINCENT AND THE GRENADINES		X		
SAMOA			X	
SAO TOME AND PRINCIPE	X			
SAUDIA ARABIA		X		
SENEGAL			X	
SEYCHELLES	X			
SIERRA LEONE	X			
SINGAPORE		X		
SOLOMON ISLANDS			X	
SOMALIA			X	
SOUTH AFRICA				X
SPAIN			X	
SRI LANKA			X	
SUDAN		X		
SURINAM		X		
SWAZILAND	X			
SWEDEN			X	
SYRIAN ARAB REPUBLIC		X		
THAILAND		X		
TOGO	X			
TRINIDAD AND TOBAGO	X			
TUNISIA		X		
TURKEY		X		
UGANDA	X			
UKRAINIAN SSR	X			
USSR	X			
UNITED ARAB EMIRATES		X		
UNITED KINGDOM			X	
UNITED REPUBLIC OF CAMEROON			X	
UNITED REPUBLIC OF TANZANIA	X			
UNITED STATES		X		
UPPER VOLTA	X			
URUGUAY		X		
VENEZUELA			X	
VIETNAM	X			
VINUATU	X			
YEMEN				X*
YUGOSLAVIA			X	
ZAIRE			X	
ZAMBIA	X			
ZIMBABWE	X			

* Later advised the Secretariat it had intended to vote against.

37/30. Question of East Timor

The General Assembly,

Recognizing the inalienable right of all peoples to self-determination and independence in accordance with the principles of the Charter of the United Nations, the Declaration on the Granting of Independence to Colonial Countries and Peoples, contained in its resolution 1514 (XV) of 14 December 1960, and other relevant United Nations resolutions,

Having examined the chapter of the report of the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples relating to East Timor[30] and other relevant documents,

Taking note of the report of the Secretary-General on the question of East Timor,[31]

Taking note of resolution 1982/20 adopted on 8 September 1982[32] by the Sub-Commission on Prevention of Discrimination and Protection of Minorities,

Having heard the statement of the representative of Portugal,[33] as the administering Power,

Having heard the statement of the representative of Indonesia,[34]

Having heard the statements of the representative of the Frente Revolucionária de Timor Leste Independente and of various petitioners, as well as of the representatives of non-governmental organizations,[35]

Bearing in mind that Portugal, the administering Power, has stated its full and solemn commitment to uphold the right of the people of East Timor to self-determination and independence,

Bearing in mind also its resolutions 3485 (XXX) of 12 December 1975, 31/53 of 1 December 1976, 32/34 of 28 November 1977, 33/39 of 13 December 1978, 34/40 of 21 November 1979, 35/27 of 11 November 1980 and 36/50 of 24 November 1981,

Concerned at the humanitarian situation prevailing in the Territory and believing that all efforts should be made by the international community to improve the living conditions of the people of East Timor and to guarantee to them the effective enjoyment of their fundamental human rights,

1. *Requests* the Secretary-General to initiate consultations with all parties directly concerned, with a view to exploring avenues for achieving a comprehensive settlement of the problem and to report thereon to the General Assembly at its thirty-eighth session;

2. *Requests* the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples to keep the situation in the Territory under active consideration and to render all assistance to the Secretary-General with a view to facilitating the implementation of the present resolution;

3. *Calls upon* all specialized agencies and other organizations of the United Nations system, in particular the World Food Programme, the United Nations Children's Fund and the Office of the United Nations High Commissioner for Refugees, immediately to assist, within their respective fields of competence, the people of East Timor, in close consultation with Portugal, as the administering Power;

4. *Decides* to include in the provisional agenda of its thirty-eighth session the item entitled "Question of East Timor".

77th plenary meeting
23 November 1982

[30] *Official Records of the General Assembly, Thirty-seventh Session, Supplement No. 23* (A/37/23/Rev.1), chap. X.
[31] A/37/538.
[32] See E/CN.4/1983/4-E/CN.4/Sub.2/1982/43 and Corr.1, chap. XXI.
[33] *Official Records of the General Assembly, Thirty-seventh Session, Fourth Committee*, 14th meeting, paras. 17-19.
[34] *Ibid.*, 23rd meeting, paras. 22-37.
[35] *Ibid.*, 15th-18th meetings.

RESOLUTION 37/30

FOR 50 AGAINST 46

ABSTAINED 50 ABSENT 11

COUNTRY	FOR	AGAINST	ABSTAINED	ABSENT
AFGHANISTAN	X			
ALBANIA	X			
ALGERIA	X			
ANGOLA	X			
ANTIGUA AND BARBUDA		X		
ARGENTINA		X		
AUSTRALIA		X		
AUSTRIA			X	
BAHAMAS			X	
BAHRAIN		X		
BANGLADESH		X		
BARBADOS	X			
BELGIUM			X	
BELIZE	X			
BENIN	X			
BHUTAN			X	
BOLIVIA			X	
BOTSWANA			X	
BRAZIL	X			
BULGARIA				X
BURMA			X	
BURUNDI	X			
BYELORUSSIAN SSR	X			
CANADA		X		
CAPE VERDE	X			
CENTRAL AFRICAN REPUBLIC			X	
CHAD		X		
CHILE		X		
CHINA	X			
COLOMBIA			X	
COMOROS				X*
CONGO	X			
COSTA RICA			X	
CUBA	X			
CYPRUS	X			
CZECHOSLOVAKIA			X	
DEMOCRATIC KAMPUCHEA		X		
DEMOCRATIC YEMEN	X			
DENMARK			X	
DJIBOUTI				X
DOMINICA			X	
DOMINICAN REPUBLIC			X	
ECUADOR			X	
EGYPT		X		
EL SALVADOR		X		
EQUATORIAL GUINEA				X
ETHIOPIA	X			
FIJI		X		
FINLAND			X	
FRANCE			X	
GABON			X	
GAMBIA		X		
GERMAN DEMOCRATIC REPUBLIC				X
GERMANY, FEDERAL REPUBLIC			X	
GHANA	X			
GREECE	X			
GRENADA	X			
GUATEMALA		X		
GUINEA			X	
GUINEA-BISSAU	X			
GUYANA	X			
HAITI			X	
HONDURAS		X		
HUNGARY			X	
ICELAND	X			
INDIA		X		
INDONESIA		X		
IRAN				X
IRAQ		X		
IRELAND	X			
ISRAEL			X	
ITALY			X	
IVORY COAST			X	
JAMAICA			X	
JAPAN		X		
JORDAN		X		
KENYA	X			
KUWAIT		X		
LAO PEOPLES DEMOCRATIC REPUBLIC	X			

COUNTRY	FOR	AGAINST	ABSTAINED	ABSENT
LEBANON			X	
LESOTHO	X			
LIBERIA		X		
LIBYAN ARAB JAMAHIRIYA				X
LUXEMBOURG			X	
MADAGASCAR	X			
MALAWI	X			
MALAYSIA		X		
MALDIVES		X		
MALI	X			
MALTA				X
MAURITANIA			X	
MAURITIUS	X			
MEXICO	X			
MONGOLIA				X
MOROCCO		X		
MOZAMBIQUE	X			
NEPAL			X	
NETHERLANDS			X	
NEW ZEALAND		X		
NICARAGUA	X			
NIGER			X	
NIGERIA			X	
NORWAY			X	
OMAN		X		
PAKISTAN		X		
PANAMA			X	
PAPUA NEW GUINEA		X		
PARAGUAY		X		
PERU			X	
PHILIPPINES		X		
POLAND			X	
PORTUGAL	X			
QATAR		X		
ROMANIA			X	
RWANDA	X			
ST. CHRISTOPHER AND NEVIS	-	-	-	-
ST. LUCIA		X		
ST. VINCENT AND THE GRENADINES				X*
SAMOA			X	
SAO TOME AND PRINCIPE	X			
SAUDIA ARABIA		X		
SENEGAL			X	
SEYCHELLES	X			
SIERRA LEONE	X			
SINGAPORE		X		
SOLOMON ISLANDS		X		
SOMALIA			X	
SOUTH AFRICA				X
SPAIN			X	
SRI LANKA			X	
SUDAN		X		
SURINAME		X		
SWAZILAND	X			
SWEDEN			X	
SYRIAN ARAB REPUBLIC		X		
THAILAND		X		
TOGO	X			
TRINIDAD AND TOBAGO	X			
TUNISIA		X		
TURKEY		X		
UGANDA	X			
UKRAINIAN SSR	X			
USSR	X			
UNITED ARAB EMIRATES		X		
UNITED KINGDOM			X	
UNITED REPUBLIC OF CAMEROON			X	
UNITED REPUBLIC OF TANZANIA	X			
UNITED STATES		X		
UPPER VOLTA			X	
URUGUAY		X		
VANUATU	X			
VENEZUELA			X	
VIET NAM	X			
YEMEN		X		
YUGOSLAVIA			X	
ZAIRE			X	
ZAMBIA	X			
ZIMBABWE	X			

* Later advised the Secretariat it had intended to vote against.

Annex 27

Statement by Chairman, Commission on Human Rights, 48th Session, 1992

58. At the 54th meeting, on 4 March 1992, the Chairman of the Commission made the following statement he had been asked to make announcing what had been agreed by consensus by the Commission on the Situation of Human Rights in East Timor:

"The Commission on Human Rights notes with serious concern the human rights situation in East Timor, and strongly deplores the violent incident in Dili on 12 November 1991, which resulted in the loss of lives and injuries to a large number of civilians and in many unaccounted for.

"The Commission welcomes the early action of the Indonesian Government in setting up a national commission of inquiry and the prompt response which its advance report elicited from the highest Indonesian

authorities; expresses its hope that, as announced by the Indonesian Government, further investigation into the action of the security personnel on 12 November 1991 and into the fate of those unaccounted for will clarify the remaining discrepancies, namely on the number of people killed and those remaining.

"The Commission is encouraged by the recent announcement by the Indonesian authorities of disciplinary measures and military court proceedings regarding some members of its armed forces and urges the Indonesian Government to bring to trial and punish all those found responsible. Furthermore, the Commission calls upon the Indonesian authorities to ensure that all civilians arrested on the occasion are treated humanely, that those brought to trial are assured of proper legal representation and fair trial and that those not involved in violent activities are released without delay.

"The Commission welcomes the appointment of Mr. S. Amos Wako, as Personal Envoy of the Secretary-General of the United Nations, to obtain clarification on the tragic events of 12 November 1991, and the willingness of the Indonesian authorities to cooperate fully with him. The Commission encourages the Secretary-General to continue his good offices for achieving a just, comprehensive and internationally acceptable settlement of the question of East Timor.

"The Commission urges the Government of Indonesia to improve the human rights situation in East Timor; commends the report entitled 'Visit by the Special Rapporteur to Indonesia and East Timor' of its Special Rapporteur on Torture, prepared following his visit at the invitation of the Indonesian Government; urges the Indonesian authorities to take the necessary steps to implement its recommendations and looks forward to a report thereon; calls on the Indonesian Government to facilitate access to East Timor for additional humanitarian organizations and for human rights organizations; and requests the Secretary-General to continue to follow closely the human rights situation in East Timor and to keep the Commission informed at its forty-ninth session."

59. At the same meeting, subsequent to the statement by the Chairman, draft resolution E/CN.4/1992/L.27 was withdrawn by the sponsors.