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International Court of Justice

The case of East Timor: Portugal v. Australia



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Forum	International Court of Justice
Issue:	The case of East Timor: Portugal v. Australia
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Introduction

This case is based on the proceedings initiated by Portugal in 1991, as well as the previous history of relations between member states, regarding the conduct of “certain activities of Australia with respect to East Timor”, on the part of Australia. East Timor was administered as a non-self-governing state by Portugal, under the United Nations Charter.

In 1975, the factions, which called for a state of self-determination, caused a series of internal conflicts, leading to Portugal withdrawing from East Timor. After the withdrawal, Indonesia invaded East Timor. In the following year, the “People’s Assembly” of East Timor formally requested integration into Indonesia jurisdiction domain and territory. Later, in January 1978, Australia acknowledged, publically and politically, the Indonesia annexation of East Timor.

Meetings ensued between Portugal and Australia, regarding the jurisdiction of a territory of continental shelf known as the “Timor Gap”. This piece of shelf lies between Indonesian and Australian boundaries. The lack of resolution on the issue resulted in a following treaty, which called for the exploitation and diminish of natural resources in the Timor Gap. This treaty became known as the *‘Treaty between Australia and the Republic of Indonesia on the zone of cooperation in an area between the Indonesian province of East Timor and Northern Australia.’*

Definition of Key Terms

Self-determination

The issue of the Principle of Self-Determination, in summary means the right to determine one’s own fate or destiny. It is also a principle of International



Humanitarian Law, as well as The Declaration of Human Rights, and the United Nations Charter; which states an individual's right to freedom of choice and determination. The Principle of Self-Determination has been adopted by International Law as a customary term and ideology.

Annexation

Annexation is defined as the action of attaching, combining, or joining two or more things together in a physical meaning. In Law, this refers more to the union of one thing, or place, to another; usually referring to the conjunction of one smaller body to a larger, more powerful body. This does not mean that the new territory obtained by a nation must be physically adjacent to the initial body, or the annexing body.

Unlawful attacks

Otherwise known as an assault. This is the purposeful harm or infliction of disadvantage committed by one body onto another; this may be from person to person. However, in the sense that we are referring to in the ICJ, this is the committal of non law-abiding activities by a nation.

Non-combatants

A Non-combatant is the term used in International Humanitarian Law (IHL) and the Law of War, which refers to individuals whom are not taking direct part in conflict, combat or hostilities, including civilians. They are members of specific belligerent orders or bodies, however are protected by their position or duties.

Napalm

A jelly-like substance, which contains gasoline. It is a thick, spreadable substance, which contains flammable such as gasoline, often utilized to spread fires over a large distance or to fuel bombs.

General Overview

History



In order to gain a complete understanding of the case, it is of essence to reflect on the events occurring in East Timor from 1941 until 1991.

Prior and during World War Two

Portuguese traders arrived at the island of East Timor between 1509 and 1511. In 1556 a group of Dominican friars settled in the area and started to convert the Timorese population to Catholicism. In the 17th century Portuguese forces expanded their authority into the island, and in 1702 the island officially became known as Portuguese Timor, with a governor from Lisbon residing in the capital Lifau. In 1769, due to internal unrest, the capital was moved to Dili. At the same time the Dutch were expanding their colonial authority in the archipelago surrounding East Timor, which would later become Indonesia, and also clashed with Portuguese authority in East Timor. In 1914, the Dutch and the Portuguese decided on a definitive border – the Portuguese retained East Timor whilst the Dutch East Indies established authority in the western part of the island. Today this border is the border between independent East Timor and Indonesia.

In December 1941, Dutch and Australian forces pre-emptively occupied Portuguese Timor, in expectance of a Japanese invasion. The Japanese reached the island in February 1942, and the Dutch-Australian force, together with Timorese volunteers, fought them in a one-year guerrilla campaign. The Dutch-Australian force was evacuated in 1943, but the Timorese volunteers continued fighting the Japanese. In this conduct the Timorese, however, bore severe losses.

Demise of colonial authority after World War Two

After the war East-Timor was handed back to Portugal. Portuguese authorities, however, treated the colony with neglect and there was very limited investment in infrastructure, education and healthcare. Meanwhile neighbouring Indonesia had declared independence from the Netherlands in 1949, and was seeking to gain control over current Papua, in its attempts to claim all of the former territory of the Netherlands East Indies.



On April 25th 1974, a revolution in Lisbon overthrew the authoritarian Estado Novo regime, which had ruled Portugal since 1933. One of the consequences of this revolution was an abandonment of interest in colonial territories, which for East Timor was the beginning of the decolonisation process.

On November 18th 1974 Lisbon appointed a new Governor of East Timor, whose first actions were to legalise political parties in preparation for elections in 1976. The three major parties that were formed were the Timorese Democratic Union (UDT), which plead for a continued association with Lisbon; the Revolutionary Front of Independent East Timor (Fretilin), which committed itself to the “universal doctrines of Socialism”; and the Timorese Popular Democratic Association (Apodeti), which plead for integration with neighbouring Indonesia as an autonomous province.

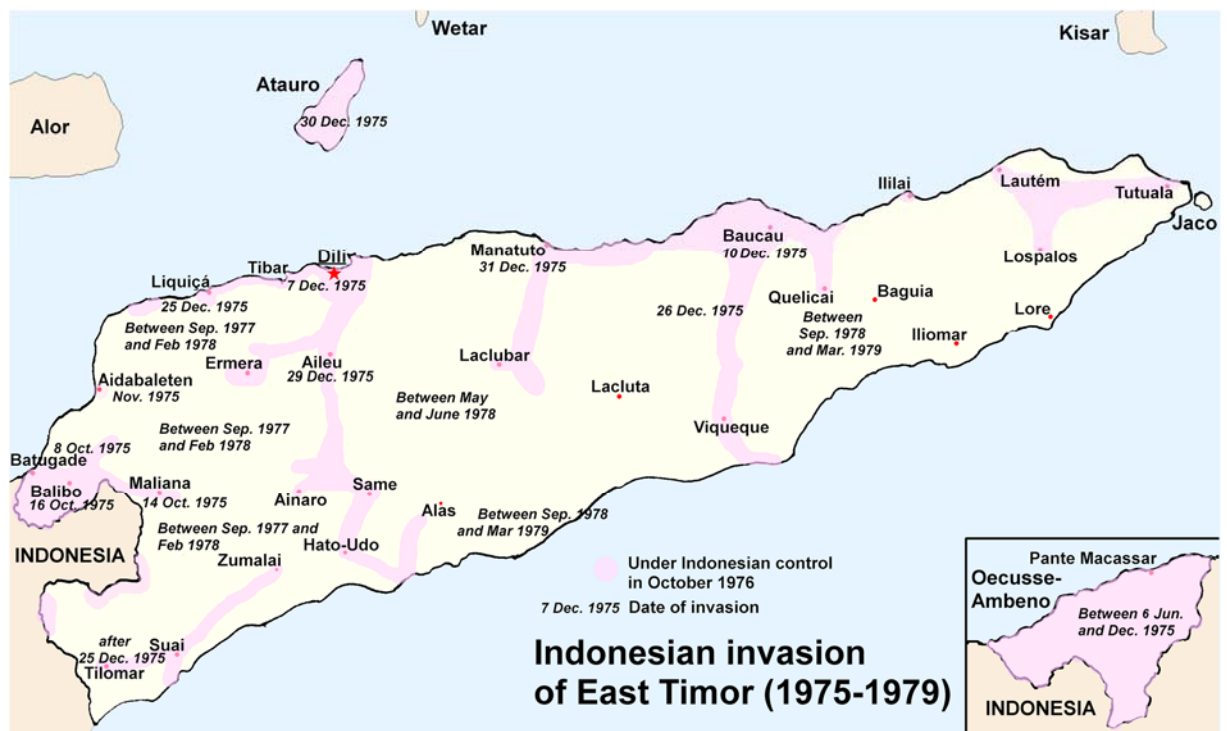
Indonesia, and its president Suharto, was alarmed by the emergence of the left-inclined Fretilin party, and saw the possibility of an independent, leftist East Timor as a threat to Indonesian territorial integrity, as it could inspire separatism in other parts of the archipelago. Australia, and its Prime Minister Gough Whitlam, had close ties with Indonesia, and therefore also saw a potential independent East Timor as “an unviable state, and a potential threat to the stability in the region”. Whitlam recognised the need for East Timorese self-determination, he saw East Timor’s integration with Indonesia as the best option.

On March 13th 1975, the UDT and Fretilin emerged as the largest parties, and campaigned for independence. As a result of this the Indonesian secret service launched ‘Operation Komodo’, which aimed to break up the coalition of UDT and Fretilin and hence prevent East Timorese independence, which it succeeded in doing later in the year. After the UDT mounted a coup on August 11th 1975 in order to bring the increasing popularity of Fretilin to a halt, the Portuguese Governor fled the island and East Timor plunged into a three week civil war, in which 1500 UDT troops fought 2000 troops of Falintil, the military branch of Fretilin. By September the majority of UDT supporters had fled into West Timor (Indonesian), and Fretilin was left in control of East Timor. The civil war had claimed the lives of around 2000 people, and in October 1975



two Australian television crews were killed by Indonesian forces, after they had witnessed Indonesian attacks from West Timor into East Timor. On November 28th, Fretilin released a Unilateral Declaration of Independence, which was not recognised by either Portugal, Indonesia or Australia, but was recognised by Albania, Cape Verde, Guinea, Guinea-Bissau, Mozambique and São Tomé and Príncipe, which were nations led by leftist or Marxist-Leninist parties.

Indonesian invasion and atrocities committed



Map detailing the progress of the Indonesian invasion of East Timor

On December 7th 1975, Indonesia invaded East Timor. Almost entirely using US-supplied equipment, Indonesia launched an air and sea invasion known as ‘Operation Seroja’. By the end of December the East Timorese Falantil troops were outnumbered by a total of around 30,000 Indonesian troops, and the Falantil troops fled into the mountains to lead a guerrilla war.

Meanwhile in the East Timorese cities, Indonesian troops started to massacre civil population, especially in the capital Dili. Fretilin radio broadcasted the following: “The Indonesian forces are killing indiscriminately. Women and children are being shot in the streets. We are all going to be killed.... This is an appeal for international help.”



Due to effective guerrilla warfare by Falintil outside the cities, by April 1977, Indonesian troops had not made any advances in over six months. In order to break the stalemate, Indonesia ordered naval ships from the United States, Australia, the Netherlands, South Korea, Taiwan and West Germany. Indonesia also received 13 specialised Bronco aircraft from the American 'Rockwell International Corporation'. Using the newly acquired military armaments, Indonesia commenced the so-called 'final solution', which entailed the bombing, using conventional weapons and Soviet Napalm, and starvation of civil population in villages. In February 1976 UDT leader Lopez da Cruz stated that since the invasion 60.000 Timorese had been killed. A notable instance was the extermination of the whole civil population of the Arsabai village due to their support to Fretilin in early 1978. Indonesia has also been accused of the use of chemical weapons for poisoning food and water supplies in Fretilin controlled areas. Indonesia's military campaign proved fatal for Fretilin, and the Timorese President, Nicolau Lobato, was shot by Indonesian troops on December 31st 1978.

Indonesian occupation of East Timor

From December 7th 1975 until October 31st 1999, East Timor was occupied by Indonesia. A Provisional Government of East Timor was installed, and one of its first actions was the creation of a Popular Assembly, which, heavily influenced by Indonesian military, on July 17th 1976, endorsed an 'Act of integration' with which East Timor officially became an Indonesian province. The province was renamed to Timor Timur, and the Indonesian government regarded its own actions as a step to the full unification of the surrounding archipelago, which had been previously divided by Portuguese and Dutch colonial authority.

During Indonesia's military campaign, civilians that were not killed were transferred to camps located closely to Indonesian military bases. After being screened for Fretilin collaborators, the detainees were forced to live in thatch huts with no toilets, and were provided small rations of food, let alone medical assistance. The International Red Cross was not allowed to distribute



humanitarian aid, and in October 1978 it was reported that 70.000 East Timorese were at risk of starvation.

Throughout 1981 until 1983 the Indonesian army conducted numerous massacres of villages in further attempts to break Fretilin resistance. In 1981, at least 400 villages were massacred in a single district of East Timor, and in 1983 200 people were burnt alive in the Creras village. People who were arrested by Indonesian force were often tortured in prison.

The Indonesian government also banned the Portuguese language, and made the Indonesian language as the language of government, education and commerce, along with imposing the Indonesian school curriculum. Further “Indonesianisation” was conducted by resettling Indonesian civilians from other parts of the country to East Timor, who took over local business and were offered jobs in education and administration. In order to gain more effective control over the province, the Indonesian government had given East Timor equal status as other Indonesian provinces, and invested in health, education, communications, transportation and agriculture. It also introduced censorship of the press.

By 1988 resistance to Indonesian rule in East Timor had significantly fallen, and a more ‘open’ policy was adopted. The travel ban for journalists was banned, travel restrictions within East Timor were reduced, political prisoners were released and the use of torture became less common. In 1989 East Timor was opened to tourism. Yet this brief period of relative prosperity soon came to an end when in November 1991, when a group of 2500 people were commemorating a pro-independence youth killed by Indonesian forces, was targeted by 200 Indonesian soldiers, who killed at least 250 Timorese. International scrutiny of the Indonesian regime arose, and there were new calls for East Timorese self-determination. The Indonesian government went into a new period of repression, and the ban on foreign journalists was re-imposed.

Meanwhile, as recognised by the UN, Portugal was still the lawful administering power of East Timor.

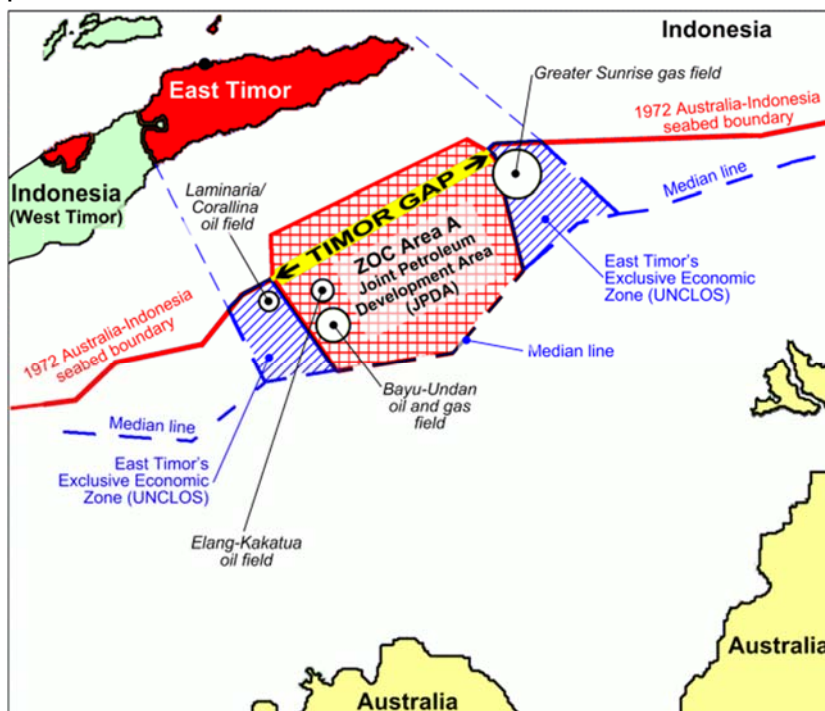


ICJ case: Portugal v. Australia

Australia's role

In 1974 Australia's Prime Minister Gough Whitlam told Indonesian president Suharto that he would support an Indonesian annexation of East Timor. Whitlam saw the ties with Indonesia as too important to risk for the sake of East Timorese independence, which after Indonesia's invasion of 1975 already seemed like a lost cause. By 1978, Australia was the only nation to recognise East Timor as a province of Indonesia. Australian government also saw good ties with Indonesia as an important security buffer to Australia's north. Trade between Australia and Indonesia only grew throughout the 1980's, despite domestic sentiment that Australia owed Portugal as it played a key role in defending Portuguese Timor in the Second World War.

In the year 1979 Australia and Indonesia started to draft a treaty to share resources in the 'Timor Gap', a part of the Timor sea (between Australia and East Timor) where there were an estimated one to seven billion barrels of oil available for extraction. The Timor Gap Treaty was signed in 1989 and put into practice in 1991.



The 'Timor Gap'



Portugal's application to the ICJ

On February 22nd 1991, Portugal submitted an application to the Registry of the Court instituting proceedings against Australia. The Application mentioned that Australia “had failed to observe... the obligation to respect the duties and powers of [Portugal as] the administering power [of East Timor]...and...the right of the people of East Timor to self-determination and the related rights”. Portugal refers to Article 36, paragraph 2 of the Statute of the ICJ as the basis for the jurisdiction of the Court, as both Portugal and Australia have both accepted the compulsory jurisdiction of the Court.

Furthermore, the Application mentions that “by excluding negotiations [concerning the Timor Gap] with Portugal, which alone is legally empowered to represent the people of East Timor until its self-determination, Australia has...contravened a general obligation to negotiate with the competent State on matter of common interest and the specific obligation to negotiate with that State on questions relating to the maritime areas of direct concern to East Timor”.

Major Parties Involved and Their Views

Portugal

Portugal is the applicant state of the case. At the time of its application to the ICJ, Portugal was still recognised by the UN as the lawful administering power of East Timor. Directly after the Indonesian invasion of East Timor in 1975, Portugal cut diplomatic relations with Indonesia and supported every UN resolution condemning the invasion. From the mid 1980's Portugal was one of the leading campaigners in the cause for East Timorese self-determination.

Australia

Australia is the respondent state of the case, by virtue of it having accepted the compulsory jurisdiction of the Court. Australia's main interest is commercial, and wants to retain ties with Indonesia in order to foster the benefits of economic cooperation, especially regarding the 'Timor Gap', despite the growing international



scrutiny, and the growing international and domestic urgency for the right of self-determination of the East-Timorese.

Indonesia

Since its invasion in 1975, Indonesia is the *de facto* authority over East Timor, and is keen to retain this authority using repression and censorship. Indonesia is also interested in the exploitation of oil reserves in the ‘Timor Gap’.

International Court of Justice

The ICJ is the primary judicial organ of the United Nations and deals with legal disputes between States (referred to as contentious cases), contrary to the role of Courts such as the International Criminal Court and the International Tribunal for the former Yugoslavia, which prosecute individuals. The ICJ can also entertain requests for advisory opinions on legal issues from United Nations organs and other authorised agencies. All 193 states that have ratified the UN Charter have automatically ratified the statute of the Court, and thus accept its compulsory jurisdiction, as the Statute was established by the Charter in 1945.

Timeline of Events

1702	The island of Timor becomes officially known as Portuguese Timor
December 1941	Dutch and Australian forces pre-emptively occupy Portuguese Timor in expectance of a Japanese invasion.
1943	Dutch-Australian force evacuated, Timorese continue resistance against Japanese occupant.
1945	East Timor returned to Portuguese administration.
April 25 th 1974	Authoritarian Estado Novo regime overthrown in Lisbon.
Nov. 18 th 1974	Lisbon appoints a new Governor of East Timor, who legalises political parties.

1974	Australian Prime Minister Whitlam tells Indonesian president Suharto that he would support an Indonesian annexation of East Timor.
August 11 th 1975	UDT mounts coup to bring increasing popularity of Fretilin to a halt; East Timor plunges into a three-week civil war; Australian TV crews killed by Indonesian forces.
Nov. 28 th 1975	Fretilin releases a Unilateral Declaration of Independence.
Dec. 7 th 1975	Indonesia invades East Timor; Portugal cuts diplomatic relations with Indonesia.
February 1976	UDT leader reports that since the invasion 60.000 Timorese had been killed.
July 17 th 1976	East Timorese Popular Assembly endorses 'Act of integration' with which East Timor officially becomes an Indonesian province.
From April 1977	Indonesia launches 'final solution' with newly ordered naval ships from the United States, Australia, the Netherlands, South Korea, Taiwan and West Germany, and aircraft from the American 'Rockwell International Corporation'.
1978	Australia only nation to recognise East Timor as province of Indonesia.
October 1978	It is reported that 70.000 Timorese at risk of starvation.
Dec. 31 st 1978	East Timorese president, Nicolau Lobato, shot by Indonesian troops.
1981	At least 400 villages massacred by Indonesian army in single district of East Timor.
1983	200 people burnt alive by Indonesian army in the Creras village.
1988	Indonesian authorities adopt more 'open' policy in East Timor.
1989	East Timor opened to tourism.



1989	'Timor Gap' treaty signed between Indonesia and Australia.
1991	'Timor Gap' treaty put into practice.
Feb. 22 nd 1991	Portugal submits Application to the Registry of the ICJ.

UN involvement, Relevant Resolutions, Treaties and Events

On December 12th 1975, the UN general assembly adopted resolution 3485, in which is urged Indonesia to “withdraw without delay” from East Timor.

On December 22nd 1975 the Security Council unanimously adopted resolution 384, which also urges for an immediate Indonesian withdrawal.

One year later the Security Council passed resolution 389 expressing the same sentiment.

From 1976 to 1982 the General Assembly passed resolution yearly calling for East Timorese self determination.

In 1991, The Timor Gap Treaty is put into place between Australia and Portugal, otherwise known as the '*Treaty between Australia and the Republic of Indonesia on the zone of cooperation in an area between the Indonesian province of East Timor and Northern Australia.*'

February 1991, Portugal addresses the ICJ, initiating proceedings regarding activities of Australia in East Timor.



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Appendix or Appendices

Appendix I

Summary of the case published by the ICJ:

<http://www.icj-cij.org/docket/files/84/6951.pdf>

Appendix II

Portugal's application to the ICJ:

<http://www.icj-cij.org/docket/files/84/6809.pdf>

