

MA International Studies and Diplomacy, 2004-2005

**The Fate of Occupied Territory: Recognition, Non-Recognition,  
Self-Determination and Prolonged Occupation**

©Simone King 2005

14 September 2005  
Word Count: 10, 496  
Supervisor Stephanie Koury

This dissertation is submitted in partial fulfillment of the requirements  
for the degree of MA International Studies and Diplomacy of the School of  
Oriental and African Studies (University of London)

## TABLE OF CONTENTS

---

<b>ABSTRACT</b> .....	<b>3</b>
<b>ACKNOWLEDGEMENTS</b> .....	<b>4</b>
<b>INTRODUCTION</b> .....	<b>5</b>
<b>BACKGROUND: PRINCIPLE OF NON-RECOGNITION</b> .....	<b>7</b>
<i>SINCE WORLD WAR II- AN EMERGENCE OF THE PRINCIPLE AS CUSTOMARY INTERNATIONAL LAW?</i> ..	9
<i>THE DOCTRINE OF NON-RECOGNITION AND SELF-DETERMINATION</i> .....	14
<b>FRAMEWORK</b> .....	<b>19</b>
<b>NAMIBIA</b> .....	<b>24</b>
<b>EAST TIMOR</b> .....	<b>28</b>
<i>I. BACKGROUND</i> .....	28
<i>II. ASSESSING RECOGNITION</i> .....	29
<i>A. State Practice</i> .....	29
<i>B. Opinio Juris</i> .....	33
<i>C. Assessment</i> .....	35
<b>WESTERN SAHARA</b> .....	<b>37</b>
<i>I. BACKGROUND</i> .....	37
<i>II. ASSESSING RECOGNITION</i> .....	38
<i>A. State Practice</i> .....	38
<i>B. Opinio Juris</i> .....	43
<i>C. Assessment</i> .....	44
<b>OCCUPIED ARAB TERRITORIES</b> .....	<b>46</b>
<i>I. BACKGROUND</i> .....	46
<i>II. ASSESSING RECOGNITION</i> .....	47
<i>A. State Practice</i> .....	47
<i>B. Opinio Juris</i> .....	49
<i>C. Assessment</i> .....	50
<b>SYNTHESIS</b> .....	<b>52</b>
<b>CONCLUSION</b> .....	<b>57</b>
<b>BIBLIOGRAPHY</b> .....	<b>59</b>

## ABSTRACT

---

This work is a study of recognition, non-recognition and self-determination in situations of prolonged occupation. It examines the evolution of the doctrine of non-recognition to conclude that the Doctrine protects the rights to self-determination and permanent sovereignty over resources and is customary law. It creates a framework to examine the elements of recognition which is then applied to the cases of Namibia, East Timor, Western Sahara, and the Occupied Arab Territories to argue that the doctrine of non-recognition has not been effectively rendered useless and if used in a consistent and uniform manner by States, the Doctrine can be a major contributing factor in ending prolonged occupation.

## ACKNOWLEDGEMENTS

---

I would like to especially  
thank my dissertation supervisor,  
Stephanie Koury for her endless support and advice,  
the librarian at the EU Depository, Eveleen Rooney,  
for all of her time in helping me track down the full text of  
the treaties without which this project would not have been possible,  
Pedro Pinto Leite from the International Platform of Jurists for East Timor  
for taking the time to provide thoughtful responses to my many questions,  
Erik Hagen of Western Sahara Resource Watch for providing me  
with a stellar list of contacts and resources on the Western Sahara,  
Peter Slinn and Catriona Drew for helping in the formulations,  
Iain Scobbie for providing excellent feedback on my outline  
and I would like to thank my Mom, Rena Karipidis, Artis  
Kakonge and Prabhat Krishna for all their support  
and encouragement. It was all of your guidance  
that led to the realization of this project  
and I am truly grateful.  
Thank You.

## INTRODUCTION

---

In an international system with a weak enforcement mechanism and where a tendency exists to view successful breaches of the law as a source of legal right, non-recognition or ‘the refusal, on the part of a nonrecognizing Power, to regard the sovereignty of the dispossessed Power over the area in question as ended and the sovereignty of the dispossessing Power as established,’<sup>1</sup> can act as a continuous challenge to a legal wrong. Despite its potential, some point to the difficulty in obtaining international consensus, the vested economic interests, the intensity of conflicting territorial claims and the prior failures in the Italian conquest of Abyssinia and the Japanese conquest of Manchukuo to illustrate the Doctrine’s past failure and questionable future.<sup>2</sup> Does this then indicate that the doctrine of non-recognition has been effectively rendered useless?

This paper illustrates that it has not been effectively rendered useless and if used in a consistent and uniform manner by States, the Doctrine can be a major contributing factor in ending prolonged occupation<sup>3</sup> by enhancing the ability of non-self governing territories to exercise their right of self-determination.

In order to reach this conclusion, this study examined the cases of Namibia, East Timor, Western Sahara and Occupied Arab Territories. All were

---

<sup>1</sup> R. Langer, *Seizure of Territory: The Stimson Doctrine and Related Principles in Legal Theory and Diplomatic Practice* (Princeton, 1947), p. 100.

<sup>2</sup> For example, J.P. Fonteyne, ‘The Portugese Timor Gap Litigation Before The International Court of Justice: A Brief Appraisal of Australia’s Position’, *Australian Journal of International Affairs*, Vol. 45, No. 2, November 1991.

<sup>3</sup> Prolonged occupation as defined by Adam Roberts is ‘an occupation that lasts more than five years and extends into a period when hostilities are sharply reduced- i.e. a period at least approximating peacetime.’ A. Roberts, ‘Prolonged Military Occupation: The Israeli-Occupied Territories 1967-1988’, in E. Playfair, ed., *International Law and the Administration of Occupied Territories: Two Decades of Israeli Occupation of the West Bank and Gaza Strip* (Oxford, 1992).

chosen because they involve non-self governing territories with rich resources and have been occupied by their neighbors thus denying their ability to exercise their right of self-determination.

The first section examines the historical evolution of the principle of non-recognition illustrating that an obligation of non-recognition exists as a matter of customary law and as a clear duty in attempted acquisition of territory which denies the right of self-determination. The second section develops a framework to view the constitutive elements of non-recognition while the third section, utilizing the case of Namibia, illustrates that the Doctrine can be successfully applied. The fourth section applies this framework to the cases of East Timor, Western Sahara and Occupied Arab Territories to assess the effectiveness of the Doctrine in each case. The final section concludes by providing solutions to more effectively apply the Doctrine.

## BACKGROUND: PRINCIPLE OF NON-RECOGNITION

---

Before the devastation of World War I, States followed the principle of the right of conquest where seizure of territory was not viewed as the concern of other States and only needed to be accepted as fact by the international community to be accorded full legal validity.<sup>4</sup>

Over time, the principle of *ex injuria jus non oritur*, that an illegality cannot, as a rule, become a source of legal right to the wrongdoer, developed and the international community's view changed regarding the use of force. The doctrine of non-recognition was utilized by States to avoid a possible validation of the consequences of the use of force through recognition.<sup>5</sup> In 1931 the principle of non-recognition, in the form of the Stimson Doctrine, was applied to denounce the Japanese conquest of Chinese territory. The Stimson Doctrine was a unilateral declaration announced by the United States on 7 January 1932 not to recognize territory acquired through the use of force.<sup>6</sup>

Nations subscribing to the Doctrine were not bound and its practical effects were limited as seven nations subsequently ignored the Doctrine and

---

<sup>4</sup> S. Korman, *The Right of Conquest: The Acquisition of Territory by Force in International Law and Practice* (Oxford, 1996).

<sup>5</sup> M. Ragazzi, *The Concept of International Obligations Erga Omnes* (Oxford, 2000).

<sup>6</sup> The Doctrine declared that '[T]he American Government...cannot admit the legality of any situation *defacto*, nor does it intend to recognize any treaty or agreement entered into between those Governments or agents thereof which may impair treaty rights of the United States or its citizens in China...commonly known as 'The Open Door Policy'...And that it does not intend to recognize any situation, treaty or agreement which may be brought about by means contrary to the covenants and obligations of the Pact of Paris of August 27<sup>th</sup> 1928, to which treaty both China and Japan as well as the United States are parties.' H. Stimson, Letter to Ambassador in Japan, *Department of State Press Releases*, pp.40-41. *League of Nations Official Journal*, Special Suppl. No. 101, p. 155.

entered into treaties and diplomatic relations that recognized Japan's claim to Manchukuo.<sup>7</sup>

Despite the Doctrine's limited practical effect, it was a catalyst to the development of a new rule of law. For the first time the principle of non-recognition became a more general policy as opposed to an individual act of non-recognition.<sup>8</sup> In March 1932, the League Assembly created a binding resolution of non-recognition for its member States. Since 1932, the obligation of non-recognition has had express incorporation in multilateral treaties.<sup>9</sup> In October 1933, Article II of the Anti-War Treaty of Non-Aggression and Conciliation incorporated the principles of the Stimson Doctrine for the first time.<sup>10</sup> By April 1934, almost one-third of the States were parties to the Treaty; therefore the Doctrine might have qualified as a rule of quasi-general law.<sup>11</sup> The application of non-recognition to the Chaco dispute between Bolivia and Paraguay and the Leticia conflict between Peru and Columbia in 1932 inspired Latin American States to enter into several treaties of non-recognition.<sup>12</sup> In 1933, Article 11 of the Convention on the Rights and Duties of States also declared a duty of non-

---

<sup>7</sup> J. Dugard, *Recognition and the United Nations* (Cambridge, 1987).

<sup>8</sup> H. Lauterpacht, *Recognition in International Law* (Cambridge, 1947).

<sup>9</sup> I. Brownlie, *International Law and the Use of Force by States* (Oxford, 1963).

<sup>10</sup> The Article states 'They [the parties] declare that the high contracting parties will not recognize any territorial arrangement which is not obtained by pacific means, nor the validity of the occupation or acquisition of territories that may be brought about by force of arms.'

Anti-war Treaty of Non-aggression and Conciliation 1933 in Department of State Publication 8484, *Treaties and Other International Agreements of the United States of America 1776-1949*, Vol. 3, (Washington DC, 1969).

<sup>11</sup> J. Trone, 'The Stimson Doctrine of Non-recognition of Territorial Conquest', *University of Queensland Law Journal*, Vol. 19, 1996, p. 160-4 and K. Yokota, 'The Recent Development of the Stimson Doctrine', *Pacific Affairs*, Vol. 8, 1935, p.134-135.

<sup>12</sup> Dugard, 1987.



recognition for contracting States.<sup>13</sup> In 1948, the principle was reaffirmed in the Bogota Charter in Article 17 that ‘no territorial acquisitions or special advantages obtained either by force or by other means of coercion shall be recognized.’<sup>14</sup>

Although States initially adhered to the principle on a voluntary or treaty basis, it would become legally binding on all States if elevated to the level of customary international law.

### *Since World War II- An Emergence of the Principle as Customary International Law?*

Customary international law is one of the sources of international law in the Statute of the International Court of Justice 1945 with Article 38(1)(b) providing international custom as evidence of a general practice accepted as law.<sup>15</sup> The first element is State practice which must be constant, general and uniform and must be present with ‘specially- affected States.’<sup>16</sup> Treaty provisions, if consistently followed by States, can also be described as State practice. The second element is opinion juris, or a sense of a legal obligation on States. This element can be found in parliamentary legislation, ministerial statements and

---

<sup>13</sup> Article 11 states that ‘The Contracting states definitely establish as the norm of their conduct the precise obligation not to recognize territorial acquisitions or special advantages which have been obtained by force whether this consists in the employment of arms, in threatening diplomatic representations, or in any other effective coercive measure...’ from Montevideo Convention on Rights and Duties of States 1933 in Department of State, *Treaties and Other International Agreements of the United States of America 1776-1949*, Vol. 3, (Washington DC, 1969).

<sup>14</sup> Charter of the Organization of American States. *A Decade of American Foreign Policy: Basic Documents, 1941-49* (Washington DC, 1950).

<sup>15</sup> Statute of the International Court of Justice (1945) in M. Evans, *Blackstone’s International Law Documents*, 6<sup>th</sup> edn (Oxford, 2003).

<sup>16</sup> *Asylum Case (Columbia v. Peru) (Merits)* [1950] ICJ Rep. 266. *Anglo-Norwegian Fisheries Case (England v. Norway) (Merits)* [1951] ICJ Rep. 116. *North Sea Continental Shelf Case (Federal Republic of Germany v. Denmark; Federal Republic of Germany v. Netherlands)(Merits)* [1969] ICJ Rep. 3.

voting in international organizations. This section examines the possible evolution of the principle as a rule of customary law.

Although the failure of the principle's application in practice in Manchukuo in 1931 and the non-collective application in the Italian conquest of Abyssinia in 1935 led many to conclude that the existence of a duty of non-recognition did not receive support until after WWII, modern developments suggest that the principle of non-recognition has since become an obligation under international law. Garner posits that the number of agreements widely entered into by States have created an obligation of non-recognition.<sup>17</sup> Sir Hersch Lauterpacht, Christine Chinkin and John Dugard, state that the Doctrine has emerged as a principle of customary international law.<sup>18</sup> Dugard cites the existence of a uniform and consistent State practice from the examples of Katanga, Rhodesia, Namibia, and the Israeli claim to the Golan Heights and East Jerusalem. Evidence illustrates that the principle of non-recognition had a long history indicative of wider acceptance even before 1978.

Principle One of the 1970 'Declaration on the Principles of International Law Concerning Friendly Relations and Cooperation Among States in Accordance with the Charter of the United Nations' (hereafter the 1970 Declaration) states that 'No territorial acquisition resulting from the threat or use

---

<sup>17</sup> J. Garner, 'Non-recognition of the Illegal Territorial Annexations and Claims to Sovereignty', *American Journal of International Law*, Vol. 30, 1936.

<sup>18</sup> Sir Hersch Lauterpacht is a prominent writer in International Law. Christine Chinkin is known for her feminist critics of international human rights law while John works are critical for our understanding of recognition.

of force shall be recognized as legal.<sup>19</sup> The Declaration prevents States from making subjective assessments of the legality of the use of force, thus not limiting non-recognition.<sup>20</sup> The 1970 Declaration was adopted by consensus and has been regarded by many international lawyers as a restatement of Charter principles and as such binding upon member States.<sup>21</sup> The 1986 ICJ *Case Concerning the Military and Paramilitary Activities in and Against Nicaragua* accepted that the 1970 Declaration reflected customary international law.<sup>22</sup>

In addition, the principle was included in the Restatement of the Foreign Relations Law of the United States in 1986. Draft Article 19 of the International Law Commission (ILC) Articles on State Responsibility, first published in 1976, refers to a serious breach of an international obligation such as prohibiting aggression and a serious breach of an international obligation to safeguard the right of self-determination of peoples such as that prohibiting the establishment or maintenance by force of colonial domination. In 2001, the ILC adopted Article 41 which provides that States have an obligation not to recognize or send aid or assistance to maintain a serious breach of an obligation.<sup>23</sup>

---

<sup>19</sup> Principle One of 1970 Declaration.

<sup>20</sup> C. Chinkin, 'Australia and East Timor in International Law' in International Platform of Jurists for East Timor, eds., *International Law and the Question of East Timor* (London, 1995).

<sup>21</sup> *Ibid.*

<sup>22</sup> *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America) (Merits)* ICJ Rep. 14, paras. 187 to 201 provides that, 'It considers that this opinion juris may be deduced from, inter alia, the attitude of the Parties and of States towards certain General Assembly Resolutions and particularly Resolution 2625 (XXV)...Consent to such resolutions is one of the forms of expression of an opinion juris with regard to the principle of non-use of force, regarded as a principle of customary international law, independently of the provisions, especially those of an institutional kind, to which it is subject on the treaty-law plane of the Charter.' This argument is also reaffirmed in Chinkin, 1995.

<sup>23</sup> Such an obligation exists in regard to people with the right of self-determination. 'Draft Articles on Responsibility of States for internationally wrongful acts' in Extract from the Report of the International Law Commission on the work of its Fifty-third Session. *Official Records of the General Assembly, Fifty-third session, Supplement No. 10 (A/56/10)*. chp.IV.E.1.

Despite such a clear indication of the obligations of States in a serious breach of an obligation, some still question the principle's existence. Fonteyne points to Rhodesia and Namibia as the only examples where a legal duty of non-recognition existed as illustrated in United Nations General Assembly (GA) and Security Council (SC) resolutions. It is undesirable to claim that since a principle was not explicitly spelled out as a sanction, it means the illegality can be ignored by impunity as a wrong and thus become a source of right to the wrongdoer.<sup>24</sup>

Percy Corbett takes the position that even if a duty of non-recognition exists it is ineffective.<sup>25</sup> Territorial sovereignty can be acquired through the use of force such as the recognition of Italy's claim to title of Abyssinia by five League of Nations members, including France, Britain and Canada and 'the indulgence shown' by the US to Israel in its occupation beyond its 1967 boundaries. He concludes 'formal annexation is [not always]...necessary to complete title by conquest' when there is an international organization that is too weak to prevent such illegal use of force and restore the status quo.<sup>26</sup> As a result, such illegal titles are likely to be accepted with the passage of time.

Lauterpacht disagrees citing the principle *ex injuria jus non oritur* as one of the fundamental maxims of jurisprudence and as such 'to admit that, apart from well-defined exceptions, an unlawful act, or its immediate consequences, may become *suo vigore* a source of legal right for the wrong-doer is to introduce into the legal system a contradiction which cannot be solved except by a denial of

---

<sup>24</sup> Chinkin, 1995.

<sup>25</sup> P. Corbett, *Law and Society in the Relations of States* (New York, 1951).

<sup>26</sup> *Ibid.*, p. 103.

its legal character. International law does not and cannot form an exception to that imperative alternative.<sup>27</sup> Rather it points to the necessity to make the principle more effective to prevent such situations.

Evidence thus illustrates that the principle of non-recognition is customary international law. The State responses in the cases of Southern Rhodesia, South Africa in Bantustans, the occupation of Egyptian and Syrian territory by Israel, the Turkish Republic of Cyprus, all illustrate calls for non-recognition before 1978. Further, in 1990, the annexation of Kuwait by Iraq was not recognized by the international community. The principle is self-executionary and Dugard declares GA and SC resolutions only confirm the already existing duty of non-recognition. Moreover, Justice Higgins declared in her Dissenting Opinion in the ICJ Advisory Opinion on the *Wall*, that non-recognition and inassistance for illegal situations are self-evident without invoking *erga omnes*.<sup>28</sup> While, it is likely that the principle has reached the status of customary law, it is questionable that the principle has on its own yet reached the status of a peremptory norm.<sup>29</sup>

---

<sup>27</sup> H. Lauterpacht, *Recognition in International Law*, (Cambridge, 1947), p. 421.

<sup>28</sup> See para. 38 of Separate Opinion of Judge Higgins in *Legal Consequences of the Construction of the Wall in Palestinian Occupied Territory (Advisory Opinion)*[2004] ICJ Rep 131.

<sup>29</sup> Para. 125 of Dissenting Opinion of Judge Skubiszewski in *East Timor (Portugal v. Australia) (Judgment)* [1995] ICJ Rep 90 provides, ‘The rule or principle of non-recognition] may be said to be at present in the course of possibly reaching a stage where it would share in the nature of the principle of which it is a corollary, i.e., the principle of the non-use of force. In that hypothesis non-recognition would acquire the rank of a peremptory norm of that law (*ius cogens*). But that is a future development which is uncertain and has still to happen. The Friendly Relations Declaration correctly states the law on the subject: “No territorial acquisition resulting from the threat or use of force shall be recognized as legal”...The rule is self-executory.’

### *The Doctrine of Non-recognition and Self-Determination*

A greater duty of non-recognition flows from the attempted acquisition of territorial sovereignty through the denial of the right of self-determination. James Crawford, a theorist, draws on the statement by the Court in the *East Timor* case that ‘Portugal’s assertion that the right of people’s to self-determination,...has an *erga omnes* character, is irreproachable’<sup>30</sup> to conclude that the right of self-determination is of a peremptory character. Based on the principle of equal rights and self-determination of peoples from the 1970 Declaration and Article 41(2) of the International Law Commission’s Articles on State Responsibility, ‘no State should recognize a serious breach of a peremptory norm’ proves an obligation for all States to respect the right of self-determination.<sup>31</sup> Further, Article One of the ‘International Covenant of Economic, Social and Cultural Rights’ and the ‘International Covenant on Civil Political Rights,’ provides that State parties have the obligation to promote the realization of self-determination and respect it in conformity with the provisions of the UN Charter.<sup>32</sup>

Hannikainen adds that ‘the two peremptory norms [the prohibition of the use of aggressive armed force by States in the international sphere and the obligation not to obstruct the right of self-determination] illustrate that territorial

---

<sup>30</sup> This was reaffirmed in para. 88 *Legal Consequences of the Construction of the Wall in Palestinian Occupied Territory (Advisory Opinion)* [2004] ICJ Rep. 90, ‘the right of peoples to self-determination is today a right *erga omnes*.’

<sup>31</sup> He provides the acquisition of territorial sovereignty through a denial of the right of self-determination as example of a serious breach.

<sup>32</sup> International Covenant of Economic, Social and Cultural Rights and the International Covenant on Civil Political Rights, 19 December 1966.

acquisitions or special advantages resulting from the use of aggressive armed force are unlawful and do not create any valid title to an alien territory.’<sup>33</sup>

In terms of a denial by a State of the right of self-determination, there has been a call for non-recognition in the case of Namibia, Rhodesia, the Bantustans in South Africa and the construction of the Wall by Israel. The ICJ Advisory Opinion on the Wall concluded that the construction of the Wall is a violation of the legal principle prohibiting the acquisition of territory by force and interferes with the ‘territorial sovereignty and consequently with the right of the Palestinians to self-determination.’<sup>34</sup>

Finally, the exploitation of natural resources in non-self governing territories without their benefit is contrary to international law as it interferes with territorial sovereignty and thus denies the right of peoples to self-determination. Drew states that self-determination consists of a process and substance content. The process content is provided in the 1970 Declaration that people have a right to freely determine their political status but there is also a substantive content that ‘implicit in any recognition of a people’s right to self-determination is recognition of the legitimacy of that people’s claim to a particular territory and/or set of resources.’<sup>35</sup> She provides a non-exhaustive list of substantive entitlements such as the right to exist- demographically and territorially- as a people, the right to territorial integrity, the right to permanent sovereignty over natural resources, the

---

<sup>33</sup> L. Hannikainen, ‘The Case of East Timor from the perspective of jus cogens’ in International Platform of Jurists for East Timor, eds., *International Law and the Question of East Timor* (London, 1995), p. 106-107.

<sup>34</sup> *Legal Consequences of the Construction of the Wall in Palestinian Occupied Territory (Advisory Opinion)* [2004] ICJ Rep 131.

<sup>35</sup> C. Drew, ‘The East Timor Story: International Law on Trial’, *European Journal of International Law*, Vol. 12, 2001, p. 663.

right to cultural integrity and development, and the right to economic and social development.<sup>36</sup>

Drew's analysis finds support from the doctrine of permanent sovereignty over resources developed in the 1950s as part of the decolonization process. The Doctrine is reaffirmed in GA Resolution 1803(XXVII) which has the status of customary international law.<sup>37</sup>

The only legal opinion offered on resource exploitation of territories under the sovereignty of peoples with the right to self-determination appears that of Under- Secretary-General for Legal Affairs, Hans Corell.<sup>38</sup> The legal opinion, not binding under international law, dealt with the legality of contracts between foreign companies and Morocco on resource extraction in Western Sahara. He found that the contracts in and of themselves were not illegal because they only called for oil reconnaissance and evaluation and thus no benefits were accrued.

---

<sup>36</sup> *Ibid.*

<sup>37</sup> See I. Scobbie, 'Natural Resources and Belligerent Occupation' in S. Bowen, eds., *Human Rights, Self-Determination and Political Change in the Occupied Territories* (Leiden, 1997) and *Government of Kuwait v. American Independent Oil Co, International Law Review*, Vol. 66, p. 588.

Scobbie talks about the applicability of the doctrine to the continental shelf- an occupant does not have rights to 'explore the continental shelf or exploit its natural resources' (Scobbie, 1997, p. 249).

1. The right of peoples and nations to permanent sovereignty over their natural wealth and resources must be exercised in the interest of their national development and of the well-being of the people of the State concerned.

2. The exploration, development and disposition of such resources, as well as the import of the foreign capital required for these purposes, should be in conformity with the rules and conditions which the peoples and nations freely consider to be necessary or desirable with regard to the authorization, restriction or prohibition of such activities.

7. Violation of the rights of peoples and nations to sovereignty over their natural wealth and resources is contrary to the spirit and principles of the Charter of the United Nations and hinders the development of international co-operation and the maintenance of peace.

<sup>38</sup> Para. 1 of H. Corell, Letter to Legal Affairs, the Legal Counsel, addressed to the President of the Security Council. UN Doc. S/2002/161. 12 February 2002., provides that 'the legality in the context of international law, including relevant resolutions of the Security Council and the General Assembly of the United Nations, and agreements concerning Western Sahara of actions allegedly taken by the Moroccan authorities consisting in the offering and signing with foreign companies for the exploration of mineral resources in Western Sahara.'



The principle that exploitation of resources in non-self governing territories must benefit the people was not breached unless further exploration and exploitation occurred without the interest of the Sahawaris.

The conclusion raises many issues. First, compensation is usually given even for oil reconnaissance and evaluation activities; therefore, Morocco most likely accrued a benefit. Second, the conclusion focuses on obligations arising for Administering Powers, in this case Spain, and does not address obligations for Morocco to respect the territorial integrity of the people of Western Sahara, the Sahawari right to self-determination, nor the consequences arising from not respecting that obligation nor does it expound upon obligations for third-States.

As Iain Scobbie states, ‘As the occupant only has rights of administration over the territory, it cannot enter into international agreements for the exploitation of its natural resources [at the very least, this is a consequence of the doctrine of permanent sovereignty over natural resources], and thus, under customary international law, is unable lawfully to exploit them in these circumstances.’<sup>39</sup> Thus, Morocco, as an occupying power clearly has obligations arising from the exploitation of the natural resources in Western Sahara.

In conclusion, there is a clear duty of non-recognition of attempted territorial acquisitions through their denial of the right of self-determination. The exploitation of resources of non-self governing territories is illegal as it contravenes with the substantial right of self-determination. States are thus under an obligation not to recognize such acts or to provide aid or assistance to them.

---

<sup>39</sup> Scobbie, p.245-246.

Non-recognition, by validating factual control, protects the rights of self-determination and permanent sovereignty over resources. The nature of non-recognition is examined to create a framework to analyze the cases of Western Sahara, East Timor and the occupied Arab territories.

## FRAMEWORK

---

While little clarity exists on the constitutive elements of non-recognition, there have been cases and writings on some actions which are thought tantamount to recognition. This section examines these actions to determine a framework of non-recognition.

It appears improbable that entering into a multilateral treaty whereby a State does not recognize another State or government does not, by the act itself, constitute recognition. Yet, States should still be able to enter into relations with other States even if some States do not recognize others otherwise the policy of non-recognition would become illogical and cumbersome.<sup>40</sup> In 1971, the ICJ Advisory Opinion on the *Namibia* Case further expounded on the possible elements of the non-recognition doctrine where they excluded multilateral treaties, such as those with a humanitarian character, where non-performance would have a negative impact on the dispossessed Power.<sup>41</sup>

Entering into bilateral treaties is considered tantamount to recognition. Lauterpacht claims that such recognition is clear where there lacks a doubt of the intentions of the parties such as a comprehensive treaty of commerce and navigation or a treaty alliance.<sup>42</sup> Robert Langer further posits that in all circumstances, entering into bilateral agreements with regard to the occupied territory would be inconsistent with recognition without explicitly adding that this

---

<sup>40</sup> Lauterpacht, 1947.

<sup>41</sup> *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South-West Africa) notwithstanding Security Council Resolution 276 (1970) (Advisory Opinion)* [1971] I.C.J. Reports 1, para. 121.

<sup>42</sup> Lauterpacht, 1947.

agreement does not amount to recognition.<sup>43</sup> This position is consistent with the judgment on the *Namibia* Case which called upon all States to abstain from entering into treaty relations with South Africa where the government of South Africa purports to act on behalf or concerning Namibia.

The Court indicated that the principle of non-recognition excludes the registration of births, deaths and marriages.<sup>44</sup> Judge Petrán concurred claiming that treaties between administrations such as on postal or railway matters are permissible.<sup>45</sup> Judge De Castro's more narrow approach suggested that treaties to avoid double taxation cannot make account for taxes paid in Namibia and that extradition treaties should not be in effect for Namibians, because they cannot be handed over to illegal authorities.<sup>46</sup> Judge Dillard cautions for flexibility in the Doctrine to allow certain acts at governmental levels not to imply recognition such as natural disasters requiring intergovernmental cooperation.<sup>47</sup>

A seeming consensus exists that sending diplomatic, special missions or consular agents to non-recognized States amounts to recognition unless there is an explicit indication that the maintenance of diplomatic or consular relations does

---

<sup>43</sup> Langer, 1947.

<sup>44</sup> *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South-West Africa) notwithstanding Security Council Resolution 276 (1970) (Advisory Opinion)* [1971] I.C.J. Reports 1, paras. 117-127 and 133.

<sup>45</sup> Separate Opinion of Judge Petrán in *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South-West Africa) notwithstanding Security Council Resolution 276 (1970) (Advisory Opinion)* [1971] I.C.J. Reports 1, p. 134.

<sup>46</sup> Separate Opinion of Judge De Castro in *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South-West Africa) notwithstanding Security Council Resolution 276 (1970) (Advisory Opinion)* [1971] Order No. 1 of 26, ICJ Rep, p. 219.

<sup>47</sup> Separate Opinion of Judge Dillard in *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South-West Africa) notwithstanding Security Council Resolution 276 (1970) (Advisory Opinion)* [1971] I.C.J. Reports 1.

not imply recognition.<sup>48</sup> Judge Petrén added that formal declarations and acts of courtesy are ways of normally expressing recognition and therefore should be excluded.

The ICJ Advisory Opinion on *Namibia* also made it implicit in non-recognition that States should abstain from entering into economic or other forms of relations which may entrench a dispossessing Power's authority.<sup>49</sup> Petrén disagreed stating non-recognition only involves abstention from governmental acts of a certain type and should not extend to States limiting or ending the commercial or industrial relations of their nationals or investing or obtaining concessions with the dispossessed Power as that request belongs to a different sphere.<sup>50</sup> Dugard disagreed suggesting that countries should prohibit their nationals from investing in the occupied territory as it amounts to illegal activity.

Based on these observations, it is likely that bilateral agreements, diplomatic and consular relations, economic or other forms of relations which might entrench a dispossessing Powers' authority all amount to recognition where the intention is clear. Multilateral treaties, where non-participation will be to the detriment of the dispossessed people, and day-to-day activities, such as the registration of births, deaths, and marriages, do not appear tantamount to recognition. De Castro suggests that entries in civil registers, Land Registry, judgments of civil courts and acts and rights of private persons do not amount to

---

<sup>48</sup> Lauterpacht, 1947, Langer, 1947, *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South-West Africa) notwithstanding Security Council Resolution 276 (1970) (Advisory Opinion)* [1971] Order No. 1 of 26, ICJ Rep, J. Dugard, 1987.

<sup>49</sup> *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South-West Africa) notwithstanding Security Council Resolution 276 (1970) (Advisory Opinion)* [1971] I.C.J. Reports 1, paras. 117-127 and 133.

<sup>50</sup> Such an obligation might exist in the duty to uphold the right of self-determination as in some cases such actions might seek to deny a peoples of the right of self-determination.

recognition. Dugard disagrees, suggesting that documents should be only honored by the lawful Administering Power although certain contacts and forms of cooperation might be justified for practical or humanitarian necessities.<sup>51</sup>

Scholars speak of two types of recognition, *de facto* and *de jure*. Lauterpacht suggests that for cases of recognition of a new international title which has its origin in an international wrong, *de facto* recognition accounts for the actuality of control while refusing its legality in international law.<sup>52</sup> He finds this type ‘a proper device for combining the disapproval of illegal action with the requirements of international intercourse’ but does not specify the requirements.<sup>53</sup> He, further cautions against the potential repercussions of *de facto* recognition, emphasizing that:

it is a legitimate device only so long as we bear in mind that the difference between *de jure* and *de facto* recognition is one of substance and so long as *de facto* recognition is not used for the purpose of avoiding any obligation of non-recognition that may have to be undertaken.<sup>54</sup>

In contrast, Langer concludes that writings and juridical decisions appear to bar *de facto* and *de jure* recognition.<sup>55</sup> He does not believe there is a real distinction between the two types of recognition and rejects the understanding that *de facto* recognition is of the qualified and provisional claiming that both can be

---

<sup>51</sup> Separate Opinion of Petřrn in *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South-West Africa) notwithstanding Security Council Resolution 276 (1970) (Advisory Opinion)* [1971] I.C.J. Reports 1, p. 134.

<sup>52</sup> Lauterpacht, 1947, p. 340.

<sup>53</sup> Lauterpacht, 1947.

<sup>54</sup> Lauterpacht, 1947, p. 341.

<sup>55</sup> Langer, p. 113.

withdrawn. Brownlie declares that the two types ‘are simply the unhappy elaboration of an unsound premise.’<sup>56</sup>

While the difference may be purely political,<sup>57</sup> Judge Weeramantry in the *East Timor* Case, analyzes different levels of varying intensity of recognition, concluding that ‘...countries entering into treaty relations in respect of that territory have a range of options stretching all the way from de facto recognition through many variations to the highest level of recognition- de jure recognition.’<sup>58</sup> Although helpful in determining the degree of the international wrong committed by the third State, both still constitute a breach of the duty of recognition because both amount to recognition of the inchoate title. It is particularly important that all such types of recognition be withheld in cases involving non-self governing territories as all help to maintain the illegal situation and act to deny the right of a people to self-determination.

Based on this analysis, I assess recognition for each case by examining the State practice and *opinion juris* of States to conclude whether the Doctrine has been effective. Given the availability of information and the seeming consensus on the connection between treaties and recognition, I focus mainly on bilateral treaties as evidence of State practice.

---

<sup>56</sup> He also indicates that according such recognition is ‘giving prominence to the “de jure”/ “de facto” usage are not only committing atrocities of analysis but are three decades out of date as a matter of ordinary description of the State practice’ I. Brownlie, ‘Recognition in Theory and Practice’, *British Yearbook of International Law*, Vol. 53, 1982, p. 207- 208.

<sup>57</sup> A. McNair, *Legal Effects of War*, 2nd edn, (Cambridge, 1944).

<sup>58</sup> Separate Opinion of Judge Weeramantry in *East Timor (Portugal v. Australia) (Judgment)* [1995], ICJ Rep 90, p. 204.

## NAMIBIA

---

As the previous section indicated, The ICJ Advisory Opinion on *Namibia* was the first opinion to clearly formulate the legal consequences of third States in illegally occupied territory and lists acts which might imply recognition. This section examines the subsequent reaction of the international community to the Opinion in order to illustrate that a sustained adherence to the doctrine of non-recognition can be a determining factor in the eventual reversal of an illegal acquisition of territory.

In the 19<sup>th</sup> Century, Germany controlled the Territory as South-West Africa with the exception of Walvis Bay which was British controlled. During WWI, the Territory was administered by South Africa under a League of Nations Mandate until WWII when it unilaterally annexed the territory.

As a result of the Opinion, the United Nations Security Council quickly issued SC Resolution 301(1971) which called upon States to uphold the Opinion and requested the Ad Hoc Sub-Committee on Namibia review all treaties and agreements to determine if they amounted to recognition of South Africa's authority over Namibia.<sup>59</sup> In 1971, the General Assembly adopted GA Resolution 2871 which provided instructions to be strictly adhered to by States with regard to Namibia.<sup>60</sup> The United Nations also appointed the UN Council for Namibia to act as the Administering Power for Namibia. In 1972, GA Resolution 2979 was adopted which condemned foreign, economic and other interests impeding

---

<sup>59</sup> SC Resolution 301 of 20 October 1971.

<sup>60</sup> GA Resolution 2871 of 29 November 1971.



independence.<sup>61</sup> The United Nations continued to remain very involved in ensuring States upheld the doctrine of non-recognition.

On average, member States appeared to have upheld the Doctrine overall. The United States re-affirmed its policy of non-recognition in many public statements. In the *Herman F. Schott et al. v. American Metal Climax, Inc.*,<sup>62</sup> George Aldrich, Acting Legal Advisor of the Department of State accepted the Advisory Opinion on *Namibia* and stated the ‘levying of taxes by the South African Government on business activities in Namibia constitutes such an illegal and invalid act.’<sup>63</sup>

In regards, to foreign businesses, Aldrich claimed that ‘the United States Government does not prohibit Americans from doing business in Namibia, although it does discourage new investment there.’<sup>64</sup> Further, ‘[US Government] announced in May 1970, that U.S. nationals who invested in Namibia on the basis of rights acquired through the South African Government since adoption of GA resolution 2145 (October 27, 1966) would not receive U.S. Government assistance in protection of such investments against claims of a future lawful government of Namibia.’<sup>65</sup> Informally, the IRS in August 1974, indicated that

---

<sup>61</sup> GA Resolution 2973 of 14 December 1972.

<sup>62</sup> San Francisco Superior Court No. 664-351 (1973) cited in Department of State, *Digest of United States Practice in International Law* (Washington DC, 1974). Case regarding a company request to use taxes, currently being paid to the Republic of South Africa as a result of its operation in Namibia, to support the United Nations Council of Namibia.

<sup>63</sup> *Ibid.*, p. 419. It was questionable, however, whether the Council of Namibia, even while acting as the legal administering power in Namibia, was a government but probably ‘has a *suis generis* nature which may not qualify the donation under Section 901 as payment to “a country”.’ It thus, decided that this was a question best for the International Revenue Service and that it did not see any need for the government to intervene in the action.

<sup>64</sup> United States Department of State, *Digest of United States Practice in International Law 1973*, 1974, p.420.

<sup>65</sup> United States Department of State, *Digest of United States Practice in International Law 1973*, 1974, p.420.

Namibia would no longer ‘qualify as a “Trust Territory” for tax purposes or as an “overseas...territory, department, province or possession” of South Africa under the same Order.’<sup>66</sup> Since 1970, the Department claimed that it has officially discouraged American private investment and trade in Namibia.<sup>67</sup> In regards to official visits, the US prohibited the Department of Commerce Inspection Team going to Namibia as it would be inconsistent with the US’ policy of non-recognition stating that in the last years, the US strictly controlled visits by government personnel to Namibia.<sup>68</sup>

While the US, UK and France voted against a mandatory arms embargo in 1974 and 1976, the US and the UK applied a voluntary arms embargo to South Africa and Namibia since 1972.<sup>69</sup>

Britain removed all diplomatic or consular relations with the authorities in Namibia, but did not prevent the importation of uranium from Namibia because it believed the GA acted beyond its powers in establishing the Council for Namibia which issued the decree.<sup>70</sup>

---

<sup>66</sup> The Company withdrew its request. United States Department of State, *Digest of United States Practice in International Law 1974* (Washington DC, 1975).

<sup>67</sup> United States Department of State, *Digest of United States Practice in International Law*, 1974, p. 599.

<sup>68</sup> ‘would be inconsistent with the declared policy of the United States with respect to the international status of Namibia in that it would be an affirmative action by the United States Government the purpose and effect of which would be to promote trade between the United States and Namibia.’ p.599 (1974)

<sup>69</sup> United States Department of State, *Digest of United States Practice in International Law 1975*, 1976.

<sup>70</sup> In a House of Lords Debate on the subject of independence negotiations for Namibia, the Government Spokesman, Earl of Avon declared, ‘The Government have no diplomatic or consular relations with the authorities of Namibia, since the territory is under unlawful occupation by South Africa. Our missions in South Africa deal with consular questions affecting British subjects visiting or living in Namibia.’ *British Yearbook of International Law*, Vol. 53, 1982, p. 391.

Toru Nakagawa claimed that Japan did not recognize South Africa's continued presence over Namibia and considered it illegal and banned diplomatic, consular, trade or other official representation or investment in Namibia.<sup>71</sup>

Australia also confirmed their practice of non-recognition in that their Government 'would avoid taking any action which could further entrench the illegal occupation of the Territory or give recognition to the government of South Africa in its claims to act on behalf of Namibia'.<sup>72</sup> It claimed to utilize diplomatic ties only to protest South Africa's human rights violations with regard to Namibia, indicated that it 'does not recognize the repressive legislation in Namibia' and declared that they make clear that there is no question of recognition of South Africa's standing in Namibia.<sup>73</sup> Before 1974, the Australian Government decided to cease official promotion of economic relations with South Africa and had officially advised Australian companies with subsidiaries in South Africa to refrain from...measures of a discriminatory nature.'<sup>74</sup>

Although it was a long process, when there was sustained application of the doctrine of non-recognition coupled with the political will of the international community, the Doctrine appeared influential to South Africa's withdrawal and Namibia's independence on 20 March 1990.<sup>75</sup>

---

<sup>71</sup> United Nations Office of Public Information, *UN Monthly Chronicle*, Volume VIII, No. 10, November 1971, p. 20.

<sup>72</sup> D. W. Greig, *The Australian Year Book of International Law 1974-1975* (Canberra, 1978), p. 205.

<sup>73</sup> *Ibid.*, p. 206.

<sup>74</sup> *Ibid.*, p. 206.

<sup>75</sup> For more information on Namibia's independence please refer to S.C. Saxena, *Namibia and the World: The Story of the Birth of a Nation* (Delhi, 1991).

### *I. Background*

East Timor, part of an island located three hundred miles off the northwest coast of Australia and at the tip of Indonesia, was administered by Portugal. In 1974, the decolonization process began and in September 1975, a group, Fretilin, unilaterally declared independence. In December 1975, Indonesian forces invaded and on 18 December 1975 Adam Malik, Foreign Minister of Indonesia, announced the establishment of a 'provisional government' in East Timor. The GA and SC reaffirmed East Timor's right to self-determination and called for Indonesia's withdrawal from the territory.<sup>76</sup> SC Resolutions 384(1975) and 389(1976) and GA Resolution 3845(XXX) called upon 'all States to respect the territorial integrity of East Timor' and for Indonesia to withdraw from the territory.<sup>77</sup> The territory was a non-self governing territory with Portugal as the Administrative Power.

The conflict very much revolved around East Timor's rich mineral and oil resources. Deposits of crude oil and or natural gas were found in the sea between Timor and Australia and off the coast of East Timor known as the 'Timor Gap.' Portugal entered a case to the ICJ against Australia in regards to 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',<sup>78</sup> (hereafter Timor Gap Treaty). The Court referred to the *Monetary Gold* Case in

---

<sup>76</sup> Clark, p. 71.

<sup>77</sup> SC Resolutions 384 of 22 December 1975, SC Resolution 389 of 22 April 1976 and GA Resolution 3845(XXX) of 12 December 1975.

<sup>78</sup> *Australian Treaty Series 1991*, No. 9, Department of Foreign Affairs and Trade, Canberra, 1995.

refusing to provide a judgment because any judgment could implicate a non-consenting party, Indonesia. In August 1999 a referendum was finally held and the East Timorese voted for independence.<sup>79</sup>

## *II. Assessing Recognition*

### **A. State Practice**

#### 1) Timor Gap Treaty

While Australia took a strong role in promoting East Timor's right to self-determination and calling for a withdrawal of Indonesian forces,<sup>80</sup> in 1978 Australia *de facto* recognized Indonesian sovereignty over East Timor because they considered it unrealistic to continue to withhold recognition.<sup>81</sup> Also in 1978 Australia voted against the GA Resolution 33/39 which re-affirmed the right of self-determination and independence and that States should refrain from the threat or use of force against the territorial integrity or national independence of any State<sup>82</sup> In 1979, Australia accorded *de jure* recognition to Indonesia while entering into negotiations for the Timor Gap Treaty which entered into force in February 1991.

First, by entering into this treaty, Australia was in breach of the obligation of non-recognition of territory acquired through the use of force. By referring to and being entitled 'the Indonesian Province of East Timor,' the treaty implies

---

<sup>79</sup> After independence the country was renamed Timor Leste.

<sup>80</sup> For example, United Nations General Assembly Resolution 3485, 12 December 1975.

<sup>81</sup> See statement of the Australian Minister of Foreign Affairs on January 20, 1978 (set out in Counter-Memorial of the Government of Australia in *East Timor (Portugal v. Australia) (Judgment)* [1995] ICJ Rep 90, Annex 21 at p.A69).

<sup>82</sup> General Assembly Resolution 33/39, 13 December 1978.

Indonesian sovereignty over East Timor. Weeramantry posited in his Dissenting Opinion that this was possibly one of the highest forms of *de jure* recognition.<sup>83</sup>

Australia responded that its entered into the Treaty with Indonesia so it could 'secure and enjoy its sovereign rights there' and Indonesia was the only State with which Australia could negotiate and conclude an effective agreement.<sup>84</sup> To allow such practical considerations to relieve a State of the duty of non-recognition could 'sap the foundation of any legal rule.'<sup>85</sup> Australia claimed that there was no explicit obligation of non-recognition by the SC. While neither the SC nor the GA specifically condemned the use of force by Indonesia in the East Timor situation, there were international calls for the withdrawal of forces.<sup>86</sup> To Clive Symmons, Australia's claim 'seems to constitute special pleading of a very specious kind.'<sup>87</sup>

Further, as was illustrated in the first section, it is believed by many that a UN prescription is unnecessary. Skubiszewski stated that non-recognition is not a free act with regard to the irregular acquisition of territory and 'it does not need to be repeated by the UN or other international organizations...it does not relieve any State from the duty of non-recognition.'<sup>88</sup> Finally, the SC is a political body

---

<sup>83</sup> Dissenting Opinion of Weeramantry in *East Timor (Portugal v. Australia) (Judgment)* [1995] ICJ Rep 90, p. 204

<sup>84</sup> 'Counter-Memorial of the Government of Australia' in *East Timor (Portugal v. Australia) (Judgment)* [1995] ICJ Rep 90, para. 354

<sup>85</sup> Dissenting Opinion of Skubiszewski in ICJ Judgment on *East Timor (Portugal v. Australia)*, ICJ Reports, 1995, para. 128.

<sup>86</sup> C.Chinkin, 1995.

<sup>87</sup> C. Symmons, 'The Role of Recognition in Instances of Denial of Self-Determination in the Light of East Timor Case: Positive and Negative Duties on Third States in International Law' in International Platform of Jurists for East Timor, *The East Timor Problem and the Role of Europe* (Dublin, 1996), p.124.

<sup>88</sup> Dissenting Opinion of Skubiszewski in *East Timor (Portugal v. Australia) (Judgment)* [1995] ICJ Rep 90, para. 129-130.

and decisions to condemn are sometimes based on political rather than legal reasons.

Second, Australia and Indonesia, by entering into the Timor Gap Treaty, are in breach of the permanent sovereignty over resources principle that was earlier indicated to be customary international law. The Treaty exploits natural resources of the East Timorese without their permission or benefit. The preamble of the Treaty states that, ‘Determined to cooperate further for the mutual benefit of their peoples in the development of the resources of the area of the Continental Shelf.’<sup>89</sup> Despite the permanent sovereignty over resources principle, no benefit was set to accrue to the East Timorese.

Third, the Treaty is even more problematic because it breaches the obligation to respect the East Timorese’s right of self-determination. As Weeramantry states, ‘The Timor Gap Treaty, to the extent that it deals with East Timorese resources prior to the achievement of self-determination by the East Timorese, is thus in clear violation of this principle.’<sup>90</sup> In fact, the Treaty acts to help prevent the East Timorese from being able to exercise that right:

Any action prior to that date [of the exercise of self-determination] which may in effect deprive them of this right must fall clearly within the category of acts which infringe on their right of self-determination, and their future sovereignty, if indeed full and independent sovereignty be their choice.<sup>91</sup>

Australia, however, countered with the argument that according *de jure* recognition to Indonesia did not change the right of the East Timorese to self-determination nor deny that right. Such a claim is contradictory because by

---

<sup>89</sup> *Australian Treaty Series 1991*, No. 9, Department of Foreign Affairs and Trade, Canberra, 1995.

<sup>90</sup> Dissenting Opinion of Weeramantry in *East Timor (Portugal v. Australia) (Judgment)* [1995] ICJ Rep 90, p.198.

<sup>91</sup> *Ibid.*, 1995, p. 198.

according *de jure* recognition to Indonesia and sovereignty over the resources of East Timor, Australia is denying the East Timorese their ability to exercise their right to self-determination.

## 2) Double Taxation Agreements

Australia claimed that, since 1976, States have not taken into account any restrictions when dealing with Indonesia in relation to East Timor.<sup>92</sup> Australia pointed to a series of double taxation agreements by States concluded with Indonesia since 1976 in its Argument to illustrate that other States have also accorded recognition to Indonesian sovereignty over East Timor. These agreements contain a territorial clause which does not exclude the territory of East Timor from the operation of these treaties.<sup>93</sup>

Skubiszewski disagrees stating that no recognition can be implied from the treaties as they do not ‘deal with territorial problems and do not refer explicitly to East Timor but concern Indonesian territory under Indonesian legislation for tax purposes alone.’<sup>94</sup>

Skubiszewski is correct to differentiate the degree of severity of the tax treaties in comparison with the Timor Gap Treaty, but the treaties still recognize Indonesian sovereignty even if implicitly. The Agreement between the United

---

<sup>92</sup> ‘Counter Memorial of the Government of Australia’ in *East Timor (Portugal v. Australia) (Judgment)* [1995] ICJ Rep 90.

<sup>93</sup> The agreements were signed by Australia, Austria, Canada, Denmark, Finland, France, Germany, India, Japan, Korea, Netherlands, New Zealand, Norway, Philippines, Sweden, Swiss Confederation, Thailand, United Kingdom of Great Britain and Northern Ireland and United States.

<sup>94</sup> Dissenting Opinion of Skubiszewski in *East Timor (Portugal v. Australia) (Judgment)* [1995] ICJ Rep 90, Para. 122.



States and Indonesia contains the territorial clause in Article 3(1)(a) providing that,

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* [emphasis added] in accordance with the provisions of the 1982 United Nations Convention on the Law of the Sea.<sup>95</sup>

The Agreement between the Republic of Indonesia and the Republic of Korea contains the territorial clause in Article 3(1)(A)(I) providing that,

the term ‘Indonesia’ *comprises territory of the Republic of Indonesia as defined in its laws* [emphasis added] 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.<sup>96</sup>

Neither territorial clause explicitly states that the Agreement does not refer to East Timor and as indicated earlier De Castro therefore claimed such agreements imply recognition. Such recognition is contrary to international law and States should refrain from making such territorial clauses.

### **B. *Opinio Juris***

The public statements of recognition hold even more weight given the territorial clause in the tax agreements and the voting record of these countries in the UN because they provide evidence of a sense of legal obligation on States. The United States, Canada and Australia are among those who have recognized Indonesian sovereignty over East Timor in public statements.<sup>97</sup> Australia revealed that ‘Since 1976 Indonesia has maintained unrestricted diplomatic or consular

---

<sup>95</sup> ‘Counter Memorial of the Government of Australia’ in *East Timor (Portugal v. Australia) (Judgment)* [1995] ICJ Rep 90, para. (xx).

<sup>96</sup> *Ibid.*, para. (xi).

<sup>97</sup> United Kingdom- House of Lords, Official Report, Parliamentary Debates, Unstarred Question-Indonesia: Aid and Human Rights, 16 July 1992.

relations with a large number of States and has become party to numerous bilateral treaties which apply to East Timor.’<sup>98</sup>

In 1976, the United States decided to recognize Indonesian sovereignty over East Timor because they believed that the annexation of East Timor was irreversible. Yet, similar to Australia, they believed the East Timorese had a right to self-determination and recognized that right.

US policy-makers decided to accept Indonesia’s incorporation of East Timor as an accomplished fact...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...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...We recognize the incorporation of East Timor into Indonesia<sup>99</sup>

Such a US policy is inconsistent with its position in other contexts, such as the German Occupation of much of Europe during WWII or Iraq’s annexation of Kuwait.

Canada also recognized Indonesian sovereignty over East Timor while not condoning the manner of incorporation and recognizing the right of the East Timorese to self- determination.<sup>100</sup>

Further, Malaysia stated that it recognized Indonesian sovereignty based on the illiteracy rates in East Timor. ‘In the Case of East Timor, given the fact that

---

<sup>98</sup> ‘Counter Memorial of the Government of Australia’ in *East Timor (Portugal v. Australia) (Judgment)* [1995] ICJ Rep 90, para. 368.

<sup>99</sup> United States- Crisis in East Timor and US Policy Toward Indonesia- Hearing before the Committee on Foreign Relations, US Senate, One Hundred Second Congress, Second Session, Washington, DC, 6 March 1992.

<sup>100</sup> Canada- Governmental Replies to Interpellations in the House of Commons in 1991 and 1992- Reply by the Secretary of State for External Affairs, Mrs. McDougall, to an Interpellation in the House of Commons, 18 September 1991.

‘Mr. Speaker, Canada considers that Indonesian sovereignty over East Timor is a fact, recognizing that there has never been any history of independence or self-determination or self-government in that territory. We do not condone the manner of incorporation and we deplore and condemn the loss of life that occurred, but we very much support the UN-sponsored dialogue between Portugal and Indonesia as the most promising means to reach an understanding in that very unfortunate and unhappy circumstance.’

over 90% 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.<sup>101</sup> Practical reasons such as illiteracy should not qualify for according recognition as such problems could be solved through working with the Administering Power. Further, GA Resolution 1514(XV) states ‘Inadequacy of political, economic, social or educational preparedness should never serve as a pretext for delaying independence.’<sup>102</sup>

Finally, Philippines claimed recognition ‘based on the facts that the people of East Timor have already exercised [their right to self-determination] freely in accordance with GA Resolutions 1514 (XV) and 1541(XV).’<sup>103</sup> Principle IX of GA Resolution 1541(XV), however, provides that the integration should be the result of the exercised democratic free will of the territory’s people.<sup>104</sup> Such an informed democratic process was yet to take place to determine the wishes of the East Timorese and thus Philippine’s basis for recognition is unfounded.

### **C. Assessment**

Third States acted to uphold the legal principle of international law by acknowledging that normally an obligation of non-recognition would exist but that this case was an exception. They provided reasons such as that the actions of

---

<sup>101</sup> ‘Counter Memorial of the Government of Australia’ in *East Timor (Portugal v. Australia) (Judgment)* [1995] ICJ Rep 90 Part 1, Chapter 2, para. 94.

<sup>102</sup> GA Resolution 1514(XV) of 14 December 1960.

<sup>103</sup> ‘Counter Memorial of the Government of Australia’ in *East Timor (Portugal v. Australia) (Judgment)* [1995] ICJ Rep 90, Part 1, Chapter 2, para. 121.

<sup>104</sup> Principle IX of GA Resolution 1541 states, ‘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.’

Indonesia were a *fait accompli* and thus according recognition was just acknowledging that fact. Other States included other practical considerations as reasoning for recognition such as illiteracy. As indicated, illiteracy is not a relevant reason for according recognition to an inchoate title. Through this reasoning, the States are seeking to preserve the legal doctrine of non-recognition.

Further, on the one hand, the public statements all declare that States recognize East Timor's right to self-determination and do not believe they are acting contrary to this right. On the other hand, by recognizing Indonesian sovereignty over East Timor, they are undermining the ability of the East Timorese to exercise their right and undermining the States legal position on the right of self-determination for the East Timorese.

A lack of political will and self-interest were determining factors for the actions of States in this case and led to the contradiction between State practice and their stated position. As Franck states, 'By then, most States, including many in the Third World, no longer saw much point in incurring the wrath of oil rich Indonesia solely to affirm a principle, which, at least in this instance, evidently could not be applied.'<sup>105</sup> Such actions by States undermine the Doctrine and the right of a people's to self-determination.

---

<sup>105</sup> T. Franck, *Nation Against Nation: What happened to the UN Dream and What the US Can Do About It* (Oxford, 1985), p. 307.

*I. Background*

Western Sahara, a former colony of Spain and Africa's last colony, shares borders with Morocco in the north and Mauritania in the south and a small common border with Algeria.<sup>106</sup> Morocco and Mauritania, stating that the territory was terra nullius, claimed immemorial possession.<sup>107</sup> In 1975, the ICJ ruled that the territory was not terra nullius and that the Sahrawis had the right to self-determination, similar to the *East Timor Case*.<sup>108</sup> On November 1975, 300,000 Moroccans entered Western Sahara in the Green March. In 1976, Spain pulled out of Western Sahara and Morocco and Mauritania conquered the territory. In 1979, Mauritania withdrew and Morocco annexed the rest of the territory. Until 1991, there was fighting between Morocco and the Polisario Front, a group representing the Sahrawis. Similar to East Timor, the UN decided to hold a referendum regarding the fate of the territory. Unlike the East Timor case, it has never been held due to an ongoing dispute over who the vote will include, particularly with reference to the large number of Moroccans who entered the territory.

Natural resources also played a significant role in the conflict. The Western Sahara is projected to be rich in natural resources particularly phosphates, hydrocarbons and fisheries reserves.<sup>109</sup>

---

<sup>106</sup> J. Castellino, *Title to Territory in International Law* (Ashgate, 2002).

<sup>107</sup> A similar claim was made by Indonesia in the *East Timor Case*.

<sup>108</sup> ICJ Advisory Opinion on *Western Sahara*, ICJ Reports, 12, 1975.

<sup>109</sup> Afifa Karmous, *Les Ressources Naturelles d'un Territoire Non Autonome: le Sahara Occidental*, France Libertes, 21 May 2001.

## *II. Assessing Recognition*

### **A. State Practice**

#### 1) EU/Morocco Fisheries Agreements

Before Spain became a part of the European Community (EC), Morocco had always linked the Fisheries Agreements with post-colonial territorial claims and issues such as the Western Sahara Conflict.<sup>110</sup> In 1969, an agreement was formed in exchange for the cession of Sidi Ifni, a Spanish enclave. In 1980-1981, the protocol of the Tripartite Agreements was exchanged for advantageous conditions in fisheries and in 1983, a fisheries agreement could only be signed with the recognition of Moroccan administration of Western Sahara.<sup>111</sup> It was the first permanent agreement since 1960 and the first one to last the whole four years.

Spain hoped to gain negotiating power as part of the EC. This was not the case and similar to past negotiations, tense negotiations between the EU and Morocco ensued.

Four fisheries agreements were signed between the EU and Morocco in 1988, 1992, 1995 and 2005. Similar to the 1983 Fisheries Agreement with Spain and Morocco, these agreements included an exchange of technical cooperation and financial compensations for Morocco in exchange for a limited number of licenses given to EC members to catch a specified amount of fish.

The March 1988- February 1992 EU/Morocco Fisheries agreement, valid for a period of four years, was only formed after very tense negotiations and a

---

<sup>110</sup> J. Vaquer i Fanes, 'Assessing Europeanisation: Spain and EC-Morocco Fisheries Negotiations', *Fifth Biennial ECSA Canada Conference*, Toronto 30 May- 1 June 2002.

<sup>111</sup> *Ibid.*, 2002.

number of concessions were made, specifically dealing with Western Sahara. The agreement implicitly recognized Moroccan sovereignty over the Western Sahara waters by including them in the agreement. Article 1 of the Agreement specifies that the agreement was applicable to ‘waters under the sovereignty or jurisdiction of Morocco.’<sup>112</sup>

The preamble provides that ‘Morocco has established an exclusive economic zone extending 200 nautical miles from its shores within which it exercises its sovereign rights for the purpose of exploring, exploiting, conserving and managing the resources of the said zone.’<sup>113</sup> Similar to the Timor Gap Treaty, the EU-Morocco agreement mentions the benefits of both the EU and Morocco excluding the benefits of the Sahrawis. The preamble provides for ‘the safeguarding of their mutual interests in the fisheries sector and the achievement of their respective economic and social objectives...’<sup>114</sup> The agreement sparked concern amongst members of the Commission but was nevertheless entered into force.<sup>115</sup>

The last available EU-Morocco fisheries agreement of 1995 ‘provides fishing opportunities for Community fisherman in waters over which Morocco has sovereignty or jurisdiction,’ referring to specific procedures which must be followed the interests of Ceuta and Melilla. Morocco’s objection to Spain’s

---

<sup>112</sup> For specific specifications refer to *Ibid.*, 2002, p. 5-6.

<sup>113</sup> Council Decision, ‘The Conclusion of An Agreement in the Form of an Exchange of Letters Concerning the Provisional Application of the Agreement on Cooperation in the Sea Fisheries Sector Between the European Community and the Kingdom of Morocco initiated in Brussels on 13 November 1995’, *Official Journal*. Vol. 38 No. 1 306/1. 19 December 1995.

<sup>114</sup> *Ibid.*, 1995.

<sup>115</sup> Juste Ruiz, ‘El Acuerdo Pesquero CEE-Reino de Marruecos de 25 Febrero de 1988’, *Revista de Instituciones Europeas*, Vol. 15, No. 3, p. 752-755.

possession of Ceuta and Melilla was explicitly indicated in the agreement but no provisions were ever made for Western Sahara.

Similar to the Timor Gap Treaty which stated the ‘Indonesian Province of East Timor,’ these agreements are in breach of the duty of non-recognition of territory acquired through the use of force as they deal with recognizing Moroccan claim over the Sahrawis’ waters. Similarly, the agreements also are in breach of the doctrine of permanent sovereignty over natural resources as they seek to ‘explor[e], exploit, conserv[e], and manag[e] the resources of the said zone’ which include the Sahrawi waters.<sup>116</sup> The 2002 UN legal opinion by Hans Correll confirmed that this doctrine applies to all types of natural resources by referring also to ‘economic activities in Non-Self Governing territories in general and mineral resource exploitation in particular.’<sup>117</sup>

Similar to the Timor Gap Treaty, the agreements are in breach of the duty to recognize the right of self-determination. These fisheries agreements are seriously jeopardizing the Sahrawi fisheries reserves and therefore their right to freely develop their natural resources. Mohammed Sidati, European Representative of Polisario exiled government, claims that these agreements have depleted the Western Sahara’s critical fisheries biomass.<sup>118</sup>

---

<sup>116</sup> Council Decision, ‘The Conclusion of An Agreement in the Form of an Exchange of Letters Concerning the Provisional Application of the Agreement on Cooperation in the Sea Fisheries Sector Between the European Community and the Kingdom of Morocco initiated in Brussels on 13 November 1995’, *Official Journal*. Vol. 38 No. 1 306/1. 19 December 1995.

<sup>117</sup> Para. 4 of Letter from the Under-Secretary-General for Legal Affairs, the Legal Counsel, addressed to the President of the Security Council. UN Doc. S/2002/161. 12 February 2002.

<sup>118</sup> Staff Writers, ‘Sahrawis’s concerned over EU-Morocco Fisheries Deal’, *afrol News*, 19 May 2005.



Meanwhile, Morocco is greatly benefiting from these agreements. Western Sahara fish products account for approximately seven percent of Morocco's total export earnings of 85.6 billion dirhams (\$9.8 billion)<sup>119</sup>

Despite these problems and the agreements' violation of the principles of international law, the recently signed EU/Morocco Fisheries Agreement not yet publicly available is rumored to be similar to the past agreements. Spain's Minister of Foreign Affairs, Miguel Moratinos at a press conference in Tenerife confirmed that '...[the] new deal with Morocco would rest on the precedents of the older EU agreements with Morocco. Asked about Saharawi protests, Mr. Moratinos held that there was no reason to change the basic conditions relative to the older agreements.'<sup>120</sup> Carlos Ruiz Miguel, a prominent writer on the Western Sahara conflict, stated that, 'the fact that a part of the agreement affects the Canary artisan fleet reveals to us that they are going to include the waters of the Western Sahara.'<sup>121</sup>

## 2) US-Morocco Free Trade Agreement (FTA)

The United States and Morocco reached agreement on March 2004 to create an FTA to 'strengthen bilateral ties, boost trade and investment flows, and

---

<sup>119</sup> E. Byrne, 'Sardines and Sovereignty in Western Sahara', *Reuters*, 13 January 2004.

<sup>120</sup> Staff Writers, 'Sahrawis's concerned over EU-Morocco Fisheries Deal', *afrol News*, 19 May 2005.

<sup>121</sup> Translated from C. Miguel, 'Acuerdo de pesca UE-Marruecos: se consuma la traicion de 1975', *El Seminal Digital*, 29 July 2005.

'El jueves 28 de julio Marruecos y la UE cerraron un nuevo acuerdo de pesca en el que se negocia sobre las aguas que se hallan bajo "soberanía o jurisdicción" de Marruecos. El hecho de que parte del acuerdo afecte a la flota artesanal canaria nos revela que se van a incluir las aguas del Sahara.'

bolster Morocco's position as a moderate Arab state.<sup>122</sup> In July 2004, Robert Zoellick, the United States Trade Representative, stated that the FTA is not applicable to Western Sahara territory:

the United States and many other countries do not recognize Moroccan sovereignty over Western Sahara and have consistently urged the parties to work with the United Nations to resolve the conflict by peaceful means. The Free Trade Agreement will cover trade and investment in the territory of Morocco as recognized internationally and will not include Western Sahara<sup>123</sup>

According to a letter from Zoellick to US House of Representative Pitts, the Harmonized Tariff Schedule makes clear, for US customs purposes, the US treats imports from the WS and Morocco differently.

Despite this statement, I was unable to locate the definition of the territory of Morocco in the treaty while the territory of the US was located in the Provisions and Definitions section. Further, the cities of Laaouyne, Es-Smara and Dakhla were listed in the Schedule of Morocco.<sup>124</sup> Laaouyne is the capital and Es-Smara and Dakhla are cities in Western Sahara.

While it has not been confirmed whether this could allocate preferential trade treatment to goods from Western Sahara, Morocco has shipped out phosphates from the Western Sahara to other countries by labeling them from Laayoune, Morocco.<sup>125</sup> If this treaty does lead to the importation to the US of

---

<sup>122</sup> R. Ahearn, 'Morocco-US Free Trade Agreement', *Congressional Research Service*, [online] Available at: [www.fas.org/sgp/crs/mideast/RS21464.pdf](http://www.fas.org/sgp/crs/mideast/RS21464.pdf), 26 May 2005, Accessed on 4 July 2005.

<sup>123</sup> Media Release, July 29, 2005, <http://www.arso.org/SADRoilaandgasBaraka.htm>.

<sup>124</sup> Available at:

[http://www.ustr.gov/assets/Trade\\_Agreements/Bilateral/Morocco\\_FTA/FInal\\_Text/asset\\_upload\\_file948\\_3836.pdf](http://www.ustr.gov/assets/Trade_Agreements/Bilateral/Morocco_FTA/FInal_Text/asset_upload_file948_3836.pdf), p. 9-27 and 9-28, Accessed on 26 August 2005.

<sup>125</sup> Such actions are making New Zealand a leading importer of phosphates from Western Sahara. For a list of the shipments and the shipment information, refer to the Letter from Kamal

goods from Western Sahara as Moroccan goods, then it would be in breach of the duty of non-recognition of the acquisition of territory through the use of force. The US would also be in breach of the duty to recognize the right of self-determination by denying the Sahawaris their right to exercise self-determination.

### **B. *Opinio Juris***

The public statements from EU countries and actions differ from the collective EU statement, which in general merely supports the work of the UN. This is in contrast to EU policy with regards to the Arab-Israeli conflict where the EU took a very active role.<sup>126</sup> In contrast to its incorporation of the Western Sahara as the territory of Morocco in treaties, it has always taken a supportive role for the work of the UN and the Sahawaris' right to self-determination.<sup>127</sup> In March 1995, the European Parliament 'called on the Moroccan Government to honor its commitments for implementing the Western Sahara peace plan.'<sup>128</sup>

Their individual public statements however diverge greatly. The UK confirmed that it does not recognize Moroccan sovereignty over Western Sahara. Mr. Hain, UK Foreign and Commonwealth Affairs, stated that, 'We [UK] recognize the right of the people to self-determination over their own future and will continue to support international efforts to achieve a just and durable solution

---

Fadel, Polisario Representative to Global Peace and Justice, 24 July 2005, [online] Available at: <http://gpja.pl.net/?q=node/391>, Accessed on 26 August 2005.

<sup>126</sup> Vaquer, J, 'Assessing Europeanisation: Spain and EC-Morocco Fisheries Negotiations', *Fifth Biennial ECSA Canada Conference*, Toronto, 30 May- 1 June 2002.

<sup>127</sup> European Union. 'EU Common Foreign and Security Policy', *Bulletin EU*, 12- 1988.

<sup>128</sup> European Parliament Fact Sheets: Southern and Eastern Mediterranean countries: Maghreb and Mashreq 6.3.6, [online] Available at: [http://www.europarl.eu.int/factsheets/6\\_3\\_6\\_en.htm](http://www.europarl.eu.int/factsheets/6_3_6_en.htm), 12 January 2000, Accessed 4 June 2005.

in the territory.<sup>129</sup> Bradshaw, UK Foreign and Commonwealth Affairs, declared that the UK does not recognize Moroccan sovereignty over Western Sahara and supports the work of the UN.<sup>130</sup>

The French have abstained in UN votes for resolutions calling for direct talks between Morocco and the Polisario and a referendum.<sup>131</sup> In 2001, President Chirac went as far as to refer to the Western Sahara as ‘the provinces of South Morocco’ in an official visit to Rabat.<sup>132</sup> Whether this statement amounts to de facto recognition is unclear, however, it is a statement from the Head of State which is contrary to international law.

### **C. Assessment**

In this case, States appeared to feel they were under an obligation of non-recognition of Moroccan sovereignty over Western Sahara and all appeared to recognize the right of the Sahawaris to self-determination. Yet the EU continued to enter into treaties which implied recognition of Moroccan sovereignty over East Timor. Such recognition erodes the effectiveness of the Doctrine and undermines the ability of the Sahwaris to exercise their right of self-determination

---

<sup>129</sup> Statement by Peter Hain in ‘House of Commons Hansard Written Answers for 8 November 2000: Western Sahara’, [online] Available at: <http://www.parliament.uk/index/index.cfm>, Accessed 4 June 2005.

<sup>130</sup> Bradshaw declares that, ‘The Government does not recognize Morocco’s annexation of Western Sahara. The UK fully supports the efforts of the United Nations Secretary General, his Personal Envoy, James Baker and the United Nations Mission for the Referendum in Western Sahara (MINURSO) in finding a just and lasting solution to this issue.’ Statement by Bradshaw in “House of Commons Hansard Written Answers for 5 July 2002: Western Sahara”, [online] Available at: <http://www.parliament.uk/index/index.cfm>, Accessed on 2 May 2005.

<sup>131</sup> J. Vaquer i Fanes, ‘The European Union and Western Sahara’, *European Foreign Affairs Review*, Vol. 9, No. 1, Spring 2004, pp. 93-113.

<sup>132</sup> Y. Zoubir and K Benabdallah- Gambier, ‘Western Sahara Deadlock’, MER227, *Middle East Report*, Summer 2003.

and by recognizing Moroccan sovereignty over Western Sahara, exploits their resources. As Drew concludes...to provide a people a right of self-determination without its substantive entitlements, such as to natural resources, would render the declaration of self-determination meaningless.<sup>133</sup>

Thus, such actions are undermining the right to self-determination even if stated positions uphold the right and also render the Doctrine ineffective by diverging from it to attain political or economic gain.

Similar to the East Timor Case, the States' actions were influenced by Morocco's strategic and political importance in the international community compared to seemingly weak and extremist Sahawaris. Allowing such political and economic considerations to influence the exercise of the Doctrine will render it ineffective.

---

<sup>133</sup> Drew, 2001.

### *I. Background*

After the collapse of the Ottoman Empire, Britain gained the League of Nations Mandates in Palestine and, in April 1920, was assigned Mandatory Power. In 1916, British Commissioner in Egypt Sir Henry McMahon promised independence for the former Ottoman Arab province but, simultaneously, Britain and France were dividing the region in a secret Sykes-Picot Agreement. In 1917, the British Foreign Minister Arthur Balfour committed Britain to ‘the establishment in Palestine of a national home for the Jews in a letter known as the Balfour Declaration.’<sup>134</sup> Similar to other conflicts, Britain as the colonial power, handed over the problem to the UN in 1947. In May 1948, the State of Israel was declared and subsequently recognized.

During the Six Day War of 1967, the West Bank, the Gaza Strip, Golan Heights, Sinai Peninsula and Suez Canal were all acquired by Israel. The Suez Canal was nationalized in 1957 and, in 1978, the Sinai Peninsula was returned to Egypt as a result of the Camp David Accords.

Similar to Indonesia and Morocco, Israel extended its national legislation to Jerusalem. Israel considers the West Bank and Gaza strip as not ‘technically occupied as they were never part of the sovereign territory of any state’<sup>135</sup> which

---

<sup>134</sup> Balfour Declaration 1917, *The Avalon Project at Yale Law School*, [online] Available at: <http://www.yale.edu/lawweb/avalon/mideast/balfour.htm>, Accessed on 21 June 2005.

<sup>135</sup> ‘Palestine, Israel and the Arab-Israeli Conflict: A Primer’, *The Middle East Research and Information Project*, Available at: [http://www.merip.org/palestine-israel\\_primer/toc-pal-ist-primer.html](http://www.merip.org/palestine-israel_primer/toc-pal-ist-primer.html), Accessed on 1 July, 2005.

is a position rejected by the international community.<sup>136</sup> In the 1967 war, the SC adopted Resolution 242 which noted the ‘inadmissibly of the acquisition of territory by force’ and called for the withdrawal of Israeli armed forces from territories.<sup>137</sup> The resolution does not mention the Palestinian right to self-determination but the ICJ Advisory Opinion on the *Wall* re-affirms the right of the Palestinians to self-determination.

Similar to the East Timor and Western Sahara cases, the conflict has involved resources, particularly land and water. While the conflict has never been resolved, presently, Israel is withdrawing its troops and settlers from the Gaza Strip.

## *II. Assessing Recognition*

### **A. State Practice**

#### 1) EU-Israel Association Agreement

From the mid-1960s the EU and Israel have entered into trade agreements and since that time Israel has been labeling goods produced in the occupied territories and exported to the EU as ‘made in Israel’ so the goods can receive preferential trade status.<sup>138</sup> The EU believes this issue revolves around a misunderstanding surrounding the territorial clause. The EU position on the

---

<sup>136</sup> SC Resolution 242 of 22 November 1967.

<sup>137</sup> *Ibid.*, 1967, ‘Withdrawal of Israeli armed forces from territories occupied in the recent conflict... termination of all claims or states of belligerency and respect for and acknowledgement of the sovereignty, territorial integrity and political independence of every state in the area and their right to live in peace within secure and recognized boundaries free from threats or acts of force.’

<sup>138</sup> ‘It is now confirmed that Israel issues proof of origin for products coming from places brought under Israeli administration since 1967...’ from European Union, ‘Imports from Israel into the Community’, *EN Official Journal of the European Communities*, 23 November 2001. N. Tocci, ‘The Widening Gap between Rhetoric and Reality in EU Policy towards the Israeli-Palestinian Conflict’, *CEPS Working Document*, No. 217, January 2005.

‘territory of Israel’ applies only to the internationally recognized borders of the State of Israel in accordance with the relevant SC resolutions.<sup>139</sup> Israel interprets the reference to Israel in the territorial clause as accordance to national law and issues certificates accordingly.<sup>140</sup> This interpretation is contrary to international law which does not recognize the acquisition of territorial sovereignty through the use of force.

Despite evidence of Israel’s policy, the EU has been slow to react to reconcile this problem. In 1997, a First Notice to Importers stated that the importers would be liable for duty recovery.<sup>141</sup> In 1998, a mission to Israel confirmed that Israel was in breach of the origin rules.<sup>142</sup> In August 2000, the Commission proceeded on a first round of verifications of Israeli consignments. In November 2001, a Second Notice to Importers was released warning that admitting settlement products with preferential treatment into the EU might cause a customs debt.<sup>143</sup> Member States proceeded in an ad hoc and inefficient duty recovery in response to the failure of the EU to act.<sup>144</sup>

---

<sup>139</sup> Question of MEP Louisa Morgantini (GUE/NGL) to the Council (H-0017/00), Subject: Products Imported from Israel possible violations of origin rules, 6 January 2000.

<sup>140</sup> European Parliament Oral Question by Louisa Morgantini To the Council, Subject: Irregular Application of the EC-Israel Agreement, 8 September 2000.

<sup>141</sup> Notice to Importers, *Importations from Israel into the Community*, OJ C338, 8 November 1997.

<sup>142</sup> European Union, The Commission Mission Report of 30 September 1998 based on a visit of the directorates of External Relations, Tax and Customs and Agriculture to Israel and the Palestinian Territories, 14-20 September 1998.

<sup>143</sup> Notice to Importers published on 23 November 2001, *Imports from Israel into the Community*, OJ C328, p. 6. ‘Community operators presenting documentary evidence of origin with a view to securing preferential treatment for products originating from Israeli settlements in the West Bank, Gaza Strip, East Jerusalem and the Golan Heights, are informed that they must take all the necessary precautions and that putting the goods in free circulation may give rise to a customs debt.’

<sup>144</sup> *Yediot Ahranoth*, 4 February 2002.



In November 2004, the EU internally agreed on a technical arrangement where products from the occupied territories would continue to be labeled as coming from Israel but it would include the originating city so customs officials could distinguish settlement products and subsequently apply a tariff to them.

While this agreement might solve the administrative burden of the EU, it does not reconcile the problem. Moreover, further application of the agreement might cause the EU to lose its right to object to further violations of the Agreement or require reconciliation of the problem by persistently failing to act or by taking an action that implied recognition of the other State's improper practice.<sup>145</sup> In other words, the EU could not object to legal effects and practical consequences that it may have failed to consider. Thus, the EU is undermining its right to fulfill its obligation of non-recognition in the future. In order to temporarily avoid these issues, the EU has clarified that the Arrangement is not legally binding.

## **B. Opinio Juris**

EU policy with regard to the occupied territories is the following: It 're-affirms once more its position that the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War is fully applicable to the Palestinian Occupied Territories, including East Jerusalem, and constitutes

---

<sup>145</sup> Could result in the EU's legal acquiescence where the EU would lose its ability to further object to Israel's malpractice with regard to the Agreement, Israel's maintaining that practice in agreements with other States, the failure of other countries to oppose Israel's practice and the EU could not prevent other countries from allowing settlement materials to be cumulated with their own production and then preferentially exported to the EU. 'Briefing Paper: Annex I: Review of Recent Developments: "EU-Israel bilateral issue of Rules of Origin"', *MATTIN Group*, September 2005.

binding international humanitarian law, vital for ensuring that protection of civilians is afforded in all circumstances'<sup>146</sup> and the EU denounces the settlements in the occupied territories. That such a statement is made, while it continues to permit Israeli illegal application of the EU-Israeli Association Agreement, is particularly disconcerting and helps to maintain the illegal settlements.

### **C. Assessment**

Any assistance to the maintenance of settlements in the occupied territories is in contravention to the member States of the EU's obligations arising from the ICJ Advisory Opinion on the *Wall*, SC Resolutions and the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War 12 August 1949 (hereafter the Convention) which has crystallized into custom.<sup>147</sup> The ICJ Advisory Opinion, *Interpretation of the Agreement of 25 March 1951*

---

<sup>146</sup> Statement by Ambassador Joaquin Perez- Villanueva Y Tovar, 'EU Presidency Statement- Commission on Human Rights: Middle East,' [online] Available at: [http://europa-eu.un.org/articles/fr/article\\_1291\\_fr.htm](http://europa-eu.un.org/articles/fr/article_1291_fr.htm), 30 March 2002, Accessed on 3 May 2005.

<sup>147</sup> The Judgment of the Court of First Instance (Third Chamber): Action for annulment- Importation of television sets from Turkey- EEC-Turkey Association Agreement- Article 3(1) of the Additional Protocol- Compensatory levy- Article 13(1) of Regulation (EEC) No 1430/79 para. 272 states that, 'The existence of such tensions does not exonerate the Commission as guardian of the Treaty and of the agreements concluded under it from ensuring the correct implementation by a third country of the obligations it has contracted to fulfill under an agreement concluded with the Community, using the means provided for by the agreement or by the decisions taken pursuant thereto. If, as a result of tensions, it is unable to meet that obligation, *inter alia* because the means at its disposal prove to be inoperative or ineffective, it is incumbent upon it, at the very least, to inform the Member States as soon as possible of the measures to be taken to prevent the damage to the Community and Community traders. In no case can the Commission use its exclusive authority as regards the recovery and remission of import duties to remedy the failures in the implementation of an agreement concluded between the Community and a third country.'

*between the WHO and Egypt* held that international organizations are bound by customary international law.<sup>148</sup>

The EU, by allowing Israel to import goods from the occupied territories as part of Israel is according political legitimacy and enabling continued resources to maintain the settlements. Thus they are acting in breach of their obligation not to recognize settlements.

There also exists a contradiction between the EU's stated position which upholds the Convention and the right of self-determination, but in its actions seeks to undermine this right. The implication, then, is that the EU by its actions is possibly weakening the Doctrine's ability to strengthen the right of self-determination.

Even, the EU's reasoning for inability to reconcile this problem being due to tensions in relations was not found in an earlier judgment by the Court of First Instance to be sufficient to validate inaction.<sup>149</sup>

---

<sup>148</sup> *Interpretation of the Agreement of 25 March 1951 between the WHO and Egypt (Advisory Opinion)* [1980] ICJ Rep 73, at 89 states that 'international organizations are subjects of international law and, as such, are bound by any obligations incumbent upon them under general rules of international law, under their constitutions or under international agreements to which they are parties.'

<sup>149</sup> The Judgment of the Court of First Instance (Third Chamber): Action for annulment- Importation of television sets from Turkey- EEC-Turkey Association Agreement- Article 3(1) of the Additional Protocol- Compensatory levy- Article 13(1) of Regulation (EEC) No 1430/79- Remission of import duty not justified Rights of the Defence found that tensions in relations between the Community and the other state does not validate lack of action.

The doctrine of non-recognition has an important function to play in a legal system where enforcement of the law is difficult and where there 'is a natural tendency to regard successful breaches of the law as a source of legal right.'<sup>150</sup> The duty of non-recognition is a continuous challenge, by the international community or by individual States, to a legal wrong. Such a challenge is particularly imperative in an international legal system, whereby an international court lacks the authorization to decide questions relating to the legality of the conduct of States. In its absence, States have the jurisdiction to pass judgment upon the legality of the action of other States.<sup>151</sup>

Recognition, on the other hand, by a State or the International community, can through a 'quasi-legislative act, give legal force to a situation which is in the eyes of the law a mere nullity.'<sup>152</sup> Lauterpacht believes that a possibility must exist to disregard the effects of an illegality in certain circumstances in order to render the legal system flexible, such as when the 'obligation of recognition may not be conducive to the general good.'<sup>153</sup> Lauterpacht comes to this conclusion is because he believes law to be a product of social reality and if this option did not exist then law would fall short of reality.

However, in the cases referred to in the previous section, the act of recognition accorded by third States was not to make the system more compatible

---

<sup>150</sup> Lauterpacht, p. 430.

<sup>151</sup> *Ibid.*, p. 413.

<sup>152</sup> *Ibid.*, p. 429.

<sup>153</sup> *Ibid.*, 1947, p.429.

with international peace and progress but for personal strategic and economic gain. In these cases even Lauterpacht admits such action is questionable.

When they (the facts) are unlawful, and in particular when their illegality consists in acts of aggression against the very life of other members of the community in deliberate disregard of fundamental legal obligations of conduct, a heavy and most responsible burden of proof falls upon those embarking upon the legalization of the effects of legality.<sup>154</sup>

Further, in cases where a right of self-determination exists, the obligation of recognition plays a particularly important function by not allowing a State to gain from the illegal action particularly when the voice of the people is too weak to be sufficiently coercive.

The major shortcomings of the Doctrine have led to its ineffectiveness in fulfilling this function. Its lack of enforcement power and lack of clarity in delineating the specific elements of the Doctrine lead states to apply it in an ad-hoc way. States were also allowed to get away with upholding the Doctrine and the right of self-determination in statements while violating it in practice to achieve short-term economic and political gains. There needs to be a codification of the elements and the UN should create an ad-hoc committee for all non-self governing territories to ensure that the Doctrine is upheld like in the Namibia case.

Also the Doctrine was not applied in a consistent manner by all States leading to its ineffectiveness. The Doctrine was more effective in the Namibia case because it was applied in a more consistent and uniform manner. Although, the Doctrine was upheld in most public statements, it was breached in many bilateral agreements. The EU/ Morocco Fisheries and the EU/ Israeli Association

---

<sup>154</sup> *Ibid.*, p. 430.

agreements, the public statements in the East Timor case, and quite possibly the US/ Morocco FTA, while not as manifest as the Timor Gap Treaty, are all in breach of the principles of non-recognition and self-determination as they imply recognition.

As illustrated in the framework section, bilateral agreements between third States and the dispossessing Power involving illegally acquired territory is contrary to the doctrine of recognition. Territorial clauses and rules of origin must firmly and explicitly not include territories that have been illegally acquired. At the very least, Article 3(1(b)) of the territorial clause in the Double Taxation agreement between Belgium and Indonesia can serve as an example.

the term ‘Indonesia’ comprises the territory of the Republic of Indonesia and 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* [emphasis added].<sup>155</sup>

Without clear territorial clauses, Occupying Powers can use bilateral agreements to undermine sovereignty and the right of self-determination and exploit the natural resources of the non-self governing territory. Morocco in the US/ Morocco FTA could try to act in the same manner as Israel did in the EU/ Israeli Association Agreement by applying the FTA to products originating in the Western Sahara.

When such illegalities occur, States need to take swift action. In the Moroccan case, Norway took a pro-active approach to the exploitation of natural resources by foreign companies in Western Sahara. The Norwegian Ministry of Finance decided that Norway’s Petroleum Fund would divest from Kerr-McGee

---

<sup>155</sup> Appendices from ‘Counter Memorial of the Government of Australia’ in *East Timor (Portugal v. Australia) (Advisory Opinion)* [1995], ICJ Rep 90, p. 213.

Corporation because it was ‘found that Kerr McGee through its exploration activities most likely will enable Morocco to exploit petroleum resources in the area.’<sup>156</sup> Yara International, a leader in fertilizers, was illegally importing phosphates from Western Sahara. Yara’s biggest shareholder, the Norwegian Ministry of Trade and Industry, urged the company to restrain its trade and investments in natural resources of Western Sahara and denounced resource exploitation in occupied territory.<sup>157</sup> In the Arab/Israeli Case, Italian customs acted unilaterally and imposed duties on all imports from Israel until their origin was verified.<sup>158</sup>

The cases illustrated that the third States believed that international law could be breached to allow for political considerations. Many of the third States allowed for such illegalities to take place, as they did not want to be an inhibiting factor in the broader peace process. Such complacency illustrates that law cannot be completely divorced from the political realm in an international legal system where States serve a legislative function.

Political considerations were also an explanatory factor for the inconsistency of actions taken by the international community in light of the illegal acquisition of territory. All of the cases involved Western allies as occupiers, which might be an explanatory factor in why third States were slow to condemn these powers and allowed the illegal acquisition of territory. Iraq’s

---

<sup>156</sup> Ministry of Finance, *Company Excluded from the Government Petroleum Fund*, Press Release 38/205 (6 June 2005). In the Recommendations of the Petroleum Fund’s Council of Ethics it was also concluded that, ‘it seems clear that the economic activities of Kerr-McGee off shore Western Sahara, on behalf of Morocco, contribute to a possible strengthening of Morocco’s sovereignty claims regarding the territory.’

<sup>157</sup> Staff Writers, “Major Phosphate Trader Out of Western Sahara”, *Afrol News*, 8 July 2005.

<sup>158</sup> *Yediot Ahranoth*, 04 February 2002.

annexation of Kuwait was quickly condemned and States moved feverishly to reverse the acquisition.

Economic considerations also played a strong role on the actions of third States. All third states seemed to know their actions amounted to legal wrongs; yet their desire to extract the wealth from the occupied territories trumped their desire to uphold legal principles. They seemed to realize that when their illegal recognition was revealed, it would be too late for condemnation and the resources would have already been exploited. This could be the reason why the territorial clauses were defined so vaguely.

The international community needs to uphold international law particularly in the cases of non-self governing territories because the people in these territories are often too weak to take action against resource exploitation and to ensure their rights are respected. By the time Indonesia withdrew and East Timor gained independence much of its resources had been exploited and its land destroyed making it one of the poorest countries. The international system needs to be ruled by justice to earn respect, not the strength of the most powerful.



## CONCLUSION

---

The principle of non-recognition, when correctly and consistently implemented, can help prevent such occurrences as those in the case studies and provide support for peoples to exercise their right of self-determination. Non-recognition can lessen the economic and political benefits derived and if consistent, act as a deterrent to future forceful occupations due to known consequences. Unfortunately, the principle now is too easily swept away in light of political and economic considerations. The contradictions that exist between a State's practice and stated position might allow them to preserve a legal position that an inchoate title is illegal but it also undermines the right of self-determination and the effectiveness of the doctrine of non-recognition.

In order to prevent this, steps should be taken by the international community to codify the principle and a UN committee should be elected to ensure that the Doctrine is upheld, especially in non-self governing territories where such support could be a determining factor in the ability to exercise their right of self-determination. In view of the current international legal system, ensuring compliance may have to result from a united international pressure brought from concerned nations. Further, the Doctrine must be upheld correctly and consistently by all States all of the time with exceptions only made for extenuating circumstances. States should only enter into agreements with the dispossessing Power when the territorial clauses are defined to explicitly exclude the dispossessed Power's territory. When there is a breach in the principle, they should even act unilaterally like Norway to prevent it. Finally, political and

economic reasons should never be permissible for diverging from these legal principles; otherwise they would be rendered ineffective.

## BIBLIOGRAPHY

---

### Official Documents and Reports:

Ambassador J. Perez- Villanueva y Tovar, 'EU Presidency Statement-Commission on Human Rights: Middle East,' [online] Available at: [http://europa.eu.un.org/articles/fr/article\\_1291\\_fr.htm](http://europa.eu.un.org/articles/fr/article_1291_fr.htm), 30 March 2002, Accessed on 3 May 2005.

Council Decision. 'The Conclusion of An Agreement in the Form of an Exchange of Letters Concerning the Provisional Application of the Agreement on Cooperation in the Sea Fisheries Sector Between the European Community and the Kingdom of Morocco initiated in Brussels on 13 November 1995. *Official Journal*. Vol. 38 No. 1 306/1. 19 December 1995.

European Parliament Resolution on the Negotiations for an EC-Morocco Fisheries Agreement. *EUROPARL*. B5-0823/2000. 23 October 2000.

European Union. 'EU Common Foreign and Security Policy'. *Bulletin EU*. 12-1988.

European Union. 'Imports from Israel into the Community', *EN Official Journal of the European Communities*. 23 November 2001.

European Union. The Commission Mission Report of 30 September 1998 based on a visit of the directorates of External Relations, Tax and Customs and Agriculture to Israel and the Palestinian Territories. 14-20 September 1998.

Extract from the Report of the International Law Commission on the work of its Fifty-third Session. *Official Records of the General Assembly, Fifty-third session, Supplement No. 10 (A/56/10)*. chp.IV.E.1.

H. Corell. Letter to Legal Affairs, the Legal Counsel, addressed to the President of the Security Council. UN Doc. S/2002/161. 12 February 2002.

H. Stimson. Letter to Ambassador in Japan. *League of Nations Official Journal*. Special Suppl. No. 101. 155.

Ministry of Finance. *Company Excluded from the Government Petroleum Fund*. Press Release 38/205 (6 June 2005).

Kamal Fadel. Letter to Global Peace and Justice. 24 July 2005. [online] Available at: <http://gpja.pl.net/?q=node/391>. Accessed on 3 August 2005.

Louisa Morgantini. European Parliament Oral Question to the Council, Subject: Irregular Application of the EC-Israel Agreement, 8 September 2000.

MATTIN Group. 'Briefing Paper: Annex I: Review of Recent Developments: "EU-Israel bilateral issue of Rules of Origin"'. September 2005.

Minutes from European Parliament Resolution on Western Sahara. *EUROPARL*, B5-0246, 0253, 0262, 0272 and 0278/2000. 16 March 2000.

Notice to Importers. *Importations from Israel into the Community*. OJ C338. 8 November 1997.

Peter Hain. Statement in 'House of Commons Hansard Written Answers for 8 November 2000: Western Sahara'. [online] Available at: <http://www.parliament.uk/index/index.cfm>. Accessed on 2 May 2005.

'Palestine, Israel and the Arab-Israeli Conflict: A Primer'. *The Middle East Research and Information Project*. [online] Available at: [http://www.merip.org/palestine-israel\\_primer/toc-pal-isr-primer.html](http://www.merip.org/palestine-israel_primer/toc-pal-isr-primer.html). Accessed on 25 July 2005.

Secretary of State for External Affairs. Canadian Governmental Replies to Interpellations in the House of Commons in 1991 and 1992. 18 September 1991.

United Kingdom- House of Lords, Official Report, Parliamentary Debates, Unstarred Question- Indonesia: Aid and Human Rights, 16 July 1992.

Written Ministerial Statement by John Healey MP, Economic Secretary Duty on Goods Imported into the European Union which originate from Israeli Settlements in the Occupied Territories, *Official Report*, column 68WS, 3 April 2003.

### **Treaties:**

Anti-war Treaty of Non-aggression and Conciliation 1933 in Department of State Publication 8484. *Treaties and Other International Agreements of the United States of America 1776-1949*. Vol. 3. (Washington DC, 1969).

Balfour Declaration 1917. *The Avalon Project at Yale Law School*. [online] Available at: <http://www.yale.edu/lawweb/avalon/mideast/balfour.htm>. Accessed on 21 June 2005.

Charter of the Organization of American States. *A Decade of American Foreign Policy: Basic Documents, 1941-49* (Washington DC, 1950).

Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in Accordance with the Charter of the United Nations in M. Evans, *Blackstone's International Law Documents*, 6<sup>th</sup> edn (Oxford, 2003).

Council Decision, 'The Conclusion of An Agreement in the Form of an Exchange of Letters Concerning the Provisional Application of the Agreement on Cooperation in the Sea Fisheries Sector Between the European Community and the Kingdom of Morocco initiated in Brussels on 13 November 1995', *Official Journal*. Vol. 38 No. 1 306/1. 19 December 1995.

International Covenant of Economic, Social and Cultural Rights and the International Covenant on Civil Political Rights, 19 December 1966.

Montevideo Convention on Rights and Duties of States 1933 in Department of State. *Treaties and Other International Agreements of the United States of America 1776-1949*, Vol. 3. (Washington DC, 1969).

Statute of the International Court of Justice (1945) in M. Evans. *Blackstone's International Law Documents*. 6<sup>th</sup> edn (Oxford, 2003).

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. *Australian Treaty Series 1991*. No. 9. Department of Foreign Affairs and Trade. Canberra. 1995.

#### **Cases:**

*Asylum Case (Columbia v. Peru) (Merits)* [1950] ICJ Rep. 266.

*Anglo-Norwegian Fisheries Case (England v. Norway) (Merits)* [1951] ICJ Rep.116 1951.

*North Sea Continental Shelf Case (Federal Republic of Germany v. Denmark; Federal Republic of Germany v. Netherlands)(Merits)* [1969] ICJ Rep. 3.

*Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America) (Merits)* [1984] ICJ Rep. 14.

*Legal Consequences of the Construction of the Wall in Palestinian Occupied Territory (Advisory Opinion)*[2004] ICJ Rep. 131.

*East Timor (Portugal v. Australia) (Judgment)* [1995] ICJ Rep 90.

*Legal Consequences for States of the Continued Presence of South Africa in Namibia (South-West Africa) notwithstanding Security Council Resolution 276 (1970) (Advisory Opinion)* [1971] I.C.J. Reports 1.

*Interpretation of the Agreement of 25 March 1951 between the WHO and Egypt (Advisory Opinion)* [1980] ICJ Rep 73.

Judgment of the Court of First Instance (Third Chamber). *Action for annulment-Importation of television sets from Turkey- EEC-Turkey Association Agreement- Article 3(1) of the Additional Protocol- Compensatory levy- Article 13(1) of Regulation (EEC)*. No 1430/79.

## **United Nations Resolutions:**

### Security Council

SC Resolution 242 of 22 November 1967.  
SC Council Resolution 267 of 3 March 1969.  
SC Resolution 301 of 20 October 1971.  
SC Resolution 377 of 22 October 1975.  
SC Resolution 379 of 2 November 1975.  
SC Resolutions 384 of 22 December 1975.  
SC Resolution 389 of 22 April 1976.  
SC Resolution 907 of 29 March 1994.

### General Assembly

GA Resolution 1514(XV) of 14 December 1960.  
GA Resolution 1803 (XXVII) of 14 December 1962.  
GA Resolution 2871 of 29 November 1971.  
GA Resolution 2973 of 14 December 1972.  
GA Resolution 3458(XXX) of 10 December 1975.  
GA Resolution 3845(XXX) of 12 December 1975.  
GA Resolution 31/53 of 1 December 1976.  
GA Resolution 33/39 of 13 December 1978.

## **State Practice Digests**

I. Brownlie and D. Bowett, eds., *British Yearbook of International Law*. Vol. 53. 1982.

D. W. Greig, *The Australian Year Book of International Law 1974-1975* (Canberra, 1978).

United States Department of State, *Digest of United States Practice in International Law 1973*, 1974.

United States Department of State, *Digest of United States Practice in International Law 1974*, 1975.

United States Department of State, *Digest of United States Practice in International Law 1975*, 1976.

**Books and Articles:**

A. Cassese. *Self-Determination of Peoples: A Legal Reappraisal* (Cambridge, 1995).

A. Cassese. 'Powers and Duties of an Occupant in Relation to Land and Natural Resources' in E. Playfair. eds. *International Law and the Administration of Occupied Territories: Two Decades of Israeli Occupation of the West Bank and Gaza Strip* (Oxford, 1992).

A. Day, *Border and Territorial Disputes* (Essex, 1982).

A. Gerson. *Israel, The West Bank and International Law* (London, 1978).

A. Karmous, 'Les Ressources Natruelles d'un Territoire Non Autonome: le Sahara Occidental'. *France Libertes*. 21 May 2001.

A. McNair. *Legal Effects of War*. Second Edition (Cambridge, 1944).

A. Maoz. 'Application Of Israeli Law To The Golan Heights Is Annexation'. *Brooklyn Journal of International Law*. Vol. 20. 1994. pp. 355- 396.

Aprodev Working Group on the Middle East. 'The European Union- Israel Association Agreement: An Introduction'. *Aprodev* (March 2002).

A. Roberts. 'What is military occupation?'. *British Yearbook of International Law*. Vol. 55. 1984. pp. 249- 306.

A. Roberts. 'Prolonged Military Occupation: The Israeli-Occupied Territories 1967-1988' in E. Playfair (eds.). *International Law and the Administration of Occupied Territories: Two Decades of Israeli Occupation of the West Bank and Gaza Strip* (Oxford, 1992).

C. Chinkin. 'Australia and East Timor in International Law' in International Platform of Jurists for East Timor. eds. *International Law and the Question of East Timor* (London, 1995).

C. Drew. 'The East Timor Story: International Law on Trial'. *European Journal of International Law*. Vol. 12. No. 4. 2001. pp. 651-684.

C. Hauswaldt. 'Problems under the EC- Israel Association Agreement: The Export of Goods Produced in the West Bank and the Gaza Strip under the EC-

Israel Association Agreement'. *European Journal of International Law*. Vol. 14. No. 3. June 2003. pp. 591-612.

C. Saunders. 'The Transitions for Apartheid to Democracy in Namibia and South Africa in the Context for Decolonization'. *Journal of Colonialism and Colonial History*. Vol. 1 No 1. Fall 2000.

C. Symmons. 'The Role of Recognition in Instances of Denial of Self-Determination in the Light of East Timor Case: Positive and Negative Duties on Third States in International Law' in International Platform of Jurists for East Timor (eds.). *The East Timor Problem and the Role of Europe* (Dublin, 1996).

C. Symmons. 'The International Recognition Position Regarding the Purported Incorporation of East Timor into Indonesia' in International Platform of Jurists for East Timor (eds.). *The East Timor Problem and the Role of Europe* (Dublin, 1996).

C. Warbrick. 'States and Recognition in International Law' in M.D. Evans (eds.). *International Law* (Oxford, 2003).

E. Molenaar. 'Western Sahara and Netherlands Fishing Activity'. *Netherlands Institute for the Law of the Sea*, Draft Version, 8 October 2002.

Euro-Mediterranean Human Rights Network. 'A Human Rights Review on the EU and Israel- Relating Commitments to Auctions 2003-2004'. *EMHRN*, 2004

F. Ugboaja Ohaegbulam. 'Ethical Issues in US Policy on the Western Sahara Conflict'. *Mediterranean Policy*. Vol. 3. No. 2. 2002. pp. 88-115.

F. Rigaux. 'East Timor and Western Sahara: A Comparative View' in International Platform of Jurists for East Timor (eds.) *International Law and the Question of East Timor* (London, 1995).

G. Davison. 'Historical Reality and the Case of East Timor' in International Platform of Jurists for East Timor (eds.) *International Law and the Question of East Timor* (London, 1995).

G. Simpson. 'The Diffusion of Sovereignty: Self-Determination in the Postcolonial Age'. *Stanford Journal of International Law*. Vol. 32, 1996, pp. 255-286.

G. Simpson. 'The politics of self-determination in the case concerning East Timor' in International Platform of Jurists for East Timor (eds.) *International Law and the Question of East Timor* (London, 1995).

H. Lauterpacht. *Recognition in International Law* (Great Britain, 1947).



- I. Brownlie. *International Law and the Use of Force by States* (Oxford, 1963).
- I. Matar. 'Exploitation of Land and Water Resources for Jewish Colonies in the Occupied Territories' in E. Playfair. *International Law and the Administration of Occupied Territories: Two Decades of Israeli Occupation of the West Bank and Gaza Strip* (Oxford, 1992).
- I. Scobbie. 'Natural Resources and Belligerent Occupation' in S. Bowen. *Human Rights, Self-Determination and Political Change in the Occupied Territories* (Leiden, 1997).
- I. Scobbie. 'Smoke, Mirrors and Killer Whales: the International Court's Opinion on the Israeli Barrier Wall'. *German Law Journal*. Vol. 5. No. 9. 2004. pp. 1107-1131.
- J. Castellano. *Title to Territory in International Law* (Ashgate, 2002).
- J. Corntassel and T. Primeau. 'Indigenous "Sovereignty" and International Law: Revised Strategies for Pursuing "Self-Determination"'. *Human Rights Quarterly*. Vol. 17. No. 2. 1995. pp. 343-365.
- J. Crawford. *Creation of States in International Law* (Oxford, 1979).
- J. Crawford. 'The Creation of the State of Palestine: Too Much Too Soon?'. *European Journal of International Law*. Vol. 1. No. 1. 1990. pp. 307-313.
- J. Crawford. 'Israel (1948-1949) and Palestine (1998-1999): Two Studies in the Creation of States' in G. Goodwin-Gill and S. Talmon (eds.) *The Reality of International Law: Essays In Honour of Ian Brownlie*. (Oxford, 1999).
- J. Crawford. *The International Law Commission's Articles on State Responsibility, Introduction, Text and Commentaries* (Cambridge, 2002).
- J. Damis. *Conflict in North West Africa: The Western Sahara Dispute* (Stanford, 1983).
- J. Dugard. *The South-Africa- Namibia Dispute: Documents and Scholarly Writings on the Controversy between South Africa and the United Nations* (Berkeley, 1973).
- J. Dugard. *Recognition and the United Nations* (Cambridge, 1987).
- J. Dugard. *South West Africa and the International Court : two viewpoints on the 1971 advisory opinion* (Johannesburg, 1975).

- JP Fonteyne. 'The Portuguese Timor Gap Litigation Before The International Court of Justice: A Brief Appraisal of Australia's Position'. *Australian Journal of International Affairs*. Vol. 45. No. 2. November 1991. pp. 170- 181.
- J. Jackson. 'Sovereignty-Modern: A New Approach to an Outdated Concept'. *American Journal of International Law*. Vol. 97. No. 4. Oct. 2003. pp 782-802.
- J. Prescott. *Boundaries and Frontiers* (London, 1978).
- J. Ruiz. 'El Acuerdo Persquero CEE-Reino de Marruecos de 25 Febrero de 1988'. *Revista de Instituciones Europeas*. Vol. 15. No. 3. pp. 741-764.
- J. Stone. *Israel and Palestine: Assault on the Law of Nations* (Maryland, 1981).
- J. Taylor. 'Decolonisation, Independence and Invasion' in International Platform of Jurists for East Timor (eds.). *International Law and the Question of East Timor* (London, 1995).
- J. Trone. 'The Stimson Doctrine of Non-recognition of Territorial Conquest'. *University of Queensland Law Journal*. Vol. 19. 1996. pp. 160-4.
- J. Vaquer i Fanes. 'Assessing Europeanisation: Spain and EC-Morocco Fisheries Negotiations'. *Fifth Biennial ECSA Canada Conference*, Toronto 30 May- 1 June 2002.
- J. Vaquer i Fanes. 'The European Union and Western Sahara'. *European Foreign Affairs Review*. Vol. 9. No. 1. Spring 2004. pp. 93-113.
- J. Westlake. 'The Nature and Extent of the Title by Conquest'. *Law Quarterly Review*. Vol. 17. 1901. pp. 392-401.
- K. Yokota. 'The Recent Development of the Stimson Doctrine'. *Pacific Affairs*. Vol. 8. 1935. pp. 134-135.
- L. Hannikainen. *Peremptory Norms (Jus Cogens) in International Law: Historical Development, Criteria, Present Status* (Helsinki, 1988).
- L. Hannikainen. 'The Case of East Timor from the perspective of jus cogens' in International Platform of Jurists for East Timor (eds.) *International Law and the Question of East Timor* (London, 1995).
- L. Sheleff. 'Application Of Israel Law To The Golan Heights Is Not Annexation'. *Brooklyn Journal of International Law*. Vol. 20. 1994. pp. 333- 353.

L. Zemer and S. Pardo. 'An Alternative Euro-Israeli Dispute Resolution: Proposal for the "Rules of Origin" Saga' *Jean Monnet Working Papers in Comparative and International Politics*, December 2002.

M. McMahon. *Conquest and Modern International Law: The Legal Limitations on the Acquisition of Territory* (Washington DC, 1940).

M. Ragazzi. *The Concept of International Obligations Erga Omnes* (Oxford, 2000).

M. Shaw. *Title to Territory in Africa: International Legal Issues* (Oxford, 1986).

M. Zacher. 'The Territorial Integrity Norm: International Boundaries and the Use of Force'. *International Organization*. Vol. 55. No. 2. Spring 2001. pp. 215-250.

N. Hill. *Claims to Territory in International Law and Relations* (Oxford, 1945).

N. Tocci. 'The Widening Gap Between Rhetoric and Reality in EU Policy Towards the Israeli-Palestinian Conflict'. *CEPS Working Document*. No. 217. January 2005.

P. Corbett. *Law and Society in the Relations of States* (New York, 1951).

P. Walshe. *South Africa: A Test Case for the West* (London, 1980).

R. Ahearn. 'Morocco-US Free Trade Agreement'. *Congressional Research Service*. [online] [www.fas.org/sgp/crs/mideast/RS21464.pdf](http://www.fas.org/sgp/crs/mideast/RS21464.pdf). 26 May 2005.

R. Langer. *Seizure of Territory: The Stimson Doctrine and Related Principles in Legal Theory and Diplomatic Practice* (Princeton, 1947).

R. S. Clark. 'The "Decolonisation" of East Timor and the United Nations norms on self-determination and Aggression' in International Platform of Jurists for East Timor (eds.). *International Law and the Question of East Timor* (London, 1995).

R. S. Clark. 'The Substance of the East Timor Case in the ICJ' in International Platform of Jurists for East Timor (eds.) *International Law and the Question of East Timor* (London, 1995).

R. S. Clark. 'Obligations of Third States in the Face of Illegality- Ruminations Inspired by the Weeramantry Dissent in the Case Concerning East Timor' in A. Anghie and G. Sturgess (eds.). *Legal Visions of the 21<sup>st</sup> Century: Essays in Honour of Christopher Weeramantry* (Hague, 1998).

R.Y. Jennings. *Acquisition of Territory in International Law* (Manchester, 1963).

S.C. Saxena. *Namibia and the World: The Story of the Birth of a Nation* (Delhi, 1991).

S. Korman, *The Right of Conquest: The Acquisition of Territory by Force in International Law and Practice* (Oxford, 1996).

S. Sharma. *Territorial Acquisition, Disputes and International Law* (Hague, 1997).

S. Talmon. *Recognition of Governments in International Law: With Particular Reference to Governments in Exile* (Oxford, 1998).

T. Babulo. *La Historia Prohibida del Sahara Espanol* (Barcelona, 2002).

### **Newspapers and Periodicals:**

C. Miguel. 'Acerdo de pesca UE-Marruecos: se consuma la traicion de 1975', *El Seminal Digital*, 29 July 2005.

E. Byrne. 'Sardines and Sovereignty in Western Sahara'. *Reuters*. 13 January 2004.

Staff Writers. 'Morocco-EU Fisheries Deal Finally Renewed'. *afrol News*. 28 May 2005.

Staff Writers. 'Sahrawis Concerned Over EU-Morocco Fisheries Deal'. *afrol News*. 19 May 2005.

Staff Writers. 'Major Phosphate Trader out of Western Sahara'. *afrol News*. 8 July 2005

Staff Writers. 'Norwegian Industry to Exploit Sahrawi Fish Resources'. *afrol News*. 12 July 2005.

*Yediot Ahranoth*. 04 February 2002.