

A POPE, TWO PRESIDENTS AND A PRIME MINISTER

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The modern history—the tragic history—of the people of East Timor can be said to have begun in 1493. In that year the Borgia Pope, Alexander VI, was asked to rule on a conflict of jurisdiction that had arisen between the religious orders governed from Spain and Portugal over newly found mission territories in South America. The Pope drew a vertical north-south line on a map: to the east of that line the Portuguese orders would have exclusive jurisdiction; to the west, the Spanish orders.

In the following year, Spain and Portugal revised this line, without the help of the Pope, in the Treaty of Tordesillas, moving it further westward, to a point where it began to approximate the present day border between Brazil and Spanish-speaking America. It seemed to have been forgotten that the division began as one of ecclesiastical jurisdiction only. The Portuguese interpreted the Treaty (and the inferred Papal authority) as extending their general sovereign rights to the whole southern hemisphere east of the line.

So it was that in their exploration of the so-called East Indies (the present day South East Asia) the Portuguese claimed sovereignty not only over their settlements on land, but on the sea areas surrounding those settlements and as a consequence, the right to exclude other European nations from navigation and trade in the area. This brought them into conflict with the Dutch, and later the British, who were keen to participate in the lucrative trade in spices and timber.

This is not the place to recount the story—in any case well known—of how the Netherlands East Indies Company, which confronted the Portuguese in the so-called Spice Islands and surrounding seas, commissioned a brilliant young Dutch lawyer, named Hugo de Groot, to write an opinion for the company refuting the claims of the Portuguese, and supporting the legal and moral right of the company to trade in the East. The motivation of this brief was two-fold: to assuage the consciences of the shareholders that they did indeed have rights, that these were being unjustly denied, and that force might be used to vindicate them; and to engage, if possible, the interest of the Netherlands government in protecting the company. As everyone knows, the young Grotius published to the world what was originally a confidential opinion, to the embarrassment of

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the Netherlands government, which had in the meanwhile adopted different policies, under the title *De Mare Liberum*: "Of the Freedom of the Seas."

No doubt the people of East Timor, in the late 16th century when the Portuguese and the Dutch arrived, would have been bemused by these theological and legal debates. All they knew was that these Europeans were fighting for control of the land territory of the island of Timor, among many other islands. Both were invaders. Both were equally unwelcome.

We travel forward now to the late 19th century. The Portuguese had been largely repelled in Asia by the Dutch, the British, and the Spaniards, but retained small territories as trading posts in India (Goa), China (Macau), and—fatefully—East Timor. The Dutch occupied the western half of the island of Timor, which, together with the remainder of the Indonesian archipelago, constituted the Netherlands East Indies. This situation, which had existed since the late 16th century, continued with minor adjustments or rectifications of the border until 1949. A geographical anomaly was the Portuguese enclave of Oecussi on the northern coast of West Timor, but administered as part of East Timor from the capital of the colony, Dili.

In 1945, in the dying days of the Japanese occupation, an Indonesian Republic was proclaimed by Hatta and Soekarno. The Dutch, however, returned to their possessions and a bloody civil war ensued. This came to an end in December 1949, with the signing of the Roundtable Agreements between the Netherlands and Indonesia for independence. All parts of the former Netherlands East Indies were transferred to the sovereignty of the Republic of Indonesia, with the exception of West New Guinea. East Timor, in the meantime, had been ravaged under a Japanese occupation that took place notwithstanding the neutrality of Portugal during the Second World War. There was no move in 1949 to incorporate East Timor as part of Indonesia. Indonesia was content to leave Portugal in possession of this sleepy backwater of European empire.

It is of more than passing interest to compare, at this point, the status of East Timor with that of West New Guinea (now the Indonesian Province of Irian Jaya). East Timor was never part of the Netherlands East Indies, but its people were geographically, ethnically, and culturally (the last, at least, until the 20th century) part of the Indonesian archipelago. West New Guinea, by contrast, was not related geographically, ethnically, or culturally with Indonesia. Its administration as part of the Netherlands East Indies was purely a matter of convenience to the distant sovereign power. Nevertheless, Indonesia was determined to claim it, and a campaign against the Netherlands continued until 1962 when, after a temporary administration by the United Nations and the holding of a consultation with representatives of the people (the validity of which has been much debated), the territory was transferred to Indonesia.

It can now be understood why Indonesia did not campaign after 1949 for the incorporation of East Timor. West New Guinea was a far richer prize. The arguments for its incorporation stood or fell by the claim to succession to the entire territory of the Netherlands East Indies, of which East Timor had never been part. To have claimed East Timor then on the grounds of propinquity and ethnic affinity would have undercut the arguments for incorporation of West New Guinea.

Nevertheless, East Timor remained a geographical and historical anomaly. It was, moreover, ruled by a distant European power of rather feeble pretensions in Asia; Portugal's overseas interests were focused on its rich territories in Africa, especially Angola and Mozambique. In Indonesian eyes, this neglected and unimportant territory could be allowed to slumber on: one day it would just drop into Indonesia's lap when the colonial power decided to leave.

Unexpected events suddenly took place in 1974. In that year, the Salazar dictatorship in metropolitan Portugal was overthrown in a military coup led by an idealistic general with experience in Africa. Doors were thrown open for the first time in more than forty years to the prospects of democracy. There was turmoil in Portugal as different political parties, tasting freedom after so many years of repression, vied for the realization of their vision for the future. Portugal's African colonies were offered independence. Government authority in Portugal itself throughout 1974 and 1975 was precariously balanced. The reverberations were felt not only in the African colonies, where ill-prepared leaders accepted an independence that soon turned into economic and political disaster, but also in East Timor.

In East Timor the main political parties emerging from the heady liberation of political thought and process of 1974 were: a) Fretilin, a Marxist-inspired party which sought immediate independence; b) the UDT, a non-Marxist party which also sought independence but only after a period of transition under continuing Portuguese presence; and c) Apodeti, a party dedicated to bringing about East Timor's incorporation into Indonesia. Portugal tried to bring these parties together at a conference in Macau in March 1975, but without success. In August of that year, Fretilin decided to seize the initiative and to take over the administration. They were opposed principally by the UDT and a bloody civil war erupted.

The Portuguese colonial administration under Governor Pires was only lightly garrisoned, mostly with locally recruited troops whose loyalty soon evaporated. No reinforcements came from Lisbon. Governor Pires made a fateful decision. In September 1975, in view of the impossible security situation, he decided to abandon the administrative capital, Dili, and other settled towns, and to withdraw to the offshore island of Atauro. There the Governor and his officials waited on the outcome of events, not interfering at all. They could be seen through binoculars swimming and playing sports on the

beaches of the island. Meanwhile, on the mainland, Fretilin gained the upper hand over its rivals. For a time they resisted the proclamation of a new state. They left the symbols of Portugal, including the flag, in place. They even left Governor Pires's official Mercedes parked untouched in its garage. Finally, however, in November, the Fretilin leaders proclaimed "The Democratic Republic of East Timor."

Most in this room are old enough to remember that countries inserting the word "Democratic" into their names were anything but that. They were Marxist dictatorships. It may be true that Fretilin held to a mild version of Marxist theory and practice. Nevertheless, (and remember, it is 1975 and Vietnam and Cambodia have just fallen to the Communists) the name sent a distinctly unwelcome message to the anti-Communist world outside. The alarm bells rang in Washington, Canberra, and Tokyo. They rang loudest of all in Jakarta.

Let us pause here to consider the options, as of November 1975. Fretilin appeared willing, until then, to allow the Portuguese back in order to perform the last rites of colonialism, and to hand authority over to the new state. Perhaps they knew that a disorderly Portuguese withdrawal would play into the hands of Indonesia. Indonesia, meanwhile, was readying itself in West Timor to intervene. But the question was, if and how it should do so. Members of the UDT and Apodeti parties in East Timor had fled to sanctuary in Indonesian West Timor and were urging intervention by Indonesia in order to overthrow Fretilin. But would this be merely a law and order exercise, or the prelude to incorporation? There is evidence of Indonesian military incursions into East Timor as early as October. In one of these actions a group of western journalists was murdered.

In October 1975, President Suharto paid a visit to Australia. He had a meeting with Australian Prime Minister, Whitlam. Their discussions included the issue of the future of East Timor. The records of this meeting have recently been released. They show clearly that Prime Minister Whitlam, while expressing the view that the best long-term solution for East Timor was to be integrated with Indonesia, stated that the people of East Timor must be consulted and agree. The procedures laid down by the Decolonization Committee of the United Nations (the Committee of twenty-four) must be followed, and the result of the consultation with the people must be approved by that Committee. President Suharto agreed.

What caused President Suharto to change his mind was the declaration of independence by Fretilin under the name "The Democratic Republic of East Timor" on November 22, 1975. He had visions of a Marxist enclave, exporting revolution to the rest of the Indonesian archipelago. Under those circumstances it was highly unlikely that a popular vote would be free or would produce a result amenable to Indonesia.

On December 7, 1975, Indonesian paratroopers landed in Dili. The city and the surrounding countryside were quickly overrun. Resistance was brutally suppressed. Fretilin forces fled to the mountains, where they remained for the next twenty-four years. On December 8, 1975, the very next day, the Portuguese administration under Governor Pires was seen leaving Atauro by ship for the Australian port of Darwin. No effort was made by the Portuguese to intervene or resist the Indonesian invasion. If this were a home invasion it would be as though the owners had left the doors of their house wide open, camped at a nearby beach and run away at the first sight of the invaders.

The reaction of the international community to these events was not swift. The invasion took place on December 7, 1975. The Security Council passed no resolution on the matter until December 22, 1975. In the meantime, the General Assembly, on December 12, 1975, passed a resolution condemning the Indonesian action and calling upon it to withdraw by seventy-two votes to ten, with forty-three members abstaining. The large number of abstention votes causes us to pause again for thought: more than one third of the roll-call of the United Nations were either actively opposed to the condemnation of Indonesia or were undecided about it.

The Security Council met to consider East Timor on December 22, 1975. It passed a resolution calling upon Indonesia "to withdraw without delay all its forces from the Territory." This rather mild resolution, using the phrase "calls upon" rather than "demands," was further weakened by the paragraph requesting the United Nations Secretary-General to send a special representative to East Timor for the purpose of making an on-the-spot assessment of the situation. This implied that, at least in the minds of some members, the situation was not entirely clear-cut. While "deploring" intervention by Indonesia, the resolution also "regretted" the failure of Portugal to discharge its responsibilities as administering Power of the Territory under Chapter XI of the United Nations Charter. The resolution was adopted unanimously.

Indonesia did not withdraw. The Secretary-General's representative made his visit and reported back to New York, in March 1976. In April, Indonesia called together a meeting of district chiefs to consider the future of the Territory. The meeting unanimously called for integration with Indonesia. On April 22, 1976, the Security Council passed a second resolution, repeating its call for Indonesia to withdraw its forces from the Territory without further delay. By reaffirming also the "inalienable right of the people of East Timor to self-determination and independence in accordance with the principles of the Charter of the United Nations and the Declaration on the Granting of Independence to Colonial Countries and Peoples," the Council impliedly rejected the validity of the "act of self-determination" carried out by Indonesia earlier that month. That act, in which the general population did not participate, but only a small number of selected community representatives, was similar to the one carried out in

West New Guinea in 1962. An invitation to the President of the Security Council from Indonesia to visit East Timor on June 24th to witness or validate the act of self-determination was rejected by a letter sent by the President of the Security Council on June 21st. That letter reaffirmed the Council's resolutions.

It is important to note that the second resolution of the Security Council (and the last on the question of East Timor by the Security Council) was not passed unanimously. Twelve members voted in favor of calling upon Indonesia to withdraw. Japan and the United States abstained. One member (Benin) did not participate in the vote. The significance of the abstentions of Japan and the United States can hardly be overstated. They sent a message to the rest of the world, from the world's two largest economies, that the situation would soon be under control and that, although the manner of Indonesian intervention was regrettable, in the longer run East Timor would be better off as part of Indonesia.

It is therefore not surprising that Indonesia failed to heed the Council's resolution. In July 1976, after the visit of an Indonesian Parliamentary delegation charged to investigate whether the people of East Timor truly wished to become part of Indonesia, the territory of East Timor was formally incorporated by an Act of the Indonesian Parliament as a Province of Indonesia.

In the meantime, in Portugal a new Constitution had been adopted in April 1976. The definition of the territories over which Portugal claimed sovereignty omitted East Timor. A special article of the Constitution, however, charged the President of the Republic with the responsibility of continuing to work for the self-determination of the people of East Timor. Thus Portugal was no longer, in law, the sovereign of East Timor; only the dispossessed "administering Power" under the terms of United Nations resolutions and in the eyes of the Decolonization Committee of the United Nations. In formal terms, Indonesia could be argued to have temporarily occupied East Timor during the period December 1975 to July 1976 in order to restore security in a Territory effectively abandoned by Portugal. By July 1976, Portugal no longer claimed sovereignty, so that the act of incorporation of East Timor in that month was not an act of aggression by Indonesia against Portugal. The house owners had not only left the house unguarded and run away but had now thrown away the title deeds.

From this point onwards, the international community gradually lost interest in the plight of the people of East Timor. The issue of East Timor returned next to the Agenda of the United Nations in December 1976 as a regular item from the Fourth Committee. Each December thereafter, until 1982, the General Assembly passed a resolution reaffirming the right of the people of East Timor to self-determination. But each year the language became less peremptory and support for it weaker. Even in its watered-down form, the resolution of November 23, 1982, introduced by Portugal, was passed by the

very narrow majority of fifty in favor, forty-six against, and fifty abstentions. Putting these figures another way, it could be said that nearly two-thirds of the roll-call of the United Nations membership either supported Indonesia's incorporation of East Timor or was indifferent to it. No resolution on East Timor was introduced into the General Assembly after 1982. Portugal and the East Timorese leaders in exile feared that, on these voting trends, the resolution would be defeated if introduced again and that the question of East Timor would disappear forever from the agenda of the United Nations.

Instead, the East Timor issue was kept alive through representations directly to governments by pro-East Timor lobby groups, motions in various forums, including the European Parliament, and by the concerns of human rights groups. Most of all, Indonesia itself managed to keep the issue alive through its brutal and corrupt administration of its new province. A number of outrages occurred, most notably the Santa Cruz cemetery massacre of November 1991. There was in consequence relentless international media attention. Indonesia's Foreign Minister, Ali Alatas, ruefully described East Timor as "the pebble in Indonesia's shoe."

What was the status of East Timor in international law from 1976 to 1999? The simple answer is that it was a territory entitled to self-determination and independence under the law of the United Nations Charter, in particular the Declaration on the Granting of Independence to Colonial Countries and Peoples, Res. 1514 (XV) of December 14, 1960, which had not yet exercised that right. By the use of force, the territory had been occupied by Indonesia, and subsequently annexed by it without the approval of the United Nations. According to the Declaration on Principles of International Law Concerning Friendly Relations and Co-operation Among States in Accordance with the Charter of the United Nations, Res. 2625 (XXV) of October 24, 1970, "the territory of a State shall not be the object of acquisition by another State resulting from the threat or use of force. No territorial acquisition resulting from the threat or use of force shall be recognized as legal."

Neither the administering Power (Portugal) nor any other State was willing, however, after 1982 to propose resolutions to the General Assembly demanding the exercise by the people of East Timor of the right of self-determination, still less to request the Security Council to take action to force the withdrawal from the Territory of the occupier (Indonesia). What were other States with economic and security interests in the area to protect to do?

The country most closely affected was Australia. It has already been recounted that Australia and Indonesia had agreed in October 1975 that the people of East Timor must be granted the right to self-determination in accordance with United Nations resolutions and procedures. Australia voted to condemn Indonesia's actions in the United Nations General Assembly vote in December 1975. In December 1976, however, and again in December 1977, it

abstained in the vote on the resolutions. (In 1977 the vote to condemn Indonesia was passed with sixty-seven votes in favor, twenty-six against, and forty-seven abstaining). In 1978, Australia began to vote against the resolution, and maintained that position until the votes ceased after 1982.

Australia had to consider its position carefully. In the first place, Australia and Indonesia are close neighbors. Australia has a population of less than twenty million. Indonesia has a population some nine times greater. For its own security, Australia has always tried to foster good political and economic relations with Indonesia. It would not wish to offend it without a reason that outweighed these considerations. In the second place, there appeared to be no willingness in the United Nations to take any action to force Indonesia to accede to the demand for a proper process of self-determination for East Timor under United Nations procedures. States were largely indifferent, and significant numbers of them appeared by their negative votes to have already acquiesced in the annexation. Thirdly, the seabed between the island of Timor and the northwest coast of Australia was known to contain hydrocarbon deposits and prospects of significant sources of oil and gas. That seabed constitutes an uninterrupted continental shelf (uninterrupted, that is, apart from the Timor Trough—discussed later) and thus required delimitation and apportionment. Considered as part of the exclusive economic zones of these opposite territories, the distance between the coasts was less than four hundred nautical miles, and, thus would equally require delimitation and apportionment.

Australia had already concluded a treaty (1971-72), with Indonesia delimiting the seabed between Australia and West Timor and Australia and the easternmost parts of the archipelago. This left a gap in the line adjacent to the then Portuguese colony of East Timor (the so-called "Timor Gap"). Portugal was invited by Australia in 1974 to negotiate a delimitation line that would have closed the gap, but it declined. The reason appeared to be the relevance of the Timor Trough. Not to be confused with the Gap, the Trough is a geographical feature running along the entire length of the island of Timor, both West and East. It is a deep depression, a trench, in the seabed, lying close to the coast of Timor. Relying on what the International Court of Justice had declared (North Sea Continental Shelf cases, 1969), that the basis of a coastal state's right to its continental shelf lay in the natural prolongation of its land territory beneath the sea it was argued by Australia that the Trough marked the outer edge of the natural prolongation of the land territory of Timor, and that this was the natural delimitation line in the otherwise uninterrupted continental shelf between the two countries. If accepted, this argument would have given the lion's share of the shelf to Australia, since the distance of the Trough from the coast of Timor is only between thirty and sixty miles. Indonesia did not accept it, but in deference to the equities that might be said to flow from such a significant geographical feature agreed on a compromise line roughly halfway between a

median line and the Timor Trough. Portugal perhaps divined that UNCLOS III, then in progress, or the International Court of Justice, might move away from the natural prolongation theory, thus discounting the relevance of the Trough. Or perhaps events in metropolitan Portugal in 1974-75 made it impossible to give the subject the necessary attention.

After Indonesia's incorporation of East Timor in 1976, there was urgency in the need to fill the Gap. Prospectors had been active for some time, and Portugal had already granted some licenses in the area. To whom were the prospectors to turn for security of title? Australia, seeing that Indonesia was firmly in possession of East Timor and that no effective action by the United Nations was forthcoming, decided in December 1978, to propose negotiations to Indonesia, the *de facto* sovereign power, for the filling of the Gap. The opening of these negotiations in February 1979 marked the transition by Australia from recognition *de facto* of Indonesia's authority in East Timor to recognition *de jure* of the incorporation of East Timor. Several weeks later Portugal sent a Note to Australia expressing "surprise" at this action. In the language of diplomacy this must be the faintest form of protest.

Australia opened the negotiations with Indonesia with a proposal that the Gap be closed simply by extending the existing lines of delimitation. Indonesia, however, also had the same intuition as Portugal that international law was moving away from the primacy of the natural prolongation theory. Moreover, it was irritated by reports in the Australian press in 1972 that Australia's success in negotiating a line in 1972 very much in Australia's favor, by reason of the account taken of the Timor Trough, could be described as "taking Indonesia to the cleaners"—an Australian expression meaning "trouncing." It therefore sought a better deal in the area off East Timor.

The negotiations begun in 1979 continued until 1989. This period coincided not only with the negotiation and conclusion of the United Nations Convention on the Law of the Sea, 1982, but also with the hearing of several seabed delimitation cases before the International Court of Justice in which the Court discounted geomorphology and prolongation in favor of broader equitable factors. These factors favored the Indonesian position, but Australia did not resile from its own position. The result was a compromise, not in the form of a line, but in the form of a joint development zone, called the Zone of Cooperation, which boxed in the entire area bounded by the extremes of the Australian and Indonesian claims, but then divided it into three sectors which more realistically represented, respectively, the areas more naturally appertaining to the parties and the central area, the true area in dispute. The treaty was signed by the Australian and Indonesian foreign ministers in an aircraft flying over the zone.

The ratification and entry into force of the treaty in 1991 was the signal that at last galvanized Portugal into action. In its capacity as the administering

Power under still extant, but dormant, United Nations resolutions relating to East Timor it commenced action in the International Court of Justice in February 1991 against Australia for its failure to respect the rights of Portugal as administering Power of East Timor by entering into an agreement relating to the natural resources appurtenant to that Territory with a third party. Indonesia was not named in the application documents. The reason was that both Portugal and Australia had accepted the compulsory jurisdiction of the International Court of Justice under the Optional Clause of the Court's Statute; Indonesia had not. It could therefore not be made a party to the case without its consent. Moreover, according to the jurisprudence of the Court, a dispute could not be decided in relation to a matter in which a State not party to the case had a substantial interest. The issue before the Court was whether Australia alone was in breach of obligations owed towards Portugal which could be determined in the absence of Indonesia as an affected party. The Court decided that it could not determine the matter in the absence of Indonesia. In rejecting the application on the grounds of its inadmissibility for this reason, the Court nevertheless stated that the people of East Timor had a continuing right to self-determination. By implication, this right could be achieved only through the relevant political organs of the United Nations. Of that, there were still no signs.

This is not the place for an analysis of the Timor Gap Zone of Co-operation Treaty. It is fair to say, however, that it suited the interests of both Australia and Indonesia very well. It was innovative in design and sophisticated in its detailed provisions. As a working model of co-operation it attracted favourable comment even from the Fretilin leaders in exile; their only objection was that they, and not Indonesia, should have been the partner with Australia in the arrangement.

We move forward now to the events in Indonesia of 1999. Following student protest and other unrest, President Suharto stepped down to be replaced by his deputy, Dr Habibie. Unrest spread also to East Timor. The Australian Prime Minister, John Howard, using what he considered to be the influence available to him as the Prime Minister of a country with close and friendly ties to Indonesia, suggested in a letter to President Habibie that the people of East Timor be prepared for a decision on their future. The pebble in the shoe should be removed: it was doing Indonesia much harm. President Habibie's heart may have been in the right place, but he was impetuous in nature and erratic in action. Whereas Mr. Howard had in mind a series of cautious steps, beginning with increased autonomy for East Timor, a lessening of the military presence there, and an effort to improve the conditions of the people, all paving the way for a plebiscite on independence in a few years time, President Habibie decided to hold a plebiscite in East Timor immediately, for or against independence. The result was, as we know, an overwhelming vote for independence followed

by mayhem and the intervention of the United Nations Force, called INTERFET. Pro-Indonesian militias went on a rampage, destroying seventy percent of all buildings, and driving a quarter of the population out of the country. Many lives were lost, some of them in horrendous ways. The people of East Timor had been made to pay dearly for their lack of gratitude toward Indonesia, which considered that it had done so much for them. Indonesian politicians rounded on Australia as the alleged instigator of the disaster. Unrest has since broken out elsewhere in the Indonesian archipelago, especially Aceh and Ambon. The new President, Abdurahman Wahid, is beset from all sides with political problems. Australian stocks in Jakarta are at their lowest level ever.

The United Nations military operation is now over. There is a transitional United Nations civil administration called UNTAET, which, under the terms of Security Council Resolution 1272 of 1999, is exercising complete authority over East Timor pending the holding of elections to form a government of the newly independent State of East Timor. Indonesia has formally renounced sovereignty over East Timor. The formal date of relinquishment of Indonesian authority and its transfer to UNTAET was October 25, 1999.

What has happened to the Timor Gap Treaty? Australia proposed to UNTAET a formal succession, but that was rejected by UNTAET on the ground that the treaty was *void ab initio* by reason of the lack of capacity of Indonesia to conclude it. By an exchange of notes between Australia and UNTAET in Dili on February 10, 2000 it was agreed that the terms of the treaty—but not the treaty itself—should remain binding throughout the transitional period, until the date of independence of East Timor. This was stated to be without prejudice to the position of the future government of an independent East Timor with regard to the Treaty. Indonesia recognized the termination of the Timor Gap Treaty, as from October 25, 1999, by an exchange of letters with Australia in Jakarta on May 25, 2000.

Australia will thus have to negotiate with an independent East Timor a replacement for the terminated Timor Gap Treaty. Indeed, negotiations have already commenced, with UNTAET acting on behalf of East Timor, with putative future East Timorese leaders as advisers. Chief negotiator on the East Timor side is a former United States diplomat, Peter Galbraith, now minister for political affairs in UNTAET. He is known to be arguing that the Timor Trough is not in fact a fault line between tectonic plates and that no equities flow from it. He is pressing for adoption of the median line between Australia and East Timor, and thus, impliedly, for the dismantling of the zone of co-operation. The median line as a permanent solution would place the presently most promising oil field, Bayu Undan, which is expected to go into production in four years time, exclusively inside East Timor's claim. The delimitation of the line of fisheries and other EEZ jurisdictions between Australia and East Timor will also

need to be renegotiated. These are presently included in the Memorandum of Understanding between Australia and Indonesia concerning the Implementation of a Provisional Fisheries Surveillance and Enforcement Arrangement of 1981, and the Treaty Establishing an Exclusive Economic Zone Boundary of 1997. The latter has not yet entered into force. Both instruments provide for, in effect, a median line between Australia and East Timor. Assuming this to be acceptable to both sides, East Timor would then need to negotiate the lines perpendicular to its coasts to the transverse median line separately with Indonesia.

What can be said to be the lessons learned from all this? There are at least three lessons. First, questions of self-determination are notoriously difficult, and most often intractable where basic facts are disputed. In the case of East Timor, however, the case was clear: East Timor was a territory inscribed on the list of non-self-governing territories maintained by the United Nations Decolonisation Committee. The failure of the United Nations to deal with it promptly and decisively, in December 1975, was disgraceful and led to much unnecessary suffering.

Second, the role of the Security Council, in particular, calls for examination in relation to East Timor. It did not want to act decisively because Indonesia is a large and important country. As has been the case for some time, it is not necessarily the casting of a veto that impedes the Council in its work, but the express or even implied or assumed potential exercise of one that casts a long shadow over proceedings. This has been most recently evident in relation to Kosovo; the taking of action by NATO without Security Council authorization may have been controversial but has occasioned little surprise. Such situations will fuel the movement for reform of the structure of the Security Council.

Last, where the United Nations is unable or unwilling to act, what are particular member states to do, faced with pressing realities? This is the situation which faced Australia after July 1976 when it appeared that Indonesia was firmly in control of East Timor and unlikely to be dislodged. An apparently "dead" claim to self-determination should not be allowed to hang over other nations' heads for twenty-five years or more, only to surface in an unexpected way and to give rise to possible claims based on the illegality of dealing with the power actually in control (*nemo dat quod non habet*). Effectiveness should be considered in this context, in the interests of stability, fairness, and good legal order.