

# Like two drops of water: the cases of Western Sahara and East Timor





**1999**



**20 May 2002**

# International Law and the Question of EAST T

ON / IJCT

The East Timor Problem and the Role of Europe

IJCT



## The East Timor Problem and the Role of Europe

### PREFACE BY

Frank Ruyt

U.S. Commissioner and U.S. General Security Director, United Nations Peacekeeping Mission for Western Sahara, 1991-1995, Washington, USA

### INTRODUCTION BY

Karin Arts

A Justice Professor in International Law and Development, Institute of Social Studies, The Hague, the Netherlands

Pedro Pinto Leite

Secretary, International Network of Jurists for East Timor, Lisbon, the Netherlands

### CONTRIBUTIONS FROM

José María Álvarez Cervera

University, La Gomera, Canary Islands, Spain

John Dwyer

University and British, London, UK

John M. Dwyer

Western Front Representative to the United Nations and the Republic of Ireland, London, UK

David Clark

Board of Governors Professor, Rutgers Law School, Camden, New Jersey, USA

Luigi Napolitano

Professor of International Law, University of Turin, Turin, Italy

Edouard Tilly de Marbo-Boissac

Associate Professor of International Law, UNED, Madrid, Spain

Colinva Shaw

Lecturer in International Law, School of Oriental and African Studies, University of London, UK

Stephen Zanes

Professor of Politics, University of San Francisco, USA

Chantal Schuster

U.S. Institute for Reconstruction Monitoring and Analysis, ON, Timor-Leste

Viktor Kozlov

Associate of Papua Indigenous Nation (New Asia Papua) in Europe, The Hague, the Netherlands

Elizabeth Kaurly

Research Fellow, School of Oriental and African Studies, University of London, UK

Harvey Binn

Professor of International Law, University of Glasgow, the Netherlands

Vincent Chabon

Research Fellow in International Law and Political Science, Université Libre de Bruxelles, Belgium

Basile Stankovic

Lecturer, Faculty of Social Sciences, Prague, Czech Republic

Carlos Balle

International Cooperative Western Sahara Resource Watch, San Diego, USA

Erik Ugeux

Journalist, Paris, France

Vanya Zhelev

Professor of International Relations and Management, Carroll School of Management, Boston

Peter Brundage

Principal legal adviser, the Swedish Ministry for Foreign Affairs, Stockholm, Sweden

Carlos Ruiz de Alarcón

Professor of Constitutional Law, University of Santiago de Compostela, Spain

José María Esteban

Professor of International Law, University of Barcelona, Spain

Christine Chabon

Professor of International Law, London School of Economics, UK

Alfredine Haddad

Joint Marie Curie Prize 2005, on political prison, El Agui, Western Sahara

Peter Schuster

Member of the European Parliament, President of the Intergroup on Western Sahara, St. Polten, Austria

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International Law and the Question of Western Sahara

IJCT



## International Law and the Question of Western Sahara

EDITED BY  
KARIN ARTS  
PEDRO PINTO LEITE

Le droit international et la question du Sahara occidental

IPJ ET

# Le droit international et la question du Sahara occidental



COORD. PAR  
VINCENT CHAPPAUX  
KARIN ABTS  
PEDRO PINTO LEITE

Two neighbouring countries...



... for many years ruled by dictators,



Salazar...



... and Franco.



One day the two dictatorships collapsed...



... and the two colonies hoped for their liberation.





But two countries neighbouring those colonies...



... Indonesia



and Morocco...

... which were also ruled for a long time by dictators,



Suharto...



... and Hassan II,

... invaded them almost simultaneously.



(7 December 1975)



(6 November 1975)

For the invasions they got weapons and diplomatic support from the same source:



# The UN Security Council condemned both occupations...

**S/RES/384 (1975)**

**22 December 1975**

**The Security Council,**

**(...) 2. Calls upon the  
Government of  
Indonesia to withdraw  
without delay all its  
forces from the  
Territory;(...)**

**S/RES/380 (1975)**

**6 November 1975**

**The Security Council,**

**(...) 2. Calls upon  
Morocco immediately  
to withdraw from the  
Territory of Western  
Sahara (...)**

... and the International Court of Justice  
reaffirmed the right to self-determination  
of both colonized peoples...





“For the two Parties, the Territory of East Timor remains a **non-self-governing territory** and its people **has the right to self-determination**. Moreover, the General Assembly (...) has treated East Timor as such a territory. The competent subsidiary organs of the General Assembly have continued to treat East Timor as such to this day. Furthermore, the Security Council, in its resolutions 384 (1975) and 389 (1976) has expressly called for respect for "the territorial integrity of East Timor as well as the **inalienable right of its people to self-determination** in accordance with General Assembly resolution 1514 (XV)"".

International Court of Justice, *Case concerning East Timor (Portugal v. Australia)*, ICJ Reports, 1995, p.103, para. 31.



“(...) the materials and information presented to it do not establish **any tie of territorial sovereignty** between the territory of Western Sahara and the Kingdom of Morocco or the Mauritanian entity. Thus the Court has **not found legal ties** of such a nature as might affect the application of resolution 1514 (XV) in the decolonization of Western Sahara and, in particular, of the **principle of self-determination through the free and genuine expression of the will of the peoples of the Territory**”

(International Court of Justice, *Western Sahara Advisory Opinion*, ICJ Reports, 1975, p.68, para. 162)

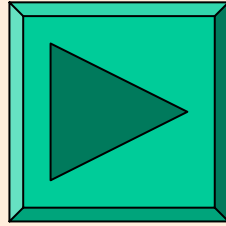
## Invasion, occupation and annexation of Western Sahara and East Timor:

- violation of the UN Charter
- international crime against peace
- violation of the right to self-determination

By maintaining the occupation:

- act of disobedience against the United Nations

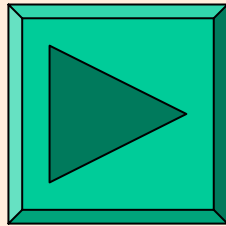
Portugal



East Timor

- \* lobbying at the UN
- \* lobbying at the EU (member since 1986)
- \* proceedings against Australia before the ICJ concerning the Timor Gap Treaty

Algeria



Western Sahara

- \* humanitarian support (Tindouf)
- \* weapons and training
- \* diplomatic support

The alleged economic  
non-viability of Western  
Sahara and East Timor

UNGA Res. 1514 (XV), paragraph 3:

“Inadequacy of political, economic, social or educational preparedness should never serve as a pretext for delaying independence.”



The Bahamas  
Jamaica

Lebanon  
Qatar

Gambia

Singapore  
Timor-Leste

Swaziland

Fiji





Western Sahara

Dominica

Sao Tome e Principe

Seychelles

Kiribati

Tuvalu

Tonga



INDONESIA

- xxxxxxx The Timor Gap
- Agreed 1972 Seabed boundary
- Agreed exclusive economic zone boundary (approximate Median Line)
- An East Timorese option for extension of East lateral of the Zone of Co-operation
- Zone of Co-operation

Indian Ocean

Ashmore Reef

200 nautical miles from East Timor

C

A

B

Timor Sea

Approximate Timor Trough

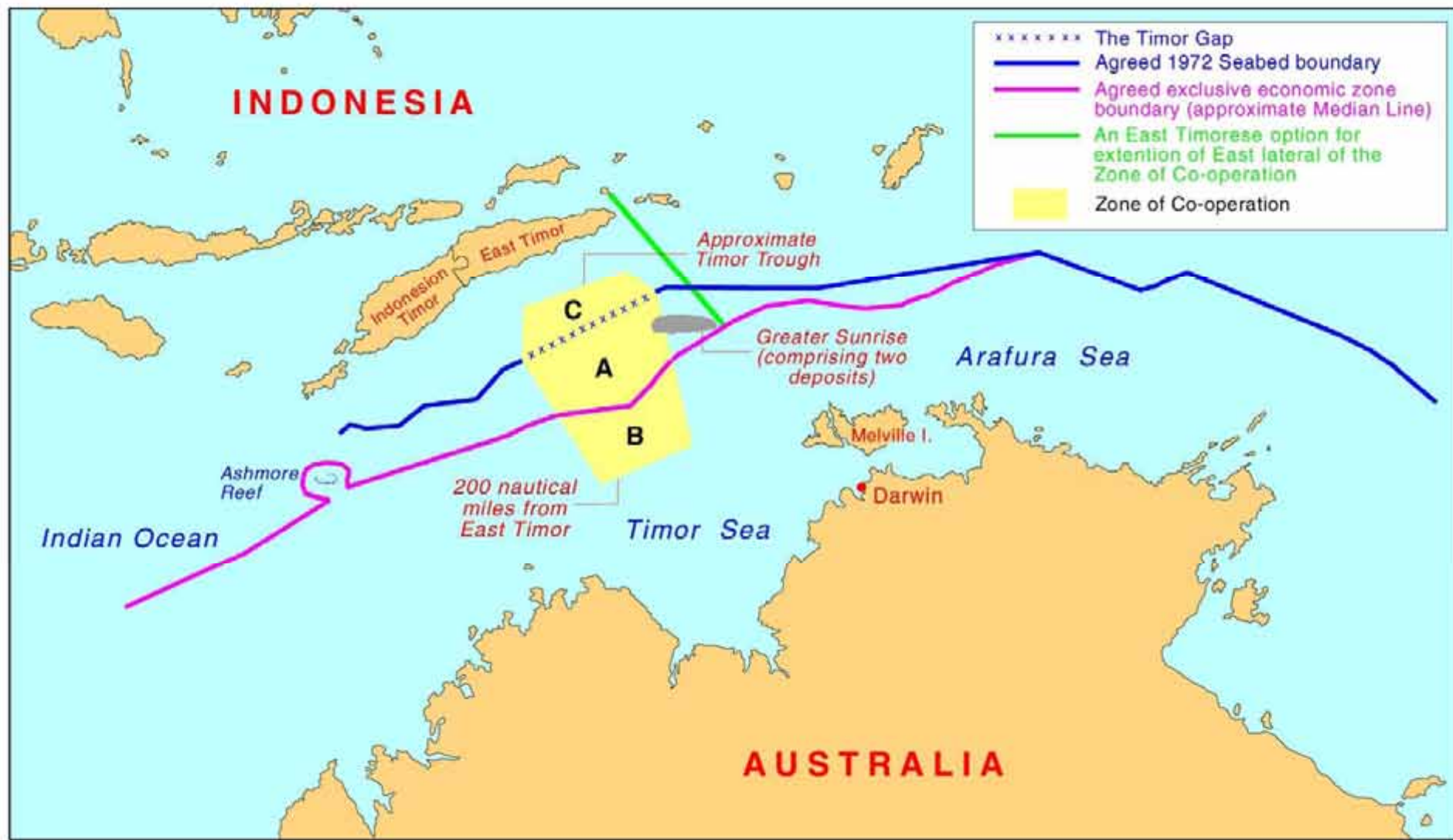
Greater Sunrise (comprising two deposits)

Arafura Sea

Melville I.

Darwin

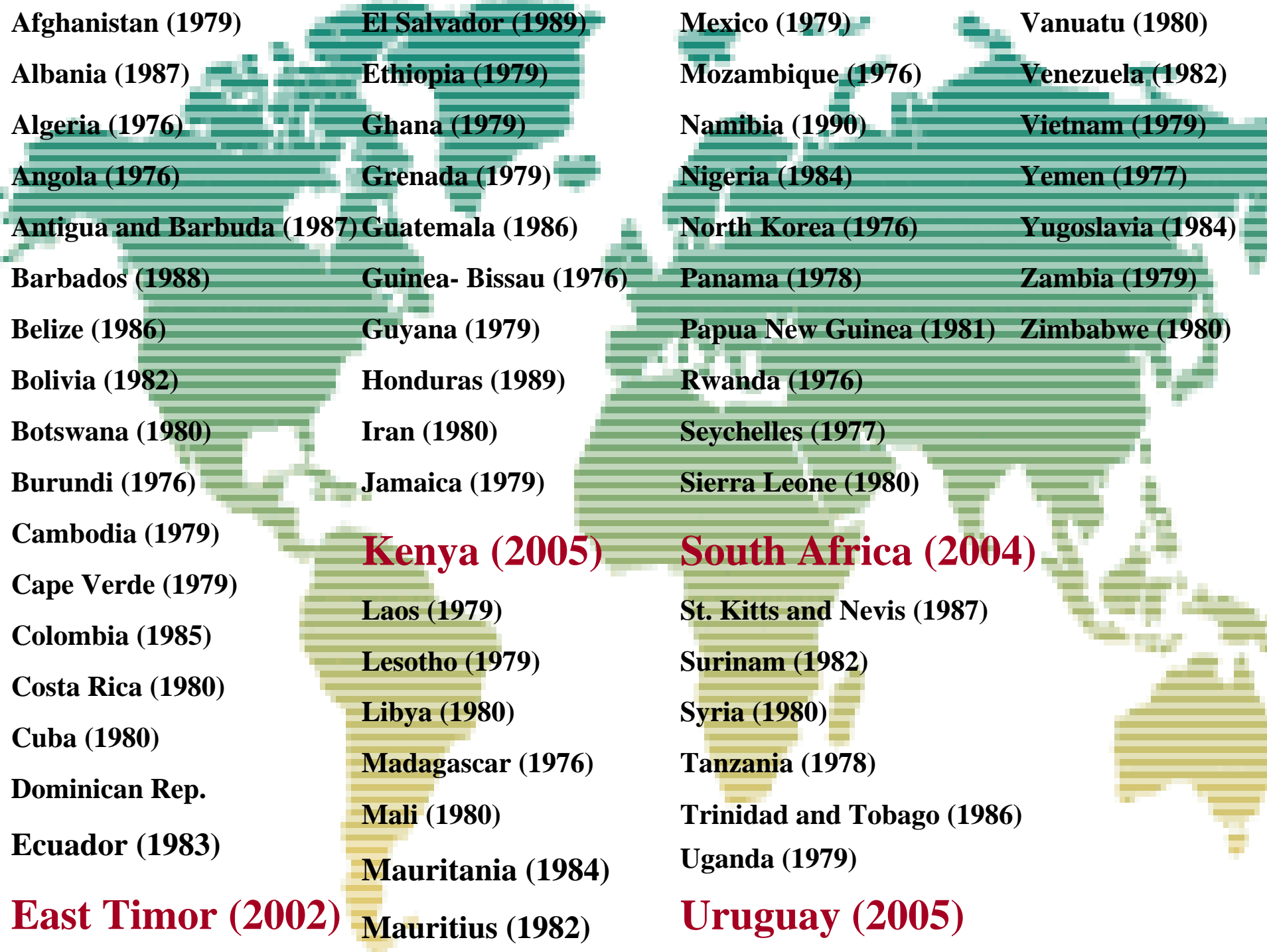
AUSTRALIA



# Western Sahara



# The Saharawi Arab Democratic Republic



**Afghanistan (1979)**

**Albania (1987)**

**Algeria (1976)**

**Angola (1976)**

**Antigua and Barbuda (1987)**

**Barbados (1988)**

**Belize (1986)**

**Bolivia (1982)**

**Botswana (1980)**

**Burundi (1976)**

**Cambodia (1979)**

**Cape Verde (1979)**

**Colombia (1985)**

**Costa Rica (1980)**

**Cuba (1980)**

**Dominican Rep.**

**Ecuador (1983)**

**East Timor (2002)**

**El Salvador (1989)**

**Ethiopia (1979)**

**Ghana (1979)**

**Grenada (1979)**

**Guatemala (1986)**

**Guinea- Bissau (1976)**

**Guyana (1979)**

**Honduras (1989)**

**Iran (1980)**

**Jamaica (1979)**

**Kenya (2005)**

**Laos (1979)**

**Lesotho (1979)**

**Libya (1980)**

**Madagascar (1976)**

**Mali (1980)**

**Mauritania (1984)**

**Mauritius (1982)**

**Mexico (1979)**

**Mozambique (1976)**

**Namibia (1990)**

**Nigeria (1984)**

**North Korea (1976)**

**Panama (1978)**

**Papua New Guinea (1981)**

**Rwanda (1976)**

**Seychelles (1977)**

**Sierra Leone (1980)**

**South Africa (2004)**

**St. Kitts and Nevis (1987)**

**Surinam (1982)**

**Syria (1980)**

**Tanzania (1978)**

**Trinidad and Tobago (1986)**

**Uganda (1979)**

**Uruguay (2005)**

**Vanuatu (1980)**

**Venezuela (1982)**

**Vietnam (1979)**

**Yemen (1977)**

**Yugoslavia (1984)**

**Zambia (1979)**

**Zimbabwe (1980)**

# Montevideo Convention on the Rights and Duties of States (1933), article 1:

“The state as a person of international law should possess the following qualifications:

- (a) a permanent population;
- (b) a defined territory;
- (c) government; and
- (d) capacity to enter into relations with the other states.”

(Criteria for statehood, recognized as a statement of customary international law)





A referendum in East Timor,  
but not in Western Sahara



- Hassan II –  
autonomy proposal  
in the 80's
- UN-OUA Peace Plan  
for Western Sahara  
of June 1990
- Establishment of  
MINURSO
- Date fixed for the  
referendum, but  
postponed
- Habibie –  
autonomy proposal  
in 1998
- New York tripartite  
agreement on 5  
May 1999
- Establishment of  
UNAMET
- Date fixed for the  
referendum, but  
postponed









# UNAMET



Do you **ACCEPT** the proposed special autonomy for East Timor within the Unitary State of the Republic of Indonesia?

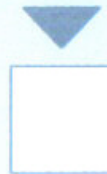
Apakah anda **MENERIMA** usul otonomi khusus untuk Timor Timur di dalam Negara Kesatuan Republik Indonesia?

Ita Boot **SIMU** proposta autonomia espeŝiál ba Timor Lorosae iha Estadu Unitáriu Republika Indonezia nia laran?

Aceita a autonomia especial proposta para Timor Leste integrada no Estado Unitáriu da Republica da Indonésia?



**ACCEPT  
MENERIMA  
HA'U SIMU  
ACEITO**



**OR ATAU KA OU**

Do you **REJECT** the proposed special autonomy for East Timor, leading to East Timor's separation from Indonesia?

Apakah anda **MENOLAK** usul otonomi khusus Timor Timur, yang akan mengakibatkan berpisahanya Timor Timur dari Indonesia?

Ita Boot **LA SIMU** proposta autonomia espeŝiál ba Timor Lorosae nebê sei lori Timor Lorosae atu haketak an hosi Indonezia?

Rejeita a autonomia especial proposta para Timor Leste, levando á separação de Timor Leste da Indonésia?



**REJECT  
MENOLAK  
HA'U LA SIMU  
REJEITO**





## Principle IX of Resolution 1541 (XV):

“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**”.

## 2003- “Peace Plan for self-determination for the people of Western Sahara” (Baker Plan II):

- four to five-year period in which the Saharawis would be reunited in the territory
- provisional administration elected by the 86,381 voters, Western Sahara granted autonomy
- a referendum would allow to an **extended electorate, including all the residents in the territory since 1999**, to choose among independence, integration or autonomy within Morocco

- Polisario Front accepted to cooperate with the UN on the plan
- Morocco rejected it
- James Baker: “the Moroccans concluded that **they weren't even willing to risk a vote (...)** I would assume it was **because they were worried that they wouldn't win the vote**”.
- 2005: Peter van Walsum appointed as UN Secretary General's Personal Envoy for Western Sahara.



- Since 2002 Mohamed VI dismisses the idea of a referendum, rejecting thus the 1990 Settlement Plan and the Houston Agreement of 1997 that his father's government had subscribed to
- ... considers as irrevocable Morocco's "sovereignty" over "the Southern Provinces"



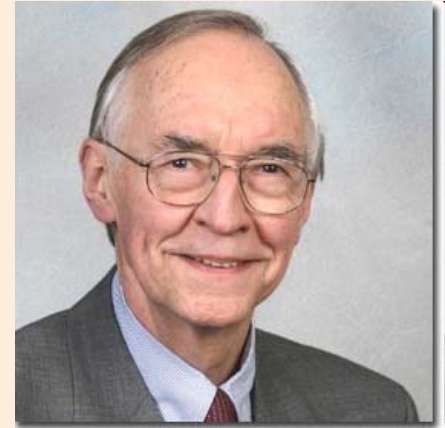
March 2006:

“Morocco will not cede a single inch, nor a grain of sand of its dear Sahara”

- April 2007: “Moroccan initiative for negotiating an autonomy statute for the Sahara region”
- Ambassador Frank Ruddy : “the latest in a long line of illusions that Morocco has created over the years to distract world attention from the real issue (...) (It) might sound like a step forward, at least until one reads the not-so-fine print. Article 6 of the plan provides that **Morocco will keep its powers in the royal domain**, especially with regard to **defense, external relations and the constitutional and religious prerogatives of his majesty the king**. In other words, the Moroccans are offering autonomy, **except in everything that counts**”.

-Manhasset talks (June 2007, August 2007, January 2008, March 2008): no breakthrough

- April 2008: Peter van Walsum told Security Council that independence for Western Sahara was unrealistic



- Christopher Ross (Feb. 2009):  
"a solution that includes the  
right of the Saharawi people to  
self-determination"

# Human rights abuses

- East Timor: more than 200,000 deaths, a third of the original size of the population
- Massacres on Uadaboro Mountain and in Taipo (November 1978, ca. 800 killed),
- in Lacluta (September 1981, ca. 500 killed),
- in Kraras (August 1983, ca. 700 killed)
- at the cemetery of Santa Cruz in Dili (12 November 1991, ca 300 killed)





Amnesty International report (April 1996):

“The pattern of "**disappearance**" of (...) political opponents by the Moroccan authorities dates back to the 1960s (...) "disappearances" of Sahrawis began to occur at the end of 1975 and continued until the late 1980s. (...) Detainees were taken to **secret detention centres** (...) where **torture and ill-treatment** was routine, especially during interrogation. With few exceptions, those detained were never charged with any offence, brought to trial, or put through any legal process. Some were released after weeks and months in secret detention, and **hundreds of others simply ‘disappeared’.**”



The Saharawi  
intifada

The Black Prison  
in El Ayun



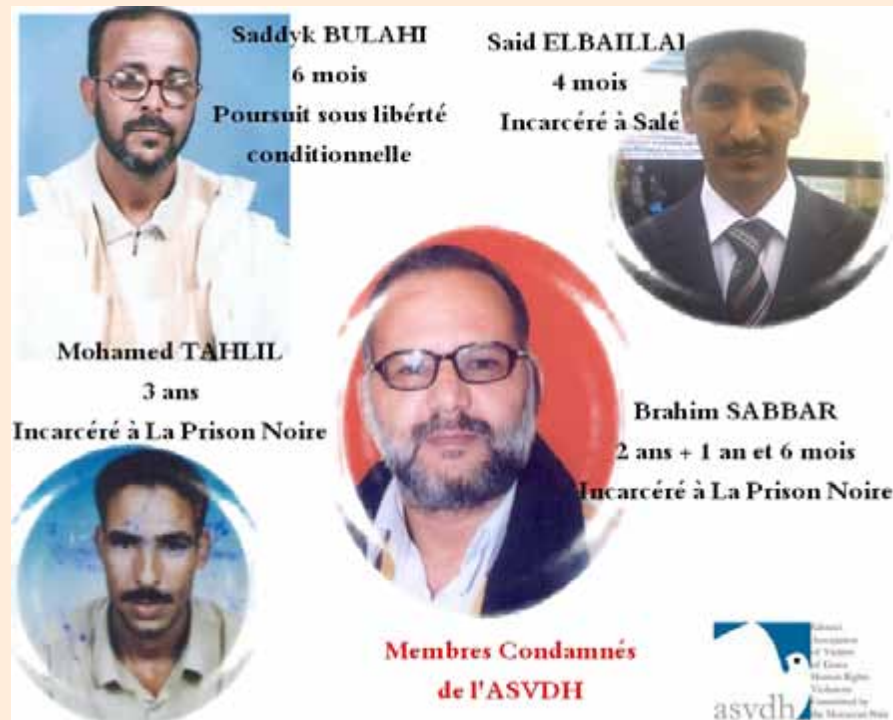
## Amnesty International Report (May 2007):

- hundreds of arrests,
- allegations of torture,
- of unfair trials
- and continued intimidation of human rights activists

# Report of the OHCHR mission to Western Sahara and the Tindouf refugee camps (May/June 2006):

**As has been stated in various UN fora, the right to self-determination for the people of Western Sahara must be ensured and implemented without any further delay. As underlined above, the delegation concludes that almost all human rights violations and concerns with regard to the people of Western Sahara, whether under the de facto authority of the Government of Morocco or of the Frente Polisario, stem from the non-implementation of this fundamental human right.**





March 2009 - New Amnesty International report highlights Moroccan repression against Western Saharan human rights defenders.



# **From the Summary of the Human Rights Watch's report 'Human Rights in Western Sahara and in the Tindouf Refugee Camps' (December 19, 2008):**

For **Western Sahara** the focus of Human Rights Watch's investigation is the right of persons to speak, assemble, and associate on behalf of self-determination for the Sahrawi people and on behalf of their human rights. We found that Moroccan authorities **repress this right through laws penalizing affronts to Morocco's "territorial integrity," through arbitrary arrests, unfair trials, restrictions on associations and assemblies, and through police violence and harassment that goes unpunished.**(...)

For the **refugee camps in Tindouf** (...) we found that at the present time, the Polisario effectively marginalizes those who directly challenge its leadership or general political orientation, but **it does not imprison them. It allows residents to criticize its day-to-day administration** of camp affairs. In practice, **camp residents are able to leave the camps, via Mauritania, if they wish to do so.**(...)



## *March 2009 - Report of the European Parliament ad hoc delegation for Sahara:*

- recognized the **reality of systematic violations of human rights** by Morocco in the occupied territory of Western Sahara
- considered the **violation of the right to self-determination as the root** of all those violations
- proposed that **MINURSO's mandate include monitoring** the situation of human rights in the region



- regretted silence of report on the pillage of natural resources
- demanded EU to freeze the granting of an 'advanced status' to Morocco

Due to the **French** threat of veto in the Security Council (April 2009), MINURSO continues to be the **ONLY** UN mission which does not monitor the situation of human rights in its region

The EU, under **French** pressure, continues to implement the decision of granting an ‘advanced status’ to Morocco



**Sidi Mohammed Daddach**

**Winner of the 2002 Rafto  
Memorial Prize**

**Aminatou Haidar**

**Winner of the 2008 Robert F.  
Kennedy Human Rights Award**



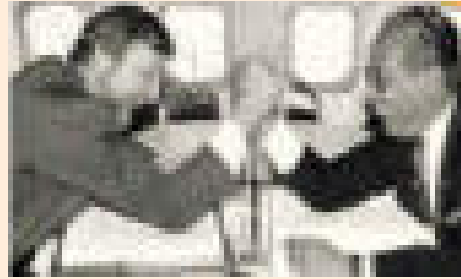
**Rabab Amidane**

**Winner of the 2009 Norwegian  
Student Peace Prize**

# The pillage of the natural resources



# Timor Gap Treaty



Prof Roger Clark: “Australia, a receptor of stolen goods”



Psst...  
Want a bargain?

## SHADY BUSINESSES...



Would you buy a television set if you knew it had been stolen, no matter how cheap the thief might sell it? Besides knowing that the television set belongs to a neighbour of yours? Knowing also that the thief illegally occupies the house of your neighbour and keeps him as a hostage? Of course not. Nevertheless, once the EU Commission, headed by Durão Barroso, managed to get a certain proposal approved by the European Parliament and Council, you will do something quite similar every time you buy fish in the nearby supermarket or fish market. Why? Because the Council, with the assent of the Parliament, ratified a fisheries agreement that the Commission had negotiated with Morocco, under which Spanish, Portuguese and other EU member states' vessels will be licensed to fish in the waters of Western Sahara, a territory illegally occupied by Morocco.

# Conclusion

Whatever the political maneuvers of Morocco and some states may be, one thing they have to recognize: **there is no alternative to self-determination**. The Saharawis must decide freely on their future status, as the East Timorese did already.

Respect for international law is a precondition for world peace. The international community ought to strengthen, not to undermine it. The UN should not measure with two different yardsticks, as that is contrary to the most elementary notions of justice and would thus weaken the basic fundamentals of modern international law. In other words, the UN has to ensure that also in the case of Western Sahara *realpolitik* does not prevail.