

Nonsense upon stilts?: East Timor and The International Court of Justice

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Introduction

The International Court of Justice on 30 June 1995 handed down its decision in the *Case Concerning East Timor* which Portugal brought against Australia in 1991.³ The majority of the Court confirmed the right of the people of East Timor to self-determination but declined to adjudge the remainder of Portugal's claim in the absence of Indonesia. The following note outlines the history of the dispute, the judgment by the majority of the court and the dissenting opinions of Judges Weeramantry and Skubiszewski. The implications of the case are discussed, in particular the Court's treatment of self-determination and its failure to give the fullest decision it may in the circumstances.

Background of the Case

In the sixteenth century East Timor became a colony of Portugal. The western part of the island came under Dutch rule and later became part of independent Indonesia. The United Nations General Assembly recognised East Timor as a non-self-governing territory within the meaning of Chapter XI of the Charter in Resolution 1542 (XV) of 15 December 1960. Portugal did not accept this status of East Timor until 1974 when a new Portuguese government addressed the decolonisation of its overseas possessions. In July 1975 Portugal enacted a constitutional law stipulating that the political future of East Timor should be decided in accordance with the wishes of the people, determined after free elections.⁴

Internal political struggles soon arose in East Timor. The climax of these saw the proclamation by the Frente Revolucionaria Timor Leste Independente ("FRETILIN") of independence on 28 November 1975 after an unsuccessful coup by another party. This was followed two days later by a proclamation of integration with Indonesia by a pro-Indonesian coalition. During the civil disorder, the Portuguese civil and military authorities withdrew from the mainland of East Timor to the island of Atauro on 27 August 1975, admitting that it was unable to control the Territory. Portugal rejected both declarations and formally requested intervention by the United Nations. On 7 December 1975 Indonesia invaded East Timor and assisted in setting up a provisional government. On 8 December 1975 the

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3 *Case Concerning East Timor (Portugal v Australia)* [1995] ICJ Rep 90.

4 *Constitutional Act 7/74* 27 July 1974. See Chinkin, C "The Merits of Portugal's Claim Against Australia" (1992) 15 *UNSW Law Journal* 423 at 425.

Portuguese authorities departed from the island of Atauro thereby leaving East Timor altogether. Indonesia continues to occupy and control East Timor. On 17 July 1976 Indonesia enacted a law incorporating East Timor as part of Indonesia, after asserting that the people of East Timor had requested Indonesia "to accept East Timor as an integral part of the Republic of Indonesia".⁵

Following Indonesia's invasion of East Timor the United Nations Security Council and General Assembly passed a number of resolutions. They called for the withdrawal of Indonesia from East Timor and the cooperation of Portugal as administering Power and other parties concerned so as to enable the people of East Timor to exercise freely their right to self-determination.⁶ Indonesia ignored these resolutions. East Timor remains a permanent agenda item in the General Assembly and in 1983 the General Assembly directed the United Nations Secretary-General to consult with all parties directly concerned to achieve a comprehensive settlement of the problem.⁷ East Timor continues to be included on the list of non-self-governing territories and the Special Committee on the Situation with Regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples is still concerned with the question of East Timor.

The *Timor Gap Treaty* 1989 was the result of Australia's efforts with Indonesia to delimit the continental shelf between their respective coasts. In 1971 and 1972 Australia and Indonesia signed treaties establishing the seabed boundaries between Indonesia and northwestern Australia. However, the treaties stopped short on either side of the continental shelf between the south coast of East Timor and the north coast of Australia. Australia simultaneously attempted to negotiate a similar agreement with Portuguese East Timor, but Portugal declined the invitation. After Indonesia's invasion, Australia extended *de facto* recognition on 20 January 1978 and *de jure* recognition with the beginning of negotiations with Indonesia for the delimitation of the Timor Gap in February 1979. Australia and Indonesia could not agree on delimitation and therefore created a "Zone of Cooperation" "in an area between the Indonesian Province of East Timor and Northern Australia" for joint exploration and exploitation of resources. These arrangements were adopted in the *Timor Gap Treaty* 1989 and were subsequently enacted as legislation in 1990 in Australia. This law came into force in 1991.⁸

The Judgment of the Court

Portugal initiated proceedings before the International Court of Justice in 1991. It was firstly submitted that the people of East Timor had the right to self-determination and permanent sovereignty over their wealth and natural resources, that

⁵ See [1995] ICJ Rep 90 at 95-96 and Chinkin, *op cit* at 425.

⁶ *Ibid* at 96-97. Note that the most important resolutions were Security Council Resolution 384 (1975) of 22 December 1975 and Security Council Resolution 389 (1976) of 22 April 1976.

⁷ *Ibid* at 97-98.

⁸ *Ibid*.

Portugal was the administering Power and that Australia must respect this. Portugal secondly claimed that Australia had violated international law by negotiating and concluding the *Timor Gap Treaty* 1989 with Indonesia, undertaking activities under that Treaty and commencing further negotiations with Indonesia. In particular, Australia had infringed the rights of the people of East Timor and the rights of Portugal and had contravened Security Council Resolutions 384 and 389.⁹

Portugal's first submission was largely accepted by both parties. Australia acknowledged that the people of East Timor have a right to self-determination and to a lesser extent that Portugal is the administering Power. The majority of the Court and dissenting judges confirmed East Timor's right to self-determination and its status as a non-self-governing territory.¹⁰

The substantive dispute was the resulting obligation upon Australia with respect to the Timor Gap. However, Australia initially objected to the jurisdiction of the Court and the admissibility of the application. Australia argued that there was no legal dispute between itself and Portugal as the "real dispute" was between Portugal and Indonesia. The Court, including the dissenting judges, dismissed this ground on the basis that there was a disagreement as to the facts and law claimed by Portugal against Australia.¹¹

Australia further argued that the Court could not adjudge the merits of the case since Indonesia was an indispensable third party. They submitted that the Court could not proceed in a case if another State's legal interests formed the "very subject matter of the decision", as was established by the Court in the *Case Concerning Monetary Gold Removed From Rome in 1943 (Monetary Gold Case)*.¹² Portugal argued that the Court, as in previous cases,¹³ could restrict its inquiry to that part of the dispute which only concerned Australia. Portugal claimed that since the United Nations continues to classify East Timor as a non-self-governing territory and Portugal as the administering Power, Australia violated international law by not negotiating exclusively with Portugal.¹⁴

The majority of the Court accepted Australia's argument. It found that a determination of Portugal's claim against Australia required a determination of the legality of Indonesia's occupation of East Timor. Indonesia's legal interests would therefore be the "very subject matter of the decision". The Court stated that such an approach

⁹ *Ibid* at 98.

¹⁰ *Ibid* at 105-106, at 142 per Weeramantry J, at 226 per Skubiszewski J.

¹¹ *Ibid* at 99-100, at 142 per Weeramantry J, at 226 per Skubiszewski J.

¹² *Case of the Monetary Gold Removed from Rome in 1943, (Italy v France, United Kingdom and United States)* [1954] ICJ Rep 19 at 32.

¹³ See *Corfu Channel (United Kingdom v Albania)* (Merits) [1949] ICJ Rep 4; *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v United States of America)* [1984] ICJ Rep 392 at 431; *Case Concerning the Continental Shelf (Libya Arab Jamahiriya/Malta)* (Merits) [1985] ICJ Rep 13; and *Case Concerning Certain Phosphate Lands in Nauru (Nauru v Australia)* [1992] ICJ Rep 240 at 259-262.

¹⁴ [1995] ICJ Rep 90 at 100-102.

would be directly contrary to the "well-established principle of international law embodied in the Court's Statute, namely, that the Court can only exercise jurisdiction over a State with its consent".¹⁵

The Court then proceeded to reject two counter-arguments submitted by Portugal. The Court accepted that the right of peoples to self-determination has an *erga omnes* character, such that all States have a legal interest in its observance. They distinguished, however, the *erga omnes* character of a norm from the rule of consent to jurisdiction and declared that:

Whatever the nature of the obligations invoked, the Court could not rule on the lawfulness of the conduct of a State when its judgment would imply an evaluation of the lawfulness of the conduct of another State which is not a party to the case.¹⁶

The Court also rejected Portugal's argument that Australia's obligation could be solely determined on the basis of Security Council Resolutions 384 and 389. The Court held that the resolutions did not impose a legal obligation upon States to exclusively deal with Portugal in respect of the East Timor continental shelf. Further, the Court doubted whether these resolutions reflected the views of the States, particularly as States had signed treaties with Indonesia but had not included reservations concerning East Timor. The Court noted that when Portugal brought the Treaty to the General Assembly and Security Council in 1989, no action was taken by either organ. Thus, the resolutions could not be regarded as "givens" on which the Court could then ground its resolution of the dispute.¹⁷

Four of the fourteen judges who dismissed Portugal's case appended separate opinions. Judge Shahabuddeen emphasised that the case not only questioned the legal interests and international responsibility of Indonesia, but more specifically it required a determination of its rights under the Treaty, as well as its treaty-making power. Thus, it challenged the validity of the Treaty itself. Judge Oda found that the Court could not adjudicate upon the case because Portugal lacked standing as it had no authority over the continental shelf covered by the Treaty. Judge Vereshchetin considered that in addition to the existence of an indispensable third party the case could not proceed since the Court had not been informed of the wishes of the people of East Timor. The remaining judge, Judge Ranjeva, responded to the dissenting opinions and will be considered in the next section.

Dissenting Opinions

The dissenting opinions of Judges Weeramantry and Skubiszewski, like the opinions of Judges Jessup and Tanaka in *South West Africa Cases (Second Phase)*¹⁸ provide

¹⁵ *Monetary Gold Case* [1954] ICJ Rep 19 at 32 quoted in *East Timor* [1995] ICJ Rep 90 at 104-105.

¹⁶ [1995] ICJ Rep 90 at 102.

¹⁷ *Ibid* at 103-104.

¹⁸ [1966] ICJ Rep 6.

comprehensive and compelling arguments against the jurisdictional conclusions of the majority of the Court.

Indispensable Third Party

Judge Weeramantry in his dissenting opinion found insufficient basis for the application of the indispensable third party doctrine. He firstly pointed out that the present case is easily distinguished from the *Monetary Gold Case*. In that case, Italy and the United Kingdom contested the right to certain Albanian gold for the satisfaction of damages as a result of Albanian wrongdoing. Italy's claim of Albanian wrongdoing, however, had not been decided at international law. The Court could not adjudicate this claim in the absence of Albania.¹⁹ The Court has subsequently asserted that *Monetary Gold* probably represents the "limit of its power to refuse to exercise jurisdiction."²⁰ It defines the line between a State's own actions and actions which are inextricably linked with another State's conduct. The former concerns the principle of individual State responsibility while the latter concerns the principle of consent, that the Court cannot adjudicate a State's actions without its sanction.

According to Judge Weeramantry, this case was closer to the *Corfu Channel Case*²¹ and the *Nauru Case*²² which fell on the other side of the line. In the *Corfu Channel Case* between the United Kingdom and Albania, the United Kingdom asserted that Albania and Yugoslavia colluded in laying mines in the Corfu Channel. The Court proceeded, in Yugoslavia's absence, to find that "the authors of the minelaying remain unknown" but that Albania was internationally responsible for allowing the mines to be laid. In the *Nauru Case*, Nauru alleged the breach of a joint trusteeship by Australia. The Court found that, even though its decision may affect the interests of the other trustees, New Zealand and United Kingdom, Australia's responsibility could be independently determined. Determination of the international responsibility of the United Kingdom and New Zealand was not a "prerequisite" to the particular claim before the Court.

In the present case, Judge Weeramantry held that Australia's responsibility could be determined irrespective of Indonesia's interests. Australia and the United Nations acknowledge that East Timor is a non-self-governing territory, and that it possesses a right to self-determination and permanent sovereignty over its resources. Judge Weeramantry criticised the majority of the Court for failing to give adequate recognition to the status of obligations under General Assembly and Security

¹⁹ The United Kingdom asserted their right to the gold on the basis of the favourable decision of the court in the *Corfu Channel Case*. See *Corfu Channel Case* [1949] ICJ Rep 4.

²⁰ *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v United States of America)* [1984] ICJ Rep 392 at 431. See also *Case Concerning the Continental Shelf (Libya Arab Jamahiriya/Malta)* (Merits) [1985] ICJ Rep 13.

²¹ [1949] ICJ Rep 4.

²² [1992] ICJ Rep 12.

Council resolutions and determinations by General Assembly Committees.²³ He provided the example of resolutions related to the 1960 Belgium Congo crisis. The resolutions did not expressly create obligations but were interpreted as constituting decisions and creating certain obligations.²⁴ The question for consideration was therefore not the legality of Indonesia's control but the duties of States, such as Australia, towards a non-self-governing territory.

Judge Weeramantry emphasised that this approach does not preclude the inevitable effect that decisions of the Court may have on the rights of third parties, such as Indonesia. This is an unavoidable part of the judicial process and a specific characteristic of the international system, particularly given the increasingly multilateral nature of international obligations. The framers of the Statute of the Court foresaw this problem, and entrenched protection for third parties in the Statute. Article 59 provides that the Court's decision is only binding upon the parties to the case, while Article 62 prescribes the right to intervene where a third party's legal interests are affected. The Court has reaffirmed these safeguards.²⁵

Judge Weeramantry also stressed that a State is individually responsible for its breaches of international law, irrespective of the nature of the obligation or the involvement of other States. As the Court recognised in the *Nauru Case*, multilateral obligations impose individual responsibility on each State concerned. Similarly, *erga omnes* rights, such as the right of self-determination, impose separate obligations on States.²⁶ Furthermore, it was Australia's unilateral actions in making the Treaty, not the validity of the Treaty, that were at issue before the Court. In the result, Judge Weeramantry found that Australia's actions in negotiating, concluding and initiating the performance of the *Timor Gap Treaty* could be adjudicated independently of Indonesia's actions.²⁷

Similarly, Judge Skubiszewski and Judge Ranjeva argued that the Court could determine Australia's responsibilities in the absence of Indonesia. Judge Skubiszewski criticised the Court's extensive interpretation of the *Monetary Gold Case*, as it was contrary to earlier practice and beyond the parameters of that case.²⁸ He endorsed Judge Shahabuddeen's approach in the *Nauru Case*, that is, that the fact, "[t]hat others had the same obligation does not lessen the fact that Australia had the obligation. It is only with Australia's obligation that the Court is concerned".²⁹ Though the Court lacked the jurisdiction to determine the validity of the Treaty, it could determine the lawfulness of Australia's unilateral acts without adjudicating upon the powers, rights and duties of Indonesia.³⁰

23 [1995] ICJ Rep 90 at 185-188.

24 *Ibid* at 205-208.

25 See *Military and Paramilitary Activities in and against Nicaragua* [1984] ICJ Rep 392 at 431. See also *East Timor* [1995] ICJ Rep 90 at 169-170.

26 [1995] ICJ Rep 90 at 170-173.

27 *Ibid* at 173-178.

28 *Ibid* at 249-251.

29 [1992] ICJ Rep 12 at 297 referred to in *East Timor* [1995] ICJ Rep 90 at 253.

30 [1995] ICJ Rep 90 at 242, see also at 242-253.

Judge Ranjeva also criticised the Court for failing to clarify the scope and limitations of the *Monetary Gold Case*. He stated that:

To refer without any explanation to the jurisprudence in *Monetary Gold* leaves too many questions open for it to satisfy the requirements of the good administration of justice, one of whose components is the foreseeability of legal decisions.³¹

Judge Ranjeva adopted a theoretical approach to the *Monetary Gold Case*, drawing a distinction between the subjective and objective rights of a State as the basis for determining whether a State is an indispensable third party. Though he agreed with the majority of the Court, he was of the view that, as in the *Nauru Case*, the Court could have adjudicated upon the objective rights in the dispute between Portugal and Australia, these rights involving the right of self-determination of the East Timorese.³²

Australia's Breach of Obligation

Judge Weeramantry and Judge Skubiszewski proceeded to consider the nature of self-determination and the resulting obligations upon Australia. For Judge Weeramantry, the right to self-determination was "the central principle around which this case revolves". He found that this right is supported by all sources of international law. It is endorsed by international conventions, embodied in Articles 55 and 56 of the United Nations Charter, and it is intrinsically linked to the Charter's major purpose of friendly relations. It is the basis for the trustee relationship between administering Powers and non-self-governing territories, expressly supported by a cross-section of States and confirmed by the Court in previous cases.³³ Further, to ensure the practical implementation of this right, a "superstructure" has emerged through the establishment of Committees overseeing non-self-governing territories and the adoption of Declarations, such as the Declaration on Friendly Relations.³⁴ Judge Weeramantry also illustrated the legal basis for a State's right to permanent sovereignty over its natural resources. Not only would East Timor lose a substantial amount of invaluable resources through the operation of the Treaty, but it also violates their right to freely dispose of "their natural wealth and resources in accordance with their national interests", "contrary to the spirit and principles of the Charter of the United Nations".³⁵

The *erga omnes* right of the people of East Timor to self-determination and their right to permanent sovereignty over their natural resources generates a correspond-

³¹ *Ibid* at 132.

³² *Ibid* at 132-134.

³³ *Ibid* at 196-197.

³⁴ Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations (General Assembly Resolution 2625 (XXV) of 24 October 1970). *Ibid* at 194-196.

³⁵ General Assembly Resolution 1803 (XVII) on Permanent Sovereignty over Natural Resources. *Ibid* at 197-199.

ing duty upon all States, including Australia, to recognise and respect these rights. Judge Weeramantry doubted the compatibility of Australia's actions, in concluding a Treaty that recognised East Timor as being incorporated into another State without the consent of its people, with the rights of East Timor and the obligations of Australia to respect these rights. Australia's argument that it had not violated international law because it was not subject to a specific direction or prohibition on dealing with Indonesia in relation to East Timor, ignores any possible implied directions or prohibitions concerning East Timor's rights. It also disregards the nature of these customary obligations and their underlying general principles and norms. Indeed, Australia has violated its obligations to respect the rights of the East Timorese. Such a violation demands a judicial remedy.³⁶ Accordingly, Judge Weeramantry concluded that the Court could have determined the legality of Australia's obligations and conduct without resorting to any adjudication upon Indonesia.

Judge Skubiszewski elaborated upon Judge Weeramantry's discussion of Australia's international obligations to East Timor. He outlined Australia's duties to East Timor as a non-self-governing territory and to Portugal as the administering Power.³⁷ The specific nature of these duties include the duty not to harm East Timor's status, to consider the interests of the East Timorese and to consult the Portuguese in undertaking negotiations concerning the interests of East Timor. As Australia breached these duties in its negotiations and conclusion of the Treaty, the Court could have found that Australia had violated its international obligations to East Timor and Portugal, without adjudicating upon Indonesia's interests and responsibilities.³⁸

Implications of the Decision

The Court

A significant consequence of the Court's majority judgment is the question it raises as to the role of the Court in the international community and the ability of the Court to fulfil its role. Judge Skubiszewski forcefully criticised the Court for misconceiving its role as the "principal judicial organ of the United Nations". He strongly agreed with Judge Lauterpacht that:

While the demands of legal principle cannot be ignored, it has to be recalled that the rigid maintenance of principle is not an end in itself but only an element — albeit one of the greatest importance — in the constructive application of law to

³⁶ *Ibid* at 209-216.

³⁷ *Ibid* at 259-265, 269-273. Judge Skubiszewski illustrated that East Timor had retained its status as a non-self-governing territory and that Portugal is still the administering Power.

³⁸ *Ibid* at 275-277.

the needs of the ultimate beneficiaries of the legal system, individuals no less than the political structures in which they are organised.³⁹

Similarly Judge Weeramantry stressed that the indispensable third party rule must be balanced against the Court's "duty to give the fullest decision it may in the circumstances of the case",⁴⁰ particularly since it is "the international system's place of ultimate resort for upholding the principles of international law".⁴¹ Discordant to these principles, the Court's approach to the indispensable third party argument verges on an abdication of its function to settle international disputes and enforce international law.

Self-Determination and Erga Omnes

In the *Namibia Advisory Opinion and Western Sahara Case* the Court declared "self-determination" to be a binding norm of customary international law in light of numerous international instruments and the practice of decolonisation.⁴² It has also recognised the importance of ascertaining the wishes of the people concerned with respect to self-determination.⁴³ The Court has added to the right's elevation by clothing it with the status of *erga omnes*. The only other occasion that the court discussed *erga omnes* was the *Barcelona Traction Case* where the Court stated that all States have a legal interest in the observance of rules such as acts of aggression and genocide as well as basic rights such as protection from slavery and racial discrimination.⁴⁴ The Court has, however, passed up another opportunity to examine the content of *erga omnes* obligations.

The Court has also failed to further develop substantive international law relating to self-determination. Self-determination has been described as "an area or a source of problems, . . . not a set of ready-made rules."⁴⁵ Development of the law on self-determination and avenues of redress is sparse in the international arena. Article 1 of the International Covenant on Civil and Political Rights provides the right of all peoples to self-determination. However, the Covenant's guardian, the Human Rights Committee, has declined to consider individual communications concerning self-determination under the First Optional Protocol to the Covenant⁴⁶ and their

³⁹ *Application of Genocide Convention, Further Requests for the Indication of Provisional Measures* [1993] ICJ Rep at 408.

⁴⁰ *Continental Shelf (Libyan Arab Jamahiriya/Malta), Application for Permission to Intervene* [1984] ICJ Rep 4 at 25 quoted in *East Timor* [1995] ICJ Rep 90 at 159. See also at 243 per Skubiszewski J.

⁴¹ [1995] ICJ Rep 90 at 161.

⁴² *The Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Resolutions 276 (1970)* [1971] ICJ Rep 16 at 31; and *Western Sahara Case* [1975] ICJ Rep 12 at para 54-56.

⁴³ *Western Sahara Case* [1975] ICJ Rep 12 at para 54-56.

⁴⁴ *Barcelona Traction Light and Power Company Case (Belgium v Spain), Second Phase* [1970] ICJ Rep 4 at 32.

⁴⁵ Koskenniemi, M "National Self-Determination Today: Problems of Legal Theory and Practice" (1994) 43 *International & Comparative Law Quarterly* 241 at 266.

⁴⁶ *Mikmaq Tribal Society v Canada*, UN Doc. CCPR/C/43/D/205/1986 (1991). See discussion in Turpel, ME "Indigenous Peoples' Right of Political Participation and Self-Determination: Recent

General Comment on Article 1 does not significantly advance our understanding of self-determination.⁴⁷ The only legal or human rights institution to address the right to self-determination has been the *ad hoc* Badinter Commission, instituted by the European Commission to determine their stance of recognition for the emerging republics in the former Yugoslavia and the Soviet Union.⁴⁸ Self-determination has therefore been exiled to the political arena, to bodies constituted by government representatives such as the General Assembly, Decolonisation Committee, Trusteeship Council and Commission on Human Rights.

Amidst this pessimism, however, it is important to recognise that the *erga omnes* character of self-determination provides potential legal avenues for aspiring beneficiaries. A State could bring an action against another State, provided it accepted the Court's jurisdiction, for violating the right of any people to self-determination. For example, Portugal could bring a case against New Zealand or Australia for denying the right of self-determination to their indigenous peoples. Indeed, the *South West Africa Case (Second Phase)*⁴⁹ would have been decided differently since Ethiopia and Liberia could have asserted a legal interest in the right of the South West African people to self-determination.

East Timor

The Court's affirmation of the right of the people of East Timor to self-determination is welcome. However, the Court's technical approach to its jurisdiction denies the East Timorese an international legal forum merely on the basis that Indonesia does not accept international dispute settlement procedures. The Court's downplaying of United Nations' resolutions is also a significant concern as it gives some legitimacy to Indonesia's position and support to Australia's policy of recognising Indonesian sovereignty over East Timor. As all legal avenues are now effectively closed,⁵⁰ the only strategies available to East Timor remain entirely political, irrespective of whether this is the most appropriate or effective recourse.⁵¹

Conclusion

The Court's narrow and technical decision in the *East Timor Case* invokes memories of their decision in the *South West Africa Cases (Second Phase)*.⁵² The Court has grandly declared the substantive right of the East Timor to self-determination and

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International Legal Developments and the Continuing Struggle for Recognition" (1992) 25 *Cornwell International Law Journal* 579.

47 Human Rights Committee, General Comment 12, HRI/GEN/1/11.

48 See Opinions 1-7, (1992) *European Journal of International Law* 184.

49 [1966] ICJ Rep 6.

50 The Court could give an Advisory Opinion under Article 65 of its Statute but this would require a request from the General Assembly which is unlikely given that the Secretary General has been given carriage of the issue by the General Assembly.

51 See Chinkin, *op cit* at 113-115 for possible avenues of redress.

52 [1966] ICJ Rep 6.

the *erga omnes* character of that right, but has denied aggrieved parties the means to have that right enforced. Jeremy Bentham's dismissal of rights as "nonsense upon stilts"⁵³ seems more appropriately directed to the treatment of human rights in this case by the International Court of Justice.

⁵³ Bentham J "Anarchical Fantasies" cited in Bowring J (ed) *The Works of Jeremy Bentham* (Edinburgh, William Tait, 1843) Vol II, p 489 at 501.