Borrowed Tools

International Law and the Making of Sovereignty in East Timor

LUCAS PROCÓPIO SANT'ANNA*

Abstract: This article uses East Timor to ask a simple question with hard answers: what can international law actually do for peoples seeking independence? The paper follows Timor's path from Portuguese rule through Indonesia's occupation to UN administration and statehood, and argues that law mattered in three different ways. First, the ICJ's East Timor case (Portugal v Australia, 1995) affirmed self-determination and permanent sovereignty over natural resources (PSNR), even as Monetary Gold rules kept the Court from deciding the merits. Second, a UN sequence, UNAMET, INTERFET, UNTAET, turned principle into practice by creating security, institutions and a constitution under Sérgio Vieira de Mello. Third, the paper shows the cost of success: transitional rule can enable self-government while temporarily constraining it, a sovereignty paradox that East Timor mitigated through early "Timorization" of authority. A comparative section reads Western Sahara and Palestine through the same lens: rights are named, but credible pathways (consultation under protection, time-bound administration with real local agency) are missing. The conclusion offers conditions, not a template, for when law moves from declaration to implementation: layered legitimacy, benchmarked security, and early transfer to elected institutions. In short, international law does not confer sovereignty; used well, it can be a tool to scaffold it.

Keywords: East Timor; Self-determination; Permanent sovereignty over natural resources (PSNR); UNTAET; State recognition.

Table of contents: 1. Introduction. – 2. Historical Background. – 3. International Law and the Limits of Decolonization. – 4. International Law as a Decolonization Tool. – 5. East Timor as an Example for the Future. – 5.1. Western Sahara: When Process Collapses. – 5.2. Palestine: Issues Across All Dimensions. – 6. Conclusion.

1. *Introduction*

East Timor's struggle for independence is one of the most complex decolonization processes of the late twentieth century. Its history is marked by successive layers of foreign intervention: from Portuguese colonialism beginning in the sixteenth century to Indonesia's invasion and occupation in 1975, and later the United Nations' transitional administration under UNTAET[1]. Each of these moments reveals the ambivalent role of international law as both an instrument of domination and a mechanism of liberation.

This paper examines East Timor's decolonial trajectory through three different yet connected dimensions: the colonial and post-colonial historical background; the intervention of the International Court of Justice in *Portugal v. Australia* (1995) concerning East Timor's natural resources[2]; and the United Nations Transitional Administration in East

* Lucas Procópio Sant'Anna is a Brazilian lawyer and academic. He earned his LL.B. from the Federal University of the State of Rio de Janeiro (UNIRIO) in 2022, where he also studied History. Through his work, he developed a focus on human rights, international law, and decolonization. A member of the Brazilian Bar Association's Law and Economy Committee, Lucas is currently completing a Master's in Global Law-Making at the University of Trento and working at the United Nations Office on Drugs and Crime (UNODC) in Nairobi. His research aims to contribute to more inclusive and decolonized legal frameworks.

[1] See *East Timor Country Profile.* (BBC News, June 5, 2023), available at https://www.bbc.com/news/world-asia-pacific-14919009 (last visited October 13, 2025).

[2] See I.C.J., 1991 no. 84, *Case concerning East Timor (Portugal v. Australia),* available at https://www.icj-cij.org/case/84 (last visited October 13, 2025).

Timor (UNTAET) under Brazilian diplomat Sérgio Vieira de Mello's leadership[3]. Building on this analysis, the paper engages ongoing debates about contemporary decolonial efforts – most notably Western Sahara and Palestine – arguing that the international community possesses legal and institutional tools that can guide local paths to sovereignty while centering local authority and culture.

This paper argues that East Timor's experience reveals international law's ambivalence in decolonization: the same legal tools that enable self-determination can simultaneously limit it. Through *Portugal v. Australia*'s affirmation of PSNR, the UN's sequenced transitional administration, and comparative readings of Western Sahara and Palestine, this article argues that international law does not confer sovereignty but, under specific conditions, can structure it, always at the cost of temporarily limiting the very autonomy it purports to create.

This article uses a mixed doctrinal and process-tracing case-study of East Timor. Doctrinal analysis reconstructs the content and effects of relevant legal norms, such as self-determination, permanent sovereignty over natural resources (PSNR), and UN peace-operations mandates, through close reading of primary sources (ICJ, *Portugal v Australia*; UNGA/UNSC resolutions; UNTAET regulations and reports) and secondary scholarship on recognition and peacebuilding. Process tracing links these norms to sequential institutional choices (from UNAMET to INTERFET, then UNTAET and finally independence), identifying mechanisms by which international law moved from principle (adjudication) to practice (administration). The approach is interpretivist-attentive to discourse (e.g., how legal language framed sovereignty claims) but grounded in documentary evidence. Limitations include case-selection (a "most-likely" case) and generalizability; these are mitigated by explicit mechanism-based claims and transparency about sources. Translations from Portuguese are the author's unless otherwise noted.

[3] See *United Nations Transitional Administration in East Timor* (United Nations Peacekeeping), available at https://peacekeeping.un.org/fr/mission/past/etimor/etimor.htm (last visited October 13, 2025).

This analysis proceeds from Third World Approaches to International Law (TWAIL), which interrogates how international law, despite its claims to universality, emerged from and continues to reproduce colonial power relations. Following Luis Eslava's attention to law's "everyday operation"[4], this paper examines not only high-level ICJ jurisprudence but also the mundane regulatory work of UNTAET that institutionalized sovereignty's conditions. This dual pattern reveals how international law's promise of freedom often becomes a technology of governance.

To bridge doctrinal and policy literatures, the paper uses a processual framework: from norms to process and finally administration. *Norms* name the right (self-determination; PSNR); *process* converts principle into collective choice under a security envelope; *administration* institutionalizes outcomes through time-bound, locally owned governance. The comparative chapters on Western Sahara and Palestine operate as a stress test: where any link fails, normative consensus, credible sequencing, or locally legitimated administration, self-determination is affirmed in principle but deferred in practice. The aim is not a template but a set of conditions under which law plausibly moves from declaration to implementation.

2. *Historical Background*

East Timor first became a topic on the international global agenda in 1960 when the United Nations added it to the list of Non-Self-Governing Territories[5]. At that time, it was administered by Portugal, alongside other colonies such as Angola, Mozambique, and Macau. Fourteen years

[4] See Luis, Eslava and Sundaya, Pahuja, *Beyond the Post-Colonial: TWAIL and the Everyday Life of International Law* at 195-221, 45(2) Journal of Law and Politics in Africa, Asia and Latin America - Verfassung und Recht in Übersee (VRÜ), (2012), available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2034228 (last visited October 13, 2025).

[5] See *East-Timor, UNTAET (Background)*, (United Nations Peacekeeping), available at https://peacekeeping.un.org/fr/mission/past/etimor/UntaetB.htm (last visited October 13, 2025).

later, in 1974, the Carnation Revolution overthrew Portugal's dictatorship[6]. The new government sought to establish a provisional government in East Timor (Timor-Leste in Portuguese), but the sudden opening of political space triggered a civil war between factions advocating independence and those favoring integration with Indonesia.

Fearing the emergence of a communist state on its borders amid the Cold War, Indonesia invaded East Timor in December 1975, annexing it as its 27th province the following year[7]. The territory was then annexed by Indonesia and it was, effectively, its 27th province from 1976 to 1999. The only countries to officially recognize this were Indonesia and Australia. The United Nations acted on the issue, namely through the General Assembly's Resolution 3485 (1975), calling for the respect for the territorial integrity of Timor[8]. The Security Council (UNSC), furthermore, put forth UNSC Resolution 389 (1976) requesting that Indonesia withdraw its forces from East Timor[9], however the country refused to do so.

The stalemate persisted for more than two decades. In 1998, weakened by the Asian Financial Crisis[10], Indonesia proposed limited autonomy for East Timor but agreed to respect the results of a UN-supervised consultation on independence. The UN Security Council, via Resolution 1246 (1999) established the United Nations Mission in East Timor (UNAMET) to organize the referendum and monitor implementation of

[6] See *Id.*

[7] See Rourke, Alison, *East Timor: Indonesia's Invasion and the Long Road to Independence*, The Guardian (August 29, 2025), available at https://www.theguardian.com/world/2019/aug/30/east-timor-indonesias-invasion-and-the-long-road-to-independence (last visited October 13, 2025).

[8] See United Nations General Assembly Resolution 3485 (1976), available at https://digitallibrary.un.org/record/189768?v=pdf (last visited October 13, 2025).

[9] See United Nations Security Council Resolution 389 (UN Digital Library, 1976), available at https://digitallibrary.un.org/record/280254 (last visited October 13, 2025).

[10] See Yehezkiel, Vito, *Revisiting the Past: Analyzing Indonesia's 1998 Monetary Crisis*. Modern Diplomacy (June 19, 2024), available at https://moderndiplomacy.eu/2024/06/19/revisiting-the-past-analyzing-indonesias-1998-monetary-crisis/ (last visited October 13, 2025).

its outcome[11]. Shortly thereafter, UN Security Council Resolution 1272 (1999)[12] created the United Nations Transitional Administration in East Timor (UNTAET), granting the UN full executive, legislative, and judicial authority during the transition to independence.

UNTAET, under the leadership of Brazilian diplomat Sérgio Vieira de Mello, combined peacekeeping, State-building, and humanitarian governance. It is widely regarded as a milestone in UN peace operations, marking the advent of a fourth generation of missions focused on peacebuilding[13]. Kai Michael Kenkel, when referring to this fourth generation of Peacekeeping Operations, claims that:

> "An extreme form of peacebuilding is the transitional administration, wherein the exercise of sovereignty over a given territory is effectively transferred to a UN peace operation and all executive, legislative, and judicial authority temporarily rests with the head of the UN mission. To date only two such administrations have been set up, the United Nations Interim Administration Mission in Kosovo (UNMIK) and the United Nations Transitional Administration in East Timor (UNTAET). Both were established in 1999; UNTAET was transformed into a political mission after Timorese independence and UNMIK continues with reduced tasks at the time of writing"[14].

UNTAET, however, was not without criticism. Not all of the mission's means and objectives were unanimous and, even though it can be regarded as a success by the international community through the United

[11] See United Nations Security Council Resolution 1246 (1999), available at https://digitallibrary.un.org/record/1494150?v=pdf (last visited October 13, 2025).
[12] See United Nations Security Council Resolution 1272 (1999), available at https://docs.un.org/en/S/RES/1272(1999) (last visited October 13, 2025).
[13] See Kenkel, Kai Michael, *Five Generations of Peace Operations: From the Thin Blue Line to Painting a Country Blue*. Rev. Bras. Polít. Int. 56 (1): 122-143 (2013), available at https://www.scielo.br/j/rbpi/a/mTGNK7hRXJBmJvmQmdQCZrh/?lang=en&format=pdf (last visited October 13, 2025).
[14] See id, p.133.

Nations, not all is perfect, as the next section expands in detail. The business of State-building is demanding, and externally induced coherence can override local norms. Dal Poz argues that:

> "UNTAET has later been criticised for several reasons, including: firstly, its adoption of 'ground zero' approach that regarded Timor-Leste as terra nullius - a blank space with no existing political actors or institutions, […] interpreted its statebuilding mandate as a merely 'technical exercise' and followed a model based on the Western Weberian paradigm, creating new national political institutions which ignored existing socio-political practices, such as traditional adat law"[15].

Under UNTAET, Sérgio Vieira de Mello also steered negotiations with Australia on the Timor Sea, culminating in the 2001 Timor Sea Arrangement and, at independence, the Timor Sea Treaty (2002), which created a Joint Petroleum Development Area and a revenue-sharing regime superseding the Timor Gap Treaty[16]. The resource has been used to mitigate internal tensions and de Mello was politically able to negotiate and partition the revenues that come from it to guarantee the political peace necessary to Statebuilding.

Yet the stabilizing effect of hydrocarbon income is conditional and fragile. Timor-Leste later sought to institutionalize national factions management via a Petroleum Fund (2005)[17], but exposure to price volatility and exhaustibility means that declines in oil revenues could reopen latent

---

[15] A, Dal Poz, *'Buying Peace' in Timor-Leste: Another UN-success Story?'*, 2(2) Peace Human Rights Governance 185-219, p. 191-192, (2018).

[16] See *Timor Sea Treaty (*Australian Government Department of Foreign Affairs and Trade, May 10, 2002), available at https://www.info.dfat.gov.au/info/treaties/treaties.nsf/AllDocIDs/A8A223D015C50F8CCA256BC70008A0E2 (last visited October 19, 2025).

[17] See *Petroleum Fund Law* (Government of Timor-Leste August 3, 2005), available at https://timor-leste.gov.tl/wp-content/uploads/2010/03/Law_2005_9_petroleum_fund_law_.pdf (last visited October 19, 2025).

social cleavages and hurt the political settlement[18]. Resource governance can buy time for institution-building, but it is not a substitute for broad-based legitimacy and diversified economic capacity[19].

Furthermore, resource governance illustrates the compound nature of international legal constraints on development. Even as PSNR affirmed Timor's right to its oil wealth, the terms of that sovereignty were shaped by: (1) interim arrangements negotiated under Australian pressure; (2) "good governance" conditionalities from international financial institutions; (3) emerging environmental obligations; and (4) investor protections. While each of these obligations is individually defensible, they collectively narrow the space for autonomous decision-making.

The issue of exploitation of natural resources in the Timor region was addressed by the International Court of Justice before Timorese independence – without a conclusion on merit, as will be explored in the next chapter. Even when courts can't reach the merits, international law still shapes behavior. Duties of non-recognition and non-assistance, which are tied to self-determination, as an *erga omnes* obligation, and to people-centered resource sovereignty, narrow the space for exploitative bargains and signal that interim deals should be provisional, transparent, and revisable by the future sovereign. In practice, that expressive guidance bolstered the UN's sequencing and helped align external support with locally owned state-building. In the discussion on Permanent Sovereignty over National Resources, *Portugal v. Australia* marks a turning point by anchoring said principle on self-determination and the peoples, not on States themselves.

[18] See Michael L. Ross, *The Oil Curse,* Princeton (2012), available at https://timor-leste.gov.tl/wp-content/uploads/2010/03/Law_2005_9_petroleum_fund_law_.pdf (last visited October 19, 2025).

[19] See Kenkel, Kai Michael, *Five Generations of Peace Operations: From the Thin Blue Line to Painting a Country Blue*. Rev. Bras. Polít. Int. 56 (1): 122-143 (2013), p. 209-210, available at https://www.scielo.br/j/rbpi/a/mTGNK7hRXJBmJvmQmdQCZrh/?lang=en&format=pdf (last visited October 13, 2025).

The evolution of PSNR from a decolonial right (1962 UNGA Resolution 1803[20]) to a conditional obligation (post-Stockholm 1972[21]) is traceable in Timor's trajectory. While Portugal v. Australia affirmed resource sovereignty, UNTAET's administration and post-independence governance operated under international oversight that qualified that sovereignty with transparency requirements, anti-corruption measures, and petroleum fund regulations – all externally validated. PSNR thus remained formal while its exercise became conditional.

UNTAET, after stabilizing the country and establishing key state institutions, allowed East Timor to hold presidential elections in 2002, which granted Xanana Gusmão his first presidential term[22]. A follow-up mission, the United Nations Mission of Support in East Timor (UNMISET), oversaw the transfer of authority until its conclusion in 2005.

Through this sequence of interventions, international law evolved from an instrument of colonial oversight to a mechanism of postcolonial reconstruction, transforming East Timor from a non-self-governing territory into a sovereign state.

Presently, East Timor occupies a meaningful place in Southeast Asia's political and economic landscape. Since independence in 2002, it has held competitive elections and witnessed peaceful transfers of power, consolidating core democratic practices[23]. It is also on a formal path to become the 11th member of ASEAN[24], a bloc that, taken together, ranks among the world's largest economies and most populous regions – fifth

[20] See United Nations General Assembly Resolution 1.803 (December 14, 1962), available at https://legal.un.org/avl/ha/ga_1803/ga_1803.html (last visited February 7, 2026).
[21] See *Report on the United Nations Conference on the Human Environment*. (June 1972), available at https://docs.un.org/en/A/CONF.48/14/Rev.1 (last visited October 25, 2025).
[22] See *Gusmão Wins First-Ever Presidency in a Landslide*. (UN News, April 17, 2002), available at https://news.un.org/en/story/2002/04/32652 (last visited October 13, 2025).
[23] See *Timor Leste.* (Freedom House), available at https://freedomhouse.org/country/timor-leste (last visited October 18, 2025).
[24] See Derek, Grossman, *Timor-Leste Adds a New Wrinkle to US-China Competition,* Foreign Policy (October 16, 2025), available at https://foreignpolicy.com/2025/10/16/timor-leste-asean-us-china-competition-south-china-sea/ (last visited October 18, 2025).

in GPD and third in population[25]. Accession would anchor Timor-Leste within a major regional market and institutional framework, reinforcing its shift from Non-Self-Governing Territory to recognized statehood with growing regional integration.

In conclusion, East Timor has moved not only from dependency to sovereignty, but toward meaningful participation in one of the world's most consequential regional organizations.

3. *International Law and the Limits of Decolonization*

This present-day trajectory was shaped by earlier legal battles over status and resources. Before UN administration and eventual independence, East Timor's claims were tested at the International Court of Justice. In 1995, the International Court of Justice (ICJ) heard the case *East Timor (Portugal v. Australia)*[26], in which Portugal accused Australia of infringing East Timor's right to freely dispose of its natural resources. Portugal claimed that Australia had unlawfully concluded the 1989 Timor Gap Treaty with Indonesia[27] – then occupying East Timor – to explore and exploit the oil and gas reserves of the territories that, under international law, belonged to the East Timorese people.

Portugal argued[28] that by negotiating and implementing the Treaty, Australia had violated:

---

[25] See *ASEAN Market Profile*, HKTC Research (March 24, 2024), available at https://research.hktdc.com/en/article/Mzk5MzcxNjEz (last visited October 18, 2025).

[26] See I.C.J., 1991 no. 84, *Case concerning East Timor (Portugal v. Australia),* available at https://www.icj-cij.org/case/84 (last visited October 13, 2025).

[27] See *1989 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* (National University of Singapore Center for International Law, December 11, 1989), available at https://cil.nus.edu.sg/databasecil/1989-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/ (last visited October 13, 2025).

[28] See ICJ, June 30, 1995, *East Timor (Portugal v. Australia*) at p.12, available at https://www.icj-cij.org/sites/default/files/case-related/84/084-19950630-JUD-01-00-EN.pdf (last visited September 27, 2025).

I. the right of the East Timorese people to self-determination and permanent sovereignty over their natural resources (PSNR);
II. the rights of Portugal as the still-recognized administering power; and
III. relevant UN Security Council Resolutions 384 and 389, which had affirmed East Timor's territorial integrity and called for Indonesia's withdrawal.

Australia's procedural claims were that, in summation, the Court lacked jurisdiction over the case, since Portugal was not a legitimate party of the procedures as it held no juridical claim on the matter. Furthermore, it claimed that, according to the Monetary Gold Principle[29], the Court had no jurisdiction because of the possible effects of the judgment on a third party, Indonesia, that had not accepted the Court's jurisdiction[30]. It is noteworthy, however, that although technically sound, Australia's representation in the ICJ does not even try to argue that the rights of East-Timor are *not* being violated, maintaining a purely legal-procedural argumentation.

The ICJ's refusal to adjudicate rested on the Monetary Gold doctrine, drawn from *Monetary Gold Removed from Rome in 1943 (Italy v France, United Kingdom and United States of America)* (1954)[31]. The rule is simple but powerful: the Court cannot adjudicate a dispute if doing so would require

[29] See ICJ, June 15, 1954, *Monetary Gold Removed From Rome in 1943 (Italy v. France, UK and USA),* at p. 19 see *"The Court finds that the jurisdiction conferred upon it by the common agreement of France, the United Kingdom, the United States of America and Italy does not, in the absence of the consent of Albania, authorize it to adjudicate upon the first Submission in the Application of the Italian Government"*, available at https://www.icj-cij.org/sites/default/files/case-related/19/019-19540615-JUD-01-00-EN.pdf (last visited September 26, 2025).

[30] See Kenkel, Kai Michael, *Five Generations of Peace Operations: From the Thin Blue Line to Painting a Country Blue*. Rev. Bras. Polít. Int. 56 (1): 122-143 (2013), available at https://www.scielo.br/j/rbpi/a/mTGNK7hRXJBmJvmQmdQCZrh/?lang=en&format=pdf (last visited October 13, 2025), p.12.

[31] See I.C.J., 1991 no. 84, *Case concerning East Timor (Portugal v. Australia),* available at https://www.icj-cij.org/case/84 (last visited October 13, 2025).

it to determine the legal responsibility or rights of an absent third State that has not consented to the Court's jurisdiction when those third-party interests form the "very subject-matter" of the decision. In *East Timor*, Portugal's claims could not be resolved without first pronouncing on Indonesia's conduct and entitlement to conclude the Timor Gap arrangements; Indonesia was not before the Court, so the case was barred.

The principle is not absolute: in *Certain Phosphate Lands in Nauru* (1992)[32], the Court allowed a case to proceed where a third State's interests were implicated but not indispensable. The line, then, turns on indispensability: when a merits decision necessarily entails attributing wrongful conduct or deciding rights of a non-consenting State, Monetary Gold blocks jurisdiction, channeling the dispute to political and administrative forums instead of adjudication.

This procedural barrier exposed a deeper structural problem: international law's State-centric architecture makes adjudication of colonial wrongs nearly impossible when the occupying power refuses jurisdiction. *Monetary Gold* thus functions as a doctrine of imperial immunity, ensuring that the most serious violations, that is, those requiring determinations about non-consenting third States, remain beyond the Court's reach. The ICJ could name the right but could not remedy the wrong. Portugal's only recourse was to shift strategy from adjudication to administration, from courts to Security Council resolutions - a move that foreshadowed the institutional sequencing (from UNAMET to INTERFET and finally UNTAET) that would eventually operationalize self-determination.

The Court, in light of all this, ultimately upheld this procedural objection, ruling that it "*cannot, in this case, exercise the jurisdiction it has […]*

[32] See *Certain Phosphate Lands in Nauru* (Nauru v Australia) (Preliminary Objections) (1992) ICJ Rep 240, paras 50–55 (last visited October 15, 2025).

because, in order to decide the claims of Portugal, it would have to rule, as a prerequisite, on the lawfulness of Indonesia's conduct in the absence of that State's consent"[33].

Despite this outcome, the *East Timor* case remains legally and politically significant. The Court explicitly reaffirmed the *erga omnes* character of the right to self-determination: a right owed to the international community as a whole, not merely to the parties before it. PSNR, while not independently declared *erga omnes*, was anchored to self-determination in a way that gave it derivative normative force. That is, if a people's right to self-determination is opposable to all States, then agreements that dispose of that people's resources without their consent cannot be treated as purely bilateral matters.

This move had consequences beyond the courtroom itself. Even without a merits decision, the judgment signaled that the Timor Gap Treaty's legitimacy was conditional, that resource arrangements negotiated over the heads of a non-self-governing people carried a legal shadow. The case kept East Timor visible on the international agenda at a moment when political attention had largely moved on. Furthermore, it reinforced Portugal's standing as administering power, which would prove critical when diplomatic conditions shifted after Indonesia's President fell in 1998[34]. In this sense, *Portugal v. Australia* functioned less as adjudication and more as strategic positioning, as it created normative pressure that, while insufficient on its own, shaped the political terrain on which UNAMET, INTERFET, and UNTAET would later operate.

While the ICJ could not enforce the right, Portugal's use of the Court demonstrated that international adjudication can serve decolonization

[33] *Timor Sea Treaty* (Australian Government Department of Foreign Affairs and Trade, May 10, 2002) at p.106, available at https://www.info.dfat.gov.au/info/treaties/treaties.nsf/AllDocIDs/A8A223D015C50F8CCA256BC70008A0E2 (last visited October 19, 2025).

[34] See *Indonesians Overthrow President Shuharto,* Global Nonviolent Action Database (1998), available at https://nvdatabase.swarthmore.edu/content/indonesians-overthrow-president-suharto-1998 (last visited March 19, 2026).

even when it fails on jurisdiction by naming obligations, constraining justifications for inaction, and keeping legal claims alive for the institutional moments that follow.

4. *International Law as a Decolonization Tool*

While the ICJ could not enforce self-determination or Permanent Sovereignty over Natural Resources (PSNR) in *Portugal v Australia*[35], the trajectory from UNAMET to UNTAET shows the ambivalence of international law. On the one hand, law can entrench power: procedural doctrines (notably Monetary Gold) left the exploitation of East Timor's offshore resources largely unaddressed at the merits stage. On the other, law can enable liberation: the Security Council's decisions and UN administration made possible Timor's passage from Indonesian province to sovereign state by sequencing from consultation to security and finally administration.

Operationalization, however, must be defined with precision, as it is here that the sovereignty paradox becomes most sensitive.

First, process design: UNAMET provided a legitimate act of collective choice under international supervision; INTERFET created a security envelope for de-escalation and humanitarian access; UNTAET then exercised temporary executive, legislative, and judicial authority, but with sunset logic built in: a public roadmap to elections and constitutional deliberation. This sequencing distinguished Timor from open-ended trusteeships: each phase had defined exit criteria tied to institutional capacity rather than abstract readiness – whatever this could mean.

[35] See First established by UNGA Res. 1803/1962, the principle has since then evolved to include both rights and duties regarding the exploration of natural resources. It is, nonetheless, an important tool in the ever evolving debate on decolonization, sovereignty and forms of neocolonialism. United Nations General Assembly Resolution 1803 (December 14, 1962) available at https://legal.un.org/avl/ha/ga_1803/ga_1803.html (last visited October 14, 2025).

Second, institutional architecture: UNTAET promulgated core regulations (UNTAET Regulation 1999/1 on authority[36], 2000/11 on organization[37], 2000/15 on cabinet structure[38]) that created functioning legal and administrative systems. These regulations seeded a national police force (UNTAET Regulation 2000/10[39]), rehabilitated courts (2000/11[40]), established a civil service (2000/22[41]), and supported a constituent assembly (2001/2[42]). Each step translated to practice abstract rights into administrative capacity, building the architecture of an effective statehood.

Third, and most critically, local agency through Timorization: what began as a slogan became practice through: (a) the National Consultative Council (NCC, July 1999), later replaced by the National Council (NC, December 2000), which gave Timorese representatives formal advisory and then legislative roles; (b) rapid recruitment of national Timorese staff across UNTAET departments –by mid-2001, over 90% of public administration positions were held by Timorese nationals[43]; (c) the East Timor Transitional Administration (ETTA, 2000), which created four Timorese-led ministries that operated alongside UNTAET's governance; and (d)

---

[36] See *UNTAET Regulation No. 1999/1* (November 27, 1999), available at https://peacekeeping.un.org/mission/past/etimor/untaetR/etreg1.htm (last visited February 7, 2026).
[37] See *UNTAET Regulation No. 2000/11* (March 6, 2000), available at https://peacekeeping.un.org/mission/past/etimor/untaetR/Reg11.pdf (last visited February 7, 2026).
[38] See *UNTAET Regulation No. 2000/15* (June 6, 2000), available at https://peacekeeping.un.org/mission/past/etimor/untaetR/Reg0015E.pdf (last visited February 7, 2026).
[39] See *UNTAET Regulation No. 2000/10* (March 6, 2000), available at https://peacekeeping.un.org/mission/past/etimor/untaetR/Reg0010E.pdf (last visited February 7, 2000).
[40] See *UNTAET Regulation No. 2000/11* (March 6, 2000), available at https://peacekeeping.un.org/mission/past/etimor/untaetR/Reg11.pdf (last visited February 7, 2026).
[41] See *UNTAET Regulation No. 2000/22* (July 4, 2000), available at https://peacekeeping.un.org/en/mission/past/etimor/untaetR/Reg2200E.pdf (last visited February 7, 2026).
[42] See *UNTAET Regulation No. 2001/2*. United Nations (September 19, 2001), available at https://peacekeeping.un.org/mission/past/etimor/untaetR/2001-28.pdf (last visited February 7, 2026).
[43] See *Report of the Secretary-General on the United Nations Transitional Administration in East Timor* (United Nations Security Council October 18, 2001), available at https://docs.un.org/en/S/2001/983 (last visited February 7, 2026).

early budgetary transparency through the Trust Fund for East Timor and public reporting requirements that, while externally mandated, were co-designed with Timorese officials.

This is where Sérgio Vieira de Mello's leadership proved decisive. Rather than treating Timorization as a late-stage handover, he accelerated it as an ongoing process from UNTAET's inception. His approach paired international capacity, including the use of force to secure positive peace, with local decision-making power, reducing both the reality and the perception of "benevolent colonialism". However, even this progressive administration could not escape the sovereignty paradox: the very metrics of "readiness" for transfer, State capacity, rule of law, fiscal responsibility, were defined by external actors. The benchmarks for removing scaffolding were set by those who built it.

This operationalization of international law therefore exposes its ambivalence. Trusteeship and transitional administrations often risk reproducing hierarchies, which critics call "benevolent colonialism" or "neocolonialism"[44], when the local agency is marginal. East Timor partially mitigated this through progressive "Timorization" of institutions and the early handoff to elected authorities, yet the sovereignty paradox remained: the same legal tools that enable self-determination can constrain it while external actors govern in the interim.

UNTAET's relative success came not from avoiding the sovereignty paradox but from managing it through early, measurable transfers of authority paired with transparent, predictable and stable timelines for exit. This, in any case, raises an uncomfortable question: if international administration can only be successful when it self-abolishes quickly, what does this say about the broader project of international trusteeship? The

[44] The former President of Ghana was the one of the first ones defining neocolonialism as: "T*he essence of neo-colonialism is that the State which is subject to it is, in theory, independent and has all the outward trappings of international sovereignty. In reality its economic system and thus its political policy is directed from outside."* Kwame, Nkrumah, *Neo-Colonialism: The Last Stage of Imperialism,* London: Panaf p.4 (2004).

answer East Timor suggests is that temporary constraint may be acceptable when paired with genuine local co-governance. Open-ended tutelage that defers meaningful power transfer never is.

Permanent Sovereignty over Natural Resources was likewise implemented, not merely asserted. Under UNTAET and immediately post-independence, Timor negotiated interim maritime arrangements with Australia that created a joint development zone and a revenue-sharing regime, providing predictable rents to underwrite core state functions. The later establishment of a Petroleum Fund sought to smooth volatility and convert finite resource income into intertemporal public goods. These tools show law's political economy aspect: resource governance can buy time for institution-building, but it is not a substitute for diversified capacity or broad-based legitimacy.

By putting these elements together, the mission in East Timor shows three complementary modalities of law in decolonization: (1) normative affirmation (self-determination and PSNR as guiding principles); (2) procedural signaling (ICJ jurisprudence that shapes expectations even without coercive effect); and (3) administrative implementation (UN mandates that build the scaffolding of the State). Each modality has limits, but their interplay made independence legally intelligible and practically achievable.

With principles affirmed and institutions built, the remaining question, which was central to East Timor and to decolonization more broadly, is how sovereignty endures once international scaffolding is removed.

5. *East Timor as an Example for the Future*

The arc of East Timor – from colony to Non-Self Governing Territory to full statehood – is a prime example of how international law, even with its shortcomings, can be articulated to guarantee sovereignty. Today,

the United Nations recognizes 17 Non-Self-Governing Territories[45]: out of those, the cases of Western Sahara and Palestine are noteworthy.

5.1. *Western Sahara: When Process Collapses*

Western Sahara's trajectory reveals what happens when normative affirmation exists without credible process and the parallels are not coincidental. Both territories were European colonial possessions listed as Non-Self-Governing Territories by the General Assembly. Both saw decolonization interrupted by a neighboring State's territorial claim – Indonesia in 1975, Morocco in the same year. In both cases, the ICJ was called upon to pronounce on the legal status of the territory and affirmed self-determination as the governing principle. Both involved resource-rich territories where the occupying power's economic interests created structural incentives against withdrawal. And in both, the international community affirmed the right but struggled to operationalize it. What separates the two cases, then, is not the normative framework but the institutional pathway: where East Timor's sequence from consultation to security to administration moved from principle to practice, Western Sahara's process stalled at consultation and never advanced.

Western Sahara, like East Timor, was a European colonial possession – administered by Spain until 1976[46]. While under Moroccan occupation, the International Court of Justice was called upon to decide:

> "I. Was Western Sahara (Rio de Oro and Sakiet El Hamra) at the time of colonization by Spain a territory belonging to no one (terra nullius)? If the answer to the first question is in the negative,

[45] See *Non-Self Governing Territories.* United Nations Decolonization, available at https://www.un.org/dppa/decolonization/en/nsgt (last visited October 18, 2025).

[46] See *United Nations Mission for the Referendum in Western Sahara*. UN Peacekeeping, available at https://minurso.unmissions.org/background (last visited October 18, 2025).

> II. What were the legal ties between this territory and the Kingdom of Morocco and the Mauritanian entity?"[47].

In regard to question I, the Court decided that no, the territory was not *terra nullius* and therefore for question II, that:

> "any tie of territorial sovereignty between the territory of Western Sahara and the Kingdom of Morocco or the Mauritanian entity. Thus the Court did not find any legal ties of such a nature as might affect the application of the General Assembly's 1960 resolution 1514 (XV) – containing the Declaration on the Granting of Independence to Colonial Countries and Peoples – 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"[48].

In this Advisory Opinion, the Court determined that Western Sahara was not *terra nullius* at the time of Spanish colonization and, crucially, that neither Morocco nor Mauritania possessed legal ties of territorial sovereignty that would affect the application of General Assembly Resolution 1514[49] containing the Declaration on the Granting of Independence to Colonial Countries and Peoples. The Court emphasized that decolonization must proceed through "the free and genuine expression of the will of the peoples of the territory".

---

[47] *Western Sahara Advisory Opinion*. International Court of Justice p. 14 (1976), available at https://www.icj-cij.org/sites/default/files/case-related/61/061-19751016-ADV-01-00-EN.pdf (last visited October 18, 2025).

[48] *Western Sahara*, International Court of Justice (Overview), available at https://www.icj-cij.org/case/61 (last visited October 18, 2025).

[49] See *Declaration on the Granting of Independence to Colonial Countries and Peoples*. UNGA Res. 1514 (XV) (14 December 1960), available at https://www.ohchr.org/en/instruments-mechanisms/instruments/declaration-granting-independence-colonial-countries-and-peoples (last visited February 8, 2026).

However, this normative clarity proved insufficient. Within weeks of the ICJ Opinion, Morocco organized the Green March[50], deploying 350,000 civilians into Western Sahara to create facts on the ground that would predetermine any referendum outcome. This massive settlement strategy transformed the question from legal principle to political reality: how could a "free and genuine expression" occur when the electorate itself had been fundamentally altered by forced demographic change?

The United Nations Mission for the Referendum in Western Sahara (MINURSO), established in 1991[51], was designed to operationalize self-determination through an internationally supervised referendum. MINURSO, unfortunately, has become one of the UN's longest-running missions without fulfilling its mandate. The referendum, perpetually in preparation, has never occurred. Disputes over voter eligibility, precisely those individuals settled during the Green March, have paralyzed the process. Unlike UNAMET's clear mandate and rapid execution (established in June 1999, referendum held in August 1999), MINURSO has operated for over three decades in a state of indefinite preparation that substitutes procedure for progress.

The structural difference from East Timor is evident: MINURSO lacks enforcement capacity. While INTERFET provided a robust security guarantee backed by military force to ensure the consultation could proceed without violent disruption, MINURSO operates purely as a monitoring mission. It can observe but cannot create the protected space necessary for genuine collective choice. Morocco, with tacit or explicit support from

[50] See Hsain, Ilahiane, *Remembering the Green March at Fifty: Faith, Sound and the Art of Nation-Making* (Morocco World News November 3, 2025), available at https://www.moroccoworldnews.com/2025/11/266336/remembering-the-green-march-at-fifty-faith-sound-and-the-art-of-nation-making/ (last visited February 7, 2025).

[51] See *United Nations Mission for the Referendum in Western Sahara*. (UN Peacekeeping), available at https://minurso.unmissions.org/background (last visited February 8, 2026).

great powers – including longstanding French backing and the US' recognition of Moroccan sovereignty in 2020 as part of the Abraham Accords[52] – has no incentive to permit a process it might lose.

Furthermore, Western Sahara illustrates the resource dimension of blocked decolonization. The territory's phosphate deposits and potential offshore oil reserves create powerful economic incentives for Morocco to maintain control[53]. Unlike East Timor's interim Timor Sea arrangements, which were explicitly provisional and subject to renegotiation post-independence (indeed, renegotiated in 2018), Morocco's exploitation of Western Saharan phosphates through State-owned OCP Group[54] operates as permanent sovereignty rather than transitional management. Resources that should, under PSNR principles, belong to the Sahrawi people, are being extracted, processed, and exported under Moroccan control with profits accruing to Rabat rather than being held in trust for the territory's future sovereign.

What Western Sahara reveals, therefore, is the fragility of the from norms to process and finally administration pathway when the process element collapses. Self-determination is affirmed, by the ICJ, by UN resolutions, by international law doctrine, but remains unrealized because no credible mechanism exists to translate norms into institutional reality. The "act of collective choice" that anchored East Timor's legitimacy is indefinitely deferred. MINURSO continues to exist, but its existence has become

[52] See *Recognizing the Sovereignty of the Kingdom of Morocco Over the Western Sahara*. Federal Register (United States Government December 15, 2020), available at https://www.federalregister.gov/documents/2020/12/15/2020-27738/recognizing-the-sovereignty-of-the-kingdom-of-morocco-over-the-western-sahara (last visited February 8, 2026).

[53] See Alex, Kasprak *The Desert Rock that Feeds the World*. (The Atlantic November 29, 2016), available at https://www.theatlantic.com/science/archive/2016/11/the-desert-rock-that-feeds-the-world/508853/ (last visited February 8, 2026).

[54] See Ziyad, Chaouki, *Morocco's Phosphate Diplomacy is Reshaping Africa's Agricultural Future* (London School of Economics, June 18, 2025), available at https://blogs.lse.ac.uk/africaatlse/2025/06/18/moroccos-phosphate-diplomacy-is-reshaping-africas-agricultural-future/ (last visited February 8, 2025).

a substitute for action rather than a pathway to it, an indefinite peacekeeping operation that freezes the conflict without resolving it. The contrast with UNTAET could not be starker: where UNTAET was designed for self-abolition through measurable transfers of authority, MINURSO's very longevity signals failure, as each year of operation marks another year that self-determination remains merely normative rather than practical. Therefore, Western Sahara and East Timor started from nearly identical normative positions. What made the difference was not law's content but its institutional follow-through.

5.2. *Palestine: Issues Across All Dimensions*

Palestine magnifies these tensions while adding layers of complexity that distinguish it from both East Timor and Western Sahara. Here, the breakdown occurs not only in the process but across all three dimensions of the framework.

Unlike East Timor and Western Sahara, where the legal characterization was relatively clear (respectively, decolonization from Indonesian occupation and Spanish colonial withdrawal), Palestine exists in a state of juridical multiplication. Is this a matter of decolonization from British Mandatory rule never completed? Belligerent occupation under the Fourth Geneva Convention? Disputed territory subject to negotiated borders? A *sui generis* situation requiring unique legal frameworks?

The ICJ's 2004 Wall Advisory Opinion[55] characterized the construction of the separation barrier in the Occupied Palestinian Territory as contrary to international law and emphasized third-State duties not to recognize or assist the illegal situation. Yet, unlike the Court's clarity in East Timor (affirming PSNR and self-determination) or Western Sahara (rejecting Moroccan and Mauritanian sovereignty claims), the Wall Opinion operated within an already-fragmented legal landscape shaped by UN

[55] See for example, recently the General Assembly approved a resolution affirming the right of Palestinians to self-determination. UNGA Res. 79/163 (December 17, 2024), available at https://docs.un.org/en/A/RES/79/163 (last visited October 18, 2025).

Security Council resolutions, the Oslo Accords[56], customary international humanitarian law, and competing narratives of rights and security. However, as in Western Sahara, the principles have outpaced the process: there is no agreed procedure for a decisive act of collective choice, no durable security guarantee to make such a process viable, and recognition politics remain divided despite partial diplomatic upgrades. The institutional landscape including split authorities, periodic conflict, and fragmented territorial control further impedes translating entitlement into administration.

This normative multiplication matters because it creates interpretive space for indefinite, perpetual deferral. Where multiple legal frameworks overlap – occupation law, self-determination, negotiated agreements, security exceptions – actors can invoke whichever framework best serves their interests at any given moment. The effect is to render self-determination perpetually imprisoned: not denied in principle, but always subject to other considerations that prevent its realization in practice.

The process dimension reveals an even deeper fracture. There is no agreed sequencing analogous to East Timor's from UNAMET to INTERFET and finally UNTAET pathway. The Oslo Accords (1993-1995)[57] established a step-by-step approach: interim self-government leading to final status negotiations. This process, however, collapsed. What was designed as transition calcified into permanence: "interim" arrangements are now over three decades old, with no agreement on what a decisive act of collective choice would look like, who would participate, what territory it would encompass, or what options would be presented. The "peace process" itself became a structure of governance rather than a pathway to sovereignty, creating what Karma Nabulsi has termed "prolonged

[56] See *Declaration of Principles on Interim Self-Government Arrangements*. (United States Institute of Peace, September 13,1993), available at https://www.usip.org/sites/default/files/file/resources/collections/peace_agreements/oslo_09131993.pdf (last visited February 8, 2026).

[57] See ibid.

temporariness": a status designed as transitional but maintained indefinitely[58].

Adding to this idea, there is no security guarantee that would make genuine consultation viable. The international presence consists of monitors and observers but no enforcement mechanism comparable to INTERFET. Periodic escalations of violence, such as the Second Intifada, Gaza conflicts in 2008-09, 2012, 2014, 2021, 2023-24[59], punctuate rather than interrupt a structural condition of insecurity. Unlike East Timor, where INTERFET's robust mandate created a protected space for UNAMET to operate, any Palestinian consultation would occur under conditions where one party maintains overwhelming military superiority and has demonstrated willingness to use force to prevent outcomes it opposes. The asymmetry is not merely political but existential: collective choice cannot be "free and genuine" when conducted under occupation.

The administration dimension is perhaps most fractured. Unlike UNTAET's unified transitional authority with clear sunset clauses and progressive Timorization, Palestinian governance is multiply divided. The Palestinian Authority exercises limited civil control in areas of the West Bank classified as Areas A and B under Oslo[60], but Israel retains security control throughout and exclusive control in Area C (comprising over 60% of West Bank territory). Hamas governs Gaza independently since 2007, creating parallel Palestinian administrations with no unified

[58] See Yutaka, Arai-Takahashi, *Unearthing the Problematic Terrain of Prolonged Occupation* (Israel Law Review 52, no. 2 2019): 125–67, https://doi.org/10.1017/S0021223719000037, available at https://www.cambridge.org/core/journals/israel-law-review/article/abs/unearthing-the-problematic-terrain-of-prolonged-occupation/1E1827215C67E045155ED2FED54F3F1B (last visited February 8, 2026).

[59] See Ali, Adam, *Palestinian Intifada: How Israel Orchestrated a Bloody Takeover* (Al Jazeera, September 28, 2020), available at https://www.aljazeera.com/news/2020/9/28/palestinian-intifada-20-years-later-israeli-occupation-continues (last visited February 8, 2026).

[60] See *Declaration of Principles on Interim Self-Government Arrangements*. (United States Institute of Peace, September 13,1993), available at https://www.usip.org/sites/default/files/file/resources/collections/peace_agreements/oslo_09131993.pdf (last visited February 8, 2026).

structure[61]. Israeli military occupation provides the overarching framework within which both Palestinian entities operate, but this occupation has no sunset clause, no benchmarks for transfer of authority, no pathway to self-abolition.

This administrative fragmentation has deep effects for resource sovereignty. Water provides the clearest example: the Mountain Aquifer underlying the West Bank is subject to Israeli control under Oslo's "interim" arrangements, with Palestinian extraction limited to pre-1967 levels despite population growth[62]. Israel extracts approximately 73% of the aquifer's water, selling a portion back to Palestinians at market rates. Unlike Timor's Petroleum Fund, which converted oil revenues into national assets under Timorese control (albeit with externally influenced management), Palestinian water remains under Israeli administration with no mechanism for transfer. The "interim" nature of these arrangements has become permanent in practice, illustrating how resource control can predetermine sovereignty outcomes: when water, land, and economic activity are structured around one party's permanent access, "final status negotiations" must bargain within constraints that have already been established.

Settlement expansion intensifies this structural predetermination. Unlike Western Sahara's Green March, which was a somewhat discrete event, Israeli settlements constitute an ongoing process of territorial transformation. Over 700,000 settlers now live in the West Bank and East Jerusalem, integrated into Israel through infrastructure, services, and legal

[61] See *What is Hamas? A Simple Guide to the Armed Palestinian Group* (Al Jazeera, October 8, 2023), available at https://www.aljazeera.com/news/2023/10/8/what-is-the-group-hamas-a-simple-guide-tothe-palestinian-group (last visited February 8, 2026).

[62] See Simone, Klawitter, *Water resources at stake: The Mountain Aquifer beneath the occupied West Bank, Palestinian Territories* (United Nations Development Programme), available at https://hdr.undp.org/system/files/documents/simoneklawitterwaterresourcesatstake.pdf (last visited February 8, 2026).

status that presume permanence[63]. These settlements create material facts that any future "agreement" must accommodate, progressively narrowing the territorial basis for Palestinian sovereignty. The effect is to make the question not whether Palestinians have a right to self-determination – this was clearly affirmed repeatedly in international law – but what territory that self-determination could possibly apply to after decades of settlement construction.

East Timor's experience makes the contrast distinct. There, the norms to process to administration process worked because each stage was activated before territorial facts could overtake legal entitlements. Consultation occurred while the political window was open, security forces were deployed before the situation solidified into a conflict without off-ramps and administration operated under sunset clauses that prevented entrenchment. Palestine inverts this logic at every stage: norms are affirmed but multiply into competing frameworks, process was initiated but converted into a permanent governance structure, and administration remains fragmented between occupying and occupied authorities with no mechanism for transfer. Where East Timor demonstrates that international law can create an architecture of sovereignty under the right conditions, Palestine reveals what happens when those conditions are not merely absent but actively foreclosed.

6. *Conclusion*

East Timor's trajectory from colonization to statehood reveals international law's constitutive ambivalence in decolonization. The ICJ's *Portugal v. Australia* judgment affirmed self-determination and PSNR while exposing how Monetary Gold functions as a doctrine of imperial immunity, as the Court could name the right but not remedy the wrong. By contrast, the UN's sequenced architecture of UNAMET, INTERFET,

[63] See Shaimaa, Khalil, *Israel Approves 19 New Settlements in the West Bank*. (BBC December 22, 2025), available at https://www.bbc.com/news/articles/cqjg18xe0wwo (last visited February 8, 2026).

UNTAET, translated principle into governance through institutions, constitutional design, and progressive Timorization that by mid-2001 placed over 90% of public administration in Timorese hands.

This success, however, reveals a sovereignty paradox: the same legal tools that enabled self-rule also constrained it while external actors governed. Even "successful" decolonization required accepting temporary submission to international administration, with benchmarks for transfer defined by those providing the scaffolding. International law did not confer sovereignty, rather it structured conditions under which sovereignty could be claimed.

Western Sahara and Palestine sharpen this lesson. Where the process collapses despite normative affirmation, like the example of MINURSO's three-decade failure and Morocco's demographic predetermination, self-determination remains declaratory. Where administration fragments, such as the case of Palestine's PA/Hamas division, "interim" arrangements calcified into permanence, resource sovereignty becomes structurally compromised and law becomes indefinite deferral.

The difference is not a legal recognition but the structural alignment of four conditions: layered legitimacy (domestic, regional, great power); protected consultation preventing violent foreclosure; time-bound administration designed for self-abolition; and resource safeguards preserving future sovereignty. East Timor briefly met these conditions; Western Sahara and Palestine do not.

This reveals that international law's effectiveness in decolonization depends heavily on political economy, not doctrine alone. The sovereignty paradox cannot be eliminated, only managed through institutional design that prioritizes its own obsolescence. The question for contemporary struggles is not whether to use international legal scaffolding but how to design it for rapid removal, ensuring it supports rather than supplants local agency.

East Timor demonstrates that international law can work as a tool for decolonization when transitional administration is designed to abolish itself. Western Sahara and Palestine reveal the inferior alternative: moni-

toring becomes permanent, procedural preparation replaces decisive action, and international law's promise of sovereignty confronts the political and economic interests invested in its postponement.