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INTERNATIONAL COURT OF JUSTICE

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Portugal brings a case against Australia

The following information is communicated to the Press by the Registry of the International Court of Justice:

Today, 22 February 1991, the Government of the Portuguese Republic filed in the Registry of the Court an Application instituting proceedings against the Commonwealth of Australia in a dispute concerning "certain activities of Australia with respect to East Timor".

In its Application Portugal refers, in order to establish the basis of the Court's jurisdiction, to the Declarations made by the two States under Article 36, paragraph 2, of the Statute of the Court.

It claims that Australia, by negotiating, with Indonesia, an "agreement relating to the exploration and exploitation of the continental shelf in the area of the 'Timor Gap'", signed on 11 December 1989, by the "ratification and the initiation of the performance" of that agreement, by the "related internal legislation", by the "negotiation of the delimitation of that shelf", as also by the "exclusion of any negotiation on those matters with Portugal", has caused "particularly serious legal and moral damage to the people of East Timor and to Portugal, which will become material damage also if the exploitation of hydrocarbon resources begins".

Without prejudice to such arguments of fact and law and to such evidence as may be submitted in due course, and likewise without prejudice to the right to supplement and amend its submissions, Portugal requests the Court:

"(1) To adjudge and declare that, firstly, the rights of the people of East Timor to self-determination, to territorial integrity and unity (as defined in paragraphs 5 and 6 of the present Application) and to permanent sovereignty over its wealth and natural resources and, secondly, the duties, powers and rights of Portugal as the power administering the territory of East Timor are opposable to Australia, which is under an obligation not to disregard them, but to respect them.

(2) To adjudge and declare that Australia, inasmuch as in the first place it has negotiated, concluded and begun to carry out the agreement referred to in paragraph 18 of the statement of facts, has taken internal legislative measures for the application thereof, and is continuing to negotiate, with the State party to that agreement, the delimitation of the continental shelf in the area of the "Timor Gap"; and inasmuch it has furthermore excluded any negotiation with the administering power with respect to the exploration and

exploitation of the continental shelf in that same area and, finally, inasmuch as it contemplates exploring and exploiting the subsoil of the sea in the "Timor Gap" on the basis of a plurilateral title to which Portugal is not a party (each of these facts sufficing on its own):

- (a) has infringed and is infringing the right of the people of East Timor to self-determination, to territorial integrity and unity and its permanent sovereignty over its natural wealth and resources, and is in breach of the obligation not to disregard but to respect that right, that integrity and that sovereignty;
- (b) has infringed and is infringing the powers of Portugal as the power administering the Territory of East Timor, is impeding the fulfilment of its duties to the People of East Timor and to the international community, offending against the right of Portugal to fulfil its responsibilities and is in breach of the obligation not to disregard but to respect those powers and duties and that right;
- (c) is contravening Security Council resolutions 384 and 389 and, as a consequence, is in breach of the obligation to accept and apply Security Council resolutions laid down by Article 25 of the Charter of the United Nations and, more generally, is in breach of the obligation incumbent on Member States to co-operate in good faith with the United Nations;

(3) To adjudge and declare that, inasmuch as it has excluded and is excluding any negotiation with Portugal as the power administering the territory of East Timor, with respect to the exploration and exploitation of the continental shelf in the area of the "Timor Gap", Australia has failed and is failing in its duty to negotiate in order to harmonize the respective rights in the event of a conflict of rights or of claims over maritime areas.

(4) To adjudge and declare that, by the breaches indicated in paragraphs 2 and 3 of the present submissions, Australia has incurred international responsibility and has caused damage, for which it owes reparation to the people of East Timor and to Portugal, in such form and manner as may be indicated by the Court.

(5) To adjudge and declare that Australia is bound, in relation to the people of East Timor, to Portugal and to the international community, to cease from all breaches of the rights and international norms referred to in paragraphs 1, 2 and 3 of the present submissions and in particular, until such time as the people of East Timor shall have exercised its right to self-determination, under the conditions laid down by the United Nations:

- (a) to refrain from any negotiation, signature or ratification of any agreement with a State other than the administering power concerning the delimitation, and the exploration and exploitation, of the continental shelf, or the exercise of jurisdiction over that shelf, in the area of the "Timor Gap";
- (b) to refrain from any act relating to the exploration and exploitation of the continental shelf in the area of the "Timor Gap" or to the exercise of jurisdiction over that shelf, on the basis of any plurilateral title to which Portugal, as the power administering the territory of East Timor, is not a party."