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State succession and treaty survival between the predecessor state and the other state party

To Dame Rosalynn Higgins

*Miguel Galvão Teles**

Introduction

This article discusses ‘treaty survival’ in the light of the 1969 agreement between the Portuguese Republic and the Republic of South Africa governing the Cahora Bassa hydroelectric project.¹ We therefore are dealing with a treaty, relating specifically to a territory that became the territory of a newly independent state, which continued between the original parties after independence with the newly independent state having consented to the survival of the treaty.

The project comprised the effective construction of a dam on the Zambezi river in northern Mozambique; the effective installation of the power generation and conversion equipment at the dam; construction of a transmission line running through Mozambican territory to the South African border and then through South African territory to Apollo; and, finally, the construction of a conversion and distribution station at Apollo in South Africa.² The treaty was linked to a supply contract between Portugal, as supplier, and the South African Electricity Supply Commission (ESKOM /ESCOM) as receiver.³

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¹ Agreement between the Governments of Portugal and the Republic of South Africa relative to the Cahora Bassa Project, done at Lisbon on 19 September 1969 – hereafter the ‘treaty’ or the ‘1969 treaty’ or the ‘Agreement’ or the ‘1969 Agreement’.

² Hereafter, the ‘Project’ or the ‘Cahora Bassa Project’. Portuguese refer to the project as Cahora Bassa, while Mozambicans use Cahora Bassa. In this article the term Cahora Bassa is used.

³ Cahora Bassa Supply Contract between the Government of the Republic of Portugal and Electricity Supply Commission, of the same date as the Agreement – hereafter the ‘SC’, the ‘1969 SC’ or ‘the contract’. The name of the receiver was originally ESKOM, afterwards