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TRACK TWO: COMMENTARY

*Cluster 1: Peace, Security and Human Rights*

## **How well has the causality of the conflict in East Timor been reflected in its UN peacebuilding experience?**

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### ABSTRACT

*The end of the UN's thirteen-year peacebuilding effort in East Timor has left behind uncertain prospects, for a country still recovering from a quarter of a century of violent occupation and conflict. This article, written in the concluding year of UN Mission in Timor-Leste (UNMIT) operations, assesses that conflict in search of its causes. It then examines the post-conflict peacebuilding exercise across a number of its dimensions, including security, governance, and post-conflict justice, to consider how far peacebuilding efforts took into account the driving forces behind East Timor's ordeals in the first place. Through these strands the argument is made that some of the most significant such drivers have not been addressed, including accountability for those who carried out what was in essence a war of aggression, and the persistence of their foreign backers in maintaining self-interest-based foreign policy frameworks, among other factors. It is further argued that unless such drivers are addressed, the prospects of long-term peace in East Timor, or other comparable situations, will remain under threat.*

**KEYWORDS:** *East Timor, Indonesia, International Relations, Peacebuilding, Peacekeeping, Timor-Leste, Transitional Justice, United Nations*

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## I. INTRODUCTION

In December 1975, the world turned its back on East Timor. Twenty-four-years of Indonesian occupation visited brutality of demonic proportions upon its people: one of the worst genocides of the late twentieth century, in which over two hundred thousand Timorese, a third of the population, were killed.<sup>1</sup>

It was answered, extremely belatedly, with the largest, furthest reaching and most committed international response in the history of United Nations (UN) peacebuilding.

The UN is now thirteen years into its intervention in East Timor, or in what, to the intervention's credit, became in 2002 the independent state of Timor-Leste. However, despite considerable success against astonishing odds, peacebuilding in East Timor has not been an unmitigated success. Today the outlook for Timor-Leste remains uncertain, its stability and prospects still appearing to hinge on the continued UN presence.

This analysis has two parts. In the first I explore the background to the East Timor conflict, in search of the causes of its traumatic violence in both the original conflict and the persisting unrest which still brings strife to its pursuit of peace. In the second I consider the UN peacebuilding exercise in depth, and ask whether it has sufficiently taken those roots of conflict into account. Through this I advance that the experience in East Timor offers lessons by which the UN might improve its peacebuilding exercises in future; but that the obstacles have been less due to faults in the UN organization, and more the responsibility of its member states and the international paradigm they yet uphold. For indeed it was this paradigm, of states which choose to act on the world only in terms of their own "national interest" calculations, and which struggle to see through value frameworks other than their own, that was ultimately responsible for East Timor's nightmares; and this choice of paradigm which, although the UN's foundational principles reject it, made East Timor all the more challenging to raise from the wreckage to which the very same choices reduced it.

## II. 1975-1999: THE CAUSES OF CONFLICT IN EAST TIMOR

From 1702 to 1975, East Timor was a Portuguese colony in an archipelago occupied by the Dutch Empire. As a maritime crossroads between several great civilizational hubs – the Indian Ocean, Southeast Asia, the Pacific – these were islands immense in ethnic, cultural and spiritual diversity, natural resources, and geostrategic weight.

This history had profound consequences when the islands won their fight for independence in 1949 as the Republic of Indonesia: a state which has ever since struggled, often violently, to build a national identity acceptable to all its peoples, and whose prospects became tied to the geopolitical ambitions of foreign powers.<sup>2</sup> Intense nationalism prevailed under the founding Sukarno regime, which laid this identity's ideological foundations in the *pancasila* doctrine, and set forth a centralizing of Indonesia's political and economic centre of gravity on the island of Java, with the religious dominance of Islam. Along with this came severe repression

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<sup>1</sup> As found by a comprehensive study commissioned by the Parliament of Australia. See Hanisworth, Paul and McCloskey, Stephen, *The East Timor Question – The Struggle for Independence from Indonesia*, London: I.B. Tauris (2000), ix.

<sup>2</sup> Rae, James DeShaw, *Peacebuilding and Transitional Justice in East Timor*, Boulder: First Forum Press, 2009, 46-49.

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and a growing role for coercion in holding this identity together, which only accelerated with the bloodshed in 1965-7 which brought General Suharto to power. This atmosphere in which violence was considered an acceptable or necessary tool to enforce national unity, especially against restive regional dissent, set the scene for the invasion of East Timor in 1975.<sup>3</sup>

East Timor was itself diverse, but its different colonial experience had given it an altogether separate journey from its neighbouring islands. As such, when Portugal relinquished its colonies following the Carnation Revolution, East Timorese political movements burgeoned – among them FRETILIN, calling for independence, and a number of other parties arguing for integration into Indonesia. Civil war broke out on account of infiltration and manipulation by the Indonesian military – including the special forces, *Kopassus* – attempting to destroy the independence movement, yet popular support was such that FRETILIN prevailed and, on 28 November, 1975, declared the independence of the Democratic Republic of East Timor.<sup>4</sup>

Indonesian full-scale invasion and occupation followed, and heralded a quarter-century era of horror in which East Timor, subjected as the twenty-seventh province of Indonesia, experienced atrocities, crimes against humanity and genocide on an unimaginable scale. The 1975 invasion saw Indonesian forces descend on the capital, Dili, in an indiscriminate wave of slaughter, destruction and rape; inhabitants were subjected throughout the occupation to such experiences as disembowelling, being thrown into the sea from helicopters, beheadings and cannibalism; and 'scorched earth' military methods, along with forced movement of people from ancestral sites to land unfit for cultivation which led to devastating famine.<sup>5</sup> Suharto also resettled Indonesians from other islands on East Timor, to assimilate it into the Indonesian nation through 'the eradication of indigenous culture, language and religion'.<sup>6</sup>

Thus, the conflict's immediate causes are in plain sight. This was first and foremost an Indonesian war of aggression, driven by violent and authoritarian nationalism, against a vulnerable neighbour viewed as a rebellious part of Indonesia's own territory: hence, its efforts not just to dominate East Timor but to utterly abolish it as a nation. Additional drivers included lucrative oil reserves in the Timor Sea; the powerful role of the army in Indonesian politics; and the Cold War fear of an independent East Timor under leftist FRETILIN as a communist stronghold in the region, agitating for further destabilization of the Indonesian state. However, no extent of such fears or postulated gains explain the staggering brutalities which Indonesian political and military actors chose to inflict on the East Timorese.

Conflict theories can help to identify such causes, but only when they acknowledge the conflicts' complexity. Even a conflict as simple on the surface as this one is not monolithic: it was a story with a vast array of characters, each with complicated and not necessarily coherent motivations. It is of limited value, therefore, to debate between categories of causation such as 'material' and 'idea-based' causes, or 'greed and grievance'<sup>7</sup>, when this

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<sup>3</sup> See Budiardjo, Carmel, "The Legacy of the Suharto Dictatorship," in Hanisworth and McCloskey, .51-67, for more on the Suharto regime's attitude towards and use of violence against regional independence movements and internal dissent.

<sup>4</sup> Rae, 44-45.

<sup>5</sup> *Ibid.*, 45.

<sup>6</sup> Hanisworth and McCloskey, 5.

<sup>7</sup> The theme of a prominent debate in present conflict discourse, as contributed to in Collier, Paul and Hoeffler, Anne, *Greedy and Grievance in Civil War*, The Centre for the Study of African Economies Working Paper Series, (2002). Though the East Timor conflict was not a civil war, a range of factors under both the 'greedy'

conflict was driven by a compound of both: whether the ideological vision of a unified Indonesia, or the territorial and economic gains to be made in East Timor's annexation.

The importance of both dimensions is still more apparent when we look at the conflict's enabling context: the foreign support for Indonesia's war, from beginning to end, from the United States of America, the United Kingdom, and Australia. The U.S. assisted the coup which brought Suharto to power, and thereafter provided him robust support, in wilful complicity with what was inflicted on East Timor: indeed, Suharto was only prepared to invade after U.S. President Gerald Ford and Secretary of State Henry Kissinger personally visited him in Jakarta and gave him the go-ahead, hoping in the words of the U.S. Ambassador that the invasion would occur 'effectively, quickly, and not using our equipment'.<sup>8</sup> Throughout the occupation the U.S. provided military training and arms sales to the Indonesian army, as did Britain, where companies such as British Aerospace profited tremendously from the arms trade with Suharto's regime.<sup>9</sup> Australian support was most overt, extending to diplomatic recognition of Indonesia's claims to East Timor as a province<sup>10</sup>, and active endorsement of the occupation through five successive Australian administrations, including military aid to Indonesia; ideological support for the concept of East Timor's integration into Indonesia; the plundering of East Timorese oil in the 1989 Timor Gap Treaty<sup>11</sup>; portrayal of the East Timorese independence movement as communist; and staunch opposition whenever the East Timor issue was raised at the UN, along with support for Indonesia's position in UN forums.<sup>12</sup>

As with Indonesian actions, complex perspectives feed into this international role. The U.S., U.K. and Australia were leading powers in the Cold War capitalist bloc, and the U.S. tendency in this period to endorse regimes capable of any depth of barbarousness, so long as they were an alternative to the slightest possibility of communist rule, is well established – especially following its trauma in Vietnam and the ascent of communism in Southeast Asia. Suharto's 'New Order' prioritized economic stability and was seen as a crucial ally and bulwark against communism in the region, especially by Australia next door; while materially, the Indonesian islands' richness in natural resources made for profitable economic relations.

Once again, conflict theories may explain why certain parties might *benefit* from promoting a

label and 'grievance' label were significant in driving it.

<sup>8</sup> As quoted in Scheiner, Charles, "The United States: From Complicity to Ambiguity", in Hanisworth and McCloskey, p.118. See also Ishizuka, Katsumi, *The History of Peace-building in East Timor – The Issues of International Intervention*, Delhi, Cambridge University Press India, 2010, 30-35; and Candio, Patrick and Bleiker, Roland, "Peacebuilding in East Timor", in *The Pacific Review* 14:1 (2001), 67-68. For more on the international contribution to the conflict, see also John Pilger's documentary *Death of a Nation* (1994), which played a major role in exposing these countries' involvement and raising East Timor to international significance: <http://johnpilger.com/videos/death-of-a-nation-the-timor-conspiracy>.

<sup>9</sup> On the role of the U.K., see Hanisworth, Paul, "New Labour, New Codes of Conduct? British Government Policy towards Indonesia and East Timor after the 1997 Election", and Needham, Andrea et al., "Seeds of Hope – East Timor Ploughshares Disarming the Hawks", in Hanisworth and McCloskey, 95-116 and 85-93, respectively.

<sup>10</sup> Indonesia's occupation was considered illegal under international law – indeed the United Nations continued to recognize Portugal as the legitimate sovereign in East Timor.

<sup>11</sup> The Timor Gap oil arrangements were of dubious legality, and were challenged by Portugal in the International Court of Justice in 1995. See Gunn, Geoffrey C., *East Timor and the United Nations: The Case for Intervention*, Lawrenceville and Asmara: The Red Sea Press, 1997, 57-68. See also Ishizuka, 178-189.

<sup>12</sup> Aubrey, Jim, "Canberra: Jakarta's Trojan Horse in East Timor", in Hanisworth and McCloskey, 133-149.

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conflict, but say nothing about why such parties might *choose* to derelict the very basics of human ethics to do so – that is, to override the empathy for others' suffering, and the reasoning that inflicting it can stir hatred and a will to reciprocate it. This is why conflict theories do not suffice: the ordeal of East Timor was not the outcome of a mechanical chain of causes and consequences, but of a perfect storm of choices by governments, businesses and media organizations to pursue the most callous possible conceptions of self-interest – any single one of which, if they had chosen differently, might have impeded or even prevented the Indonesian invasion in 1975 and the crimes against humanity which followed.

Herein lies the problem impeding much of conflict theorizing, but also the spotlight this problem places on the deepest foundation we can yet observe for the causes of conflict in East Timor. Too many theories, especially in the tradition of Thomas Hobbes's *Leviathan*, are built upon crude and observably inaccurate (or at least incomplete) generalizations about human nature as inherently self-serving, pursuing dominance over or destruction of others; but the choices in question were made not because this is in fact human nature, but because a paradigm of state behaviour which held that people and states *should* behave in this way was permitted to dominate in the Cold War period. Most damagingly, this paradigm was established as inherently 'realistic' in political and academic discourse, through terms such as 'realism' and '*realpolitik*', developing legitimacy for the pursuit of geostrategic, economic or ideological gain to the detriment of human rights: an approach synonymous, in Cold War symbolism, with one of this very story's primary characters, Henry Kissinger. The wilful construction of this paradigm, and the decisions it conducted to, were the most underlying causes of conflict in East Timor we can yet arrive at; and no method of explaining it should exempt those who made those choices from responsibility.

This is essential to the UN peacebuilding experience that followed. In peacebuilding, in Timor-Leste and everywhere else, we are chained to the problem that to implement the principles beneath it, we are relying on states which so recently complied with eagerness in one of the most protracted and bloody episodes of crimes against humanity in modern history: which fully aware of the depth of the cruelties being visited upon the East Timorese, opted not to assist them, but to encourage that bloodshed onwards by supplying its perpetrators with all the quarter-of-a-century's worth of armaments, cover-ups, diplomatic support and insulation from accountability that they could muster. Those very states, which in a remarkable irony would become the bedrock of the international effort to help East Timor recover, continue to operate by the same paradigm by which myopic national perspectives dominate their actions: and this has generated serious practical obstacles and mistakes throughout the peacebuilding period.

What was the underlying cause of that phenomenon, whereby so many characters so readily relinquished their most basic ethical instincts, so as to permit, and contribute to, the conflict in East Timor? By what process were they able to take these decisions without their own humanity giving them pause; and how did our kind permit these processes to become an international paradigm? These questions lead into murky waters, beyond this inquiry's immediate scope; but only when we get past the resignation that this was merely human nature, and seek to properly address the paradigm of selfish interests and those who practice it a *problem*, and one of the most inglorious of our age – that is, not reality, but a *broken* reality – can we hope in earnest that the world has seen the last of ordeals such as those unleashed on the East Timorese.

**III. 1999-2012: PEACEBUILDING**

The Indonesian occupation faltered in the 1990s. International coverage of atrocities like the Santa Cruz massacre thrust its inhumanity into global public awareness, on account of foreign activism on East Timor's behalf from NGOs, journalists, solidarity movements, independent activists, and a few governments such as the Irish. Their years of work, along with the collapse of the Soviet bloc, brought a gradual erosion of international support for Suharto's regime, which culminated when the rioting, bloodshed and ethnic turmoil following the Asian Financial Crisis led at last to Suharto's fall from power in 1998.

No longer able to advertise economic stability or the status of a Cold War bulwark for international support, and with pressure mounting over human rights violations, the new regime of B.J. Habibie was forced to reassess Indonesia's relationship with East Timor; and in no position to resist, gave its assent for a UN-supervised referendum on independence in 1999. On 11 June, the UN Security Council passed Resolution 1246, creating the United Nations Mission in East Timor (UNAMET) to 'organize and conduct a popular consultation...to ascertain whether the East Timorese people accept...or reject the proposed special autonomy for East Timor, (the latter) leading to East Timor's separation from Indonesia.'<sup>13</sup> Under the oversight of the Indonesian army and police, a 98 per cent turnout voted almost 80 per cent in favour of independence: and in response, militias, armed and premeditated by the Indonesian army, went on a rampage of burning, smashing, looting and atrocities which killed over two thousand people, forced hundreds of thousands more into the bush or into West Timor as refugees, and systematically obliterated East Timor's infrastructure – it is thought at least 70 per cent of all private homes, public buildings and essential services were destroyed.<sup>14</sup>

The Security Council replied with the fastest response in the history of UN peacekeeping, passing Resolution 1264 and creating INTERFET, the International Force for East Timor: an armed multinational peacekeeping force mandated with 'all necessary measures' to 'restore peace and security'.<sup>15</sup> Its arrival led the militias to melt away to the west; and these initial missions would evolve into the process of helping the East Timorese emerge from the debris and construct their nation from what little remained standing.

The UN peacebuilding commitment has consisted of six different missions in total, replacing each other over a period of thirteen years and counting. The UN Transitional Administration in East Timor (UNTAET) stands out as the first time a UN mission was tasked with effectively functioning as a sovereign government: an exhaustive range of responsibilities including political restructuring, social and economic concerns, infrastructure, justice, security, policing, and even the power to make treaties on East Timor's behalf.<sup>16</sup> From a country reduced to the 'true meaning of emptiness'<sup>17</sup> in 1999, UNTAET saw East Timor achieve independence in 2002 as the Democratic Republic of Timor-Leste, with full UN membership, on the back of significant accomplishments in humanitarian relief, successful

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<sup>13</sup> UN Security Council Resolution 1246 (11 June 1999).

<sup>14</sup> Rae, 53-4. See also Traub, James, "Inventing East Timor", in *Foreign Affairs* Vol. 79, Issue 4 (Jul./Aug. 2000), 74-89; and Ishizuka, 126-7 on the responsibility of the Indonesian army for the violence, as established by the UN Secretary-General's International Commission of Inquiry on East Timor in 2000.

<sup>15</sup> UN Security Council Resolution 1264 (15 September 1999).

<sup>16</sup> Ishizuka, 63.

<sup>17</sup> Traub, 74.

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elections, restoration of basic services, and a baseline, at least, of peace and security.<sup>18</sup>

However, after UNTAET was downscaled, first to the UN Mission of Support in East Timor (UNMISET) and then the UN Office in Timor-Leste (UNOTIL), renewed instability and violence came to a head in the crisis of 2006, when what started as a police strike led to factional disputes, rioting, deaths and displacement, and the arrival of an Australian-led intervention force to restore order. Thus was established the UN Integrated Mission in Timor-Leste (UNMIT), operating on a broadened mandate of capacity-building, restoring and maintaining public security, and 'enhancing a culture of democratic governance...to bring about a process of national reconciliation and to foster social cohesion.'<sup>19</sup>

UNMIT has operated in Timor-Leste ever since, and at the time of writing is mandated to run until 26 February 2012. Since 2006 there has been further unrest, including election violence, and an assassination attempt on the President and Prime Minister in 2008. Peace remains elusive despite a decade of UN commitment, highlighting problems and setbacks from which the UN can learn lessons, but which come ultimately from beyond the UN organization itself. In three aspects of peacebuilding in East Timor – security, governance, and justice – one can observe persisting obstacles posed by the states on whose involvement the peacebuilding process relies; and the ways in which their international paradigm, by which their own 'interest' calculations and value frameworks take foremost priority, have drastically impeded the Timorese pursuit of peace.

### **III-A. SECURITY**

The first mistake, and by far the most serious in consequence, was that of the Security Council in 1999 to entrust the government of Indonesia to 'monitor and ensure the security of the popular consultation' about the independence of a territory on which it had shown, unambiguously, that there was no destruction it would not inflict to keep it subjected. Although the consent of conflicting parties was a pillar of peacekeeping operations, and a legitimate reputational concern following disasters in Somalia, Yugoslavia and Rwanda, there should have been no illusion that the Indonesian army and police could be relied on to promote a peace they had no interest in. The credibility of UN peace operations was thus dealt another blow, whether due to intelligence failures or, more likely, an unwillingness by the relevant states to confront the difficult questions about the East Timor situation in practice. An armed international force, as deployed following the militia rampage that followed, should have been dispatched with UNAMET to provide security for the referendum, with all necessary pressure applied to the Indonesian authorities, as aggressors, to withdraw their armed presence from East Timor.

Thereafter, the UN missions sought to develop East Timor's security capacity – that is, the defence forces and police – and a recurring problem was a lack of attention to legitimating this capacity in the eyes of Timorese people. The previous problem of excessively dogmatic regard for mission principles at the expense of looking at realities on the ground, was repeated when INTERFET, and then UNAMET, were mandated to believe mission impartiality was cause to disarm and disband FALINTIL.<sup>20</sup> This was the military arm of FRETILIN which had single-handedly resisted the Indonesian occupation for over two

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<sup>18</sup> Ishizuka, 64-66.

<sup>19</sup> UN Security Council Resolution 1704 (25 August 2006).

<sup>20</sup> Ishizuka, 74.

decades; one might surmise that Timorese would not have thought highly of their courageous guerrillas being forced to disband because a supposedly benign occupation force, led by some of the very nations responsible for their miseries in the first place, wished to appear impartial.

Legitimacy – that is, the confidence and will to cooperate of local people, who must be able to feel that they are the authors of their own process – may be peacebuilding's most valuable resource. In failing to appreciate FALINTIL's advantage in this resource, the peacebuilding states squandered an opportunity to legitimate the development of East Timorese security capacity by integrating FALINTIL into the new security apparatus – which to its credit it did eventually do – and worse still, could not therefore take advantage of FALINTIL's accumulation of local intelligence during the conflict.<sup>21</sup> A question remains however as to whether East Timor, at this stage, needed a defence force at all.<sup>22</sup> Another full-scale invasion by either of its massive neighbours was considered unlikely, due to the presence and international legitimacy of armed UN operations in the country; nor would a fledgling F-FDTL be postulated as particularly effective in the case that such an invasion occurred.

Concurrently, the development of PNTL – the police – was hindered not only by corruption, human rights violations and unprofessionalism, but the fact that since 1975, the police had for the Timorese become the very face of crimes against humanity, due to its role in Indonesian atrocities. Confidence in the PNTL thus had to be earned out of deep-rooted mistrust, and was extremely quick to vanish when the PNTL was ineffective or abusive.<sup>23</sup> All of these factors contributed to the politicized rivalry between the defence forces and police, and its eruption in violence in the 2006 Crisis.

Whether better attention to the conflict's legacy could have forestalled such turbulence in the security apparatus and prevented its descent into violence, is of course unanswerable. Nevertheless, with more consideration for East Timor's experience and its legitimacy implications, these problems might at least have been mitigated. As the difficulties for these missions to do so stemmed significantly from mandate constraints, the improvement of mandate design thus requires the states involved to forego their own 'interest' perspectives in favour of a more rigorous and reflective analysis of the situations these operations must contend with; although the missions themselves would benefit from greater prerogative to act when they find that building peace, in practice, requires exceeding the mandate's authority.

### **III-B. GOVERNANCE**

Nowhere is legitimacy more important in peacebuilding than in locals' authorship of their own political destiny, and UNTAET was much criticized for its reluctance for Timorese participation in governance. This caused immense frustration, a mistake acknowledged by UNTAET officials including the Transitional Administrator, Sergio de Mello<sup>24</sup>; and was worsened by the notoriously lavish lifestyles international staff seemed intent on exhibiting:

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<sup>21</sup> Ishizuka, 75.

<sup>22</sup> Personal correspondence with Professor Sukehiro Hasegawa, Special Representative of the Secretary-General for Timor-Leste (2004-06), January 2012. While FALINTIL's credibility resources could have been put to use elsewhere in the security apparatus, postponing development of the national capacity for force might even have opened a path for rejecting it altogether, with lessons perhaps from the Costa Rican or Japanese approaches. Such a direction, emerging from so anguished a historical backdrop, might have done much to maintain international interest in East Timor in all the most respected and rewarding of ways.

<sup>23</sup> *Ibid.*, 107-111.

<sup>24</sup> *Ibid.*, 88-89.

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their massive vehicles, expensive restaurants, air-conditioned offices, floating hotel, and incomes colossal compared to those of the impoverished Timorese whose island it was, could only have created the sense of yet another foreign occupation; and when this did not test Timorese tolerance enough, incidents of decadent parties, alcoholism and drink-driving, and sexual harassment, abuse or irresponsibility were obscenely insulting and sullied the UN's reputation.<sup>25</sup> This disparity also gave the missions an air of enormous power, and thus enormous expectation on them to deliver: expectations that did not match the capabilities of often inexperienced staff tasked with raising a country from rubble.

But the imposition was more elemental in depth. The dominant states pursued a vision of good governance grown from Euro-American models, characterized by concepts such as democracy in those foreign states' image, rule of law, and especially high normative weight attached to elections: hence the equating of successful elections in 2002 as 'mission success', when in fact elections are a competitive and divisive process, based on majoritarian norms of legitimacy, that produce winners and losers: not necessarily intuitive for building a common identity or mending peace among peoples with different traditional legitimacy norms, emerging factional acrimony, and a recent history embedding violence as the standard tool with which to resolve disagreements.<sup>26</sup>

Democracy, properly defined, must inherently grow out of the journey of the people who choose it: many Timorese indeed called for it, but in a context of their own traditions and culture which the peacebuilding missions neglected. It requires no normative judgement on either the international nor indigenous approaches to say that the missions' approach to governance sacrificed enormous legitimacy potential by imposing a 'one-size-fits-all', 'Western' model, rather than engaging international standards with traditional Timorese institutions to develop a system the Timorese could support, feel familiar with, and call their own.<sup>27</sup>

Again the UN can institutionally learn from these mistakes, but the real problem lies deep in the international order whereby states pursue dogmatic, rather than organic, conceptions of governance: that is, which either satisfy and extend their notions of the supremacy of their own systems, or in the least do not represent a perceived threat. Letting the letter of democracy take precedence over the essence of democracy was not to East Timor's advantage, and this doctrinaire approach echoes those countries' Cold War attitudes, by which, to East Timor's agony, any alternative outcome – at all – was preferable to the chance of a communist government.

### **III-C. JUSTICE**

Justice presented some of East Timor's most complex challenges. Many concerned the period it had just emerged from in which the very notion had been bludgeoned to meaninglessness; and the meanings returned all at once in questions of accountability for atrocities during the 1975-1999 occupation and 1999 militia rampage. On top of that emerged issues of refugee

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<sup>25</sup> Ishizuka, 119-120, and Rae, 63-65.

<sup>26</sup> Rae, 83.

<sup>27</sup> *Ibid.*, 81-2. A famous example of this kind of creative pragmatism may be seen in the American occupation of Japan from 1945 to 1952, in which the Showa emperor, Hirohito, was kept on the throne, and the unique public respect his office derived was used to legitimate the occupation and gain the Japanese people's cooperation.

return, social reconciliation, and worsening domestic violence and gender conflict; all beneath the overarching question of how, and on what normative foundations, to build East Timor's justice infrastructure.

Again the answers were dealt a disservice by colliding foreign and Timorese approaches. As with governance, the UN was deployed with the established norms and frameworks of its dominant states: a traditionally Euro-American – perhaps Abrahamic – mentality of exhasutive investigations, strict procedures, prosecutions, punishments and prisons.<sup>28</sup> This was reflected in UNTAET's Serious Crimes Unit (SCU), a tribunal created in 2000 to investigate and prosecute crimes during the 1999 violence. The SCU was not well suited to the circumstances: in the absence of judicial infrastructure, a shambles in pre-trial detention, confusion between legal practitioners from different backgrounds, and lack of cooperation from Indonesian authorities harbouring many of the suspects, it was critically constrained. Nor did its remit extend past 1999 to the occupation period; and its closure at the end of UNMISSET, with all the imagery of incompleteness, ineffectiveness and political expediency, was calamitous for the UN's judicial credibility in East Timor.<sup>29</sup>

Conversely, the Timorese already had a venerable traditional justice system, based in customary law institutions such as *adat* or *lisan* (a comprehensive justice ethos), *bandu* (the ethos's basis of legitimacy in ancestors still living in the spirit world), *nahe bitu* (conflict resolution process) and *juramento* (blood oath to seal settlements reached and restore peace).<sup>30</sup> In contrast to the more punitive 'Western' tradition, Timorese justice is a communal concern emphasizing reconciliation, dialogue, engagement and taking responsibility, and reaching social harmony.

For post-conflict East Timor, reconciliation was as much a pragmatic necessity as a principle. This traditional emphasis on reconciliation over strict formality was reflected in President Xanana Gusmão's approach to refugee repatriation and justice for the 1999 militia crimes<sup>31</sup>; and in the establishment of the Commission for Reception, Truth and Reconciliation (CAVR) in 2001, a truth commission without high judicial function, tasked to investigate and acknowledge the truth, hold hearings, and assist community reconciliation for the victims of crimes through the entire 1975-1999 period. Though not without criticism, the CAVR was generally well-received by a population more familiar and at ease with its practices than with the 'solemn, adversarial courtroom', and made major accomplishments in documenting crimes, rehabilitating perpetrators, and providing closure to victims by the time of its final report in October 2005.<sup>32</sup> Post-conflict justice presents an often painful challenge of balancing accountability for the past with advancement into the future, both of which are essential concerns; and by engaging local customs with international human rights perspectives, the CAVR made important contributions to the demands of both in a highly precarious period.

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<sup>28</sup> Ishizuka, 234.

<sup>29</sup> *Ibid.*, 129-134.

<sup>30</sup> Increasing attention has been paid to Timorese justice customs and their peacebuilding relevance in recent analyses. See Rae, 143-5 and Ishizuka, 229-231.

<sup>31</sup> *Ibid.*, 234-5. Quoting Gusmão in September 2001 on the rank-and-file militias: 'Who will pay for their daily life in prison? The money that you pay in taxation...What we have discussed is that if we need to repair buildings, the people who burned the buildings will repair them.'

<sup>32</sup> Rae, 177-181 and 201; and Ishizuka, 138-143.

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Like international standards, indigenous justice approaches are not beyond fault. Reconciliation might not be enough for extremely serious crimes, such as the Indonesian executive architects of the occupation and 1999 violence. Moreover, the communal basis of the indigenous approach may lead its outcomes to be prejudiced by family or kinship connections, or sacrifice individual rights for the sake of stability or social norms, especially in domestic and gender violence situations.<sup>33</sup> *Juramento* may also raise questions of animal welfare. Thus, it is important for international and local approaches to engage with one another, to combine the strengths of both and overcome one another's weaknesses: the demands of post-conflict justice are so multi-faceted as to be best addressed with a similarly multi-faceted, creative and flexible approach. The onus is on the states leading the peacebuilding effort to develop such an approach to peacebuilding operations, and this requires greater open-mindedness in states with perhaps more pride in their norms and systems of justice than their outcomes merit.

The paradigm of political selfishness remains an obstacle. One of the most damaging long-term failures of justice in East Timor is the impunity to this day of Indonesian war criminals, including those indicted by the SCU: as of 2003 there were 221 suspects so indicted which the Indonesian authorities refused to extradite for trial, and Indonesia has consistently refused to cooperate with Timorese judicial processes.<sup>34</sup> This includes several high-ranking officials, some of whom, such as General Wiranto, remain politically active in Indonesia at the highest levels.<sup>35</sup> Here we see self-interest calculations impeding accountability for crimes against humanity, not only within Indonesia, but by an international community reluctant to pressurize an Indonesia supposedly emerging from authoritarian repression and economic instability into a new democratic era; but in fact still struggling with notorious political corruption, serious abuses against regional populations (such as in Papua), and the mass destruction of its tropical rainforests, of enormous global biodiversity and climate change significance – an order which must be considered unsatisfactory, at best.

The parallels with international behaviour during the occupation are striking. As events after 1999 stoked concerns that other regions would break from Indonesia and follow East Timor to independence, Indonesia's geopolitical partners still prioritize its stability both as a trading partner and a strategic bulwark: if no longer against communism, then against Islamist terrorism and the expansion of China as a regional power.<sup>36</sup> Without significant international leverage, the question emerges as to whether culpability for East Timor's ordeal is acknowledged by Indonesia at all: for there could be no more ominous shadow over Timor-Leste's long-term prospects than an enduring attitude in its dominant neighbour, acquiesced to by the international community, that it was right all along.

Similarly, accountability has yet to be extended to the foreign backers of the Indonesian occupation, and must be for the same reasons: that peacebuilding means nothing if it does not

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<sup>33</sup> See Ishizuka, 238-245. Gender is complex in East Timor, influenced both by the patriarchal influence of the Catholic Church and, according to J.D. Rae, matrilineal and even matriarchal traditions where political and economic power was controlled by females, some influences of which have endured. See Rae, 92-93. Especially given the many gendered inadequacies even of international frameworks, indigenous culture may again offer considerable legitimacy resources to appeal to in addressing the worsening gender violence situation.

<sup>34</sup> Ishizuka, 131-2.

<sup>35</sup> Rae, 176.

<sup>36</sup> See Emmerson, Donald K., "Will Indonesia Survive?", in *Foreign Affairs* 79:3 (May/June 2000), 95-106, for a post-referendum analysis on the implications of Timorese independence for Indonesian territorial unity.

mean taking the necessary steps to ensure whatever peace is built will not be knocked down in future. Far from establishing recognition for the British, American and Australian roles in East Timor's calamity, the very notion that self-interest is an acceptable primary pursuit for states and businesses, in persisting today, still enables legitimization of their choices during that period: and thus makes it intuitive that if the circumstances were repeated, their behaviour would be no different.

As with the justice process within East Timor, the 'international' formalized court-cases model of justice might not be most appropriate or effective for this. Indeed, in the spirit of reconciliation, the best penance might be those states' continued commitment to the peacebuilding process, for as long as is necessary or desired by the Timorese people: accompanied however by considerably clearer contrition than has yet been expressed, and a recognition that this commitment, with all expenses it incurs, is an act not of kindness, but of reparation.

#### IV. CONCLUSIONS

This has not been a fully comprehensive consideration of East Timor's challenges, some of which, such as refugee concerns and socio-economic development, are just as important to its pursuit of peace, and exhibit the same trends of international and local collision, and obstruction by the self-interest of participating states.<sup>37</sup>

Foreign material greed or value myopia, in the context of a *chosen* predatory international paradigm, caused the conflict in East Timor. As East Timor sought to rebuild, the persistence of those currents in the international peacebuilding contribution, and the failure to consider the consequences thereof, hindered the process. Governance and justice were approached on the basis of 'Western' models and systems, marginalizing the Timorese in terms of participation, accessibility and values; the conflict's effects on Timorese were not adequately considered when it came to defence force and police legitimacy; and those who actually carried out the destruction, whether in Indonesia or the powers which supported it, have not been held to account.

The UN's founding premise is the pursuit of a very different order: one which rejects the 'scourge of war', reaffirms 'fundamental human rights', and works for 'the economic and social advancement of all peoples'.<sup>38</sup> Though progress at the paradigmatic level has advanced in recent decades, such as through developing and implementing concepts such as Human Security and the Responsibility to Protect, UN peacebuilding remains bound to the decisions and attitudes of its dominant states, and thus cannot be held culpable for when the self-interest paradigm obstructs its mission. Nonetheless there are practical steps the UN can take as an organization to learn from the East Timor experience: such as institutionalizing local

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<sup>37</sup>As expressed by Professor Sukehiro Hasegawa in personal correspondence (January 2010), difficulties in economic rehabilitation and the creation of employment were very significant in the relapse into conflict. Moreover, attention must be drawn to Australian policies of consistently bullying East Timorese authorities to cede it oil and gas revenues in the Timor Straits: an unconscionable approach potentially devastating to Timor-Leste's economic recovery. See Bellamy, Alex J. And Williams, Paul D., *Understanding Peacekeeping* (Polity Press, 2010), 275. See also Rae, 107 on the significance of these revenues, as well as other examples of foreign agendas taking precedence in economic assistance to Timor-Leste; and Ishizuka, 166-196 for more detail on the evolution of the Timor Sea oil politics, and Australia's unworthy behaviour towards East Timor throughout the peacebuilding period.

<sup>38</sup> Preamble to the *Charter of the United Nations* (1945), <http://www.un.org/en/documents/charter/>.

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participation in governance; introducing systematic training for staff in local history and culture; more thorough briefing for staff on the purpose and proper culture of peacebuilding missions, to curtail extravagant lifestyles or arrogant mindsets in mission zones; institutional additions, such as military lawyers as a part of peacekeeping forces<sup>39</sup>; and improved investigation and vetting of staff to prevent the serious disciplinary failures by UN peacekeepers occurring in recent years, including sexual exploitation and abuse.<sup>40</sup>

This should not detract from the peacebuilding missions' remarkable accomplishments, but the deep roots of the troubles they have encountered must not be ignored. Rectifying them is not a matter of idealistic hope, but of practical necessity. The success of peacebuilding in Timor-Leste, and the development of a reliable approach to peacebuilding generally, requires a shift from dogmatic to more organic peacebuilding: that is, less top-down imposition of structures and practices based in dominant states' norms and loaded with their agendas, and more the *growing* of peace from the soil of wherever that peace is to be pursued, with the needs and values of those societies engaged with by international frameworks, and definitely questioned and scrutinized, but nevertheless at centre stage. And furthermore, for the prevention of the conflicts that bring about such painstaking need for peacebuilding in the first place, a fundamental shift is required in the values and attitudes by which international actors, above all states, conduct themselves towards others.

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<sup>39</sup> As suggested by Hansjorg Stohmeyer. See Ishizuka, 81.

<sup>40</sup> U.N. General Assembly, *Report of the Secretary-General – In larger freedom: towards development, security and human rights for all* (A/59/2005) (21 March 2005), Section III, Article 113.

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