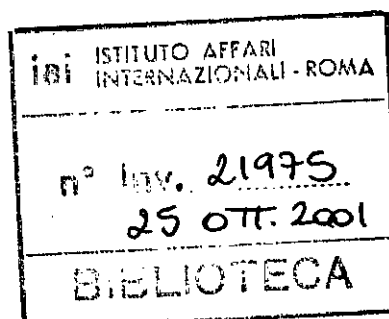


**COMPARING EXPERIENCES WITH POST-CONFLICT STATE BUILDING  
IN ASIA AND EUROPE:  
THE CASES OF EAST TIMOR, BOSNIA AND KOSOVO**  
Council for Asia Europe Cooperation (CAEC)  
Bali, 15-18/X/2001

- a. Program
- b. List of Participants
  - 1. "The law and order dimension: an analysis of Kosovo"/ Kari Margrethe Osland (16p.)
  - 2. "Law and order: judiciary development in East Timor"/ Dionisio Babo-Soares (18p.)
  - 3. "Collapse and reconstruction of a judicial system: the United Nations missions in Kosovo and East Timor"/ Hansjoerg Strohmeyer (p.46-63)
  - 4. "Between integration and state failure: political transformation in the Balkans"/ Klaus Becher (8p.)
  - 5. "Success, weaknesses and challenges: a critical overview of the political transition in East timor"/ Dionisio Babo-Soares (16p.)
  - 6. "Administrative capacity building in Kosovo: an assessment of UNMIK's civil administration policy"/ Knut G. Kirste (38p.)
  - 7. "East Timor: assessing UNTAET's role in building local capacities for the future"/ James J. Fox (13p.)
  - 8. "Peacebuilding and spoils of peace: the Bosnia and Herzegovina experience"/ Michael Pugh (13p.)
  - 9. "Building East Timor's economy"/ Helder da Costa, Hadi Soesastro (17p.)
  - 10. "A popular challenge to UNTAET's achievements"/ Lucas da Costa, Jose Antonio Neves (4p.)
  - 11. "Comparing European experiences with state building: the cases of East Timor, Bosnia and Kosovo"/ Manfred Eisele (13p.)
  - 12. "Securing East Timor: the military and external relations"/ Rizal Sukma (12p.)
  - 13. "A state in the making: international actors in East Timor"/ Landry Haryo Subianto (20p.)



*As of October 12, 2001*

**Council for Asia Europe Cooperation  
Task Force Workshop**

**Comparing Experiences with Post-Conflict State Building in Asia and Europe:  
The Cases of East Timor, Bosnia and Kosovo**

**Sanur Beach Hotel, Sanur, Bali  
October 15-18, 2001**

**Program**

**Monday, October 15**

am/pm

Participants arrive

19:30

**Welcoming Dinner**, Sanur Beach Hotel

**Tuesday, October 16**

09:00-09:30

**Opening Remarks**

Jusuf Wanandi  
Centre for Strategic and International Studies (CSIS)

Tadashi Yamamoto  
Japan Center for International Exchange (JCIE)  
*(to be confirmed)*

09:30-10:00

**Introductory Remarks on the Program**

Jusuf Wanandi  
Task Force Co-ordinator

Hanns W. Maull  
Task Force Co-ordinator

10:00-10:30

**Coffee Break**

10:30-12:30

**Session I**

**Re-establishing Law and Order**

Paper authors: Kari Margrethe Osland  
Norwegian Institute of International  
Affairs (NUPI)

		Dionisio Babo Soares Australian National University (ANU)
	Commentators	Detlef R. Buwitt UN-Commissioner IPTF
		Hans-Joerg Strohmeyer UN OCHA
12:30-13:30	<b>Lunch</b>	
13:30-15:00	<b>Session II</b>	
	<b>Political Transformation</b>	
	Paper authors	Klaus Becher International Institute for Strategic Studies (IISS)
		Dionisio Babo Soares ANU
	Commentators	Winrich Kuehne Stiftung Wissenschaft und Politik (SWP)
		Colin Stewart UNTAET/ETTA
15:00-15:30	<b>Coffee Break</b>	
15:30-17:00	<b>Session III</b>	
	<b>Administrative Capacity Building</b>	
	Paper authors	Knut G. Kirste UNMIK/OMIK
		James Fox ANU
	Commentators	Fabrizio Hochschild Drummond UNHCR
		Omar Halim The Non-Aligned Movement Centre for South-South Technical Cooperation
19:00-21:00	<b>Dinner</b>	

**Wednesday, October 17**

09:00-10:30

**Session IV**

**Economic Development**

Paper authors	Michael Pugh University of Plymouth
	Helder da Costa East Timor Study Group
	Hadi Soesastro CSIS
Commentators	Joao Mariano Saldanha East Timor Study Group
	Hanns W. Maull University of Trier

10:30-11:00

**Coffee Break**

11:00-12:30

**Session V**

**Providing for Internal and External Security**

Paper authors	Lt. Gen. (ret) Manfred Eisele Department of Peacekeeping Operations, UN
	Rizal Sukma CSIS
Commentators	Winrich Kuehne SWP
	Nicola Dahrendorf UNTAET/ETTA

12:30-13:30

**Lunch**

13:30-15:00

**Session VI**

**The Role of International Institutions**

Paper authors

Ettore Greco  
Istituto Affari Internazionali (IAI)

Landry Haryo Subianto  
CSIS

Commentators

Fabrizio Hochschild Drummond  
UNHCR

Jusuf Wanandi  
CSIS

15:00-15:30

**Coffee Break**

15:30-17:00

**Concluding Session**

Jusuf Wanandi  
Hanns W. Maull

19:00-21:00

**Farewell Dinner**

**Thursday, October 18**

Participants depart

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*As of October 12, 2001*

**Council for Asia Europe Co-operation  
Task Force Workshop**

**Comparing Experiences with Post-Conflict State Building in Asia and Europe:  
The Cases of East Timor, Bosnia, and Kosovo**

**Sanur Beach Hotel, Sanur, Bali  
October 15-17, 2001**

**List of Participants**

***East Asia/Pacific***

- |     |                           |  |
|-----|---------------------------|--|
| 1.  | Dr. Helder da Costa       | East Timor Study Group, Dili   |
| 2.  | Dr. Nicola Dahrendorf     | UNTAET/ETTA  |
| 3.  | Prof. James J. Fox        | Director, Research School of Pacific<br>and Asian Studies, Australian<br>National University (ANU), Canberra |
| 4.  | Mr. Omar Halim            | The Non-Aligned Movement Centre for<br>South-South Technical Cooperation                                     |
| 5.  | Ms. Clara Joewono         | Deputy Executive Director, CSIS  |
| 6.  | Dr. Joao Mariano Saldanha | East Timor Study Group, Dili   |
| 7.  | Dr. Dionisio Babo Soares  | Research School of Pacific and<br>Asian Studies, ANU   |
| 8.  | Dr. Hadi Soesastro        | Executive Director, CSIS   |
| 9.  | Mr. Landry Haryo Subianto | Researcher, CSIS   |
| 10. | Dr. Rizal Sukma           | Director of Studies, CSIS  |
| 11. | Dr. Colin Stewart         | UNTAET/ETTA  |
| 12. | Mr. Jusuf Wanandi         | Member, Board of Trustees, CSIS  |
| 13. | Dr. Tadashi Yamamoto      | President, JCIE*   |

## *Europe*

- |      |                                  |  |
|------|----------------------------------|--|
| 1.   | Mr. Klaus Becher                 | Senior Research Fellow, International<br>Institute for Strategic Studies (IISS),<br>London |
| 2.   | Lt. Gen. (ret). Detlef R. Buwitt | Former U.N. Commissioner of IPTF<br>in Bosnia and Herzegowina                              |
| 3.   | Lt. Gen. (ret) Manfred Eisele    | Former Assistant Secretary General for<br>and Support, U.N.                                |
| 4.   | Mr. V.L.R. Fleischer*            |  |
| ✓ 5. | Dr. Ettore Greco                 | Deputy Director, Istituto Affari<br>Internazionali   |
| 6.   | Dr. Fabrizio Hochschild Drummond | UNHCR  |
| 7.   | Dr. Knut G. Kirste               | OSCE Pillar of U.N. Interim<br>Administration Mission in Kosovo                            |
| 8.   | Dr. Winrich Kuehne               | Deputy Director, Stiftung Wissenschaft<br>und Politik (SWP)                                |
| 9.   | Prof. Hanns W. Maull             | Chair, Foreign Policy and International<br>Relations, University of Trier                  |
| 10.  | Dr. Michael Pugh                 | Director, Plymouth International<br>Studies Centre, University of Plymouth                 |
| 11.  | Dr. Hans Joerg Strohmeyer        | Policy Advisor, UN OCHA, New York  |

*\*to be confirmed*



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permission of the author*

**Council for Asia Europe Cooperation  
Task Force Workshop**

**Comparing Experiences with Post-Conflict State Building in Asia and Europe:  
The Case of East Timor, Bosnia and Kosovo**

**Sanur Beach Hotel, Sanur, Bali  
October 15-18, 2001**

**The Law and Order Dimension:  
An Analysis of Kosovo**

**Kari Margrethe Osland  
Norwegian Institute for International Affairs (NUPI)**

Paper to be delivered to Council for Asia Europe CO-operation (CAEC) project on:

Comparing Experiences with Post-Conflict State Building in Asia and Europe:

The Cases of East Timor, Bosnia and Kosovo

## **THE LAW AND ORDER DIMENSION**

— **AN ANALYSIS OF KOSOVO**

*By Kari Margrethe Osland, Norwegian Institute for International Affairs (NUPI)*

Paper to be presented in Bali, Indonesia, 15-17 October 2001

Draft.

Comments most welcome. Please do not quote without permission of the author.

## **Introduction**

In this paper, I shall propose a perspective on the experiences with post-conflict state building in Kosovo where the concept of law and order is at the centre of analysis. I will assess, by analysing the experiences in Kosovo, how law and order can be (re-) established after an intervention with the help of international institutions and the international community. The paper focuses on three core aspects, namely the internal security situation, the legal and judicial system and how to deal with the past. Before handling these specific aspects, I will turn to an overall assessment of problems in the field of law and order in Southeast Europe in general.

## **Challenges on Law and Order in Post-Conflict Societies**

The shifting of scale, from nation-states to a conception of the individual, is a shift that the concept of security has shared with its twin Cold War term, development. For most of the period after the Second World War until the 1990s, 'security' structured thinking about relations between east and west, 'development' structured relations between north and south. Both terms had nation-states as their object. After the Cold War, this has changed, and there has been an individualisation of both terms. This process seems to have taken place in two stages: first from state to 'community', then from 'community' to 'human'. Thus, development as national strategy was replaced with community development and later human development. A similar sliding of scale has taken place with reference to security. Originally, security was concerned with the preservation of the sovereign state, and its protection by the use of military force.<sup>1</sup> This was challenged by what in security studies has become known as the 'wideners', who claim that other reference objects than the national state (such as individuals and their communities), as well as other issues than the threat and use of military force (such as environmental, economic, societal, and political), should be included in the concept of security.<sup>2</sup> Wye Jones calls these two moves respectively for an extending and a broadening of the concept of security.<sup>3</sup>

The character of peace support operations (PSOs) has changed significantly after the Cold War. From a focus where the international community (IC) did not intervene in the society at

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<sup>1</sup> Buzan, Wæver and de Wilde 1998:2

<sup>2</sup> Albert 1998:42; Buzan 1991; Wæver et al. 1993; Buzan, 1997

<sup>3</sup> Wye Jones 1999

all, via a focus on the reconstruction of a society's *status quo*, to a focus on supporting democratic transition processes. This development has coincided with a widened understanding of security: from military assistance to a focus on cooperation between the civilian, the military and the law and order sector. In many ways this mirrors a real change in situations of conflict after the Cold War. Most wars of today are intra-state rather than inter-state and this explains the change in the object of security.<sup>4</sup> Moreover, ninety percent of the casualties are civilians, predominantly women and children, a fact that explains the focus on other agents than the military.<sup>5</sup> In this regard, the concept of security sector reform (SSR) has earned a central place within international community assistance to societies going through transitions from war to peace.<sup>6</sup> SSR as a phenomena encompasses crucial goals of a peace support operation, namely to create security and a democratic development for the people living there. Although we have seen democratisation waves sweeping the Balkans the deeper problems have not been taken away, and are often the ones relating to the security sector.

Generally speaking, the security sector is made up of two components: the internal, consisting of police, justice and penal sector, and the external, constituting the military. However, there are often sliding transitions between these, and in some countries there are no differences between the role of the military and that of the police. In other countries, private security companies increasingly take over responsibility formerly reserved to the police and the military. Security sector reform should be seen as an integral component of conflict prevention and post-conflict reconstruction. Development, or at least sustainable development, cannot succeed without a stable environment, i.e. security and a commitment by the recipient states to improve governance. Following this, there is a need for comprehensive SSR approaches to assistance that link security, governance and development (economic, political and social). This has been emphasised by the development of a crisis management capability in the European Union as well as by the recent report from the Secretary General on United Nations Peace Operations.<sup>7</sup>

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<sup>4</sup> Wallensteen and Sollenberg 1999

<sup>5</sup> Wallensteen and Sollenberg 1999; Carnegie Commission on Preventing Deadly Conflict 1997:xvii

<sup>6</sup> It should be noted that reform of the security sector may happen without the assistance from the 'outside', like was for instance the case in both South Africa and FYR Macedonia where processes of reform happened from the 'inside'. The concept 'security sector reform' refers, however, to a process that is initiated by the international community.

<sup>7</sup> UN Secretary General's report to the General Assembly/Security Council, 2000 (the 'Brahimi-report'). This has also been emphasised by the Committee of the Defence (NOU 2000/20 – Forsvarspolitisk utvalg) and by the Committee on Vulnerability (NOU 2000/ 24 – Sårbarhetsutvalget)

The main tenet of SSR is the desirability of spreading well-understood norms on how the security sector should be managed in order to promote the wider objectives of development and security.<sup>8</sup> Hence, SSR is closely linked with other normative agendas such as democratisation, civilian control of the military, protection of human rights, independent judiciary, importance of an independent civil society, etc. We have seen discrepancies between international demands, standards and norms on the one hand, and local needs and interests on the other. Here, there is a need to understand the contextual character of the conflict as well as focusing on local ownership. The initiatives may well be external and based on international demands and standards as long as the local actors feel that they take part in the process and feel some ownership in it. This is crucial for long-term sustainability and for the peaceful exit of the international engagement in a given country. Both in the Kosovo and the Balkans, as well as in most other countries in the world, the need for security sector reform most often arises against the background of civil war, ethnic strife, international intervention and the collapse of previous regimes.

### **The security situation in the Balkans**

The security situation represents the greatest challenge in the Balkans since the beginning of the Yugoslav dissolution. The trauma of the war has left the people in war-torn societies with an extreme sense of insecurity.<sup>9</sup> There is a general consensus among experts within the field of international crisis management that the primary source of insecurity is weak states.<sup>10</sup> The assistance to rebuild the state and make this able to fulfil its intended task is perhaps the most crucial role of the international community.<sup>11</sup> In the Balkans many states are engaged in processes of state building – either the creation of new states or the fundamental transformation of regimes. Recent studies have showed that one of the greatest perceived threats to regional security is external withdrawal or disengagement. The international community has in many of these countries become some sort of a Leviathan, as conflict will most probably break out the moment the international community withdraw. Kosovo, but also Bosnia and Herzegovina, serve as examples of this. In the long run, membership into international organisations, above all, membership in the European Union and NATO, is seen as the only way in which disengagement can happen without it posing a threat to the stability

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<sup>8</sup> Chalmers 2001

<sup>9</sup> Tanner 2001

<sup>10</sup> Ball 1998. By 'weak state' I mean both a lack of capacity and legitimacy.

<sup>11</sup> Ofstad and Stokke 2000:99

of the region. Herein lies also a problem. Many people in the region look at the intermediate security sector, which concerns regional cooperation and integration, as a threat to further European integration. The logic is that more regional integration will lead to less European integration and that this is the rationale behind the interest of the IC in assisting in this process - as if it was a zero-sum game where more regional integration and cooperation would impede European integration.<sup>12</sup> For this reason some of the partner-countries have been reluctant to cooperate on especially security issues at a regional level.

Kosovo and Bosnia share some common features both regarding their past, the wars they went through, the way the war ended and the role of the international community in these societies: In the absence of a final end state Kosovo is occupied by NATO's KFOR and administered by the UN through its UNMIK mission. Bosnia on the other hand is also some kind of an international protectorate, but in a much lesser degree than what is the case in Kosovo. While in Bosnia, there were recognised government structures to work with, in Kosovo the international community had to prepare itself for performing this task.<sup>13</sup> However, in many instances they are incomparable. This concerns for instance their 'post-conflict' status. The key element of a society being in a post-conflict status is that a peace agreement has determined a final end state for the territory. This is the case for Bosnia, but not Kosovo. While in Bosnia a peace-agreement was found in the Dayton accords where the determination of a final end state for the territory was established, this was absent in Kosovo. The Dayton-agreement of November 1995 established the Republic of Bosnia and Herzegovina, consisting of two autonomous entities. As for Kosovo, the UN Security Council Resolution 1244 says that Kosovo is to remain as part of the Federal Republic of Yugoslavia.<sup>14</sup>

### **Internal Security in Kosovo**

The 3rd of June 1999 EUs representative, the Finish president Martti Ahtisaari and the Russian special envoy Victor Tjernomyrdin, managed to find a peace-agreement with the

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<sup>12</sup> This statement is based on talks and discussions with several chief of police representatives from Southeast Europe.

<sup>13</sup> Barth Eide, Espen and Tor Tanke Holm 2000:214.

<sup>14</sup> In the case of Bosnia, see article III and annex 2 of the General Framework Agreement for Peace in Bosnia and Herzegovina (the Dayton Peace Agreement). In the case of Kosovo see S/RES/1244(1999) where article 10: 'Authorizes the Secretary-General, with the assistance of relevant international organizations, to establish an international civil presence in Kosovo in order to provide an interim administration for Kosovo under which the people of Kosovo can enjoy substantial autonomy within the Federal Republic of Yugoslavia...'

Yugoslav authoritarian president Slobodan Milosevic. This ended 78 days of war and led to the establishment of the United Nations Security Council Resolution 1244, which is the legal mandate under which Kosovo is ruled. When NATO entered with its Kosovo Force (KFOR), the UN with its Interim Administration Mission in Kosovo (UNMIK), the OSCE and the EU, they were met by a situation of vacuum in the security sector. After the withdrawal of Serbian security forces there were no local institutions at hand to take care of the public security function.<sup>15</sup>

After years of discrimination, the Kosovo-Albanian community started a process of reversed ethnic cleansing towards the non-Albanian community. This is not the case any longer, although it is not easy to be neither Kosovo-Albanian in Kosovo-Serb dominated communities nor the other way around. Today, large-scale ethnic violence has been reduced significantly compared to the first half year after the end of the war, but it still represents a great challenge. It should be remembered here that '...Kosovo was not a particularly well-ordered society *before* the war either. The totally Serbian-dominated police was in Kosovo for public control rather than public service, and on the other side, strong traditional structures of *kanun* laws emphasising blood revenge and self-styled 'policing' prevailed.'<sup>16</sup>

The lack of effective judicial and policing mechanisms has been a key factor in perpetuating a climate of insecurity in Kosovo. The impact has been severe: in the absence of any effective deterrent, the level of crime and violence continues to be high. This applies not only to ethnically motivated crime against Serbs and other minorities, including murders, abductions, destruction of property, forced evictions, threats, and intimidation, but increasingly also to organized criminal activities which affect the security of all inhabitants of Kosovo. In this regard, the international community's major preoccupation<sup>17</sup> is not final status but security. KFOR's 42,500 troops in Kosovo (and 7,500 in addition in neighbouring countries) as well as around 4,000 UN Police officers have not been very effective in providing internal security. The inability to prevent Albanian revenge attacks against Kosovo-Serbs and other minorities, which began immediately after the war ended, is the most obvious example of this.

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<sup>15</sup> CPN Briefing Paper 1999.

<sup>16</sup> Eide & Holm 2000:213.

<sup>17</sup> For a further discussion on this, see ICG's report (2000) 'After Milosevic' and its chapter 5 on Kosovo.

The complex nature of security challenges, which met the international community after the end of the war, has meant that what used to be understood as a clear distinction between military and civil roles has become increasingly indistinct. This became very clear with the high level of cooperation that was established between UNMIK and KFOR all from the beginning of the mission in Kosovo. This meant for instance that COMKFOR and the SRSG met daily for coordination purposes. Furthermore, KFOR and UNMIK Police are involved in joint patrolling. This has, however, not proven to be conflict-free. KFOR-soldiers have carried out duties for which they are not trained, while UNMIK-police officers have preferred not to do patrolling with the soldiers because this have proved in some situations to hamper to contact with the local population. Added to this picture comes that the UNMIK Police mission possess executive authority. This was seen as necessary because the Federal Republic of Yugoslavia had withdrawn their security forces and did not exercise sovereign authority over the province.<sup>18</sup> However, the international community cannot possess this role forever. In order to build up a local police force (the Kosovo Police Service – KPS), the Kosovo Police Service School (KPSS) was established. The KPS is under full command of the UNMIK Police while the KPSS is run by the OSCE. Measured on several dimensions, the creation of the KPS and the KPSS is maybe the greatest success-story regarding the role of the international community in assisting security sector reform. The most important element is that it has been successful in recruiting students from minority groups (unlike the problems of politicisation of the Bosnian police). Furthermore it has an aim of having 30% women in each class, which has been achieved. KPS has been involved in a measure undertaken aimed at curbing the most violent excesses in September last year, namely the establishment of Special Local Security Measures (SLCM). SLCM includes mobile police stations manned by UN police, KFOR troops and by mixed ethnic personnel of the Kosovo Police Service. The effort has been criticised for institutionalising the Serb enclaves.

Another important effort concerning cooperation between the different international organisations within the context of security sector reform concerns the demilitarisation and demobilisation of the Kosovo Liberation Army (KLA). The demilitarisation was central to KFOR's mandate to enforce a safe and secure environment,<sup>3</sup> but this process was overseen by UNMIK. When the Kosovo Protection Corps (KPC) was established by UNMIK Regulation No. 1999/8 on 20 September 1999, it happened on the basis of close consultations between

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<sup>18</sup> Eide & Holm 2000:212.



UNMIK and KFOR. KPC is supposed to serve as part of a civilian emergency response agency. It consists of 3000 active members and 2000 reservists. 200 of the active members are allowed to carry personal weapons, restricted for guarding facilities and ceremonial purposes. Although KFOR provides the day-to-day supervision of the corps, UNMIK is responsible for its civil administration. KPC was for some time seen as a success-story. But especially after the escalation of conflict in the Presevo-valley in southern Serbia in February 2000 (with the UCPMB) and in Makedonia in one year after (with the NLA), many were the ones who criticised the international community for not having been able to demilitarise the KPC fully, because in both places, many of the former fighters in the KLA participated.<sup>19</sup> However, it must be bared in mind that the KLA was never a very structured organisation in the sense that it was composed of disparate groups with different agendas at respective local levels. Most people today seem to look upon the KPC, not as a civil emergency agency, but just as a demobilised KLA. Furthermore, if Kosovo is to get independence in the future, the KPC (or parts of it) will most probably constitute its army.

As for the reform of the legal and judicial system in Kosovo, disputes about which legal code that was to be used as the applicable law left UNMIK in a legal limbo for the first six months of the mission. The agreement reached was that it should be based on the law from 1989 and supplemented with law from 1998 as well as new elements. But the problems were not solved concerning the wide latitude for arbitrary decisions. When international judges and prosecutors were inserted into the process, however, the situation improved.

Another measure that improved the situation was the establishment of the Joint Advisory Council on Legislative Matters in August 1999. This was established to counsel the UN Interim Administration Mission (UNMIK) on how to purge Kosovo's legal codes of discriminatory elements. Besides from this, it also focuses on creating new legislation, in cooperation with international experts identified by UNMIK. The purpose has been to review the existing legal framework and the laws applicable in Kosovo with a view to purging it of all provisions, which are inconsistent with the standards recognized in Europe and the rest of the world. Local and international legal experts were elected to advice the United Nations operation in Kosovo on legal reform in the territory. The Council also established working

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<sup>19</sup> UCPMB is an Albanian abbreviation and means the Liberation Army of Presevo, Medvedja and Bujanovac, while NLA means the National Liberation Army.

groups that are to consider criminal law, property law, economic and financial laws, administrative law, civil law and other matters.

Despite these measures, there is still a need to speed up the process of a functioning and impartial judicial system. The international community must continue to closely monitor the performance of Kosovo judicial personnel and judges to avoid the performance of ethnic bias of their duties.<sup>20</sup> It must be remembered that the question of whose justice and what law is intertwined with that of movement toward final status.<sup>21</sup> Furthermore, the salary of local judges should be increased as an anti-corruption measure. This latter point is somewhat linked to what represents the most difficult security problem to deal with in Kosovo, and that is what operates beneath the surface in both the Kosovo-Albanian and Kosovo-Serb communities. This regards especially the problem of organised crime, or rather, transnational organised crime. While peaceful co-existence is a difficult issue between several of the countries in Southeast Europe, this has not hampered organised crime, which is transnational by its very nature.<sup>22</sup> This implies that it must be dealt with on a regional level.<sup>23</sup> As what regards the penal system, there is no institutionalised international capacity for dealing with rehabilitation and capacity building. Due to this, the issue has been dealt with in an ad hoc manner.

### **Dealing with the Past**

Creating a legal system able to administer justice for war crimes and crimes against humanity committed in Kosovo, most notably since March 1998, is also important for future stability. If justice is seen to be done in such cases, tensions between Kosovo-Albanians and others, particularly Serbs and Roma, may decrease, improving the conditions for dialogue and, eventually, peaceful co-existence. The future does not look too bright concerning this at the moment. However, it must be bared in mind that Yugoslavia did not go through any process of social catharsis after the Second World War. This is much of the reason why the gap between 'Self' and 'Other' at the moment seems to be unbridgeable. All societies have procedures, conscious and unconscious, which define who belongs and who does not belong to the group. The growing number of identity claims in the name of ethnicity poses many problems for the sovereign state. The state solves the problem of conflicting identity claims

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<sup>20</sup> See OSCE report 2000:61.

<sup>21</sup> ICG report 2000:92.

<sup>22</sup> Holm & Osland 2000:11.

<sup>23</sup> For more on this, see: <http://www.stabilitypact.org/WT-3/Organised%20Crime/SPOC%20Doc.htm>.

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<sup>22</sup> Hölm & Osland 2000:11.

<sup>23</sup> For more on this, see: <http://www.stabilitypact.org/WT-3/Organised%20Crime/SPOC%20Doc.htm>.

Apart from the ICTY, which has jurisdiction over Kosovo, complementary measures have been suggested. In Kosovo, for a long time planning went on in order to establish the so-called Kosovo War Crimes Court (KWECC), but due to different cooperation problems among the local parties as well as among central international organisations, this has been carried out.

Policymakers must adopt the more long-term approach of encouraging 'nations' to become cosmopolitan and internally heterogeneous, and demonstrating to ethnic entrepreneurs that the rewards of partial assimilation outweigh those of separation.<sup>27</sup> There is always someone who does not want the war to end. Stedman has labelled these 'spoilers'.<sup>28</sup> Very often, these not only play an important role during the war, but also in the aftermath, especially when it comes to combating transnational organised crime.

### **Lessons Learned and Future Challenges**

Reform and reconstruction are ambitious goals for international actors. Their inherent intrusiveness on the structures and processes of a state make them highly political processes. The extensive and open-ended nature of reform is resource demanding and requires long-term commitment of assistance. Most important, it necessitates a coherent vision of the end-state to be achieved. The democratic, efficient rule of law is the articulated goal of the international community. This end-state, however, is not easily translated into clear tasks and measurable objectives. Strategic thinking is thus required at all levels about the goals of international assistance to security sector reform, the specific targets to be set at distinct stages, and the priorities to be established in particular contexts.

Reform of the security sector is an absolute need, both in itself, but also because it can foster economic and other kinds of investment in the future. It is crucial that SSR is seen as an integrated part of the development and reconstruction process, because a long-term sense of security is a basic premise for economic reconstruction and reconciliation after war and conflict. Solid and lasting peace requires not only the absence of conflict, but also that people *expect* that there will be peace *in the future* and that they make their personal calculations on

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<sup>27</sup> Laitin 1995:13

<sup>28</sup> Stedman 1997; Eide 1997

that assumption. People do not live their lives in short-term intervals but in the long run.<sup>29</sup> The 'security first approach' has been developed on the basis of different PSOs in Western Africa.<sup>30</sup> The argument is that a crucial precondition for development in any country is that a sufficient level of security is established and kept. However, security sector reform cannot tackle for instance the corruption problems without associated rule of law changes. For this reason, adoption of international rule of law standards is paramount in relation to future membership in the European Union.<sup>31</sup>

Which are so the lessons learned so far concerning the reconstruction of law and order in Kosovo and which are the future challenges? As for the lessons learned they can be summarised in the following points:

- The international community can only *assist* the countries in need of reforming their security sector.
- The countries must *want* the international community to assist them in this process.
- The countries in question must take an active part in the process of restructuring the law and order sector – they must feel an *ownership* in the process.
- It must be clear from the start that a reform of the law and order sectors is first and foremost a *political process*.

As for the future challenges, Kosovo must be seen as forming part of the broader security complex in Southeast Europe in the sense that it is difficult to look at one area or country separate from the development in the neighbouring countries. A destabilisation of Kosovo for instance, will have impact on the countries in the region. Hence, in order to point out the challenges for these countries in specific, a glimpse is necessary to cast on the region as such. The greatest challenges facing the region today is therefore the following:

- Combat the problem of transnational organised crime in the region.
- Cooperation with the ICTY for all the countries falling under its jurisdiction. This also implies the need of starting the process of social catharsis in all the countries having experienced war and conflict in the region.

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<sup>29</sup> NUPI Working Group on Security Sector Reform 1999. See also Eide & Holm 2000:3.

<sup>30</sup> Ibid.

<sup>31</sup> Holm and Osland 2000:23. For more on this, see also CPN Briefing Paper 1999.

- Restructuring the security sector in the countries of the region. The reforms must be seen in relation to each other.
- Establishing functional cooperation between the countries in the region – for instance concerning networking with regard to more effective crime fighting.
- Ensure the safe return and integration of refugees.

A strong and independent legal system is one of the cornerstones in building a democratic society and secure future for Kosovo based on the rule of law. As a consequence, laying the groundwork for an independent and impartial justice system, and a fair and effective system of policing, is an essential task for the international community. Furthermore, security sector reform must aim at improvements along three different, but partially interdependent lines. First, the security sector must obtain internal legitimacy. The basis for legitimacy may vary depending on local laws, traditions and values. Secondly, the security sector must be effective. If the state cannot provide protection against crime and violence, it loses legitimacy quickly. Thirdly, the security sector must enable the state to be internationally accountable. This means that the state must live up to international standards and norms, such as human rights and the fight against organised crime.

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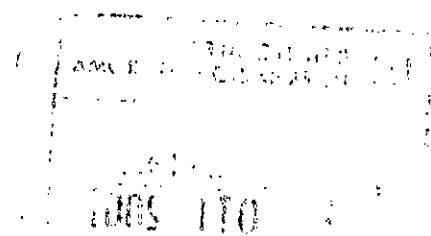
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## **LAW AND ORDER: JUDICIARY DEVELOPMENT IN EAST TIMOR**

Prepared for the conference on *Comparing Experiences with Post-Conflict State Building in Asia and Europe* in Denpasar, Bali-Indonesia, 15 – 17 October 2001.

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### **Introduction**

On the basis of Security Council Resolution 1272, 25 October 1999, the United Nations Administration in East Timor (UNTAET) was granted full authority to administer the territory and is empowered with all means to exercise the legislative and the executive authority, including the administration of justice. Law and order topped the rank of components in the UNTAET's mandate, underlining the significance of this element in the work of the Transitional Administration.

This paper however, will concentrate on the development of the legal and the judicial system, outline its achievements and strengths during the transition period and foresee the weaknesses and challenges ahead. The paper is divided in three parts. The first part details the achievements of the Judiciary after the UNTAET's two years involvement in East Timor, the second part covers some of the weaknesses and drawbacks and the third part looks at the challenges this sector will need to work out in the future. To conclude this discussion, some final comments will be made to sum up the main points of the paper.

### **Legal Framework**

When referring to both legal and judicial systems during the Transitional Administration period, one ought to look carefully at the regulation No 1/1999. This regulation serves as the basis for all laws currently applied in the territory. Section 3 of regulation No 1/1999 states that the laws applied in East

Timor prior to 25 October 1999 shall apply *mutatis mutandis* in the territory as long as they do not conflict with section 3.1 of the regulation. The latter being (a) the mandate given to UNTAET under United Nations Security Council resolution 1272 (1999); and (b) the regulations and directives issued by the Transitional Administrator in executing its task.<sup>1</sup>

In a way, applying Indonesian law –Penal Code and Criminal Procedure Code– and honouring legally binding decisions under both Portuguese and Indonesian law regimes were implicit in UNTAET's regulation No 1/1999. It is worth mentioning that the Indonesian Civil Code and Civil Procedure Code, both of which are Dutch-based laws, have also been used in courts throughout East Timor. Bearing this in mind, the Transitional Administration maintains only two tasks in terms of promulgation of laws namely, to amend the existing laws whenever deemed necessary and to issue new regulations to carry out its task.

Regulation No 1/1999 also puts an end to a number of Indonesian laws (section 3.2) <sup>2</sup> including the abolishment of capital punishment (section 3.3). This was done to comply with section 2 of the same regulation which requires strict adherence to international Conventions and full compliance with universal human rights standards.<sup>3</sup> Until the time this paper was written (13 October 2001) UNTAET had issued a total of 68 regulations, with 4 regulations promulgated in 1999, 36 regulations in 2000 and 28 regulations in 2001. This does not include the number of Directives, Notifications and Executive Orders issued by the Transitional Administrator.

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<sup>1</sup> See Regulation 1/1999, 27 November 1999 (source: <http://www.un.org/peace/etimor/untactR/r-1999.htm>).

<sup>2</sup> These include Law on Anti-Subversion; Law on Social Organisations; Law on National Security; Law on National Protection and Defence; Law on Mobilisation and Demobilisation; Law on Defence and Security.

<sup>3</sup> These include the Universal Declaration on Human Rights of 10 December 1948; The International Covenant on Civil and Political Rights of 16 December 1966 and its Protocols; The International Covenant on Economic, Social and Cultural Rights of 16 December 1966; The Convention on the Elimination of All Forms of Racial Discrimination of 21 December 1965; The Convention on the Elimination of All Forms of Discrimination Against Women of 17 December 1979; The Convention

In terms of the legal and the judiciary system, a number of regulations have also been promulgated. These include:

- Regulation 1999/3 on the Transitional Judicial Service Commission which was amended by regulation 2000/25;
- Regulation 2000/11 on the Organization of Courts which was amended by regulation 2000/14, regulation No 2001/18 and then regulation 2001/25;
- Regulation 2000/15 on Panels with Jurisdiction Over Serious Criminal Offences;
- Regulation 2000/16 on Public Prosecution service;
- Regulation 2000/30 Transitional Rules of Criminal Procedure;
- Regulation 2001/22 Police Service.

On the issue of legal representation, regulation No. 2000/11 on the Organization of Courts in East Timor, section 27 provides for a basic right to legal representation. The aim was to ensure effective and equal access to lawyers and that every East Timorese has access to justice in a court of law. The provision of legal aid is an important safeguard to ensure that legal advice in relation to complex issues in both criminal and civil cases can be accessed by the society at large.

### **Institutional Building: Early Development**

In the early period of UNTAET's administration the legal infrastructure was appalling. (1) No legal framework was in place. (2) The courts/buildings, including everything in them left from the previous administration (Indonesia) were completely destroyed. (3) With the exception of a number of Indonesian law graduates with little experience in court matters, not one East Timorese judge, public prosecutor or lawyer was in place.<sup>4</sup> Indonesian judges, public prosecutors and public defenders who worked in East Timor as civil servants had left the country following the September 1999 mayhem. (4) Having

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Against Torture and other Cruel, Inhumane or Degrading Treatment or Punishment of 17 December 1984; The International Convention on the Rights of the Child of 20 November 1989.

experienced a military occupation for 24 years during which the judiciary system was simply untrustworthy, people's confidence in state courts was lamentable. The effort to recover people's confidence in the justice system has not been an easy task.

The point here is how to start establishing the foundation of a legal framework that might be sustainable for East Timor even after the Transitional Administration has left the territory.

After a series of considerations, a Transitional Judicial Service<sup>5</sup> was established to work on the recruitment of judges, public prosecutors and public defenders.<sup>6</sup> The selected candidates were provided with a series of one-week compulsory "quick-impact" courses both in Dili and in Darwin from November until December 1999. On 7 January 2000, the District court of Dili was established. Judges, prosecutors and lawyers were also appointed on that day. Thanks to the availability of a number of law graduates from Indonesian universities who made the recruitment possible, the Justice Department in East Timor had a much easier task to execute than had been the case in other previous newly emerging post-conflict states.<sup>7</sup>

Institutionally, the building of the legal and judicial system in the territory commenced from scratch. In his paper, *Building a New Judiciary for East Timor*, Mr Hansjoerg Strohmeyer, the then head of the Legal section of UNTAET, underlined four key strategies in developing the legal system during the initial phase of the administration. These included the need (1) to design the necessary legal framework for a functioning and independent judiciary, (2)

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<sup>4</sup> During the 24 years of *Integrasi* (integration) with Indonesia only one East Timorese was appointed as public prosecutor, not one of the judges was East Timor born.

<sup>5</sup> UNTAET, Regulation No 1999/3

<sup>6</sup> For an understanding of the early development of the legal system in post-referendum East Timor, see Hansjoerg Strohmeyer, *Building a New Judiciary for East Timor: Challenges for a Fledgling Nation*. Paper presented at the symposium "Enhancing Respect for Human Rights – Challenges for the New Judiciary in East Timor", on International Human Rights Day, 10 December 1999, at the Parliament House of the Northern Territory in Darwin, Australia.

<sup>7</sup> I was told that some former Portuguese colonies did not have law graduates when they gained Independence, and countries like Mozambique had only two law graduates at the time it proclaimed its Independence (Notes, from Conference on East Timor in Algarve, Portugal, October 1998).

to rebuild the collapsed infrastructure of the judiciary and (3) to prepare a comprehensive education program for the existing legal community. In addition to the above, there was a need to give priority (4) to the efforts to mark a fundamental departure from the culture of the judiciary which existed under Indonesian rule by committing the new judiciary to international human rights standards.<sup>8</sup>

During the past two years of the Transitional Administration, there has been a great sense that some of the four key strategies have been, to some extent, implemented successfully. Indeed, while the second and third key strategies might be progressing, although slowly, issues such as an independent judiciary, providing a comprehensive education program for the local legal community and adjusting people to a new culture of tolerance need time and patience. As this paper will explain later, even after two years, a number of weaknesses remain unresolved, which, if not improved and sustained, might jeopardise the efforts made so far.

### **Definition of Portfolio**

Throughout the year 2000, local demands for power sharing within the administration intensified. In responding to such demands, UNTAET took some major adjustments.<sup>9</sup> These included the reshuffling of the cabinet ministers on several occasions along with the creation of East Timor Transitional Administration (ETTA).<sup>10</sup> The Justice department was handed over to the East Timorese on 15<sup>th</sup> September 2001 following the election of members of the Constitutional Assembly on 30<sup>th</sup> August 2000, 23 months after UNTAET began its work in the territory.

Nevertheless, while successfully establishing courts and appointing the judges and prosecutors, the administration faced strong pressure to bring the

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<sup>8</sup> Hansjoerg Strohmeyer, 1999 *ibid.*

<sup>9</sup> Please refer to Dionisio Babo Soares, Successes, Weaknesses and Challenges: A Critical Overview of the Political Transition in East Timor, 2001, a paper to be presented in this conference.

<sup>10</sup> Dionisio Babo Soares, 2001, *ibid.*

perpetrators of September 1999 crimes to justice and the need to try those suspected of serious crimes under International law. In line with the United Nations agreement to give Indonesia a chance to try the perpetrators of the post August 1999 referendum violence, UNTAET undertook some 'reforms' in the court system in late 2000. A unit specialising in serious crimes was established and a number of international lawyers were recruited to deal with such cases. In order to explore the definition of crimes, the position of the courts, their eligibility and jurisdiction to try cases, this court reform process can be discussed under the following headings:

- District Courts & Jurisdiction

The District courts are responsible for ordinary cases, both criminal and civil, which do not fall within the category of Serious Crimes. The courts started hearings and trials in mid 2000, and these have been the full responsibility of local judges, local prosecutors and local public defenders. The international staff are available only to assist.

The establishment of courts in East Timor has been marked by the introduction of an 'investigating judge' in the panel of judges, a position which did not exist under the Portuguese and Indonesian court systems.<sup>11</sup> Under the new system, the investigating judge is primarily responsible for issuing warrants, ordering arrests and ordering detention prior to trial. The investigating judge is also responsible for the hearing of cases before determining whether a specific case needs to be brought before the court for trial or otherwise.<sup>12</sup>

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<sup>11</sup> Mr Strohmeyer played a significant role in introducing this 'section' within the panel of judges in East Timor's court system, a practice found commonly in the German law tradition.

<sup>12</sup> See UNTAET regulation No 2000/11.



- Categorisation of Crimes, Eligibility & Jurisdiction

Although UNTAET regulation 2000/11 provided an exclusive jurisdiction in relation to most serious crimes including genocide, war crimes, and crimes against humanity in the first half of 2000, such crimes fall within the jurisdiction of International law. As such, local judges are not eligible to deal with cases of this category since they are not qualified for such cases. The Transitional Administration took a step to address the most serious charges, those of the tragic events of 1999 by establishing the Serious Crimes Unit. This unit is a supplement to the existing 'Ordinary Crime Unit' but is responsible exclusively for Serious Crimes. On the basis of Regulation 2000/15, International judges and prosecutors had to be brought in to deal with the Serious Crimes cases. The work of the unit in East Timor is to try only the cases at hand (mostly suspects who have since remained in East Timor) and not those still remaining in Indonesia.

Previously, on 6<sup>th</sup> April 2000, the Transitional Administration of UNTAET signed a Memorandum of Understanding (MOU) with the then Attorney General of Indonesia, Marzuki Darusman, in relation to mutual assistance on matters of legal, judicial, and human rights interest. This MOU was expected to facilitate the transfer of suspected criminals between the two countries, especially those involved in the September 1999 violence. However, so far, it has proved not to be working. The MOU has been rejected by Indonesia because it lacks 'approval' of the country's highest legislative body (MPR) since, under Indonesian law, an international agreement of this kind requires 'ratification' by that body before it takes effect. The new government under President Megawati has decided to set up an Ad Hoc court in order to try suspects of the East Timor 1999 violence, closing the door on an international court or the possibility of having the suspects transferred to East Timor. Last week, the prosecutors of the Serious Crimes Unit in East Timor sought the extradition of suspected perpetrators of September 1999 violence citing the

6<sup>th</sup> April 2000 MOU, but there has not been any positive response from Jakarta.<sup>13</sup>

## Public Response

In UNTAET regulation no 2000/11, eight courts were to be established in East Timor (section 7). However, in regulation 2000/14, which is an amendment to regulation 2000/11, only four courts were to be established (section 2) namely in Dili, Baucau, Suai and the enclave of Oecussi. The four courts have been functioning since May 2000. The fact that the legal sector in general is working and the courts have commenced some of their work, confidence is growing among the population. Indeed, within only two years, a judicial system –although with continuous improvisation– is already in place, and four District Courts have been set up,<sup>14</sup> judges and public prosecutors have been sworn in, and a number of legal defenders have also been appointed. In addition, the fact that a number of criminal and civil cases, both under ordinary and serious crimes units are being processed, has sent a positive signal to the society at large. This achievement must be attributed to the pioneers of the administration who arrived in a country which, to use the words of Mr Sergio Vieira de Mello, they found clinically dead.<sup>15</sup> With a crumbled legal framework, collapsed physical infrastructure, lack of human resources and frustration over the previous culture of the judiciary, there was no choice left but to start from nothing. Currently, three additional law firms initiated by the East Timorese Jurist Association, one purely business in character and two operating in the form of NGOs, have been established to provide legal assistance to the locals. In general, the legal sector has been able to come to terms with providing security and confidence to the society at large.

<sup>13</sup> Jolliffe. Jill, 2001 *East Timor justice suffers in the big picture* in Asia Times, October 5, 2001

<sup>14</sup> See Section 7, Regulation No 2000/11 regarding the Organisation of Courts in East Timor, 6 March 2000 (UNTAET/REG/2000/11).

<sup>15</sup> See also *New York Times*, 'Ruined East Timor Awaits a Miracle', 22 April 2001, p.1

In the days following the September 1999 mayhem, there was a growing sense of a 'thirst for justice' felt by the society in general. I had the chance to tour nine districts from January until July 2000 as a member of the local jurist association and a researcher, which gave me the opportunity to hear expressions of people's feelings. Nevertheless, the inspiring point is that, with four courts in place, some of the early cases have been catered for and the grievances resulting from dissatisfaction over the previous judicial system are being addressed.<sup>16</sup> In addition, the empowerment of the Civilian Police to make arrests and detain suspected perpetrators of crimes, which began as far back as October 1999, seemed to work well.

Recently, new recruits of East Timorese police have been graduated and are now working in the territory alongside the International Civilian Police. The recruitment started on 27 March 2000 with the first class of fifty (50) Cadets (thirty-eight males and twelve females). This class was graduated in late June after completing the twelve-(12) week basic training course. Several classes followed and have successfully graduated an additional number of local police who are now being employed around the territory.<sup>17</sup> The most interesting thing is that some of the new recruits were former members of Indonesia military and police. A few selected local police were given access to guns (pistol) during the August 2001 Constitutional Assembly election for security reasons.

#### **Issues to be looked at**

- Introspection

Despite all these achievements, a number of criticisms have been addressed to UNTAET highlighting the drawbacks and the lack of attention by the

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<sup>16</sup> There are only two courts operating permanently in Dili and Baucau. As to the districts of Suai and the enclave of Oecussi, although courts have begun to operate, the judges and prosecutors have yet to assume permanent residence there. As a result, some cases have to be tried in Dili or the judges and the prosecutors have to be sent to these districts to work on a periodical basis, making it costly from a financial point of view.

<sup>17</sup> For further information please visit <http://www.gov.east-timor.org/police/college>.

administration to specific aspects of the legal system.<sup>18</sup> The first drawback could be detected as early as January 2000.

After their appointment in January 2000, the judges and prosecutors were unable to carry out their tasks until six months later. From one perspective, reasons for such a delay have been attributed to the lack of experience, inability and inadequate training on the part of local lawyers. The brief "quick-impact" training that was conducted during November-December 1999 was considered inadequate for the appointed lawyers to start the huge task, and a number of international mentors were employed to run courses in the 'vacuum' period.

From another perspective, such delays were caused by the lack of readiness of the International staff. In the early period, there was confusion over whether or not to proceed with the recruitment of international lawyers. Most of the legal staff of UNTAET came from the common law system and had difficulties in adjusting themselves to local lawyers who were educated and trained in the civil law system.<sup>19</sup> The Administration had to replace its non-civil law background staff with mentors from countries with a similar law tradition to that of East Timor. In addition, there were other related administrative matters pertaining to the new mission that remained an obstacle to the efforts to proceed with court trials. As a result, until today, a number of civil cases, which could have been tried, are left on hold, for the administration prioritised criminal cases over civil cases.<sup>20</sup> Justification for the delay in the trials has been attributed to financial problems inside UNTAET, unfamiliarity with local and regional customs of East Timor, and recruitment difficulties.<sup>21</sup>

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<sup>18</sup> See Vasconcelhos, Carlos, Briefing to the Annual Conference of International Association of Prosecutors, held in Sydney 2-7 September 2001. Also, Yayasan HAK, Serious Concerns Regarding the Independence of the Judiciary Under the United Nations Transitional Administration in East Timor, A briefing Paper 24 July 2001. See also, A Popular Challenge to Untaet's Achievement, source: <http://www.pcug.org.au/~wildwood/01seppopular.htm>.

<sup>19</sup> Historically, East Timor is located in the civil law system. It inherited the Dutch-based Indonesian legal system and the Portuguese legal system, both being Continental code-based.

<sup>20</sup> Interview with a Dili District Judge (anonymous), August 2001.

<sup>21</sup> See Hansjoerg Strohmeyer, 1999. *Ibid*

Critics argue that the overwhelming blame on local lawyers has been a good way to conceal the deficiencies of the Justice Department.<sup>22</sup> In fact, until January 1999, this department was not even able to amend the Indonesian Penal Code, a law popularly deemed by International staff working for the Administration as failing to comply with International human rights standards. In addition, a regulation on the organisation of courts in East Timor only came out on 6 March 2000, two months after the appointment of the judges and the establishment of the Dili District court. Most strikingly, the amendments to the Indonesia Penal Code only materialised on 25 September 2000 or seven months after the court was established. In fact, in a civil law system, the availability of proper 'law' is essential for trials to proceed. Unlike the situation in the common law system, where the power vested in a judge is far-reaching; the judges and prosecutors under civil law system depend almost entirely on 'laws' in order to make decisions.

Dismay and frustration are perhaps the best words to describe the situation in the first seven months of UNTAET's existence. While not blaming the Transitional Administration for its slow progress given its unfamiliarity with the local situation, disappointment over this situation was felt at all levels in the East Timorese community. Since no justice system was in place, a number of criminal cases went unnoticed. On the one side, throughout the period of January-September 2000, violations of law were on the rise at the community level. Petty crimes ranging from household burglaries to beatings in the street for retaliatory purposes were common. While violence is not a common issue for the East Timorese, most of the problems were stirred up by dissatisfaction over the 'vacuum' in the justice system. Gangs emerged everywhere and former warlords enjoyed vast freedom. By warlords I refer to some former guerrilla leaders who, dissatisfied with the lack of 'attention' given to them by UNTAET and the Resistance body (CNRT), decided to set up their groups and involved actively in some civil disturbances.<sup>23</sup> Hard-won freedom did not necessarily bring about peace and tranquillity. Issues such as retaliation, pay

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<sup>22</sup> Pers. Comm. Lawyers from Australia Law Resource Institute (ALRI) in Dili, 2000.

back, destroying properties left by alleged collaborators of the previous military regime characterised the daily conversation of the East Timorese.

In such a disparate situation, people needed security, law enforcement and the creation of favourable atmosphere in order to go about their daily routine.<sup>24</sup>

- The Initiation of Trials

Had it not for the initiative by a number of local lawyers from a local Human Rights NGO, Yayasan Hak, who launched a pre-trial appeal to the Dili District Court on 9 May 2000 challenging the detention period of a detainee in the Dili prison, the trials in courts in East Timor would have started much later. The pre-trial appeal challenged UNTAET's regulation No 2000/11 regarding the period of detention of a suspect. Based on regulation 2000/11, the Indonesian Penal Code should have applied for the detention period, which is 30 days. Preoccupied by this appeal, on the 10 of May, the Transitional Administration quickly promulgated regulation 2000/14 aimed at broadening the power of the investigating judge to extend the period of detention of a suspect for up to 60 days, with further possible extensions of the detention period. The first ever pre-trial hearing in the history of Independent East Timor witnessed the court turning down UNTAET's rushed 2000/14 regulation and accepting the pre-trial application, at the same time freeing the suspect. Days later, the head of the Justice Department intervened and warned the presiding judge to comply with UNTAET's rules of the game and not to repeat the same mistake in the future (Pers. Comm. Presiding Judge, May 2000).

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<sup>23</sup> See Independent Study on Security Force Options for East Timor, The Center for Defence Studies, King's College, London, Paragraph No. 12.

<sup>24</sup> In a report published in August 2000 Amnesty International expressed its concern about the delays in establishing a functioning criminal justice system. The organisation warned that institutional and legal weaknesses were contributing to a law and order vacuum, the result of which was the emergence of new patterns of human rights violations, while recognising the scale of the task. The report contained comprehensive recommendations to UNTAET on a wide range of issues.

Regardless of the challenges, confusion and contradictions, the pre-trial served as a kick-start of later trials. The court began taking the initiative to try cases outside the schedule set by the Department of Justice, a delay often blamed on the local judges and prosecutors for their 'inexperienced status'.

- Intervention of the Executive in Judicial Matters

The overwhelming intervention of the Justice Department in court matters continues to haunt the court in its initial stage. Local judges, local prosecutors and international prosecutors alike have been complaining about the intervention of the Justice Department in their work which, they think, has often undertaken decisions which are supposed to fall within the jurisdiction of the courts and prosecutors office.<sup>25</sup>

In the court proceedings, the local judges and prosecutors faced huge challenges. With the 'inexperience' stereotype marked upon their heads, the Justice Department did intervene and often warned local judges against taking decisions deemed outside the 'interest' of the department. For example, in a case over several hectares of land located next to Hotel Dili, the Dili District court, after studying and assessing the case, endorsed a decision settled earlier by an Indonesian court. Some International mentors intervened soon after the decision was made and warned the panel of judges that Indonesian court decisions were void and should be disregarded, ignoring the principle upheld by the courts universally that the same case cannot be tried for a second time (*nebis in idem*).

- Mentor system

Since the operation of the courts, the education system of the Justice Department has continuously facilitated training or weekly courses prepared by international staff (mentors). While the system is good, it is sometimes rather inappropriate to 'push' the judges and prosecutors to undertake

courses and at the time maintain a full workload. Part of the mentoring system does not work due to mis-communication between mentors and trainees. In addition, the substance of training often serves as a source of misunderstanding. The trainees would prefer a practical approach rather than theoretical training since most of them are new graduates and are still reasonably 'fresh' on theoretical issues. Some international mentors might have the necessary understanding of law in their countries but lack the practical approach and fail to respond to the needs of the local judges and prosecutors. Some of the latter often fail to attend the training due to their lack of time and the lack of relevant courses.

- Slow progress in Prosecuting Serious Crimes.

Criticism has also been addressed to UNTAET's recruited International judges and prosecutors. The UNTAET's investigations into crimes against humanity and other serious crimes committed in September 1999 have been very slow. The Serious Crimes Unit - which is responsible for investigating and prosecuting these crimes has been affected by a combination of inadequate resources, a shortage of experienced staff, poor management and a lack of political support.<sup>26</sup> Consequently, the current system cannot process those suspects already in detention, some of whom have been held for almost a year. Moreover, UNTAET is facing significant difficulties in bringing to justice those responsible for the serious violations of human rights that occurred in East Timor in 1999. The slow pace and questionable quality of its work has resulted in a loss of confidence among the East Timorese in UNTAET's ability or willingness to bring perpetrators to justice, with inevitable negative consequences for the process of reconciliation in East Timor.

In these circumstances, it is particularly important for UNTAET to consider all available ways of attracting the necessary resources. Decisions on handling

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<sup>25</sup> See Vasconcelhos. 2001 *ibid*.

<sup>26</sup> Amnesty International, East Timor Justice Past, Present and Future. Source: <http://web.amnesty.org/ai.nsf/Index/ASA570012001>



serious crime investigations should, as far as possible, reflect East Timorese expectations.<sup>27</sup>

## Challenges

As the UNTAET is approaching the end of its term (end of 2001), challenges are beginning to emerge.<sup>28</sup>

- The absence of Courts in Far-Flung Districts

While UNTAET has made progress in developing a court administration system, prosecution services, public defender's system and prison services, the judicial sector remains seriously under-resourced. The courts in the enclave of Oecussi and the District of Suai only operate on a periodical basis. As such, people in the districts, which fall within the jurisdiction of either court hardly have any access to the legal service. Rural people, who are mostly farmers, find the current courts costly and time consuming since they have to walk for hours or spend money for transportation to the towns only to find the courts not operating. In addition to that, money is needed for other court-related matters.

- The Absence of the High Court of Appeal

At the moment, following regulation No 2000/11, there is one court of appeal in East Timor. There is no certainty as to whether current decisions made by the appeal court can still be raised with a higher court of appeal in the future. Issues such as the "retroactive principle" in the legal system need to be addressed in order to avoid conflicting views within the judiciary which might set a bad precedence for the future legal system. The Constitutional Assembly which has started its work on the constitution is expected to come

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<sup>27</sup> Amnesty International, 2001, *ibid*

<sup>28</sup> Last week, Ramos Horta appealed for the extension of UNTAET's mandate for another year. Nevertheless, no response has been given to this request. <http://www.Solidamor.com>

up with issues pertaining to the judiciary, in particular those left untouched by the transitional administration.

- Sustaining the present system

Lack of resources is a major problem for the future. As soon as the UNTAET leaves, the justice department and the courts will have to find ways to sustain the cost of their operations and other related resources. The present judiciary is well equipped with a considerable amount of resources and money from the International community. Are the East Timorese prepared to carry on with the task?

The introduction of a Serious Crimes Unit in East Timor is unprecedented in the history of the UN. Introducing a legal regime to prosecute international crimes in domestic courts will be a problem for the judiciary itself, should the East Timorese be left to carry out this task alone in the future. Short-term training of judges cannot equal the kind of training and experience required for such positions. It is essential to consider whether the existing (or incoming) system can support such a venture once UNTAET has left. Apart from that, this costly and time-consuming international justice in domestic courts has raised expectations among the East Timorese that the court would not only be a place to find justice but that the government in general will have to bring all crimes, even those committed before 1975, to justice. With a still fragile and volatile society like East Timor, this may have serious consequences for future peace and stability in the territory, should the future East Timor justice system fail to meet the expectations of the society.

- Land and Property

Land is an issue to be dealt with because conflict over land is a daily issue. Under the previous law regimes, rules related to the appropriation of land have changed several times and lots of land titles are either not registered or administered by customary law. During the Portuguese period only 2,843

*alvara* titles were issued, but during the Indonesian administration more than 20.000 titles were registered. This is not counting titles which fall within customary groups.

At the moment, conflicts over land titles registered under different law regimes have begun to emerge. Recent East Timorese returnees from Australia and Portugal who fled the country in 1975, came only to find their lands and houses in the hands of other owners with titles registered under Indonesian law. East Timorese refugees, who are now living in Indonesia, also encounter the same experience. Some of these 'refugees' still remaining in Indonesia have begun issuing 'letters' claiming their rights over land and properties in East Timor.

In light of this, UNTAET has issued regulation No 2000/27 which prevents any non-East Timor resident entering into transactions over land and property in East Timor that result in a change of ownership (immovable goods) during the transition period. This regulation clearly presents UNTAET's disengagement with the issue and will leave the matter entirely to be resolved by the future East Timor administration. A huge task ahead is waiting!

### **Closing Remarks**

This paper has outlined and discussed briefly the developments in 'law and order' in East Timor during the two years of the Transitional Administration period. With an emphasis on the judicial system, it pointed to the success of UNTAET in laying the foundation of this legal infrastructure, which has attracted confidence in the sector by the population. Indeed, the emphasis on legal infrastructure has made this sector a prestigious asset for East Timor. Nevertheless, it has also raised expectations which, if not sustained, could be a problem for this sector in the future, particularly after UNTAET has left. There are issues pertaining to the work of the judiciary which need to be addressed and improved by the Transitional Administration during its term and, if necessary, with support mechanisms thereafter.

The challenges facing the future judiciary are enormous. Predictions of a lack of resources and an inability to maintain the current 'achievements' are looming since there is no mechanism designed yet to sustain the work of the institution in the future. In addition, issues such as corruption, bribery and mismanagement in the courts are imminent, and it is important to find ways to prevent them from happening as well. The weaknesses and challenges presented are only some of the problems which remain to be solved. The new judiciary system needs more than just the apparent presence of a legal physical structure (the legal system). Most imperatively, it needs a strong foundation, good management that is well-resourced and sustainable.

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**Collapse and Reconstruction of a Judicial System:  
The United Nations Missions in Kosovo and East Timor**

**Dr. Hansjoerg Strohmeier  
Policy Advisor  
UN-OCHA**

## COLLAPSE AND RECONSTRUCTION OF A JUDICIAL SYSTEM: THE UNITED NATIONS MISSIONS IN KOSOVO AND EAST TIMOR

*By Hansjörg Strohmeyer\**

Within the span of only a few months in 1999, the United Nations was faced with one of the greatest challenges in its recent history: to serve as an interim government in Kosovo and East Timor.

In Kosovo, in response to massive attacks on the Kosovar Albanian population, including orchestrated and wide-scale "ethnic cleansing," the North Atlantic Treaty Organization (NATO) conducted an eleven-week air campaign against Yugoslav and Serbian security forces and paramilitary groups.<sup>1</sup> The campaign resulted in the agreement of the Federal Republic of Yugoslavia to withdraw all Yugoslav and Serbian security forces from the territory. On June 10, 1999, one day after the suspension of NATO's air strikes, the United Nations Security Council adopted Resolution 1244 (1999), establishing the United Nations Interim Administration in Kosovo (UNMIK).

Only three months later, in the aftermath of the UN-organized "popular consultation" in which the overwhelming majority of East Timorese had voted for independence, the Security Council created the International Force for East Timor (INTERFET),<sup>2</sup> to halt the violent campaign of killing, burning, and looting that had been waged by heavily armed militia supporting the integration of East Timor into Indonesia, at times with the support of the Indonesian security forces. Following INTERFET's successful restoration of peace and security to the half-island, the Security Council adopted Resolution 1272 (1999) on October 25, 1999, establishing the United Nations Transitional Administration in East Timor (UNTAET).

The scope of the challenges and responsibilities deriving from these mandates was unprecedented in United Nations peacekeeping operations. Both resolutions vested the United Nations with a comprehensive mandate, in effect empowering it to exercise all legislative and executive authority in Kosovo and East Timor and to take responsibility for the

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<sup>1</sup> The conflict between Serbian military and police forces and Kosovar Albanian forces had flared up in the course of 1998, leaving over 1,500 Kosovar Albanians dead and approximately 400,000 expelled from their homes. The deteriorating situation led the NATO Council to authorize activation orders for air strikes on October 13, 1998. On March 24, 1999, NATO actually began "Operation Allied Force," following the refusal of the Federal Republic of Yugoslavia to sign the Rambouillet accords. The two-round negotiation of the accords in February and March 1999 had been facilitated by the contact group for the Balkans (France, Germany, Russia, Italy, the United Kingdom, and the United States) and was aimed at reinstating substantive autonomy and self-government in Kosovo. The representatives of the Kosovar Albanian community signed the accords.

<sup>2</sup> SC Res. 1264 (Sept. 15, 1999). On August 30, 1999, some 98% of East Timorese voters had gone to the polls and decided, by a margin of 21.5% to 78.5%, to reject autonomy for East Timor, proposed by the Republic of Indonesia, and to begin, instead, a process of transition toward independence. Following Indonesia's failure to control the security situation in East Timor, as guaranteed in the political agreements leading up to the popular consultation of August 30, 1999, the Security Council established INTERFET. See also Agreement on the Question of East Timor, May 5, 1999, Indon.-Port., Agreement Regarding Security Arrangements, May 5, 1999, UN-Indon.-Port., UN Doc. S/1999/513, Anns. I, III, respectively.

administration of justice,<sup>3</sup> the third branch of government. The latter alone was an enormous task, which essentially required the complete re-creation of the judiciary. In addition, however, each mission had to rebuild the entire public sector, including the reconstruction and operation of public utilities, ports, airports, and a public transport system; establish a functioning civil service, requiring the selection and payment of civil servants; create a network of social services, including employment offices and health care; rehabilitate and maintain road systems; ensure the provision of primary, secondary, and higher education; create the necessary conditions for economic development, including the establishment of a banking system, the formulation of budgetary and currency policies, the attraction of foreign investment, and the establishment of a comprehensive tax, customs, and levies scheme; and develop public-broadcasting and mass-media capabilities.

Above all, the United Nations needed to create a legal framework within which these activities could be carried out. The legislative powers granted by the Security Council could not be exercised until each mission took steps to draft, promulgate, and enforce a range of United Nations regulations,<sup>4</sup> which would have the force of law in the administered territories. This daunting task was further complicated by the fact that, in both Kosovo and East Timor, the armed interventions had led to the withdrawal, in their entirety, of the political and administrative cadres that had previously governed the territories, including the security and law enforcement apparatus.

The initial operational strategy of both missions instinctively gave priority to traditional peace-building efforts, including ensuring peace and security in the territory to be administered and facilitating the return of hundreds of thousands of refugees. The experiences of both Kosovo and East Timor have proven, however, that from the outset the administration of justice must be counted among the top priorities of such an operation. Indeed, while emergency humanitarian assistance, physical rebuilding, and political negotiations are being carried out in postconflict situations, criminal activity does not cease; in fact, it often flourishes. Moreover, evidence of violations of international humanitarian and human rights law can be destroyed, while the perpetrators of serious crimes remain at large. The failure to address past and ongoing violations promptly and effectively, and to create a sense of law and order, can impede the broader objectives of the operation. At the same time, the United Nations civil police forces, which were entrusted in both undertakings with law enforcement, cannot do so in a meaningful way in the absence of a functioning judiciary.

Thus, it is essential that such missions, commonly referred to as "nation-building" operations, function within a framework of law and order, and that they be enabled, from the

<sup>3</sup> See SC Res. 1244, para. 11(a), (b), (i) (June 10, 1999), 38 ILM 1451 (1999) ("[p]romoting the establishment . . . of substantial autonomy and self-government in Kosovo"; "[p]erforming basic civilian administrative functions where and as long as required"; and "[m]aintaining civil law and order"); SC Res. 1272, para. 1 (Oct. 25, 1999), 39 ILM 240 (2000) ("establish . . . a United Nations Transitional Administration in East Timor (UNTAET), which will be endowed with overall responsibility for the administration of East Timor and will be empowered to exercise all legislative and executive authority, including the administration of justice"); see also UNMIK Regulation 1999/1, §1.1 (July 25, 1999) ("All legislative and executive authority with respect to Kosovo, including the administration of the judiciary, is vested in UNMIK and is exercised by the Special Representative of the Secretary-General"); UNTAET Regulation 1999/1, §1.1 (Nov. 27, 1999) ("All legislative and executive authority with respect to East Timor, including the administration of the judiciary, is vested in UNTAET and is exercised by the Transitional Administrator"). All the regulations promulgated by UNMIK and UNTAET are available online at <<http://www.un.org/peace/kosovo/pages/regulations>> and <<http://www.un.org/peace/timor/untactR/UntactR.htm>>.

<sup>4</sup> The United Nations, which traditionally promotes international law, was actually mandated, both in Kosovo and in East Timor, to legislate and create new law in areas that normally fall within the competence of a national legislature. By promulgating UN regulations that have the status of laws and supersede any other law on the regulated matter at issue, the head of the UN mission, in effect, becomes the exclusive legislator of the administered territory. See SC Res. 1272, *supra* note 3, para. 6 (stating that "the Transitional Administrator . . . will . . . have the power to enact new laws and regulations and to amend, suspend or repeal existing ones"). As the experience in Cambodia has shown, many of these regulations remain in force even after the completion of the UN transitional administration, or serve as a blueprint for subsequent national legislation.



earliest stages, to carry out minimal judicial and prosecutorial functions, including arrests, detention, investigations, and fair trials. Moreover, the effective reconstruction of the justice sector requires a coherent approach that places equal emphasis on all its elements: police, prosecution, judiciary, and the correctional system.

Nevertheless, taking on the administration of justice in Kosovo and East Timor was no simple task, even if based on a comprehensive mandate. How can a justice system be administered when there is no system left to be administered; when the personnel needed to carry out judicial tasks have departed or are tainted by their perceived affiliation with the previous regime; when the courthouses and related facilities have been destroyed, looted, or even mined; and when the laws to be applied are politically charged and no longer acceptable to the population and the new political classes?

### I. THE SITUATION UPON ARRIVAL

To understand fully the daunting tasks awaiting the United Nations upon its arrival in Pristina and Dili, respectively, one has to look more closely at the circumstances that prevailed in the early days of each mission.

#### *Kosovo*

The situation encountered by the first UNMIK officials to arrive in Kosovo on June 13, 1999, was devastating: as a result of the systematic cleansing of the Kosovar Albanian population by the Yugoslav and Serbian security forces, the majority of Kosovo's population had been expelled and was living in refugee camps abroad.<sup>5</sup> Soon after the arrival of the United Nations, however, the refugees started to return from Macedonia and Albania at a historically unprecedented scale and speed. Those returning to the abandoned, and in many cases burned and looted, towns and villages of Kosovo<sup>6</sup> were often highly traumatized—not only by the months of violence preceding the deployment of the UN mission, but also by the decades of oppression and discrimination they had suffered under Serbian rule. By June 25, 1999, the number of spontaneous returns had reached 300,000, with some 50,000 refugees crossing into Kosovo every day, by car, by tractor, and on foot. Only two weeks later, by July 8, more than 650,000 refugees had returned to the territory, creating a tense humanitarian and security situation. In need of immediate housing and material support, an increasing number of returnees resorted to violence and intimidation as a means of retrieving some semblance of their previous lives. Looting, arson, forced expropriation of apartments belonging to Serbs and other non-Albanian minorities, and, in some cases, killing and abduction of non-Albanians became daily phenomena.<sup>7</sup> Moreover, organized crime, including smuggling, drug trafficking, and trafficking in women, soon flourished. It was apparent, within the first few days, that the previous law enforcement and judicial system in Kosovo had collapsed.<sup>8</sup> Criminal gangs competing for control of the scarce re-

<sup>5</sup> At the end of the Kosovo conflict, out of a population estimated at 1.7 million, almost half (800,000) had sought refuge abroad, mainly in neighboring Albania, the former Yugoslav Republic of Macedonia, and Montenegro. In addition, an estimated 500,000 people were internally displaced within Kosovo. See Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo, UN Doc. S/1999/779, para. 8 (July 12, 1999). <<http://www.un.org/Docs/sc/reports/1999/s1999779.htm>> [hereinafter Secretary-General's Kosovo Report].

<sup>6</sup> According to a preliminary survey of 141 villages by the United Nations High Commissioner for Refugees, 64% of homes were severely damaged or destroyed, and household waste and human remains had contaminated 40% of the water resources. See *Chronology: UN Interim Administration in Kosovo (UNMIK)*, 8 July [1999] <<http://www.un.org/peace/kosovo/news/kos30day.htm>>.

<sup>7</sup> See HUMAN RIGHTS WATCH, *FEDERAL REPUBLIC OF YUGOSLAVIA: ABUSES AGAINST SERBS AND ROMA IN THE NEW KOSOVO* (HRW Report No. 10(D), 1999).

<sup>8</sup> See Matthew Kaminski, *UN Struggles with a Legal Vacuum in Kosovo; Team Improvises in Effort to Build a Civil Structure*, WALL ST. J., Aug. 4, 1999, at A14.

sources immediately started to exploit the emerging void.<sup>9</sup> In addition, the Kosovo Liberation Army (KLA)<sup>10</sup> returned and rapidly penetrated the entire territory of Kosovo, often installing its own administrative structures—parallel to those of the United Nations—and urging Serbs to leave.<sup>11</sup>

Besides establishing a civilian administration, Security Council Resolution 1244 had created the Kosovo Force (KFOR), an international force composed of NATO troops that was charged with ensuring “public safety and order until the international civil presence can take responsibility for this task.”<sup>12</sup> In response to the rising security concerns and pursuant to its mandate, KFOR started to carry out large-scale arrests to restore public peace and order to the territory. In just two weeks, this policy led to a backlog of more than two hundred detainees, many of them held for such serious criminal offenses as arson, violent assaults, and murder, but also for grave violations of international humanitarian and human rights law.<sup>13</sup> In view of the gravity of these offenses, and the possible effect of their prosecution and trial on the peace and reconciliation process in Kosovo, UN personnel considered it particularly important to observe fair-trial standards to the maximum extent possible. Using the code of criminal procedure of the Federal Republic of Yugoslavia as its basis, but applying those laws within the framework of recognized international human rights standards,<sup>14</sup> UNMIK strove to accord initial judicial hearings to detainees within seventy-two hours of their arrest, and to determine whether or not to detain them and commence investigations. In addition, UNMIK had to ensure that detainees were provided with sufficiently qualified defense counsel. The fact that most of the detainees would accept defense counsel only from their own ethnic group did not make the task any easier.

This emergency situation made it imperative for UNMIK to turn its immediate attention to the reestablishment of the core functions of the Kosovo judiciary.<sup>15</sup> KFOR itself was neither ordered nor prepared to exercise these functions, which, according to Resolution 1244, was a civilian task falling under the mandate of UNMIK.

Nevertheless, the conditions for accomplishing this task were not favorable. As a result of the policy of gross, government-sanctioned discrimination, applied with particular vigor since 1989,<sup>16</sup> virtually no Kosovar Albanians remained in the civil service. Most severely

<sup>9</sup> See Secretary-General's Kosovo Report, *supra* note 5, para. 6.

<sup>10</sup> The KLA (also known under its Albanian acronym UCK for *Ushtria Çlirimtare e Kosovës*) was the main military organization fighting for the liberation of Kosovo from Serbian rule. Its origins go back as far as 1996. Only in November 1997, however, did UCK members identify themselves for the first time to the public.

<sup>11</sup> By early July, approximately 58,000 members of ethnic minorities in Kosovo, mainly Serbs, had left the territory and registered for assistance with the Yugoslav Red Cross. See further LAWYERS COMMITTEE FOR HUMAN RIGHTS, KOSOVO: PROTECTION AND PEACE-BUILDING: PROTECTION OF REFUGEES, RETURNEES, INTERNALLY DISPLACED PERSONS, AND MINORITIES 2 (1999).

<sup>12</sup> SC Res. 1244, *supra* note 3, para. 9(d). “Operation Joint Guardian” commenced on June 12, 1999.

<sup>13</sup> See *Controversy Erupts as Kosovo Judges Sworn in*, SHAPE News Morning Update, July 1, 1999 <<http://www.fas.org/man/dod-101/ops/docs99/mu010799.htm>>.

<sup>14</sup> See European Convention for the Protection of Human Rights and Fundamental Freedoms, Nov. 4, 1950, Art. 5(3), 213 UNTS 221: (“Everyone . . . shall be brought promptly before a judge or officer authorized by law to exercise judicial power . . .”). The term “promptly” represents a stringent standard. In *Brogan v. United Kingdom*, 145 Eur. Ct. H.R. (ser. A) at 28–30, paras. 49–53 (1988), obtainable from <<http://www.echr.coe.int/cng/Judgments.htm>>, the European Court of Human Rights held that four days and six hours was too long a period to meet this standard. See also International Covenant on Civil and Political Rights, Dec. 16, 1966, Art. 9(3), 999 UNTS 171.

<sup>15</sup> UN Secretary-General Kofi Annan was quoted as saying: “The security problem in Kosovo is largely a result of the absence of law-and-order institutions . . .” See John J. Goldman, *Kosovo Tense But Getting More Stable*, *UN Reports*, L.A. TIMES, July 14, 1999, at A12.

<sup>16</sup> In February 1989, ethnic Albanians held widespread strikes in Kosovo, a province of the Republic of Serbia, to protest proposed constitutional amendments to the Serbian constitution aimed at limiting the province's autonomy status. The federal authorities of Yugoslavia imposed “special measures”—a de facto state of emergency—and sent troops into the province. On March 23, 1989, the constitutional changes were approved, effectively giving Serbia control over Kosovo's police and judiciary. In July 1990, following a resolution approved by 114 Kosovar Albanian delegates to Kosovo's assembly declaring the territory “an equal and independent entity within the

affected was the judicial sector: politically and ethnically motivated appointments, removals, and training had led to a judiciary in which only 30 out of 756 judges and prosecutors were Kosovar Albanian.<sup>17</sup> The exodus of the non-Albanian population of Kosovo, among them many of the Serb and Montenegrin lawyers who had administered Kosovo's justice system for the last decade, had accelerated the total collapse of the judicial system. The few judicial officials who decided to stay behind were considered to be representatives of the previous regime and soon faced death threats.

#### *East Timor*

As difficult as the situation was in Kosovo, the United Nations faced even greater challenges in East Timor.<sup>18</sup> UNTAET staff members will never be able to forget the panorama of devastation that awaited them upon their arrival in East Timor: most public and many private buildings ruined and smoldering in the midst of what had once been towns and villages, now all but abandoned by their former inhabitants, cut off from transport and communication, and lacking a governmental superstructure. Immediately after the popular consultation of August 30, 1999, heavily armed groups and forces sympathetic to the integration of East Timor into Indonesia had conducted a "scorched earth" campaign in which they had burned and looted entire towns and villages, attacked and killed at random in the streets, and forcibly "evacuated" or kidnapped people to the western half of the island, which was still part of Indonesia. In response, thousands of East Timorese had abandoned their homes, fleeing into the mountains of central East Timor or across the border into West Timor.<sup>19</sup> Many East Timorese towns and villages had turned into ghost cities in which virtually all houses, apartment buildings, and shops were demolished.

The preexisting judicial infrastructure in East Timor was virtually destroyed. Most court buildings had been torched and looted,<sup>20</sup> and all court equipment, furniture, registers, records, archives, and—indispensable to legal practice—law books, case files, and other legal resources dislocated or burned. In addition, all judges, prosecutors, lawyers, and many judicial support staff who were perceived as being members *de facto* of the administrative and intellectual privileged classes, or who had been publicly sympathetic to the Indonesian regime, had fled East Timor after the results of the popular consultation were announced. Fewer than ten lawyers were estimated to have remained, and these were believed to be so inexperienced as to be unequal to the task of serving in a new East Timorese justice system.

In this situation, it quickly became apparent to UNTAET officials that a justice system in East Timor, including the necessary regulatory framework, first had to be *built*—and built within the shortest possible time—before it could be *administered*, as called for in Security Council Resolution 1272.<sup>21</sup>

framework of the Yugoslav federation." Serbian authorities abolished both the assembly and the government of Kosovo, closed down the only Albanian daily, and took over the state-owned television and radio stations. See NOEL MALCOLM, *KOSOVO, A SHORT HISTORY* 346 (Harper Perennial 1999) (1998).

<sup>17</sup> See Secretary-General's Kosovo Report, *supra* note 5, para. 66.

<sup>18</sup> See James Traub, *Inventing East Timor*, FOREIGN AFF., July/Aug. 2000, at 74, 82–83.

<sup>19</sup> To date, the exact number of refugees and internally displaced persons in East Timor in October 1999 has not been definitely established. It has been estimated, however, that more than one-third of East Timor's pre-September 1999 population of some 800,000 was at least temporarily dislocated. According to UNTAET sources, a total of 162,444 refugees had returned to East Timor from abroad by May 31, 2000. In addition, tens of thousands of people who had temporarily left their homes and escaped to safer locations in the mountainous regions of East Timor had returned to their places of origin.

<sup>20</sup> According to the World Bank-sponsored Joint Assessment Mission to East Timor, over 70% of all administrative (i.e., government) buildings were partially or completely destroyed, and almost all office equipment and consumable materials totally destroyed. WORLD BANK, JOINT ASSESSMENT MISSION REPORT 4, para. 15 (Dec. 17, 1999), obtainable from <<http://www.wbi0018.worldbank.org/cap/cap.nsf>>; see also Report of the Secretary-General on the Situation in East Timor, UN Doc. S/1999/1024, paras. 11–13 (Oct. 4, 1999).

<sup>21</sup> See Hansjörg Strohmeyer, *Building a New Judiciary for East Timor: Challenges of a Fledgling Nation*, 11 CRIM. L.F. 259 (2000).

Most pressing was the need for a mechanism to review the arrests and detentions that had been carried out by the Australian-led INTERFET.<sup>22</sup> At the same time, the United Nations civil police force was faced with a growing number of ordinary crimes, including such serious offenses as violent assault, rape, and murder. INTERFET had established a temporary arrest and detention system that was run by military personnel but was neither mandated nor equipped to try, convict, or sentence criminal offenders.<sup>23</sup> Because of the scheduled gradual withdrawal of INTERFET from East Timor, beginning in December 1999, and the scarcity of immediately deployable international lawyers, UNTAET needed to install a civilian mechanism that, if nothing else, would provide the minimum judicial functions required upon arrest and detention.

The enormous task of rebuilding a judicial system had to be carried out in the initial stages of both missions, when the operation had a very small staff, logistics and a communications infrastructure were just being set up, mass media to support activities such as the search for qualified lawyers were not yet available, and construction materials for the building or refurbishment of destroyed judicial facilities and prisons were an extremely scarce commodity.<sup>24</sup> In addition, the lack of sufficient numbers of domestic translators—a problem common to most United Nations missions—affected cooperation with the local population in virtually all sectors of civil administration, but most tangibly in law enforcement.<sup>25</sup>

## II. IMMEDIATE MEASURES

It was against this backdrop that the United Nations missions in Kosovo and East Timor began their respective efforts to plan, design, and put in place initial arrangements aimed at addressing urgent needs and serving as the nucleus for a future judiciary in each territory. The enormity of the task, and the extent to which it would mirror the obstacles being experienced in the political, economic, and humanitarian sectors of each mission, soon became evident.

### *Appointment of Judges and Prosecutors*

In any legal system, the appointment of judges and prosecutors is a complex and multi-layered effort. Despite the United Nations' comprehensive mandate and the urgent need to fill judicial positions as swiftly as possible, political considerations prevented the heads of the two missions from simply appointing candidates of their choosing. In view of the political and symbolic significance of such appointments in a postcrisis situation and the United Nations' desire to act in sharp contrast to the flagrant politicization of judicial appointments that had characterized the previous regimes, it was essential to proceed in a transparent and professional manner that would give legitimacy to the undertaking. First, capable candidates

<sup>22</sup> See SC Res. 1264, *supra* note 2. The INTERFET-run Forced Detention Center delivered over 25 detainees into the custody of the UNTAET civilian police and the East Timorese judiciary on January 14, 2000. Many of these detainees had been arrested by or handed over to INTERFET on charges of serious violations of international humanitarian and human rights law committed during the postballot violence.

<sup>23</sup> Based on its mandate to restore peace and security in East Timor, the Australian INTERFET contingent had created a temporary detention system. Individuals apprehended by INTERFET were held in the Forced Detention Center and granted an initial hearing by an INTERFET legal adviser within 24 hours. If not released, they were transferred, within 96 hours, to the Detention Management Unit for review of the detention order. The Detention Management Unit consisted of four additional INTERFET legal advisers (one reviewing officer, one prosecutorial officer, one defending officer, and one visiting officer) who reported to the commander of INTERFET on a daily basis. In addition, the International Committee of the Red Cross, the UN High Commissioner for Refugees, and family members were granted regular visits to ensure adherence to generally accepted prison standards.

<sup>24</sup> In Kosovo, since the Serb withdrawal was still ongoing and the public buildings subsequently required extensive de-mining and cleanup efforts, the de facto headquarters of UNMIK in the first two weeks was located in the residential building that had served as the living quarters of the initial UN staff since their arrival on June 13, 1999.

<sup>25</sup> See further *infra* note 41.

had to be identified; next, selections had to be made in accordance with objective and verifiable criteria and merit, but also in mind of the need for political or ethnic balance; and finally, the entire process had to be transparent and based on a sound legislative framework.

In both Kosovo and East Timor, the establishment of independent judicial commissions became the primary mechanism for the selection of judges and prosecutors and served as an important safeguard for the establishment of an independent and impartial judiciary.<sup>26</sup> The commissions were designed as autonomous bodies; they were to receive applications from persons with a law degree, at a minimum. The commission would then select candidates for judicial or prosecutorial office on the basis of merit and, eventually, make recommendations on appointments to the head of the UN mission. The East Timorese commission was also entrusted with drawing up codes of ethics for judges and prosecutors and acting as a disciplinary body to review complaints of misconduct.

Both commissions were to include local and international legal experts. In Kosovo, the Joint Advisory Council on Judicial Appointments,<sup>27</sup> later succeeded by the Advisory Judicial Commission,<sup>28</sup> was set up only two weeks after the arrival of the first UNMIK staff members. It initially comprised seven lawyers, including two Kosovar Albanians, one Bosniak (Muslim Slav), and one Serb, all of whom had extensive previous experience in the administration of justice in Kosovo, and three international lawyers from different international organizations. In East Timor, the Transitional Judicial Service Commission was a five-member body that included three East Timorese and two international experts, and was chaired by an East Timorese of "high moral standing."<sup>29</sup> The United Nations deemed it essential to recruit the majority of the commission members among local experts and to empower them to overrule the international members so as to build a strong sense of ownership over the new judiciaries and to inject as much domestic expertise as possible into the process. Over time, the international membership of the commissions was expected to be phased out, but a suitable mechanism would meanwhile have taken root through which future local governments could make nonpartisan judicial appointments.

Whereas the East Timorese leadership endorsed the composition of the Transitional Judicial Service Commission,<sup>30</sup> the appointment of the commission members in Kosovo prompted a more controversial reaction among UNMIK's local interlocutors, in particular representatives of the KLA. One of the Kosovar Albanian experts, who had been the last president of Kosovo's abolished Supreme Court, was considered to stand for the old Yugoslav order and was criticized for his involvement in the trials of Kosovo Albanian leaders in the aftermath of the 1989 strikes.<sup>31</sup> The Serb member was evicted from his apartment after only a few days in office. He then joined the general Serb exodus to Serbia proper and was threatened with death if he returned. For his part, the Bosniak member was immediately accused of having collaborated with the previous Serb-dominated regime in Kosovo. These reactions were perhaps to be expected, given the political turmoil taking place in

<sup>26</sup> See AMNESTY INTERNATIONAL, AMNESTY INTERNATIONAL'S 16 RECOMMENDATIONS TO THE PARTIES AT RAMBOUILLET, para. III (AI Index No. EUR 70/08/99, 1999).

<sup>27</sup> See UNMIK Emergency Decree 1999/1 (June 28, 1999).

<sup>28</sup> See UNMIK Regulation 1999/7 (Sept. 7, 1999). According to section 2.1 of this regulation, the composition of the commission was changed to eight local and three international lawyers, of different ethnicity and reflecting varied legal expertise.

<sup>29</sup> See UNTAET Regulation 1999/3, §2 (Dec. 3, 1999). The current chairman of the commission is Bishop Dom Basilio de Nascimento from the diocese of Baucau.

<sup>30</sup> The membership of the Transitional Judicial Service Commission was determined by the UN transitional administrator, in concert with the National Consultative Council (NCC). The NCC was the supreme body established by UNTAET to provide a consultative mechanism to ensure the participation of the East Timorese people in the decision-making process during the transitional administration in East Timor. The council consisted of 15 members, 11 of them East Timorese, appointed by the transitional administrator. In October 2000, the NCC was expanded into a 33-member body, in effect serving as the nucleus of an East Timorese parliament. See UNTAET Regulation 1999/2 on the Establishment of a National Consultative Council (Dec. 2, 1999).

<sup>31</sup> On the strikes, see *supra* note 16.

Kosovo and the clear divisions being created along ethnic lines. At the same time, as described in greater detail below, the efforts to achieve ethnic balance in accordance with the mission's stated policy,<sup>32</sup> coupled with the dearth of lawyers from which to draw in the setup phase of the mission, made it difficult to avoid such an outcome.

While obstacles such as these posed serious challenges to the missions' efforts to build new judicial systems in both territories, perhaps the greatest difficulty lay in identifying candidates who had the necessary professional experience and were also politically acceptable to the general public.

In Kosovo, from the outset the declared goal of the United Nations administration was to establish a judiciary that reflected the various ethnic communities.<sup>33</sup> Clearly, no reconciliation efforts, including the prosecution and trial of individuals suspected of grave violations of international humanitarian and human rights law, could succeed without an ethnically and politically independent and impartial judicial system that enjoyed the confidence of the population. As a practical matter, however, many Kosovar Albanian lawyers had belonged to the persecuted intellectual classes and had thus either gone underground or taken refuge abroad in the weeks and months preceding the deployment of UNMIK. Most of those who remained were considered to be collaborators with the previous regime. Even an immediate cross-organizational effort in neighboring Macedonia and Albania to screen refugee camps for lawyers did not yield the hoped-for results. Over the next few months, the time-consuming search for qualified legal personnel was taken up by the regional offices in Kosovo of the United Nations and the Organization for Security and Co-operation in Europe (OSCE),<sup>34</sup> which operated by word of mouth, district by district, networking through the few remaining lawyers and seeking nominations from the KLA and the Democratic League of Kosovo, Kosovo's main political forces at the time. Only gradually were a number of sufficiently qualified lawyers identified.

On June 30, 1999, two weeks after the arrival of the first UNMIK staff in Priština, the search had already yielded its initial results: the head of the United Nations mission was able to appoint nine judges and prosecutors, among them three Serb jurists, on the basis of recommendations of the Joint Advisory Council. They served as mobile units with jurisdiction throughout the territory of Kosovo. By mid-July, these judges and prosecutors had conducted hearings on 249 detainees in all of Kosovo's five districts, releasing 112. The initial appointments were controversial because of a perceived overrepresentation of Serb lawyers.<sup>35</sup> Nevertheless, by July 24, 1999, as the mission had gradually identified more lawyers, the number of UNMIK-appointed judges and prosecutors had risen to twenty-eight,<sup>36</sup> comprising twenty-one Kosovar Albanians, four Serbs, one Roma, one member of the Turkish community in Kosovo, and one Bosniak.

Although less complex politically, the task of identifying candidates for judicial or prosecutorial office in East Timor was equally herculean. The exodus of all Indonesian and pro-Indonesian lawyers, judges, and prosecutors, as well as many law clerks and secretaries, had left East Timor with a huge void in experienced legal personnel.<sup>37</sup> Under Indonesian rule, no East Timorese lawyers had been appointed to judicial or prosecutorial office. As a result,

<sup>32</sup> See SC Res. 1244, *supra* note 3, para. 10 ("to ensure conditions for a peaceful and normal life for all inhabitants of Kosovo"); see also Secretary-General's Kosovo Report, *supra* note 5, paras. 40, 66.

<sup>33</sup> See Secretary-General's Kosovo Report, *supra* note 5, para. 66 ("There is an urgent need to build genuine rule of law in Kosovo, including through the immediate re-establishment of an independent, impartial and multi-ethnic judiciary.").

<sup>34</sup> The OSCE mission in Kosovo forms one of the four integral components of UNMIK and is responsible for matters relating to institution- and democracy-building, and human rights in Kosovo.

<sup>35</sup> The nine judges and prosecutors included five Kosovar Albanians, three Serbs, and one ethnic Turk. See *Controversy Erupts as Kosovo Judges Sworn in*, *supra* note 13.

<sup>36</sup> See UNMIK Press Release, July 24, 1999, UN Doc. UNMIK/PR/18; see also LAWYERS COMMITTEE FOR HUMAN RIGHTS, *supra* note 11, at 5.

<sup>37</sup> The Australian Section of the International Commission of Jurists (ICJ) supported this assessment. See ICJ, REPORT ON VISIT TO EAST TIMOR FOR EAST TIMOR PROJECT COMMITTEE MARCH 2000 (2000).

there were no jurists left in East Timor with any relevant experience in the administration of justice or the practical application of law. Thus, immediately upon its arrival in Dili, UNTAET began the process, through word of mouth and with the support of its local staff and civil-society groups, of identifying lawyers, law graduates, and law students. In the absence of a functioning broadcasting network, INTERFET volunteered to drop leaflets from airplanes throughout the territory, calling for legally qualified East Timorese to contact any UNTAET or INTERFET office or outpost. Only a week later, an initial group of seventeen jurists had been identified. In their first meetings, the lawyers sat on the ground outside the former governor's headquarters, since the departing Indonesian security forces and pro-integration militias had left behind no chairs or other furniture in the looted and burned court buildings.

Within two months, over sixty East Timorese jurists had formally applied for judicial or prosecutorial office. All the applicants had completed law school—mostly in Indonesian universities—and were enthusiastic about the opportunity to play a historic role in the first criminal and civil trials of a free East Timor. They also took pride in being part of a judicial system that would strive to respect the rule of law and encourage, rather than inhibit, the professional participation of East Timorese. After a rigorous interview and selection process, conducted by the previously established Transitional Judicial Service Commission,<sup>38</sup> the transitional administrator appointed the first-ever East Timorese judges and prosecutors on January 7, 2000.<sup>39</sup> Further appointments have since followed. However, only a few of these jurists had any practical legal experience, some in law firms and legal aid organizations in Java and other parts of the Indonesian archipelago, and others as paralegals with Timorese human rights organizations and resistance groups; none had ever served as a judge or prosecutor.

In both missions, the rationale for the rapid appointment of local judges and prosecutors was based on numerous similar considerations. The most critical reason, as noted above with regard to East Timor, was the territories' lack, soon after the establishment of the missions, of a review mechanism for those who had been arrested and detained by KFOR and INTERFET. Neither the United Nations nor the international community at large was able, on such short notice, to deploy an adequate number of international lawyers with enough knowledge of the legal traditions of the administered territories.<sup>40</sup> In addition, the political sensitivity to the euphoria and excitement that had followed international intervention in both Kosovo and East Timor required accommodating the general expectation that the international community would demonstrate an immediate commitment to domestic involvement in democratic institution building, especially in the legal sector. Hopes for self-determination and self-government meant that the appointment of local judges—an unprecedented move, for example in East Timor, that was unknown even under Portuguese colonial rule—took on enormous symbolic significance. Moreover, both missions considered that the immediate involvement of local lawyers would avoid, or at least minimize, any disruptive effect on the judiciary once the limited international funds earmarked for financing international lawyers inevitably dwindled and forced their withdrawal. Finally, the experience of other United Nations missions has shown that the appointment of international lawyers leads to a myriad of practical concerns that would have overburdened the

<sup>38</sup> See UNTAET Regulation 1999/3 on the Establishment of a Transitional Judicial Service Commission (Dec. 3, 1999).

<sup>39</sup> The appointments on January 7, 2000, included eight judges and two prosecutors. Their swearing-in ceremony, held in the still-devastated shell of the courthouse in Dili, was an emotional experience for both the East Timorese and the internationals involved. Before some 100 members of the general East Timorese public and numerous representatives of the international community, UNTAET Transitional Administrator Sergio Vieira de Mello took the oath from each appointee and handed each one a black robe.

<sup>40</sup> Since the legal systems in both Kosovo and East Timor were based on civil law, potential international judges and prosecutors were required to have sufficient practical experience in the administration of justice in a civil-law system to be immediately operational. Moreover, those lawyers had to be proficient in English—the working language of the missions—and able to make a longer-term commitment.

missions in their setup phases, such as the costly requirements of translating laws, files, transcripts, and even the daily conversations between local and international lawyers,<sup>41</sup> as well as the enormous time and expense of familiarizing international lawyers with the local and regional legal systems.

#### *Legal Assistance*

The scarcity of experienced legal personnel affected the legal-assistance sector as well. Neither Kosovo nor East Timor boasted a developed legal aid system before the United Nations arrived in its territory. Faced with the high number of arrests carried out in the first weeks of the missions, the United Nations was impelled to live up to the due-process and fair-trial standards it itself had promoted for more than fifty years, and to ensure the provision of adequate legal counsel to the detainees. This was particularly important since many of those arrested belonged to certain ethnic or political groups or, in some cases, were suspected of grave violations of international humanitarian and human rights law, which made their cases politically sensitive.

In Kosovo, UNMIK identified lawyers of different ethnic backgrounds who were qualified and willing to serve as defense counsel in such cases, and it provided each detainee with a list of their names. The enormous number of detainees, however, by far exceeded the number of available lawyers. In East Timor, section 27 of UNTAET Regulation 2000/11 of March 6, 2000, expressly recognized the basic right to legal representation and the obligation to ensure effective and equal access to lawyers. Consequently, UNTAET set up the nucleus of an UNTAET-financed public-defender system; but owing to the scarcity of experienced lawyers, UNTAET identified only a relatively small pool of defenders.

#### *Legal Training*

The dearth of experienced lawyers placed a particular burden on the United Nations to ensure that adequate legal and judicial training programs were immediately put in place, so that the few available jurists, including the newly appointed judges and prosecutors, would be prepared, as soon as possible, to discharge their much-needed functions.

In East Timor, unlike other contexts in which the international community has supported judicial training programs, it soon became clear that professional legal training would need to extend beyond technical assistance: legal training was a pivotal element in building and empowering local judicial ranks and in creating a stable legal system. Such training had to focus not only on conveying legal and practical skills but, equally important, on fostering appreciation of the crucial role of the judiciary in society and the benefits of a culture of law. In a society that had never before experienced respect for the rule of law, and in which the law was widely perceived as yet another instrument for wielding authority and control over the individual, the meaning of independence and impartiality of the judiciary had to be imparted gradually.

To lay the foundation for comprehensive practical and theoretical training upon which the new East Timorese judiciary could be built, UNTAET developed a three-tiered approach consisting of (1) a series of one-week, compulsory "quick impact" training courses for judges, prosecutors, and public defenders prior to their appointment to office; (2) mandatory ongoing training for judges, prosecutors, and public defenders upon their appointment

<sup>41</sup> Extensive involvement of international lawyers would inevitably have led to the need for translation of every court session and every court-produced and legal document, the interpretation of every communication with other lawyers, and, more important, the creation of an extensive translation apparatus for plaintiffs and defendants. Also, in East Timor in particular, it has proven to be virtually impossible to deploy a sufficient number of international jurists with a civil-law background who are able to make a minimum commitment of six months to one year in East Timor and, ideally, have some knowledge of the applicable law and traditions of East Timor.



to office; and (3) a "mentoring scheme," in which a pool of experienced international legal practitioners who were familiar with civil-law systems would serve as "shadow" judges, prosecutors, and public defenders without actually exercising judicial power. This was essentially an interim approach; the mission recognized that it would ultimately be necessary to establish a judicial training center that functioned independently of the government and that afforded an important role in defining the curriculum to the East Timorese themselves.<sup>42</sup> However, its extremely stretched resources, and difficulties in recruiting a sufficient number of experienced trainers and mentors with a background in civil law, prevented the United Nations, at least at the outset, from fulfilling its objective of providing the newly appointed judges, prosecutors, and public defenders with sufficient legal training and assistance.

The need for judicial training also surfaced similar attention in Kosovo, although it was less dramatic because of the availability of a larger number of lawyers with practical experience in the administration of justice. The Secretary-General of the United Nations reported on July 12, 1999, that "it will be important to provide immediate 'quick start' training programmes in domestic and international law for those Kosovo Albanian lawyers who were trained during the time of the 'parallel institutions' or were banned from practising their profession."<sup>43</sup>

Nevertheless, the issue of training had to be tackled carefully. Bearing in mind the long legal tradition of the former Yugoslavia, many of the lawyers educated in Yugoslav universities considered the emphasis on professional training to be somewhat patronizing. For their part, Kosovar Albanian lawyers, particularly those schooled during the decade of "parallel institutions,"<sup>44</sup> reacted extremely cautiously to the notion of training for fear that the inadequacy of their experience and skills might disqualify them for judicial office or, yet again, provide an advantage to those who had "collaborated" with the previous regime. More readily accepted was the notion of training in international legal instruments, including the European Convention on the Protection of Human Rights and Fundamental Freedoms and the 1966 International Covenant on Civil and Political Rights, so as to ensure that, in conformity with UNMIK Regulation 1999/1, judicial officials observed internationally recognized human rights standards.<sup>45</sup>

UNMIK's plans to start legal training courses and create a judicial training center were severely hampered by a vigorous debate on the applicable law in Kosovo. Although Regulation 1999/1 provided that the laws previously in effect in Kosovo—that is, the currently appli-

<sup>42</sup> Supported by the New Zealand Institute of Judicial Studies, UNTAET has been developing plans to establish a Judicial Studies Board (JSB) since January 2000, in order to institutionalize judicial training and education. The JSB was intended to comprise seven members, four of whom would be East Timorese jurists, who would identify and set priorities regarding training needs, coordinate donor assistance on legal training, and promote judicial excellence, including awareness of the social context of law.

<sup>43</sup> Secretary-General's Kosovo Report, *supra* note 5, para. 69 (also stating that "[g]enerally, newly appointed judges should receive continuous training, particularly in the area of the law and application of international instruments on human rights").

<sup>44</sup> Following the abolition of Kosovo's autonomy status in 1989 and the subsequent closing of ethnic Albanian institutions in the territory, the Kosovar Albanian population established a system of so-called parallel institutions, essentially the creatures of a separate republic, among others in the educational sector, that were intended to continue Kosovo's self-government and to maintain a distinct Albanian culture and identity outside the official Serb- or Yugoslav-dominated institutions. With the closing of the Albanian wing of the law faculty of the University of Pristina in 1991, the Kosovar Albanian teaching staff and students were forced to find shelter in private homes and buildings so as to continue a distinct legal education for those students. Despite the lack of governmental funding and severe practical difficulties—for example, all literature was kept in the libraries of the Serb faculty building, which was barred to Kosovar Albanians—the Faculty of Law, like all other faculties of the University of Pristina, maintained its struggle to provide adequate education throughout the period of Serb administration of Kosovo. See further MALCOLM, *supra* note 16, at 348–49.

<sup>45</sup> UNMIK Regulation 1999/1, *supra* note 3, §2, which states:

In exercising their functions, all persons undertaking public duties or holding public office in Kosovo shall observe internationally recognized human rights standards and shall not discriminate against any person on any ground such as sex, race, color, language[,] religion, political or other opinion, national, ethnic or social origin, association with a national community, property, birth or other status.

cable laws of Serbia and the Federal Republic of Yugoslavia—were to be applied, political representatives of the Kosovar Albanians demanded a return to the legal system that had existed before the abolition of Kosovo's autonomy status in 1989.<sup>46</sup> This debate significantly delayed the mission's ability to carry out the urgently needed quick-impact training.

#### *Reconstruction of the Physical Infrastructure*

Both Kosovo and East Timor had just emerged from violent and highly destructive conflicts, which had heavily damaged their physical infrastructure. As a result, one of the most crucial steps in rebuilding their judicial systems was the physical reconstruction of the judicial infrastructure, including court buildings and offices.

In Kosovo, virtually all public buildings, including the courts, had to be cleared of mines and booby traps before they could be reclaimed for public purposes. In the course of the conflict, files had been dislocated, official forms and stationery had been destroyed, and valuable office equipment had been appropriated by the withdrawing security apparatus. The situation was so grave that the first UN-appointed judges and prosecutors had to bring their own dated typewriters to the initial hearings to be able to draft decisions and court records.

In East Timor, the situation was far worse: it was estimated that between 60 and 80 percent of all public and private buildings had been destroyed in the violence of September 1999.<sup>47</sup> As noted above, the destruction encompassed most court buildings and their office equipment and legal resources.

Step by step, UNTAET had to start rebuilding courthouses, police stations, and prisons. The first judges to be sworn in were required to work in smoke-blackened chambers and courtrooms that were devoid of furniture—much less computers and other apparatus—and nearly bereft of legal texts. None of the buildings had electricity or running water, since even the wiring and pipes had been stripped by the withdrawing Indonesian army and militia forces. Basic stationery and office equipment had to be provided out of UNTAET's own supplies, and official forms and stamps had to be re-created. More significantly, UNTAET struggled, on a daily basis, to identify and collect copies of the laws that, in accordance with its Regulation 1999/1, formed the applicable body of law. Sometimes UNTAET staff members were able to retrieve copies of law books from the ruins of official buildings, but mostly they sought donations from private law firms and law schools in Indonesia and Australia. The support of the Australian legal profession for UNTAET's efforts in this respect was exemplary,<sup>48</sup> the donations extending beyond law texts to include robes for the new judges and prosecutors and folding chairs for the court building in Dili.

#### *The Correctional System*

The correctional facilities met with the same fate as most of the other buildings and infrastructure during the violence in Kosovo and East Timor. The identification of suitable facilities in which to hold those apprehended and arrested by the international forces and the United Nations civil police thus became one of the most dramatic challenges faced by both missions.

In Kosovo, the withdrawing Yugoslav security forces had emptied all the prisons and "transferred" the inmates, among them many political prisoners of Kosovar Albanian origin, to unknown locations in Serbia proper. Moreover, many prisons had been damaged or destroyed and the guards had fled with the withdrawing forces. As a result, the hundreds of individuals detained in the first few weeks had to be held in makeshift military facilities.

<sup>46</sup> For more detail, see the section "Legal Framework" *infra* p. 58.

<sup>47</sup> See *supra* note 20 and corresponding text.

<sup>48</sup> In January 2000, Australian Legal Resources International appealed to the Australian legal profession, on behalf of UNTAET and through the Law Council of Australia, for law texts, courtroom furniture, computers, and judges' robes. The response was overwhelming.

which usually consisted of army tents in KFOR camps that were guarded by military officers who had no experience in the administration of prisons and international standards on the detention of civilians.

In East Timor, the situation was even worse. Not only had all the prison guards left during the exodus of the Indonesian security forces, but also all prison facilities had been burned and rendered unusable.<sup>49</sup> The limited capacities of the makeshift detention center inherited by the United Nations from INTERFET had been stretched to the maximum, leaving no more space for detainees and ordinary criminals. Consequently, the United Nations had to limit the number of arrests. At times, UN civil police officers were even forced to release suspects who had been arrested for serious criminal offenses so that they could detain returning militia members implicated in the commission of grave violations of international humanitarian and human rights law in the violence of August and September 1999. The failure to arrest such individuals would have been unacceptable in the eyes of both the general public and its political leadership.

The inadequacy of the interim facilities and the fact that the UN civil police were neither trained nor equipped to carry out the functions of prison wardens made it clear that the United Nations urgently had to reconstruct suitable facilities, identify experienced international wardens, and develop local capacities. These essential tasks were made difficult, however, by the reluctance of donors to fund, whether directly or indirectly, the reconstruction or erection of prison facilities, and of United Nations member states to provide contingents of prison personnel.

#### *Legal Framework*

All of these challenges were surpassed by the need to establish a basic legal framework for the judiciary in each territory. Judicial appointments, legal training, and the performance of judicial, prosecutorial, and other legal functions, all depended on the existence of a clear body of applicable law. Neither in Kosovo nor in East Timor did the previous legislation constitute a sufficient legal basis for the establishment of an independent and effective judiciary. Thus, in both territories the United Nations first had to draft regulations indicating which previously existing laws still applied, or setting forth entirely new laws, before it could establish the corresponding judicial and other public institutions.<sup>50</sup>

In their Regulation 1999/1, both UNMIK and UNTAET had decided in effect that the laws that had applied in each United Nations-administered territory prior to the adoption of Security Council Resolutions 1244 and 1272, respectively, would apply, *mutatis mutandis*, insofar as they conformed with internationally recognized human rights standards and did not conflict with the Security Council's mandate to each mission or any subsequent regulation promulgated by the mission.<sup>51</sup> This decision was made solely for practical reasons: first, to avoid a legal vacuum in the initial phase of the transitional administration and, second, to avoid the need for local lawyers, virtually all of whom had obtained their law degrees at domestic universities, to be introduced to an entirely foreign legal system.

Especially in Kosovo, this decision prompted vigorous protest by local politicians and the legal community. The Yugoslav criminal laws, in particular, were considered to have been one of the most potent tools of a decade-long policy of discrimination against and repres-

<sup>49</sup> On this subject, see the findings of Human Rights Watch, *Unfinished Business: Justice for East Timor*, Press Backgrounder (Aug. 2000).

<sup>50</sup> See UNMIK Regulations 1999/1, *supra* note 3; 1999/2 (Aug. 12); 1999/5 (Sept. 4); 1999/6 (Sept. 7); 1999/7 (Sept. 7) (replacing UNMIK Emergency Decree 1999/1); see also UNTAET Regulations 1999/1, *supra* note 3; 1999/3, *supra* note 29; 2000/11 (Mar. 6); 2000/14 (May 10); 2000/15 (June 6); 2000/16 (June 6).

<sup>51</sup> See UNMIK Regulation 1999/1 and UNTAET Regulation 1999/1, *supra* note 3, §§2, 3. The wording of section 3.1 of UNTAET Regulation 1999/1 (the factual statement "the laws applied" is used rather than "the applicable laws") carefully avoids the retroactive legitimization of the Indonesian occupation in East Timor.

sion of the Kosovar Albanian population.<sup>52</sup> The political representatives of the Kosovar Albanian community thus threatened to cease cooperating with the United Nations, and newly appointed judges and prosecutors resigned from office, demanding an immediate return to the laws applicable in Kosovo before the revocation of its autonomy status within Serbia. This demand was made primarily for political reasons, since these laws were by no means more democratic than the Yugoslav criminal laws. On December 12, 1999, UNMIK finally promulgated a regulation providing that the law in force in Kosovo prior to March 22, 1989, would serve as the applicable law for the duration of the UN administration, effectively superseding the relevant provisions in UNMIK Regulation 1999/1.<sup>53</sup>

In practice, moreover, the formula laid out in UNMIK and UNTAET Regulations 1999/1 proved to be rather difficult to apply in both Kosovo and East Timor, because it did not actually spell out the laws or specifically identify the elements that were inconsistent with internationally recognized human rights standards. Rather, it required the lawyers, many of whom were inexperienced, to engage in the complex task of interpreting the penal code or the criminal procedure code through the lens of international human rights instruments, applying those provisions that met international standards, while disregarding those that did not, and substituting for the latter the appropriate standard under international law. The difficulties that can arise are obvious. For example, whereas determining that a provision allowing twenty or more days of detention without a judicial hearing<sup>54</sup> violates international human rights standards is relatively easy, consistently defining the standard that should apply instead under such a provision is much more difficult. In both territories, only a few local lawyers were even familiar with the practical application of international human rights norms, which aggravated the situation.

Yet another challenge faced by both missions was to obtain, from the government that had just withdrawn, all the legislation constituting the applicable body of law and to translate these rules so that international experts could assist their local colleagues in the practical application of the formula contained in section 3 of UNMIK and UNTAET Regulations 1999/1, requiring consistency with international standards.

Thus, in practice, the formula introduced by the United Nations administrations in Kosovo and East Timor, which was aimed at avoiding a legal vacuum and ensuring that the laws applied conformed with international standards from the outset, led to considerable legal and political difficulties. In consequence, both United Nations missions ultimately had to conduct comprehensive reviews of all the legislation that was pivotal to the establishment of an independent and impartial judiciary, and the law-and-order sector more generally, and amend or supersede these laws as necessary through subsequent UN regulations. In the meantime, however, the United Nations civil police and the judiciary had to apply the existing legislation on a daily basis, trying their best, but struggling to do so in accordance with the requirements of UNMIK and UNTAET Regulations 1999/1.

### III. CONCLUSION

The establishment of a functioning governmental structure, including the re-creation of the judicial branch, from "ground zero" is a daunting task. In recent years, the United Nations has been entrusted with providing assistance to the legal and judicial systems of several countries in postconflict situations, including, most recently, Cambodia, Haiti, and

<sup>52</sup> See Kaminski, *supra* note 8.

<sup>53</sup> According to section 1.1 of UNMIK Regulation 1999/24 (Dec. 12, 1999), "[t]he law applicable in Kosovo shall be: a. The regulations promulgated by the Special Representative of the Secretary-General and subsidiary instruments issued thereunder; and b. The law in force in Kosovo on 22 March 1989." According to section 3, "[t]he present regulation shall be deemed to have entered into force as of 10 June 1999."

<sup>54</sup> See REPUBLIC OF INDONESIA, DEPARTMENT OF INFORMATION, LAW-BOOK ON THE CODE OF CRIMINAL PROCEDURE Arts. 20, 24 (n.d.) (Act No. 8/1981).

Bosnia and Herzegovina. Nowhere other than Kosovo and East Timor, however, did this task require the establishment of a coherent judicial and legal system for an entire territory virtually from scratch.

The experiences of the United Nations in Kosovo and East Timor have shown that the reestablishment, at a minimum, of basic judicial functions—comprising all segments of the justice sector—must be among a mission's top priorities from the earliest stages of deployment. Indeed, the absence of a functioning judicial system can adversely affect both the short- and the long-term objectives of the peace-building effort, including the restoration of political stability necessary for the development of democratic institutions, the establishment of an atmosphere of confidence necessary for the return of refugees, the latitude to provide humanitarian assistance, the implementation of development and reconstruction programs, and the creation of an environment friendly to foreign investment and economic development. The lack of adequate law enforcement and the failure to remove criminal offenders can inevitably affect both the authority of the mission and the local population's willingness to respect the rule of law. In the worst of cases, such an atmosphere can push self-proclaimed vigilante forces to take law enforcement into their own hands and resort to illegal detention, which can threaten the safety and security of the local population and the international staff. Finally, a functioning judicial system can positively affect reconciliation and confidence-building efforts within often highly traumatized postcrisis societies, not least because it can bring to justice those responsible for grave violations of international humanitarian and human rights law.

The United Nations' most recent experiences in transitional administration demonstrate that justice, and law enforcement more broadly, must be seen as effective from the first days of an operation. The inability to react swiftly to crime and public unrest, particularly in postconflict situations when criminal activity tends to increase, and the failure to detain and convict suspected criminals promptly and fairly, can quickly erode the public's confidence in the United Nations. In Kosovo, a total of 14,878 criminal offenses were reported from January to August 2000 alone; over the same period 3,734 people were arrested.<sup>55</sup> Thus, the establishment of effective judicial institutions can be critical to the long-term success of a mission and the sustainability of its governance and democratic-institution-building efforts.

Given the current prevalence of intrastate conflicts and the likelihood that such conflicts will lead to the emergence of autonomous regions or independent states in the future, the United Nations may be asked to establish a transitional administration for other situations, which will inevitably include the creation of a judicial system. The enormous difficulties encountered in Kosovo and East Timor in this respect have shown that the United Nations and the international community at large must enhance their rapid-response and coordination capacities so that the necessary attention and resources can be directed to this key area of civil administration. While international civilian policing resides at the core of prototypical peacekeeping operations, this element cannot be focused on at the expense, or without due consideration, of the other elements of a functioning law enforcement and judicial system.

In addition to early and sensible mission planning, involving representatives of the local legal profession, and committing the necessary financial and human resources, implementing the following recommendations would further enhance the United Nations' capacity to build or reconstruct postcrisis judicial systems.

1. *Establishment of judicial ad hoc arrangements.* A law enforcement vacuum in the early days of a mission should be avoided by establishing ad hoc judicial arrangements to facilitate the detention and subsequent judicial hearings on individuals who are apprehended on crim-

<sup>55</sup> See INTERNATIONAL CRISIS GROUP, KOSOVO REPORT CARD 31, 44 (ICG Balkans Report No. 100, 2000) (stating that the criminal offenses "included 172 murders, 116 kidnappings, 160 attempted murders, and 220 grievous assaults").

inal charges. The UN experience in both Kosovo and East Timor demonstrates that, where there has been a complete breakdown of the judicial sector, the quick deployment of units of military lawyers, as part of either a United Nations peacekeeping force or a regional military arrangement such as KFOR and INTERFET, can fill the vacuum until the United Nations is staffed and able to take over what is ultimately a civilian responsibility.<sup>56</sup>

The advantage of such an arrangement would be that military lawyers, who would make up an integral part of the peacekeeping force, could be rapidly deployed together with the troops. In contrast, civilian United Nations staff, many of whom must go through a lengthier recruitment process, cannot be immediately deployed. In this emergency phase, military lawyers would have to be in a position to execute legal functions, including arrest, detention, prosecution, and initial adjudication, immediately, without engaging in the time-consuming task of assembling and familiarizing themselves with local laws. Thus, as a practical matter, they would all have to come from the same country and to apply the laws in force in that country.<sup>57</sup> It would be understood, however, that such military arrangements would remain in place only for a limited and clearly defined period of time, until responsibility could be handed over to an adequately functioning civilian body. Moreover, any such arrangements would have to accord strictly with internationally recognized human rights and other relevant legal standards.<sup>58</sup>

Intuitively, one would hesitate to involve military actors in this sensitive area of civil administration, but in the absence of sufficient and immediately deployable civilian resources, it may be the only appropriate response to avoid the emergence of a law enforcement vacuum. The experiences in both Kosovo and East Timor have proved that the emergence of such a vacuum can ultimately be more detrimental to the objective of developing an independent judicial system and effectively protecting a population's human rights than the establishment of a temporary military-run judiciary.

The establishment of ad hoc military arrangements for a transitional period would provide the United Nations with the time and space to devise the appropriate legal system for the duration of the transitional administration and to take the necessary steps toward building the foundation for a truly independent judicial branch. Such a system would help the mission avoid the sense of urgency that could drive it to fill judicial positions with individuals who might turn out not to enjoy the general acceptance of the local population and its leadership, as happened in Kosovo, or to grapple early on with the practical problems posed by the lack of experienced lawyers, as happened in East Timor. Moreover, this approach would permit the United Nations to carry out a proper assessment of the available human and physical resources, possibly including the screening of applicants for serious violations of international law, to give due consideration to existing political and cultural sensitivities, and to provide initial legal training as necessary.

2. *Formation of a standby network of international lawyers.* Regardless of the institution of ad hoc military arrangements, the United Nations must enhance its own capacity to establish a functioning judiciary as rapidly as possible, by ensuring that the fundamental task of judiciary building is part of its emergency first-phase response. It is thus imperative for the

<sup>56</sup> Compared to the improvised policy in Kosovo, the existence in East Timor of the INTERFET-sponsored Detention Management Unit, *see supra* note 23, until early January 2000 allowed UNTAET at least to engage in more in-depth planning of the future judicial system and to carry out the difficult search for East Timorese jurists.

<sup>57</sup> Ideally, they would apply the set of interim rules on criminal procedure and substantive criminal law referred to in the fourth recommendation at p. 62 *infra*.

<sup>58</sup> The United Nations' Model Agreement with member states that contribute personnel and equipment to peacekeeping operations includes the following standard provision: "[The United Nations peacekeeping operation] shall observe and respect the principles and spirit of the general international conventions applicable to the conduct of military personnel." See Daphna Shrager & Ralph Zacklin, *The Applicability of International Humanitarian Law to United Nations Peace-Keeping Operations: Conceptual, Legal and Practical Issues*, in INTERNATIONAL COMMITTEE OF THE RED CROSS, SYMPOSIUM ON HUMANITARIAN ACTION AND PEACE-KEEPING OPERATIONS 39, 44 (Umesh Palwankar ed., 1994).

United Nations to develop a standby network (as opposed to a costly standing capacity) of experienced and qualified international jurists that can be activated at any given time. In view of the significant practical differences between the common-law and civil-law systems, experts in both systems should be recruited in sufficient numbers to ensure that they can adequately respond to the specific needs of the territory to be administered. Since quick deployment is crucial to the effectiveness and credibility of an operation in its early stages, the United Nations should create a network based on standby agreements with member states, agencies, and academic institutions to facilitate the mobilization of these jurists on short notice, within a few days, if required. If provided with ongoing training in international legal and human rights standards, and updated information on international instruments and judicial developments, the members of this network would eventually constitute a sufficient number of qualified international lawyers, who could work as trainers, mentors, judges, and prosecutors.

3. *Immediate reconstruction of the correctional system.* In view of the enormous difficulties experienced in both Kosovo and East Timor in this sector, urgent priority must be given to the immediate establishment of an adequate prison infrastructure. A functioning correctional system is not only complementary, but also inextricably linked, to the creation of a functioning law enforcement mechanism. Despite the reluctance of many donors to finance correctional facilities, such a mechanism cannot be established without sufficient and quickly disburseable funding for immediate reconstruction efforts. Thus, the United Nations must make a concerted effort to convince donor countries that funding for this crucial task must be incorporated, from the outset, in the consolidated budget for the activities of a transitional administration, and based on assessed rather than voluntary contributions. In this connection, the United Nations should not fail to include a sufficient number of professional international prison guards and wardens in its mission planning and budgeting.

4. *Creation of an immediately applicable legal framework.* The availability of an immediately applicable legal framework is an important prerequisite for the building of judicial institutions. Capacities within and outside the United Nations must thus be identified for quickly drafting new legislation in accordance with internationally recognized standards and with due consideration to the legal traditions (i.e., civil law or common law) of the territory at issue. To facilitate this effort, the United Nations must develop standby arrangements with partner agencies such as the World Bank, the International Monetary Fund, and the Council of Europe, as well as with universities and nongovernmental organizations. Particularly in the setup phase of a mission, and at its request, these agencies could prepare initial drafts that would subsequently be finalized by the United Nations in concert with local lawyers. Significantly, such arrangements would promote early cooperation, without requiring lengthy assessment and approval procedures in advance.

In this regard, a body of law-enforcement-related legislation should be developed as part of a "quick-start package" for United Nations-administered territories. Readily applicable criminal procedure and criminal codes, as well as a code regulating the activities of the police, have proved to be essential to the unimpeded functioning of the UN civil police component of peace-building missions. First of all, the UN civil police need to act with legal certainty and in accordance with clearly spelled-out legal provisions so as to carry out their daily law enforcement activities effectively and without fear of breaching the law. Second, the civil police need a clear legal framework in which to train the future local police force in democratic policing. Third, newly appointed judges, prosecutors, and lawyers must be clear as to what the applicable law is in order to execute their functions. Thus, as an indispensable initial step, the United Nations must draft a set of interim rules of criminal procedure and substantive criminal law in core areas of police activity, including arrest/detention and searches/seizures. In the long term, the United Nations could promote the development of a model criminal procedure code that would be used by all UN missions

that are mandated to rebuild a legal system, including the temporary ad hoc military arrangements referred to above. In areas other than criminal law, UN regulations from previous missions could serve as model regulations where applicable.

5. *Prioritization of legal training.* The international community must play an active role in providing adequate professional training to newly appointed lawyers, judges, and prosecutors so that the judiciary will be equipped with the highest level of technical competence, will be strongly committed to the principles of judicial independence, and as an institution will respect human rights and understand how to protect these rights in its day-to-day work.

Professional legal training in complex postcrisis situations such as those in Kosovo and East Timor extends beyond technical assistance. It is a pivotal element of capacity building and empowerment for the creation of a stable legal system. For example, given the lack of East Timorese experience in the administration of justice, the United Nations should ideally have been in a position immediately on deployment to provide quick-impact training and mentoring programs on core issues such as pretrial standards, the conduct of hearings, and the drafting of detention orders. For, in addition to enhancing appreciation of the judiciary's role in society, such training would also advance the concept of an independent and impartial judiciary as protecting rights and freedoms, rather than as serving as an instrument of repression, power, or control. However, the necessary training and mentoring programs for local lawyers cannot be implemented unless sufficient financial and human resources are obtained. The initial establishment of a comprehensive database, including reference to potential providers of judicial training and their programs, would help to ensure a quicker response in this regard.

None of the above recommendations is intended to provide the final answer on how best to build a judiciary from scratch, since every postcrisis situation is unique and requires an adapted response. The international community will have to accept that such a process requires its commitment and that of the United Nations system from the very start and, even then, is bound to experience serious setbacks. Yet careful consideration of how an independent and operational judicial system can enhance the long-term objectives for the territory to be administered maximizes the chances that the United Nations will succeed in creating a secure environment and guiding a postconflict society toward political stability, economic recovery, and reconciliation.



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## Between Integration and State Failure: Political Transformation in the Balkans

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--- DRAFT ---

This paper does not aim to present a detailed narrative of domestic political transformation processes in various Balkans countries during the ten years since the dissolution of the former Yugoslavia. Others are better able to describe, analyse and evaluate individual instances of constitutions, electoral process, legislature, parties, civil society, media, civic education, civil-military relations, local government etc. in the Balkans.

Instead, it is useful to highlight the specific nature and framework of the issue of political transformation in the Balkans environment at this particular phase of European history. This should not only help to answer the question how much common ground for comparisons with similar developments outside Europe really exists.

Above all, this approach should provide a concrete yardstick for measuring the progress, or success and failure, of political transformation as described in existing and future case studies. Should such case studies come to the conclusion that is to be expected, i.e. that political transformation processes have been inconclusive and seriously flawed in many respects, this approach can add the

necessary grain of salt: Perhaps the details of political transformation don't matter all that much.

### The internal need for transformation

The project that has given rise to this paper looks at state building after the end of armed conflicts, and thus singles out Bosnia-Herzegovina after the Dayton Agreement and Kosovo under KFOR and UNMIK. When it comes to political (and economic) transformation in the Balkans, however, it is striking that deficits in political transformation have been perceived and treated largely the same way in countries and territories that suffered war and those that did not. The set of countries and territories under consideration here would therefore have to be defined somewhat wider.

Macedonia, clearly aware of its vulnerability from within already since 1992, has now joined the countries that experienced war. Albania, after its complete state collapse and decay into anarchy, had to be bailed out economically and secured militarily in the European-led Operation Alba in 1997, and has since then been a prime example for the attempt at political transition towards stable democratic structures. Also, Montenegro and post-Milosevic Serbia, and to some degree post-Tudjman Croatia, face many similar problems when it comes to political transformation. It makes sense to look at this subregion as a whole.

The differences between the cases must be kept in mind. There is the issue of sovereignty under international law. Kosovo, while autonomous, will not gain sovereignty unless Belgrade concurs. Montenegro, while legally entitled to declare independence, hasn't made that step for some good reasons. Bosnia-Herzegovina's sovereignty is still a theoretical construct, as the supreme power remains international (the High Representative) and identities remain divided. Macedonia, Albania and Serbia/Yugoslavia, in varying degrees and for different reasons, are factually not in full control of all parts of their territory. None of the cases is easy, but all are different, with immediate consequences for constitution-building and political transformation. Significant differences also exist with regard to the relative composition of ethnic and religious population groups in these various states and territories.

However, substantive similarities are obvious that establish the need for political transformation and affect its pursuit. This subregion comes with the ballast of a politically disenfranchised existence throughout most of its history, bad governance and corruption, peripheral economies that have been further weakened by state socialism and subsequent asset stripping, infrastructural deficits, conflictual minorities issues, xenophobia, lack of civil society, powerful and conflicting national myths that are in part based on officially cultivated distortions of history, lack of inward private investment, disputed property rights, limited access to credit and a lack of capable, democratically minded leaders, aggravated by a strong inclination to emigrate among highly qualified young people.

As elsewhere, such a confluence of negative factors creates a widespread mindset of dependency and a fixation on short-term gains, attitudes that would render the establishment of viable democratic and economic structures virtually impossible. It has thus been obvious for some time that the economic and social calamity requires decisive political, legal and administrative changes if the hope that it will ever be overcome is to be kept alive. It has however largely been through external involvement, especially through the normative role model provided by the EU and its members, that this indigenous desire for transformation has been given shape. Domestic forces have so far not been the primary driver of political transformation in the Balkans, although they naturally hold the biggest stake in it and, in the last analysis, give it the shape they prefer.

### The external goals of political transformation

Historically, the issue of transformations in the Balkans erupted at the end of the old system of East-West antagonism in Europe, although warning signs had of course been up before. In many ways the motivations, strategies and errors both of actors in the Balkans and the outside world in this period were shaped by the decay of this old framework of reference and the attempt to replace it economically, politically and ideologically. Expectations of democratic political transformation were formulated in this specific regional context and derive a major portion of their validity from it.

While triggered locally, all the crises and wars in the Balkans since 1990 were rooted in this regional process of change. At the same time, their effects were

immediately felt throughout the region and beyond, and solutions could regularly not be found locally but only by involving a wider international grouping.

In EU countries, especially those geographically exposed to the Balkans, a wide security paradigm of a strategic nature was developed and pursued with a sense of urgency vis-à-vis the Balkans. The ongoing European policy of deep engagement and leadership for change in the Balkans was above all generated by tangible negative effects on public security at home and the international environment of peaceful multinationalism abroad. This included the politically and economically costly influx of displaced persons, ethnic linkages between Balkans conflicts and population groups within the EU, as well as an upsurge of organised crime activities in Europe linked in part to Balkan wars.

In many different ways, the weakness of political institutions in Balkans countries has time and again had wider security implications, potentially even posing risks to the viability of the international system. For example, in Albania more than half a million weapons were looted from government stocks in 1997. Bosnia, to this day, has no visa regime and lends itself, for this and other reasons, as an operations base for international illegal activities. It was understood that only by offering to extend the European benefits of peace, stability, prosperity and freedom to the Balkans - backed by the EU and NATO but requiring deep political transformations in the Balkan countries - can such risks be better controlled.

Above all, the violent evocation of nationalism in its most atavistic forms by certain leaders in the disintegrating Yugoslavia in the early 1990s undermined the very foundations of the still-evolving order of a "Europe whole and free", expressed to a large part in the CSCE's Charter of Paris of 1990. In response, a strict standard has now been established in Europe against such unacceptable acts as changing of international borders by force, dividing and expelling population groups, and genocide. The Euro-Atlantic consensus on these fundamentals proved its strength by propelling EU countries towards a more effective international role and the use of military power in combat, first in Bosnia and then in the Kosovo War. The active involvement of Russia, e.g. in the Contact Group, serves as a clear indication that a new regional security system has been proven and strengthened in these efforts.

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## The limits of state engineering

While there can be no doubt that local elites in the Balkans have their own conceptions about desired political transformations, the high systemic significance assigned to the Balkans crises within Europe and the euro-atlantic institutions have led to a situation where the goals of the transformation process are defined by the international community rather than by local forces. Their ambitions are regularly superseded - at least on paper and for some time - by the more forceful, systemically motivated agenda of "exporting stability" as defined in Western capitals. One recent example is the genesis of the Ohrid peace accord in Macedonia, where all sides were effectively told by the EU and NATO what their positions would reasonably have to be, take it what it may.

The expectations of political transformation in Bosnia-Herzegovina and in Kosovo had been defined in a similar way. While formally implemented, e.g. through agreeing on new election laws and holding free, fair and supervised elections, the largely undisputed fact is that none of this changed much in the power distribution or the way political affairs are run, both in Bosnia-Herzegovina and its constituent entities and in Kosovo.

This can easily be explained by the fact that local elites, while paying lip service to the larger agenda, keep openly pursuing their own games of power, gain, and nepotism - more or less undisturbed by laws, the media and a (non-existent) pluralistic, open political process. There is not much to be done about this, though it may be noted that a major portion of the High Representative's decisions in Bosnia-Herzegovina is about removing specific individuals from public office, based on the authority invested in him at Dayton.

There is basically only the long-term hope that generational change will produce a new leadership better in tune with democratic values. There may also be the hope, if the economic environment permits, that some of those who are now successfully involved in illegal business will at one point see even more advantage for themselves in becoming law-abiding, tax-paying citizens and pillars of democratic society.

Political transformation thus presupposes continuous efforts to strengthen the judiciary, police and independent media, improve education, stimulate the

preparation of the required legal and financial ground for profitable investment in new jobs, and foster civil society and institutionalised political pluralism through sustained personal interaction. These conditions are yet not in place, and it seems therefore still too early to pass a judgement on the political transformation achievements, or lack thereof.

The perspective of eventual integration of the Balkans in the EU that was formally established for the long term at the Zagreb summit meeting in 2000 is designed to change the calculus of local actors and encourage them to take decisive steps of political transformation on their own, not least to shine in the "beauty contest" between potential EU applicant countries. If the international community manages to maintain a peaceful environment in the Balkans and keep the region's European integration perspective credible, this recipe may well work out.

Still, two agendas - the ambitious one of international headlines and the subdued one of local back rooms - are likely to coexist in different spheres. Both are agendas for political transformation, though different in style and ambition. It is important to realise that even if the international agenda may at one point be considered a failure, the other one would still exist, and might in some convoluted way at least theoretically still lead to the desired result over time. The more likely outcome is that the two agendas will gradually converge as each of the countries makes - necessarily slow - progress in consolidating its democratic structures in its own way, taking advantage of a framework of gradual European integration.

## Conclusion

Political transformation in the Balkans forms only part of a wider effort, orchestrated in the EU, to cooperatively pacify, secure and stabilise the states and territories in that subregion of Europe in the wider systemic interest of the continent as a whole. This limits the available common ground for comparisons with similar developments outside Europe. Political transformations after non-European armed conflicts such as in Cambodia and East Timor have been much less determined by larger political imperatives resulting from the regional international system. Both the amount of high-level attention and the willingness to

provide sustained engagement to underpin the long-term stability of change have been lower in such cases.

Nevertheless it is far from certain that even with the high degree of international attention and support achieved for the parts of the Balkans under consideration here, their efforts toward political transformation can be considered a success. Given the definition of goals (prevent spillover effects that could undermine Europe's international system), in fact anything would have to be considered a (at least temporary) success that does exactly that.

Paradoxically, while on the surface the ins and outs of "Europe-worthy" democratic rule appear to be so clearly and narrowly defined, in real life tolerance for imperfection on the ground is actually very high, though not complete, as long as four fundamentals are not touched: violent change of borders, large-scale forced migration, genocide, and - since the attacks of 11 September - facilitating terrorism. This ambiguity of a long-term commitment to ambitious ideas of good governance, on the one hand, and an almost fatalistic acceptance of human and bureaucratic inertia and fallibility has often been deplored vehemently by disillusioned diplomats, activists, and politicians. However, it is exactly this ambiguity of approach that is able to energise the long-term engine for eventual self-sustained change in Balkans societies.

The benchmark for assessing progress, success or failure of political transformations in the Balkans environment can therefore not primarily be defined, for example, as achieving a certain percentage of capable, non-corrupt politicians and officials at a given time, or any other given indicator of democracy, pluralism, civil society and rule of law, on the understanding that if that benchmark isn't met, the experiment will be terminated as its international backing is being cancelled.

The strategic patience that is equally employed by the international community and the majority of citizens in Balkans countries boils down to a much simpler benchmark: no war, no expulsions, no genocide, no terrorism - politically, all the rest will then sort itself out well sooner or later along the lines of other European democracies. This works of course only in a region like Europe where the nation state cannot anymore claim to be politically self-sufficient and where the



desire to eventually fit the European mould is shared by most as it promises the most attractive return for the largest number.

The trust thus currently invested by the peoples of the Balkans in the long-term validity of this shared European political system would be put in jeopardy each time when the four fundamentals are not defended in the Balkans with due determination wherever necessary by European neighbours and institutions. Arguably, failure to provide a basic level of economic viability could also erode it.

This trust for Europe (with its American link) often looks like the only factor that can induce conflicting actors in the Balkans to escalate their disputes in organised violence. The name of the game that has been pursued for the better half of a decade is therefore either live with a Balkans full of imperfect political transitions, or abandon the Balkans because the micromanagement of change is frustrating and face the resulting collapse of political and social order as well as potential gangster regimes and failed states in Europe.

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**Successes, Weaknesses and Challenges:  
A Critical Overview of the Political Transition in East Timor**

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## **Successes, weaknesses and challenges: A Critical Overview of the Political Transition in East Timor**

Prepared for the conference on *Comparing Experiences with Post-Conflict State Building in Asia and Europe* in Denpasar, Bali-Indonesia, 15 – 17 October 2001.

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### **Introduction**

It was the results of the 30 August 1999 Referendum in East Timor that sparked the subsequent militia rampage throughout the territory and led the Security Council to pass resolution 1272/1999, the legal foundation of the current United Nations (UN) Transitional Administration in East Timor (UNTAET). This Transitional Government began its task in October 1999 and, just two months away from its second anniversary, held an election to elect members of the Constitutional Assembly on 30 August 2001. Has the political transition gone as planned? What are the factors (weaknesses and strengths) shaping this transition, and can the same political transition serve the foundation for a sustainable government?

This paper looks into the recent political transition in East Timor, identifies challenges and factors contributing to the work of UNTAET in the last two years, and foresees a possible scenario after UNTAET. First, it identifies the players involving in the political transition, explains their role and looks at the political character of the transition. Second, it identifies some of the factors contributing to the work of UNTAET, and third, it addresses the dynamics within the relation between UNTAET and the East Timorese. This section highlights how UNTAET leaders, compelled by the changing political circumstances, successfully oriented and adjusted themselves to comply with the greater demand for power-sharing by the East Timorese, thereby ignoring the elaborate and rigid rules drawn up in New York. Lastly, this paper looks into the challenges after UNTAET?

### **Players in the Political Transition**

The political transition in East Timor is unique. Unique in the sense that on the one side, there is an international administration led by the United Nations Administration in East Timor (UNTAET), whose work is to prepare the foundation of a state. On the other side, in doing its work, UNTAET has to put up with local political dynamics in

which different political communities (including political parties and civil society), the Catholic Church and a population of 800,000 are involved. In general, there are several players whose roles are imperative in shaping East Timor's political transition.

- The first player (i) is UNTAET and its subjects; International staff and a Peacekeeping Force (Police and Military).<sup>1</sup> UNTAET is responsible to New York and not to the East Timorese, making it a separate institution despite its physical presence in East Timor
- The second player (ii) is the East Timorese political community. These include political parties and civil society (women, youth organisation, NGOs, and so on). This group is actively involved in the political process, and acts in opposition to, but is complementary to and depends on, UNTAET for its role.
- The third player (iii) is the ordinary people, the population.
- The fourth (iv) player is the Catholic Church and other religions. Although often regarded as part of civil society, they are not politically active, maintain a high moral stance and play a decisive role in relation to their followers.

The first player (i) has a mandate from the Security Council to prepare a state. It operates like a government, is independent and does not have administrative links with the East Timorese. This group is well endowed with power, money and expertise. The second player (ii), since the beginning, has assumed that UNTAET would establish both administrative and political ties with the East Timorese, yet it did not. This group started operating mostly through 'interest groups', but became involved in politics after agreeing that the first player (i) did not have any plan to involve the East Timorese in the Transitional Administration. Their task was to insist upon this 'participation' as well as to prepare for future government. The third player (iii) is powerless and has no role to play in politics. Instead, this group relies on the second group (ii) to fight for its interests. Lately, it has begun pushing for greater participation (consultation) on issues regarding its members' rights (rights to control natural resources, to protect identity, etc). The fourth player (iv) is apolitical. Nevertheless, because of its moral standing, the Catholic Church, often acts to provide moral guidance and sometimes acts as a 'bridge' between the first (i) and the second (ii) groups. The church also have the moral power to act as 'power broker' between groups within the second group (ii).

The political transition in East Timor has been characterised by intense interaction between the first (i) and the second player (ii), at least during the last two years.

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<sup>1</sup> The authorised maximum strength of UN-PKF in East Timor are Military 9,150; Civilian Police and 1,640. Current strength, as of 31 August 2001: 9,614 total uniformed personnel, including 7,998

Relying on a classic political analysis, this paper tries to depict the interplay between these two players in shaping the political transition in East Timor. While both (i) and (ii) maintain that they are fighting for the same objective (to set up a country) and for the sake of the same constituency (iii), their different hierarchical structures often prevent them from working together. The UNTAET is based in New York and the East Timor political and civil society, with no central political leadership, is based in East Timor. Their political interaction is not necessarily antagonistic, but complementary in character, which in turn provides room for adjustment and improvement of their work in a mutually beneficial way. Put this way, the local political players (ii) can exercise their rights only if UNTAET (i) allows them to do so and, on the contrary, UNTAET can only operate if it actively cooperates with local political players. In conclusion, the political transition in East Timor is shaped by the interplay between UNTAET and the East Timorese civil and political communities.

As to the role of the National Council of Timorese Resistance (CNRT), as I will explain later, since the arrival of UNTAET, this body has been marginalised and has, for the most part, survived with the help of its charismatic figure, José Alexandre Xanana Gusmão. The local political community (ii) –political groups, interest groups and the civil society- which formerly constituted CNRT, began distancing themselves after the 30 August referendum and decided to go their own ways. However, this 'break down' should not be interpreted as a division leading to confrontation among East Timorese political groups. First, this division was necessary for each political party's internal interest. A number of political parties started restructuring themselves and some even broke up. Second, there was a sentiment that UNTAET was excluding the East Timorese, and that CNRT had failed to fight for the greater participation of the East Timorese in the government. It was therefore necessary to wage this fight in a different way. Third, finding their goals were similar to those in civil society, political parties started pushing for Timorization in the Transitional Administration. As a result, the real 'interaction' between player (i) and player (ii) began.

### **The Transitional Character of UNTAET**

The UN mission in East Timor is unparalleled in the history of the world body. Unlike in Namibia, Somalia, Cambodia, Kosovo and other parts of the world where it had

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military, 1,489 civilian police and 127 military observers supported by some 972 international civilian personnel and 1,859 local civilian staff. Source: <http://www.un.org/peace/etimor/UntaetF.htm>

previously been involved,<sup>2</sup> UNTAET was given full governing authority under resolution 1272 of 25 October 1999. Its task included the mandate to provide law and order, establish an effective administration, assist in the development of civil and social services, ensure coordination and delivery of humanitarian assistance, rehabilitation and development assistance, support the capacity to build self government, and assist in the establishment of conditions for sustainable development.<sup>3</sup>

With this power, UNTAET operates almost like a government. It fulfils all the attributes of a state and has functions equivalent to a government. It has:

A constitution (the authorising Security Council Resolution), an ideology (the formal objectives in UNTAET's mandate: democratisation, preparation for independence, sustainable economic development, efficient administration), a police force (ca 1600 UN- hatted international CivPol), a military force (some 8500 UN peace keepers), a flag (blue), a civilian administration (staffed almost exclusively by 1200 internationals) and a viceroy (the Special Representative of the Secretary General).<sup>4</sup>

While controlling a population of around 1200 internationals, UNTAET is also preparing a state for another 800,000 people (East Timorese). It is accountable to a legislative body located thousands of miles away in New York, the Security Council (SC). Not surprisingly, conflict over jurisdiction and services between the government and the 800,000 constituents has been common.

In executing its mandate, the body is required to report to New York every three, or sometimes six, months about the progress being made. It has an executive body and a military component consisting of troops from various nations to maintain security (UN-PKF and CivPol). As such, although UNTAET's work seems to progress slowly, it faced no serious challenges in implementing its task. This has been facilitated further by the involvement of almost 200 International NGOs in the humanitarian relief side since September 1999, and by the contribution of donors for the economic

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<sup>2</sup> For an in depth grasp of UN mission in East Timor, Kosovo and Cambodia see *Reason and Reconstruction: The multiple Logics of UNTAET*, a paper prepared by Astri Suhrke of Chr. Nielsen Institute for the NFR Conference, Oslo 18-19 January 2001 (Draft version, quoted without the permission of the author).

<sup>33</sup> Security Council Resolution 1272, 25 October 1999

<sup>4</sup> Opcit. Suhrke, 2001.

recovery through the World Bank which has been involved consistently since the early days.<sup>5</sup>

Thus, central in the tasks of UNTAET are 'peace-building', 'governance & public administration', and 'humanitarian relief & rehabilitation'. In this, peace-building, and governance & administration are directed by UNTAET, whereas the humanitarian relief and (economic) reconstruction were provided by International Donors through the World Bank and Non-Government Organisations (NGOs).

### **Factors Contributing to UNTAET's work**

When the previous UN mission in Cambodia completed its work, it left much to be done. As a result, limitations on a complete recovery of the country remain enormous even after several years. The 'Cambodia Syndrome' is a clear warning of what can happen. In Kosovo, the UN continues to witness fighting between two ethnic groups, Serbs and Albanians, and an effort to bring peace to this territory still has a long road ahead.

East Timor has a rather different character:

First, the territory has been internationally considered as a non self-governing territory since the vacuum left by the Portuguese in 1974. The 24 years of Indonesian involvement in the territory was not recognised by the UN. Its *terra nullis* status has made it an international question and there is no international territorial dispute regarding East Timor. The Indonesian Parliament has recognised the results of the 1999 Referendum in East Timor in which pro-Independence won a landslide majority. The activity of the former militia has been kept at bay and is limited only to the border with West Timor where the presence of the International Peacekeeping Force is obvious.

Second, unlike in Cambodia where rival groups fought each other for power, and Kosovo where ethnic antagonism remains, the East Timorese political community accepted, from the early stage, the involvement of UNTAET. Political discontent against UNTAET was often expressed in democratic ways through dialogue,

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<sup>5</sup> For this purpose, the World Bank set up the World Bank Trust Fund (WBTF) to manage contributions from donors through various venues such Consortium Groups (CG) and others, and the East Timor Trust Fund (ETTF) to administer voluntary contributions from donor countries.



peaceful demonstrations and in the media. There is no open factional confrontation being waged within the territory.

Third, at the time UNTAET came into being, no local political structure was ready either politically or financially to carry out the reconstruction task. UNTAET's presence was received wholeheartedly and no one single local political group contested the presence of this body. There is one group called *Conselho Popular pela Defesa, República Democrática de Timor Leste* (CPD-RDTL) which initially rejected the presence of the UN and called for the UN's recognition of the proclamation of Independence in 1975 but the limited capacity of this group made its challenges largely irrelevant in East Timor politics.

Fourth, although CNRT, the resistance body is not as solid as it is supposed to be since its main stakeholders began distancing themselves soon after the referendum in 1999, the body has relied most on the figure of its leader, José Alexandre Xanana Gusmão. Indeed, his role has been vital throughout the transitional process. Often referred to as the Independence leader, Xanana Gusmão possesses the charisma to unite all factions and is seen as a symbol of reconciliation.

Five, the people seem to have tired of the conflict and terror during the last 25 years. In all public speeches, political leaders regularly remind themselves and the public to exercise restraint and reject violent means of resolving differences. All public speeches have highlighted the importance of UNTAET, although frustration continues to be directed at the body.

This unique situation has indeed contributed to the presence of UNTAET in East Timor. This was emphasised further by the supportive response of the other 'pillars' in East Timor society namely, the Church, the former guerrilla wing and the civil society in general.

However, East Timor is not able to stand alone yet, either from a political or an economic perspective. Metaphorically, it is being helped to sit in a 'wheelchair' provided by the UN. Perhaps, for the next five years, this country will still have to rely on international donors for most of its expenditure. Border security with West Timor remains a problem, the economic infrastructure was destroyed in 1999, inflation is high, the mobilisation of revenue is low, the modern economic structure has yet to be developed, the social infrastructure is shattered, and the main institutions are weak

(Haughton, 2001:289-294). Any future government will face a huge task in rebuilding the country.

### **Early Discrepancies: Failure to Understand Local Expectations**

The focus on its 'imported' administration (apparatus and expertise) and the 'disinterest' of the 800,000 residents proved unhelpful to the Transitional Administration. Having a state (UNTAET) not responsible to its constituents (the East Timorese) is not what the East Timorese wanted. Since the early days, East Timorese assumed that UNTAET would work to prepare a state together with the locals in the reconstruction process. Since no East Timorese political structure was in place, at least from September 1999 until January 2000,<sup>6</sup> locals' misconception of UNTAET's work was bearable in the first four months. However, after this time, dissatisfaction grew.

For one thing, the East Timorese were only recognised symbolically as 'partner' through the National Council of the Timorese Resistance (CNRT).<sup>7</sup> Headed by its Independence leader, José Alexandre Xanana Gusmão, CNRT was credited by UNTAET for its capacity to embrace all factions fighting for Independence of East Timor.<sup>8</sup> What escaped UNTAET's attention was that CNRT lacked the capacity to organise itself in the aftermath of the referendum. There were two reasons for this. First, the existing political parties that helped found the resistance body – mainly Fretilin and UDT, the two traditional political parties –, began to distance themselves from CNRT and concentrate on preparing for the election. They did not think CNRT was eligible to claim any authority in the territory, for its mission ceased when separation from Indonesia had been achieved. Second, frustrated by the negligence of UNTAET, these political parties even campaigned, in a disguised manner, to oust UNTAET from the territory as quickly as possible. However, differences within the resistance body were evident until CNRT was dissolved in late June 2001.

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<sup>6</sup> This was due to the fact that the September 1999 mayhem that saw the destruction of major infrastructure and the massive exodus of people into West Timor and the mountains paralysed local political direction. Not even the now dissolved National Council of the Timorese Resistance (CNRT), was able to maintain the territory's security and establish a proper government structure.

<sup>7</sup> This political body was dissolved in June 1999. Xanana Gusmão claimed that CNRT had completed its main task which was to bring the country to Independence.

<sup>8</sup> In fact, while Xanana Gusmão is seen as a nationalist figure and a political leader in the resistance, CNRT is not at all a solid body. Previously, the body was known as the Council of Maubere Resistance and was a subject of dispute among various factions within the resistance. Formed only in 1998, after long years of internal dispute, to respond the crisis in Indonesia at the time and for the sake of national political interest, it is a 'fragile' rather than the 'solid' organisation most outsiders have often referred to.

Frustrated by UNTAET's slow process and the exclusion of the locals from the supposedly 'local transitional' government, new East Timorese local political parties and groups began organising themselves.<sup>9</sup> Being so different from, and disregarded by the transitional administration, also shifted local perception about the Transitional Administration from a 'Angel Saviour' to a stand-alone, if not a new colonialist, political enterprise in the territory. In the first year of its arrival, UNTAET deliberately copied the previous Portuguese and Indonesian governments structure. It slowly established the administration by posting the UN representative (Sergio de Mello) in the capital, Districts Administrators in each District and Sub-Districts Administrators in Sub-Districts. Interestingly, most of the District Administrators remained mostly in the capital of the districts (or the country's capital), leaving an administrative vacuum for almost of the time. From the sub-district levels downward, locals were left to organise themselves. The East Timorese who are living in the sub-districts would, even until now, hardly know what the administration is doing. The lack of information on the political development in the rural areas has exacerbated the situation.

Portuguese Administration	Indonesia Administration	UNTAET Administration
Provincia	Propinsi	<b>UNTAET</b>
Distrito	Kabupaten	<b>District</b>
Posto	Kecamatan	<b>Sub-District</b>
<u>Village Level</u>	<u>Village Level</u>	<u>Village level</u>
Liurai	Kepala Desa	<b>Nurep/ Liurai*</b>
Dato	Kepala Rukun Tetangga	<b>Selcom/ Dato*</b>
Makair-Fukun	Kepala Rukun Keluarga	<b>Makair-Fukun*</b>

\* Filled by CNRT and local rulers (liurai).

Tabel I: Administrative structure during three different administrations in East Timor.

Facing uncertainty, the CNRT held its first and open National Congress from 20 to 30 August 2000, after operating both clandestinely inside the territory and abroad for 24 years. The Congress, which brought together 500 participants from throughout the territory, witnessed the expression of frustration over UNTAET. Participants also complained about the inability of CNRT to convince the UNTAET to be more accommodative towards the East Timorese. In its resolution, the Congress recommended UNTAET to speed up the Timorization process and adopt a more

<sup>9</sup> Detection of growing dissatisfaction of UNTAET's slow progress and some 'negligence' became obvious as early as December 1999.

inclusive strategy by staffing the Transitional Administration with East Timorese and reducing the number of International staff in the mission.<sup>10</sup>

Various demonstrations against UNTAET demanding greater consultation with the locals and a greater share of state power were common. In an act of defiance, many East Timorese graduates opted to work for both local and international NGOs rather than joining UNTAET.<sup>11</sup> This was further fuelled by the fact that some local political leaders regarded East Timorese graduates from Indonesia, who constitute 98 percent of Timorese university graduates, as lacking the standard quality to work as professionals. Discussions were held between local NGOs and the youth covering issues such as the transitional process, the need to consult with the population about their rights, and the inclusion of East Timorese in the transitional government. Some activist groups which have become political parties –for example, the Socialist and the Labour parties– were actively involved in organising rallies against the administration. Slowly but surely, such grievances began attracting the attention of high UNTAET officials.<sup>12</sup> As I will argue later, the 'shift in the strategy' of UNTAET to accept local demands was purely a push from inside East Timor rather than a blessing from the top.

In the meantime, the exclusivity of UNTAET with its 'imported' staff members from various nationalities, began experiencing its own internal problems, notably from December 1999 onwards:

- While previous UN military missions were small in size and military in character, the mission in East Timor is a combination of government and military. Surprisingly, the civilian mission turned out to be as costly as the military. The budget of the first 7 months (until 30 June 1999), not including humanitarian assistance financed under separate inter-agency consolidated appeal process (CAP), amounted to US \$ 386 million and is also similar to the proportion of the next financial year (A/54/769,1999).<sup>13</sup> This has raised concerns as to how the cost could be minimised and work could be done as effectively as possible;

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<sup>10</sup> CNRT, Outcomes of the CNRT National Congress – 21<sup>st</sup> – 30<sup>th</sup> August 2000.

<sup>11</sup> Interview with an international staff member working for UNTAET, September 2000.

<sup>12</sup> Pers. Comm. with Andrew Whitley, then head of Civil and Public Service Department, now head of Political Affairs of the Mission, September 2000.

<sup>13</sup> For example, 35% of the US\$ 592 million of the budget for 2000-2001 was used for civilian personnel and 39% for the military (A/55/43,2000).

- The headquarters in New York was preoccupied most with the grand agenda such as security in the border with West Timor, relations with Indonesia, preparations to set up state infrastructure, and humanitarian relief; it gave very little attention to local social problems. Rising unemployment, slow disbursement, slow recuperation of education and health and the failure to set up a mechanism to consult with the East Timorese and the inability of UNTAET to solve social problems (ex, land conflicts) frustrated both ordinary East Timorese and local politicians. Interestingly, after securing a deal with the then Indonesian President, Abdulrahman Wahid, to recognise East Timor, UNTAET rushed to claim a great success in the transitional phase. Some even claimed East Timor could be a model for "nation-building missions" in the future (SC/6799/3, February 2000);
- On the issue of planning for reconstruction, bringing together hundreds of different nationals to work together as a team for a period of three to six months proved far from easy. Different concepts of thinking often caused a 'task' to be postponed for days, whereas strong demand for involvement in the administration continued to mount from the East Timorese. Some UNTAET staff members did not even speak English when joining the mission and this sent a wrong signal to the East Timorese that the UN was teaching foreigners English in East Timor. As one UNTAET staff member told me;
 

The heavy centralised bureaucracy in the hands of a small elite within the Transitional Administration, and the elaborate and rigid rules of the mission often constrained the small units to take decisions deemed adjustable to the demands of the local people;<sup>14</sup>
- In January 1999 the Transitional Administrations successfully established a district court in Dili, the capital, swore in a number of local judges and prosecutors and appointed some public defenders. However, the newly recruited and inexperienced judges find it difficult to carry out their tasks. Apart from mismanagement and mishandling court cases, the overwhelming 'intervention' of the Justice Department in the court proceedings and decisions made the court's work difficult.<sup>15</sup> When trying to protest, the local judges risked losing their jobs. Some prosecutors resigned afterwards and a local investigating judge was recently sacked for protesting against the bureaucratic procedure in the court.

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<sup>14</sup> Interview with an international staff from the Land and Property Unit of UNTAET, March 2000).

Facing these political dynamics, UNTAET was 'compelled' to orient itself to adjust to the changing environment and the increasing demand for a rapid 'Timorisation' in the administration. If understood correctly, UNTAET was asked to surrender some of its powers to the East Timorese.

### **The First Phase of Timorisation in the Administration**

In around May-June 2000, at a Development Conference held by the CNRT, Sergio de Mello (the Head of UNTAET) and Peter Galbraight (Head of Political Affairs) agreed to involve the East Timorese in the cabinet. This self-oriented interest was of course a challenge to UNTAET's original mandate, which did not include any parallel structure of the kind alongside the one designed from New York.

While this 'strategy-shift' might have been seen as a natural change in the transitional administration, for which UNTAET leaders have to be given credit, in fact it was a response to the exigencies (the needs and demands) of the East Timorese rather than a pure management approach from the top. The Special Representation had no option but to conform to 'field exigencies'.

A Transitional Authority known as ETTA (East Timor Transitional Administration) was created with Sergio de Mello remaining as the executive administrator. At this stage, UNTAET's structure had not been dissolved and the existing cabinet ministers were maintained (Political Affairs and Sea, Civil Policy and Emergency Services, Justice and Finance) but four ministerial portfolios were added and given to the East Timorese (Social Affairs, Economic, Internal Administration, and Infrastructure). The Head of General Inspectors Office was also an East Timorese. Sergio de Mello later appointed José Ramos Horta as the minister of Foreign Affairs of the Transitional Government, both UNTAET and ETTA.

Along with this cabinet, a 'symbolic' parliament known as National Council was set up. With his absolute right under SC Resolution 1272/1999, Sergio de Mello

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<sup>15</sup> See Carlos Vasconcelhos, *Briefing to the Annual Conference of the International Association of Prosecutors*, Sydney, 2-7 September 2001. Mr Vasconcelhos was a senior prosecutor for the 'Serious Crimes Unit' of UNTAET from June to September 2000.

appointed 33 political figures along with some additional members to the body, claiming it represented all sections in East Timorese society. This Council although not elected, discussed and gave consent to the (draft) regulations proposed by the Transitional Administration. While, the Special Representative retained his prerogative to veto any decision deemed contradictory to the Transitional Administration's mandate, with the figure of Xanana Gusmão placed as the head of this Council, the East Timorese received it with enthusiasm. Their symbolic approval of the body can be seen in various discussions in the media during that period, although the middle-class East Timorese only cautiously welcomed this political gesture.

### **The Second Phase of Timorization in the administration**

On 30 August 2001, an election was held to elect 75 national and 13 district candidates to write the Constitution for the nation. Prior to the election, some political party candidates who held ministerial portfolios (Economy, Civil Service and Infrastructure) were asked to resign from their posts in order to run in the elections. In effect, during this period, the first ETTA cabinet was dissolved. Of the 16 contesting political parties, the veteran political party Fretilin won 57%, or 56 seats out of 88.<sup>16</sup> At the time of this writing (Saturday, 15 September 2001) the members of the Assembly have been sworn in, and negotiations to appoint the second ETTA ministers comprising 12 ministerial portfolios are in process.

Political Party/	Total Votes	Percentage	Seats
<b>NATIONAL - SEATS</b>			
P. Demotrático Cristão	7181	19.82	2
União Democrático Timorence	8581	23.62	2
Partido Democrático	31680	87.27	7
Apodeti Pro-Referendo	2181	0.6	0
Fretilin	208,531	57.37	43
Kota	7735	21.3 2	2
Parentil	1970	0.54	0
P. Nacionalista Timorence	8035	22.12	2
P. Trabalhista Timorence	2026	0.56	0
P. Democrático Maubere	1788	0.49	0
P. Sosial Democrático	29726	81.86	6
União Democrático Cristão /PDC	2413	06.61	1
P. do Povu de Timor	6483	17.82	2
P. Sosialista Timorence	TBC	20.11	1
ASDT	28495	78.46	6
Partido Liberal	4013	11.01	1

<sup>16</sup> Fretilin received 43 seats at the national level, 12 seats at the district level plus that of one Independent candidate who later declared his affiliation with the party.

District/ Candidates/Affiliation			
DISTRICT - SEATS			
Aileu/ Alfredo Frente FRETILIN	5118	57.47	1
Ainaro/ Mário Ferreira FRETILIN	6050	34.63	1
Baucau/ Elias Freitas FRETILIN	38525	85.97	1
Bobonaro/ José Andrade FRETILIN	18743	60.34	1
CovaLima/ Gervasio Silva/ FRETILIN	13961	65.74	1
Dili/ Cipriana da Costa Pereira/ FRETILIN	47855	72.49	1
Ermera/ José Soares/ FRETILIN	14724	39.79	1
Lautem/ Armindo da C. Silva/ FRETILIN	12766	54.93	1
Liquica/ Joaquim Barros Soares/ FRETILIN	16249	78.43	1
Manatuto/ Flávio Maria Guterres da Silva/ FRETILIN	8501	55.04	1
Manufahi/ Aréo Amaral/ FRETILIN	10235	75.12	1
Oecussi/ Antonio da Costa Lelan/ Independent	8207	36.06	1
Viqueque/ Januario Soares/ FRETILIN	22721	81.62	1

Table II: Results of August 2001 Vote. Total Votes Cast: 384,248 - Total Valid Votes: 363,501 - Invalid Votes: 20,747.

This Constitutional Assembly, while preparing to write a constitution, has the power to transform itself into the first parliament of the new nation. Consequently, it can automatically form the first government, should the French Semi-presidential system of government be adopted. The president will be elected, following the tradition in this system, through a separate presidential election. A recruitment of East Timorese to fill high positions in the Transitional Administration began as early as January 2001.

### Prospects for the Future

The political transition in East Timor seems to have proceeded with various changes along the last two years. Some international observers agree that UNTAET has performed an good job. However, to most East Timorese, much remain to be seen. There are still many unresolved social and political problems that UNTAET is either unable to deal with or simply does not want to be involved in. These remain worrisome. Some of these problems are:



### *Ideology & Symbolic Identity*

One of the most critical issues is ideological in character, the issue of the flag, national anthem and the date of independence. On 28 November 1975, Fretilin declared the Independence of East Timor, which prompted the invasion and 24 years of annexation by Indonesia. In 1986, when the orientation of the resistance shifted from a factional to nationalist approach,<sup>17</sup> a new generation of nationalists came into being who has become involved actively in the nationalist struggle. While some of this generation continues to adhere to Fretilin, others are simply non-political. Being more familiar with the attributes and symbols of the National Unity Pact this latter group see the date of the referendum in 1999 as the day of the nations' liberation, the CNRT's flag as the national flag and the latter's anthem as the national anthem. Can this generation accept Fretilin's idea to 'reinstate' (known locally as *restauração*) the 28 November 1975 declaration of independence and adopt its attributes and emblems as the nations' symbols?

### *Justice*

Many perpetrators of the post-referendum mayhem have returned or are now returning to East Timor. Under the presence of the United Nations, safety for these people is guaranteed. However, there are two issues that need to be resolved in this connection. First, many victims of the post-referendum anarchy are dismayed by the fact that political leaders are not preaching 'justice' when advocating reconciliation. To this group, as long as justice is not upheld, reconciliation is only a vague term. Second, legally, if the perpetrators go unpunished, that will set bad precedent for the new East Timor legal system, and a lack of proper definition of crimes (war crimes, crimes against humanity, ordinary crimes) will make it difficult for justice to be upheld.

### *Language*

Fretilin and some political parties have decided to adopt Portuguese as the official language and Tetum as the national language. This means that, while Tetum is the official language, Portuguese will be the medium of instruction in education, government affairs and diplomacy. However, most generations since the 1970s do not speak Portuguese. Their refusal to accept this language as the 'official' version of the state will give the new government extra work.

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<sup>17</sup> Xanana Gusmão, *Timor Leste: Um Povo Uma Patria*, Edições Colibri, Lisboa 1994

### *Unemployment & Unskilled Civil Servant*

Unemployment is one of the main problems. UNTAET has been recruiting a very tiny portion of the potentially 195,707 educated East Timorese into the work force.<sup>18</sup> This number has yet to include former guerrillas, members of the clandestine movement and the yet uncounted population aged between 15 and 55. It is estimated that 90% of the workforce are unemployed or lack the skills to become self-employed.

Despite the Timorese political leaders claim to have experienced civil servants from the Indonesian administration, shifting from a provincial bureaucratic atmosphere into a Independent state administration requires not only experience but also certain degree of education and skills.

### *Land Conflict*

Three administrations in three consecutive periods have led to 'chaos' in land entitlement. Most of the land in East Timor is not registered. Entitlements to land on the basis of customary practices are still held widely among East Timorese rural communities. During the Portuguese administration, only around 2,843 land titles (alvára)<sup>19</sup> were issued, but during the 24 years of Indonesian occupation more than 20,000 entitlements (*Hak Milik*) were issued. Nevertheless, thousands more land titles remain under customary practices. In the towns and cities, especially in Dili, locals now occupy almost 90 percent of the houses left by either East Timorese refugees or Indonesians in September 1999. The rest, especially government buildings, have been taken over by the Transitional Administration. It is not an easy task for the new East Timor government to confiscate the illegally occupied houses.

The 'euphoria' of Independence and the 'entertaining' presence of internationals in East Timor will soon fade when the UNTAET leaves. Given all sorts of problems, can a 'Timor Syndrome' be prevented?

### **Closing Remarks**

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<sup>18</sup> See *Perencanaan Kesempatan Kerja Daerah, Repelita VII, Propinsi daerah Tingkat I Timor Timur*, Kerjasama Kanwil Depnaker Timor Timur Dengan Universitas Timor Timur, Dili 1996

<sup>19</sup> da Cruz. P. (1999), *Study Tentang Penguasaan dan Penggunaan Tanah Bekas Hak Portugis yang Ditunda Konversinya Dengan PP No 34 Tahun 1991 di Kabupaten Dili Propinsi Timor Timur*, Honours thesis, Yogyakarta: Sekolah Tinggi Pertanahan Nasional Yogyakarta

This paper has critically outlined the strengths, weaknesses and challenges of the political transition in East Timor and related issues. The United Nations Transitional Administration in East Timor is about to complete its task, the setting up of an East Timor State. With the backing of all necessary resources (Money, Professional Staff, Peacekeeping Force), it has been able to address *governance* and *security* issues unchallenged. Indeed, East Timor is freer and safer than in the last twenty-four years. In addition, the humanitarian relief has been able to help the East Timorese to recover slowly from their 'deadly' economic illness.

However, the people of East Timor should be allowed to stand on their own feet and not rely on the 'wheelchair' provided by UNTAET. Most East Timorese understand their situation and have been 'patient' enough to accommodate to the shortcomings of UNTAET. Apparently, the internal political upheavals and differences of interest have 'helped' the Transitional Administration to adjust itself to local demands and improve its work. Nevertheless, it still cannot help the East Timorese to avoid the unresolved internal issues. The 'Cambodia Syndrome' is still reaping the fruits of past mistakes. Can East Timor get away with all the unresolved problems? The first government of East Timor will come to terms with these issues in the future.

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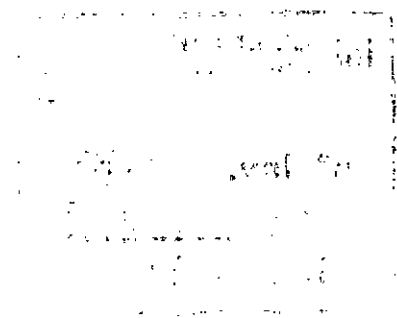
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**Administrative Capacity Building in Kosovo:  
An Assessment of UNMIK's Civil Administration Policy**

**Dr. Knut G. Kjrste  
UNMIK/OMIK**

## **Council for Asia Europe Co-operation (CAEC)**

### **Comparing Experiences with State Building in Asia and Europe: The Cases of East Timor, Bosnia and Kosovo**

#### **Paper # 4: Administrative Capacity Building in Kosovo.** **An Assessment of UNMIK's Civil Administration Policy**

**Author: Dr. Knut G. Kirste<sup>1</sup>**

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### **EXECUTIVE SUMMARY**

The United Nations Interim Administration Mission in Kosovo (UNMIK) has been given a comprehensive mandate to provide transitional administration while establishing and overseeing the development of provisional institutions of democratic self-government in Kosovo. When UNMIK entered the province in June 1999, it was confronted with illegal, hastily established administrative structures lacking both democratic legitimization and professionalism. Due to a slow mission build-up, UNMIK faced difficulties in establishing its authority throughout the province. At the central level, a system of co-sharing of power (JIAS) was introduced in order to dissolve any parallel administrative structures and to ensure participation of Kosovars in the administrative decision making process. After the November 2001 central elections, a gradual hand-over of power to the Kosovo authorities is foreseen but UNMIK is already being challenged for withholding substantial competencies from the Kosovars. At the local level, UNMIK appointed interim local administrations before permanent democratically elected institutions of

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local self-government were established in October 2000. In the municipalities, UNMIK has never fully succeeded to establish its authority and to fully implement its own regulations. A complex web of organizations and agencies is engaged in capacity building programmes for local administrators, often lacking the necessary co-ordination and co-operation. Much remains to be done before a democratic and efficient new civil service will be established to replace UNMIK's international staff. Efforts to ensure co-ordination between different international agencies and between UNMIK and local actors have produced mixed results. UNMIK has achieved a remarkable progress in transforming Kosovo's civil administration from a state of chaos to a situation where basic public services are provided and civil administration and self-government are beginning to take shape. The mission, however, has suffered from a number of structural, managerial and operational problems, which future missions should address by following some basic rules.

## **1. Introduction and Background**

This paper provides an assessment of the policies of UNMIK aimed at re-building administrative structures and institutions in Kosovo since the establishment of the Mission in June 1999<sup>2</sup>. The paper will first briefly describe the relevant background and problems facing institution-building efforts by the international community in Kosovo. It will then look in more detail at the different phases and the overall strategy for establishing administrative structures in the Province from the outset of the Mission in 1999 until the Summer of 2001. A third part of the paper will deal with the human resource component of re-building Kosovo's new civil administration and describe and assess specific capacity-building programs by the international community, in particular by the Organization for Security and Co-Operation in Europe (OSCE), aimed at improving administrative and management skills of Kosovo's new civil service. The fourth part of the paper looks at how various international institutions/actors, in particular the four pillars of UNMIK, have been working together with their local counterparts and to what extent they have achieved a meaningful and effective distribution of work among themselves. Part five of this study summarizes the main problems encountered by the



international community while setting up an effective administration in Kosovo and assesses how it has dealt with those challenges. Finally, the paper briefly assesses administrative capacity building in Kosovo and offers some conclusions and recommendations for the future.

### *Background*

After the NATO led military intervention in June 1999, many aspects of Kosovo's civil administration were in a state of chaos. All FRY institutions had collapsed as a consequence of the effective withdrawal of Belgrade's authority over the province. The displacement of many Kosovars as refugees or IDPs<sup>3</sup>, led to the breakdown of Kosovo's official civil service, which had been dominated by Serbs. Likewise, the Albanian system of "parallel administration", which had developed over the last ten years during Serbian oppression, had also largely collapsed<sup>4</sup>, leading to more chaos and anarchy.

The immediate post-war administrative power vacuum did not last for long, however. Before the international community set up its Mission in Kosovo and even during the final stages of the armed conflict, leaders of the Democratic Party of Kosovo (PDK), representing Kosovo's Liberation Army (KLA/UCK), had swiftly assumed political and administrative power and appointed their representatives in key positions of local government. The municipalities and the remaining administrative structures had been virtually high-jacked before UNMIK entered Kosovo.<sup>5</sup> The same was done at the village level, where village councils traditionally take a strong position in the administration of communal matters. By summer 1999, Hashim Thaqi, the political leader of the PDK, had

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<sup>2</sup> For the establishment of UNMIK see UNSCR 1244, 10 June 1999, United Nations, S/RES/1244 (1999).

<sup>3</sup> Internally Displaced Persons

<sup>4</sup> The Milosevic government in 1989 decided to revoke the status of Kosovo as an autonomous province of the Republic of Serbia within the Socialist Federal Republic of Yugoslavia (SFRY). Belgrade's subsequent dissolution of Kosovo's own institutions resulted in a boycott by most Kosovo Albanians of Belgrade's rule. Together with several years of harsh oppression and civil war in the province this had led to the establishment of a parallel (illegal) system of administrative structures, which was run and self-managed by Kosovo's Albanian population for almost 10 years. This parallel system of government, once called the most effective NGO in the world, comprised Albanian language schooling, a system of tax collection, the organization of referendums and elections for an Assembly and State President. See: As Seen As Told, Part I, The OSCE/KVM Human Rights Operation, The Historical and Political Background, OSCE/ODIHR 1999, pp. 3ff.

effectively installed his self-proclaimed interim government for Kosovo in 27 out of the 30 municipalities.<sup>6</sup> Thus, UNMIK was confronted with illegal, hastily established administrative structures lacking democratic legitimization and professionalism. This is the background against which UNMIK had to operate and, together with the initial structural and operational weakness of the international Mission in Kosovo, has been a considerable impediment for rebuilding civil administration in the Province.

## **2. The Re-Building of Administrative Structures**

### **2.1. The Mandate for Civil Administration**

UNSCR 1244 has been designed as the "formal blueprint for what proved to be one of the most complex international community missions of modern times."<sup>7</sup> In article 10, UNMIK was given the mandate to "provide transitional administration while establishing and overseeing the development of provisional democratic self-governing institutions..." In the area of civil administration the main responsibilities of the international civil presence were defined as follows:

- (a) Promoting the establishment, pending a final settlement, of substantial autonomy and self-government in Kosovo...
- (b) Performing basic civilian administrative functions where and as long as required;
- (c) Organizing and overseeing the development of provisional institutions for democratic and autonomous self-government pending a political settlement, including the holding of elections;
- (d) Transferring, as these institutions are established, its administrative responsibilities while overseeing and supporting the consolidation of Kosovo's local provisional institutions and other peace-building activities;
- (e) ...

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<sup>5</sup> Interview with Sarit Jafa, Head of Division for Monitoring and Service Development, Department for Local Administration, UNMIK, Pristina, 24 July 2001.

<sup>6</sup> See *Waiting for UNMIK: Local Administration in Kosovo*, Report by the International Crisis Group (ICG), Brussels, October 1999, p. 4.

<sup>7</sup> See "UNMIK at Two: The Way Ahead: Partnership, Responsibility and Trust", UNMIK Pristina, June 2001, p. 2.

(f) In a final stage, overseeing the transfer of authority from Kosovo's provisional institutions to institutions established under a political settlement.<sup>8</sup>

Some analysts have described this mandate as ambiguous, in particular at the local level, as the *method* is not described, only the *outcome*, giving UNMIK no absolute responsibility "to impose powerful communal administrations."<sup>9</sup> The weak and methodologically unclear mandate would have implications for the effectiveness of UNMIK's work, as will be described later.

## 2.2 The Formal Establishment of Institutions

Achieving the overall objectives of UNMIK was envisaged in several integrated phases: During **phase I**, the Mission set up administrative structures, deployed international civilian police, provided emergency assistance for returning refugees and displaced persons, restored public services and trained local police and judiciary. It also developed a phased economic recovery plan to establish a self-sustaining economy. The focus of **phase II** has been on administration of social services and utilities, and consolidation of the rule of law. Local elections have been conducted to legitimize municipal institutions of self-government. At the central level, a system of co-sharing of administrative power, JIAS, has been created.

During **phase III** (currently), UNMIK is finalizing preparations for the conduct of elections (on 17 November 2001) for provisional institutions of self-government at the central level.

In **phase IV**, UNMIK will help Kosovo's elected representatives organize and set up those provisional institutions. After their establishment, UNMIK will transfer its remaining administrative responsibilities while supporting the consolidation of Kosovo's provisional institutions.

Finally, the concluding **phase V** will depend on a final settlement of the status of Kosovo. UNMIK will oversee the transfer of authority from Kosovo's provisional institutions to institutions established under a political settlement.

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<sup>8</sup> UNSCR 1244, 10 June 1999, Art. 11.

<sup>9</sup> Cf. Waiting for UNMIK: Local Administration in Kosovo, ICG Paper, 18 October 1999, p.3.

### 2.2.1 JIAS – The Central Level

Pursuant to UNSCR 1244, which calls for substantial autonomy and meaningful self-administration in Kosovo while fully acknowledging the sovereignty and territorial integrity of the Federal Republic of Yugoslavia, there are no “state-level” institutions in Kosovo for the time being. At the central level, permanent democratic institutions of self-government will only be created after the elections for a Kosovo-wide “Assembly”<sup>10</sup> scheduled to take place on 17 November 2001.

At the central level, UNMIK early on established UN run central departments to administer public services delivery throughout the Province (education, health, labour, local administration, roads and transportation, post and telecommunications etc.). However, there was strong pressure by Kosovar leaders to set-up a framework allowing for power-sharing between the UN and major political forces in Kosovo. After weeks of negotiation, on 15 December 1999, UNMIK and Kosovo’s main political leaders agreed on the Joint Interim Administrative Structure (JIAS), comprising three major components<sup>11</sup>, as a means for sharing administrative and executive responsibility between UNMIK and local political actors. Existing Kosovo legislative, executive or judicial institutions were to be transformed and, to the extent possible, integrated into the new JIAS and by February 2000, JIAS had officially replaced all previous parallel security and administrative structures. Three main elements constitute the JIAS structure at the central level:

The Interim Administrative Council (IAC), headed by the SRSG<sup>12</sup> has the role of a preliminary cabinet. It includes the leaders of Kosovo’s four main political forces (three Kosovo Albanians and one Kosovo Serb) as well as the heads of the three functional

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<sup>10</sup> See UNMIK Resolution 2001/9, on the Constitutional Framework for Provisional Self-Government in Kosovo, 15 May 2001. For a background report see: “Ein Verfassungsrahmen fuer das Kosovo”, FAZ, 16 May 2001.

<sup>11</sup> For a description of these components see UNMIK Regulation 2000/28 of 14 January 2000, Sections 2-7.

<sup>12</sup> Special Representative of the Secretary General, presently Mr. Hans Haekkerup of Denmark.

UNMIK Pillars<sup>13</sup> and one observer representing Kosovo's civil society. The IAC defines policy and recommends new regulations or amendments to current legislation by consensus or majority vote. In case of deadlock, the final decision lies with the SRSG. Thus, IAC serves as an advisory cabinet for the SRSG and as an executive board for the JIAS proposing policy guidelines for the Administrative Departments.

JIAS foresaw 14 (later 20) Administrative Departments, providing the public administration to implement the policy guidelines as formulated by IAC. The Administrative Departments are jointly led by a Kosovo and an UNMIK Co-head and supervised exclusively by the DSRSGs<sup>14</sup> for Civil Administration (UN Pillar), Democratisation and Institution Building (OSCE Pillar) or Economic Reconstruction (EU Pillar). Under a formula designed to reflect the diversity in Kosovo, the local Co-Head positions are shared among the three main Albanian political parties, three national communities (Serb, Bosniac and Turk) and an independent. Despite the co-sharing of power, the Administrative Departments are largely UN controlled. One of the Departments, the Department of Local Administration (DLA), established in March 2000, is in charge of developing and implementing policy in the area of local self-government.<sup>15</sup>

Finally, the Kosovo Transitional Council (KTC), the highest-level consultative body of JIAS, provides Kosovo-wide oversight and can be described as embryonic parliament. It has been established as early as July 1999 in order to bring representatives of Kosovo's civil society into the administration as soon as possible. Its 36 members are a microcosm of Kosovo's political, religious, ethnic and civic communities. The KTC's weekly discussions about day-to-day concerns of Kosovars serve as a testing ground for

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<sup>13</sup> The former Pillar I, UNHCR, now replaced by Police and Justice (UN run), has observer status in the IAC.

<sup>14</sup> Deputy Special Representative of the Secretary General, which function also as the Heads of the organizations and agencies forming UNMIK's Pillars.

<sup>15</sup> UNMIK Regulation 2000/9 of 3 March 2000 on the Establishment of the Administrative Department of Local Administration, Section 1. According to the Department for Public Information in Pristina (DPI), UNMIK Pillar II employs 1458 internationals and 4062 nationals as of 24 July 2001, about 500 of which are working for Civil Administration issues throughout Kosovo.

democratic procedures and tolerance-building.<sup>16</sup> In reality, it is mainly a forum in which representatives of the Kosovo society are debriefed about action planned or taken by UNMIK.

### *Assessment*

JIAS was an attempt to dissolve any parallel structures. By neutralizing them, it has worked remarkably well in that regard. While IAC and KTC have in practice ensured a substantial consultation and at times even provided for a joint decision making process, the arrangement for co-sharing executive power within the 20 Administrative Departments has worked less satisfying. For one thing, the Serbian representatives have on several occasions preferred to boycott the joint structure in an attempt to underline their discontent with the general development in Kosovo<sup>17</sup>. On the other hand, some of the Kosovo Co-Heads, often chosen for their political affiliation, were no equal players to the international Co-Heads in terms of qualification. Depending on the individuals in the respective departments and the personal relationship between the international and the local Co-heads, the central level structure for administrative power sharing has, therefore, worked well only to varying degrees.<sup>18</sup>

### *Checks and Balances*

An Ombudsperson Institution was established by November 2000 to promote and protect the rights and freedoms of individuals and to provide "means for the review and redress of any act, omission or decision constituting an abuse of authority or a violation of human rights by the interim civil administration (UNMIK) or by any other emerging central or local institution."<sup>19</sup> Kosovo citizens were thereby given an instrument to file complaints against administrative acts carried out by UNMIK, KFOR and other municipal authorities. 344 cases were registered in the first year.

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<sup>16</sup> For background information on JIAS c.f. Agreement on Joint Administration. OSCE Spot Report, 24 December 1999, pp. 1-2; UNMIK Regulation No. 2000/28 of 14 January 2000 on the Kosovo Joint Interim Administrative Structure.

<sup>17</sup> It must be said that JIAS in general has not been able to ensure proper minority participation.

<sup>18</sup> Interview with Tom Koenigs, Deputy Special Representative of the Secretary General for Civil Administration, UNMIK, Pristina, 17 August 2001.

*The Final Transfer of Power: A Long Term Perspective*

After the central elections on 17 November 2001 and the certification of election results, the 120 member Assembly will be convened within 30 days and elect a President, who in turn will nominate a Prime Minister. All 20 co-administered JIAS departments will transform into more or less 10 Government Ministries, led by a Kosovar Minister and only supported by an international advisor. This will introduce phase IV in the transition of central administrative and executive power. All UNMIK administration at the regional level will be either transferred back to the municipalities or to the central level departments. UNMIK will then begin to withdraw from day-to-day administration and focus more on a supervisory role. Since the SRSG and UNMIK will continue to be responsible to the UN for any failure or mismanagement, UNMIK will monitor the performance and assess progress made by the new government. Depending on those assessments, additional functions and responsibilities will be transferred. The SRSG will continue to sign all legislation passed by the Assembly for the time being.

Already now, a power struggle has emerged between UNMIK Civil Administration and the political parties of Kosovo over the appointment of senior administrative staff for this new structure. While UNMIK intends to start hiring senior staff positions through open recruitment procedures based on qualification, political parties are trying to ensure that senior staff are political appointees representing voting results and selected according to party affiliation.

Assessments of the significance of the November elections for civil administration vary. According to Daan Everts, Head of the OSCE Mission in Kosovo and DSRSG for Democratic Governance and Civil Society, "those elections should hand over to Kosovars about 70% of self-government."<sup>20</sup> The DSRSG for Civil Administration, Mr. Tom Koenigs, describes the November elections as a "step towards self-government", which, if it functions well, can facilitate a UN decision about the future status of Kosovo, and describes the actual powers of Kosovars under this new arrangement as comparable to

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<sup>19</sup> See Ombudsperson Institution in Kosovo, First Annual report 2000-2001, Pristina, 18 July 2001, p.1.

<sup>20</sup> See RILINDJA, 17 July 2001, p.4.

those exercised by a German "Bundesland". He underlines, however, the "ultimate authority of the Special Representative of the Secretary General", who probably commands more power than any Head of State or Government.<sup>21</sup> Some analysts have described the expected transfer in authority as less dramatic, though. According to the FAZ, the new government will dispose of only 8% of the budget administered by UNMIK, out of which it will be expected to finance the departments of health and social services as well as education. At the same time, the judiciary, police, law and order issues, as well as military, security and foreign relations will remain under the full control of UNMIK. According to the paper, the November elections will therefore achieve as little a power transfer as was achieved by the municipal elections in October 2000: "De facto, all power in Kosovo is still under UNMIK control, while the rights of elected representatives on the municipal as well as on the central level administration are rather symbolic."<sup>22</sup>

The Framework, accordingly, has been criticised by some Kosovo Albanian leaders for not giving the future government of Kosovo sufficient and meaningful competencies.<sup>23</sup> While UNMIK, through UNSCR 1244, implicitly acknowledges the right of self-determination for the people of Kosovo, it requires them to accept the international administration's authority in the most important aspects of executive, legislative and juridical power. This contradiction at the central level appears for the time being unavoidable, though, as long as UNMIK is trying to prevent any motion for independence by Kosovo representatives.

Everything beyond co-administration will depend on a political settlement of Kosovo's future status and is therefore a medium term if not a long term perspective. UNMIK Pillar II (Civil Administration) and other international agencies will undergo a major restructuring after the central elections in November 2001 with considerable staff cuts. It is questionable if under these circumstances, UNMIK can continue to withhold

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<sup>21</sup> Interview with Tom Koenigs, Deputy Special Representative of the Secretary General for Civil Administration, UNMIK, Pristina, 17 August 2001.

<sup>22</sup> "Ein Verfassungsrahmen fuer das Kosovo", FAZ, 16 May 2001.

<sup>23</sup> Ibid., p. 2



substantial administrative power from the Kosovo authorities, given their increasing pressure for real competencies.

In summary, three steps are being applied to establish institutions of *provisional* self-government at the *central* level: 1) From chaos to exclusively UN-run central administrative departments (June 1999 – January 2000). 2) The co-headed JIAS structure (January 2000 - November 2001). 3) From JIAS to democratically elected Kosovo-wide institutions, including a President, an Assembly, a Prime Minister and 10 Ministries, supported by UN experts (starting after the central elections on 17 November 2001).

### **2.2.2 Municipalities – The Local Level**

#### *The self-appointed (illegal) structures*

As has been described above, municipal administrations had been illegally appointed by the dominant political forces (PDK) during and immediately after NATO's intervention. These local self-appointed administrative structures consisted of municipal presidents (mayors), municipal assemblies as a local legislative branch and directors for municipal departments overseeing the delivery of services to the people of Kosovo. The self-appointed structures and the assertion of its political wing, the PDK, were initially welcomed by the majority of the population which felt an urgent need to satisfy the most basic municipal services. There was also much gratitude to the KLA for taking up the fight against Serbian rule. After a few months, however, it became obvious that the self-appointed administration had little administrative expertise to offer and showed little results in problem solving. Some of its members were involved in a number of illegal activities including illegal tax collection, or were affiliated with organized crime. Finally, the self-appointed government was not recognized by other important political forces, including Rugova's LDK, who later won the majority in the first local elections.

As a natural reaction, UNMIK attempted to dissolve the parallel structures after entering the province. In trying to do so, it was facing a twofold dilemma: The parallel, self-appointed and illegal administrative structures at the local and central level were for the

time being the only counterparts to work with for creating order and for providing basic services to the people in the approximately 1500 villages of Kosovo. Lacking inside knowledge about the complex functioning of local issues in a Kosovo Albanian context, UNMIK needed the expertise and the communication channels of the self-appointed structures to get a grip on the municipalities. The local structures never fully co-operated with UNMIK, though: "The locals were always two steps ahead, telling us two things and not telling us ten other things."<sup>24</sup>

Another problem for UNMIK has been the lack of staff and financial resources in the initial stage of the Mission. Since July 1999, UNMIK had regional administrators in all five of Kosovo's administrative regions but little resources and staff to truly administer them. By September 1999, UN Municipal Administrators (UNMAs) were appointed to govern all 30 municipalities in Kosovo. Initially, many were not holding permanent offices in their respective cities but traveling back and forth between Pristina and their assignment. Permanent UN Administrators moved into each town-hall by October, with an average of two to three international officers for each municipality<sup>25</sup>, too few to assume full administrative responsibility and therefore unable to dismiss the self-appointed local administrations without risking a collapse of services and possibly violent opposition. UNMIK did not have an operational budget for the municipalities until November 1999. This meant in effect that the UN for the first six month had no money to inject into the municipalities while the illegal self-appointed structures collected (illegal) fees and taxes and therefore disposed of money they could spend in towns and villages. This did not necessarily foster UNMIK's standing in the eyes of the local population. After November 1999, having financial resources at hand, the power struggle between UNMIK and the local political forces somewhat tilted in favor of UNMIK.

Given the collapse of democratic administrative structures and the firmly established self-installed interim government, the UN interim administration had a choice between

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<sup>24</sup> Interview with Sarit Jafa, Head of Division for Monitoring and Service Development, Department for Local Administration, UNMIK, Pristina, 24 July 2001.

imposing a full international administration according to its own standards or establish working relations with the existing, self-appointed structures already in place. To pursue the first option UNMIK did not have the necessary resources and power. Instead, UNMIK decided to co-operate with the structure in place.<sup>26</sup>

#### *The UN-Appointed interim administrations*

By December 1999, it became obvious that UNMIK was not in a position to exclusively run the municipalities. At the central level, a system of co-sharing administrative power was being designed after considerable pressure by Kosovo's political leaders to participate in administering the Province (see chapter 2.2.1). At the municipal level, JIAS foresaw the replacement of the formerly self-appointed local administrations by UN-appointed ones, incorporating, "to the extent possible...members of the current Kosovo municipal structures"<sup>27</sup>. By this, UNMIK hoped to get rid of the old structures and assert its power by appointing new people of its own liking. UN Municipal Administrators, however, lacked a detailed reference document, which could be applied as a guideline in this appointment process. Being weak and understaffed at the local and regional level, UN Municipal Administrators often had no choice but to co-operate with the existing self-appointed structures in order to avoid chaos, especially in those cases where the existing structures used or threatened to use a boycott at the municipal level. UNMIK has therefore been reluctant to come into direct conflict with local political leaders. As a result, many UN appointments for Municipal Presidents, Municipal Councils and Administrative Boards have fallen prey to the political aspirations of political parties in their struggle to control local government. In the already strongly politicised climate of Kosovo's society, the appointment of a-political expert representatives and civil servants would have furthermore been contrary to the traditional expectations of the population. In many municipalities, consequently, the overwhelming majority of the new, UN appointed

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<sup>25</sup> Unlike OSCE staff, only the UN Municipal Administrator is required to take up residency in his/her duty station municipality which in effect means that in many towns UN personnel is present only during working hours.

<sup>26</sup> As one senior UNMIK staff phrased it: "If we cannot win the power struggle, we might as well join them".

<sup>27</sup> See UNMIK Regulation 2000/28, Section 8.2.

Heads of Departments were members of the former self-appointed structures or appointed solely as a result of their political affiliation, often lacking professional qualification.

Parallel structures continued for some time in form of corruption, illegal re-allocation of housing, illegal collection of so called taxes and fees, illegal policing, and, especially at the village level (*bashkia lokale*), the distribution of humanitarian aid in a politically or ethnically discriminatory manner. The dissolution of these parallel structures met with a surprisingly low level of opposition throughout the province and resistance was treated by UNMIK, UN Police and KFOR mainly as political problems, not necessarily as a criminal act.<sup>28</sup> The self-appointed structures, by then, had lost most of their initial support from the local population.

#### *Assessment*

In the interim period after UNMIK took office in the Summer of 1999 and the first democratic municipal elections in late October 2000, UNMIK, by endorsing and de facto legitimising former self-appointed authorities, has been unable to fully impose an impartial and accountable local government. Insufficient resources within Pillar II (UN Civil Administration) given the enormity of the task at hand, the lack of more precise guidelines and directives from the top management and the unexpectedly bold approach of local political forces are to blame for this failure. Consequently, local administration had become a playing field for the short-term oriented political power struggle of Kosovo's parties and due to politicisation little progress was achieved in the delivery of administrative services to citizens who mainly wanted to get on with their lives. Also, due to the interim nature of this arrangement, valuable time was lost in which no long term local capacity building or a training of a permanent civil service, able to support the UN-Administration in running the province, could take place.

#### **2.2.3 Municipal Elections in October 2000**

Institutions of local self-government were the first ones to be permanently installed and democratically legitimized through the municipal elections of October 2000. It took

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<sup>28</sup> UNMIK Memorandum to SRSG on the Dissolution of Parallel Structures, 16 January 2000.

considerable time to organize those elections, which signalled the start of local self-government. For one thing, it was hoped that with time, more IDPs and refugees, in particular the Kosovo Serbs, would return to the Province, making election results more balanced and representational of the pre-war population. Time was also needed to technically prepare impeccable elections according to modern electoral standards (in particular with regards to the civil and voter registries). Democratic elections for Kosovo's 30 municipalities finally took place on 28 October 2000. Those elections, somewhat unexpectedly, provided for a transfer of power from the self-appointed PDK representatives to a democratically elected LDK majority in most of Kosovo's municipalities. To ensure participation of minorities in the political process, UNMIK also appointed representatives to the municipal assemblies of those ethnic groups and minorities who had not participated in the elections or had not won a mandate. Unfortunately, many of those representatives, namely the Kosovo Serbs, have refused to actively participate in the process of local self government. In order to complete the democratic transfer of administrative power the newly elected Municipal Assemblies were subsequently requested to hire senior administrative staff,<sup>29</sup> in compliance with UNMIK Regulation 2000/45<sup>30</sup>. The Regulation gives local authorities the right to regulate and manage a defined share of public affairs. UN Municipal Administrators subsequently took a step back from their previous role but nevertheless retained reserve powers of intervention, namely in all budgetary issues.<sup>31</sup>

#### *Problems of the new local administrations*

The selection process for senior staff of the newly elected local administrations, despite being guided by UNMIK Regulations, did not always result in the selection of best-qualified and ethnically balanced candidates. Again, UN Municipal Administrators had only limited influence over the political networks in their municipalities. The Democratic League of Kosovo (LDK), the party of moderate Kosovo leader Ibrahim Rugova, having

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<sup>29</sup> This executive, legitimized by the democratically elected Municipal Assemblies, consisted in particular of a Chief Executive Officer and Directors of individual municipal departments, responsible for the day-to-day running of local administration and services.

<sup>30</sup> C.f. UNMIK Regulation 2000/45 On Self-Government of Municipalities in Kosovo, issued to reinforce local self-government, defining the municipalities, its composition, organs, powers, functions and responsibilities.

won the local elections by a comfortable majority, now displayed much of a 'winner takes all' attitude and once again municipal staff was primarily selected based on party affiliation and old style networks. Administrative and managerial competence did not matter to the same extent. This example demonstrates that even where clear UN guidelines for a democratic and transparent process do exist and were by and large implemented, there is little or no guarantee for democratically spirited institutions or administrations if local counterparts do not embrace the basic concepts of democracy, the rule of law or accountability. In other words, democratic procedures can be forced upon a society only to a certain extent.

By early 2001, elected Municipal Assemblies with Presidents, Deputies, Chief Executive Officers and mandatory municipal committees on Policy and Finance, Communities (dealing with minority issues), and Mediation were formally in place in most municipalities. The first layer of democratically legitimized government was thereby completed. The UN Municipal Administrator was still formally in charge and could overrule any decision made by the locals. The proper functioning of those new institutions of local self-government has been widely monitored by international agencies and institutions. Initially, there was much confusion of the new assembly members and administrators about the implementation of numerous UN regulations, ranging from statutes on the conduct of meetings and decision making procedures to concrete guidelines for any administrative act by the local government. These rules were essential to good governance but on many occasions rather alien to the relevant Balkan traditions and thus at times ignored or circumvented.

The new municipal administrations were also faced with a lack of clarity between the competencies foreseen for the central and the local level. UNMIK regulations in this regard have been deliberately unclear in order to preserve the political nature of the central governing institutions, still being "infant" at that time. This has resulted in a

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<sup>31</sup> See UNMIK at Two, Pristina, June 2001, p. 16.

considerable struggle between the local and central level over power and competencies.<sup>32</sup> The central level has, furthermore, appointed administrative staff in the municipalities to handle competencies allocated to the local level and has thereby further antagonized the municipalities. Likewise, the Central Fiscal Authority has not always granted the municipalities sufficient budgetary funds needed to execute their duties.<sup>33</sup> It is interesting to note that these shortcomings of UNMIK policy have, in some way, facilitated and expedited the establishment of additional elements of democratic self-government at the local level: In order to better defend the interests of the municipal against the central level, the Association of Kosovo's Municipalities (AKM) has held its inauguration session in Prizren on 30 June 2001.<sup>34</sup>

If compared to the creation of provisional administrative structures at the central level, only two steps were employed by UNMIK for the municipal level: (1) from the self-appointed illegal municipal structures immediately after the war to the UN-appointed Municipal Councils, Mayors and Administrative Boards; and (2) from those UN-appointed municipal structures to the municipal elections of October 2000 with the subsequent formation of democratically elected Municipal Assemblies, Presidents and Boards of Directors, supervised by UNMIK.

The hand-over of authority and responsibility in civil administration from UNMIK to the Kosovar level, while not yet completed, is much faster at the local than at the central level, not least because UNMIK never got the upper hand in the power struggle at the municipal level.

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<sup>32</sup> Note the examples of agriculture, including the economically important authority over logging and forestry, and the attempt to install departments for civil defense, which should have given TMK (a basin for former UCK fighters) a strong local profile.

<sup>33</sup> For this assessment c.f. OSCE Mission in Kosovo, Background Report on the Implementation of JIAS at the Local Level: Effects on and Implications for Local Political Developments and Municipal Elections, May 2000, 12 pp.

<sup>34</sup> See OSCE Mission in Kosovo, Weekly Democratisation Report, No. 27/2001, 4 July 2001.

### **3. Measures Concerning the Organisation and Training of Kosovo's New Civil Service**

Countries in post-conflict rehabilitation, even more so than countries in transition, must undertake a serious effort to rebuild (remaining) public service institutions and structures. This 'hard-ware' component has been described in chapter 2. Such countries are also facing the challenge of adapting their public service to a new environment, which has emerged as the result of armed conflict and any subsequent changes in the political and economic system, new expectations and demands of citizens, and requirements to comply with international and/or UN standards.<sup>35</sup> This chapter examines how well the country was endowed with the human resource component needed for a modern public administration. It also describes and evaluates how the international community has tried to introduce to Kosovo's new civil service fundamental standards such as the rule of law, reliability, predictability, accountability, transparency, efficiency, the technical and managerial competence, organizational capacity and structures providing for citizens and minority participation.

#### **3.1. Existing Human Resources**

In the case of Kosovo, many components of good governance which are shared principles of public administration among democratic states have been largely unknown to the remains of the Kosovo civil service when UNMIK entered the province. Since the early 1980's, Belgrade had effectively removed Kosovar Albanians from influential positions within Kosovo's administration and replaced them systematically with Kosovar Serbs or Serbian administrators from Serbia proper. Due to the massive exodus of the Serbian population during and after the NATO bombardment and the de facto removal of Belgrade's authority from the province with UNSCR 1244, UNMIK found in Kosovo a civil service which was virtually non-existent. Not only were the previous Serbian administrators gone, former Kosovar Albanian public employees (and judges, policemen, teachers etc.) serving in previous administrations had been without much practice or any formal training for at least a decade. In addition, those suitable for public managerial



positions and old enough to still having served under the previous Yugoslav administration, (age group 40-60) had acquired much of the typical habits and mentalities of communist administration. "Either, you found young people with no experience or older people with the wrong experience."<sup>36</sup> Inertia, politicisation of office, clientelism, inability to assume responsibility, old-style decision-making, lack of human resources and general management skills and last but not least, a general lack of basic education would characterize the local human resources UNMIK was confronted with.<sup>37</sup>

As a result, UNMIK found it difficult to identify suitable and well-qualified public administration employees. Add to that an obvious tendency of the private sector to attract the most highly skilled labour force<sup>38</sup>, there has been a negative selection process as regards public servants in the province.

This general lack of qualified local civil servants hit UNMIK's reconstruction efforts twice: First, in the summer of 1999, when UNMIK had to appoint interim local mayors, their staff and municipal council members among those political forces who had taken control of the municipalities. Second, after the municipal elections, when those elected were more often than not chosen for their political affiliation and not for their skills as public managers or municipal legislators. It also turned out that despite a UN regulated recruiting system for municipal employees, the senior staff hired did by no means represent the best qualified individuals at hand and Kosovo's municipalities are still suffering from having the wrong people in many administrative key positions.<sup>39</sup> This lack of human resources can only partially be offset by international capacity-building and training programmes, no matter how effective they may be.

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<sup>35</sup> For a similar assessment cf. Country Profiles of Civil Service Training Systems, OECD, SIGMA Papers, No. 12, OECD/GD(97)122, Paris 1997, p. 3

<sup>36</sup> Interview with David Mitchels, Regional UN Administrator for Western Kosovo (Peja/Pec Region), Peja/Pec 17 July 2001.

<sup>37</sup> Many remarkable exceptions of qualified and enthusiastic Kosovo civil servants must be noted, however.

<sup>38</sup> In the case of Kosovo and many other UN protectorates, the lack of any significant private sector activities was partially compensated by the attractive wages paid to locals by international organizations and institutions. The effect was much the same: whoever was qualified would much rather work for UNMIK than for the public sector. As an example, an OSCE language assistant would earn more than twice the salary of a municipal mayor.

<sup>39</sup> Note, however, quite a few exceptions to the rule with well qualified and motivated mayors and municipal CEOs throughout Kosovo, often in the smaller communities.

Another human resource related problem for UNMIK has been the prevailing Balkan mentality, where decision-making is exclusive and top-down and an authoritarian leadership style is widely respected and followed. This often resulted in clashes with an international mission whose management style was deliberately consensual, trying to convince and to co-operate rather than using authoritarian mechanisms to establish order and to ensure obedience.

### **3.2. OSCE's Capacity Building for Kosovo's new civil service**

All together, the need for a comprehensive capacity-building and training initiative was obvious right from the start and had indeed already been acknowledged by a July 1999 Report of the Secretary General on the United Nations Interim Administration Mission in Kosovo.<sup>40</sup> The report tasked the OSCE to function as the main institution-building component of UNMIK "assisting the people of Kosovo in strengthening the capacity of local and central institutions..." OSCE was also tasked "to identify the needs of local civil administrators and provide them with the required training as quickly as possible..." and to "develop an integrated approach to the strengthening of governance structures through the training of government officials and executive and administrative officers..."<sup>41</sup> In the following section, OSCE's training strategy for Kosovo's civil service will be described in more detail.

Founded in late 1999 in response to the mandate mentioned above, the OSCE's Institute for Civil Administration (ICA) is the international community's primary mechanism to provide training and education to members of Kosovo's civil service.<sup>42</sup> The Institute operates under the policy and administrative oversight of OSCE's Mission in Kosovo Democratisation Department.<sup>43</sup>

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<sup>40</sup> Report of the Secretary General on the United Nations Interim Administration Mission in Kosovo, S/1999/779, 12 July 1999, in particular Section B on institution-building.

<sup>41</sup> Ibid., paras 80-81

<sup>42</sup> For the following cf. Institute for Civil Administration, Fact Sheet on ICA: Spring 2001, OMIK, Pristina.

<sup>43</sup> The ICA employs approximately 15 international staff at head-quarter level and another 25 in its field structure, working directly with the municipalities throughout Kosovo.

The strategic objective of the Institute is to expand the human resource capacity of Kosovo's public sector. Once the ICA's sustainability has been ensured, its management will be transferred to Kosovar counterparts. The programmes of the Institute are delivered by the following principal mechanisms.

- 1) 1-2 day training seminars for municipal staff across Kosovo on sector-specific, technical issues (e.g. Budget Process or Waste and Water Management).
- 2) A 20 day senior management crash course on Law, Economics, Public Finance, Human Resource Management, Public Management, Urban Planning/Rural Development and Conflict Resolution.
- 3) Possibly a one year pre-service study course in public management in co-operation with the University of Pristina (under consideration).
- 4) Study and exchange programmes for senior civil servants with civil service academies and municipalities throughout Europe and North America.<sup>44</sup>

### **3.3 Assessment of civil service capacity-building programmes**

In total, about 3.500 civil servants will have participated in the various OSCE's public management trainings by Fall 2001. Some of the early trained senior managers have lost their positions in the municipal elections in October 2000. Others have transferred from the civil service into better paid private sector or UNMIK jobs. It is rather difficult to measure the impact of training on the day-to-day job performance or attitude changes of former trainees.<sup>45</sup> While in some areas of capacity building for public administration there has been a remarkable training impact (i.e. public finance, human resource management and consumer orientation) other areas have not yielded much measurable success. In one training segment for senior civil servants, the OSCE introduced basic knowledge of human resource management, including interviewing and hiring techniques. An internal assessment on the impact of the training showed clearly that those techniques, such as CV screening, interviewing procedures and a selection process based

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<sup>44</sup> A more detailed description of the OSCE's civil administration capacity building programme can be found in the Annex.

<sup>45</sup> Cf. for this and the following reference Knut Kirste, ICA Medium Term Training Impact Assessment Project, Final Report, OSCE Mission in Kosovo, Democratisation Department, Pristina, 8 June 2001 (internal document).

on qualification standards have been widely used throughout Kosovo in the hiring of new municipal staff after the municipal elections in October 2000.

Although training may be properly delivered by implementing agencies and actively received by trainees, there may be little impact in terms of visible behavioral change. For example, the concept of distribution of power has been mostly unknown to Kosovo leaders. The crucial distinction between local politicians or elected representatives of the population (the legislative) and appointed civil servants (the executive) has not been practiced in Kosovo before: the party was the dominant institution and the concept of leadership was an unrestricted one. After the municipal elections, all newly elected municipal assembly members were invited to go through an intensive crash course on basic democracy issues, including the distribution of power. Until today, in many Kosovo municipalities, the fundamental difference in the role of the local legislative and executive is not properly understood and is not practiced in a strict sense. This shows that deep-rooted factors related to political culture and traditions must be addressed by long term capacity building programmes aimed at changing values and attitudes, not only 'technical' behavior. The international community, with its budgetary and political constraints, however, is seeking short-term results as 'deliverables' and often is unable for long term commitment and sustainability.

International capacity building agencies often have different political mandates and their outreach may focus on different segments of the local society, at times excluding the main target group in need of training. Take as an example the crucial area of training in the field of waste and water management for Kosovo's municipalities. After a few hours in the province, an urgent need for training in these areas becomes overwhelmingly apparent. Through its Institute for Civil Administration, the OSCE has, upon request of many UN Municipal Administrators, delivered a province wide training on waste and water management. It is, however, in its mandate restricted to delivering training to members of the municipal service, i.e., directors of municipal departments and their senior staff. This excludes the directors of the local utilities companies who deal with

waste and water management issues, who received training from another agency.<sup>46</sup> This 'distribution' of training among different providers may lead to different levels of knowledge and skills of civil servants and other staff working on the same issue, not to mention managerial issues such as dual cost for logistics and trainers.

Many newly elected or appointed local civil service officials, furthermore, have shown little interest in training. For one thing, some Kosovar leaders have a tendency to reject international advice. Having gone through years of parallel administration, Serbian repression and civil war, there is a mentality of "we've seen it all and we know it all". There is also widespread de-motivation throughout the civil service (low wages, no career opportunities, etc.) and no culture of learning has taken root in Kosovo as of yet. For example, of the 40 individuals selected by OSCE for the latest Western Kosovo (Peja Region) senior management medium term training in May and June 2001, only 21 graduated, about 50%. The rest either dropped out during the course or did not participate at all. Many participants complained about the lack of logistical support, promised by the international community, such as transportation to the training site and the lack of free meals. These are insignificant cost items but have been a long term and constant source of dispute between the different international organizations and agencies involved. Other trainees missed significant parts of the course due to the fact that they have not been given permission to attend by their supervisors due to the workload. Training is still widely considered by local managers as a luxurious and non-essential matter.

Most international capacity building programmes are long term oriented with little or no benchmarks for measurable results and it is probably too early to assess their full potential. The administrative institutions at the municipal level increasingly show signs of improvement, demonstrating more and more both technical as well as managerial skills in the delivery of services and in tackling urgent problems. This is at least partially the result of a massive international effort for administrative capacity-building. It must, however, also be attributed to the fact that at least at the municipal level, Kosovars have learned from working with their respective UN Municipal Administrators and their teams

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<sup>46</sup> USAID is funding an extensive training programme for the directors of public utility providers.

over the past two years. They are furthermore gradually entrusted with more and more administrative responsibilities and real power, forcing them to take charge and deliver, which constitutes a big incentive.<sup>47</sup>

#### **4. How successful do international institutions co-operate with each other and work together with the local ones?**

##### **4.1 Co-ordination among the international community**

With UNSCR 1244, the international community has been given a comprehensive mandate to promote the establishment, pending a final settlement, of substantial autonomy and self-government in Kosovo. This includes providing transitional administration in all areas while establishing and overseeing the development of provisional democratic self-governing institutions to ensure conditions for a peaceful and normal life for all citizens in Kosovo. It has been said that the UN has effectively overstretched its potential with such comprehensive a mandate.<sup>48</sup> UNMIK consists of a complex structure of four pillars, representing the main areas of responsibility for the mission: Pillar I, Police and Justice, administered by UN (previously UNHCR for humanitarian affairs); Pillar II, Civil Administration, also led by UN; Institution Building, run by OSCE; and Economic Reconstruction, under the authority of the EU. To this must be added the military component (KFOR) and a myriad of NGOs and state agencies operating in the province.

The human resources component of this international effort has truly been remarkable with roughly 5000 international and many more local staff members.<sup>49</sup> Much could be said with regards to co-operation and co-ordination among four independent minded Pillars of UNMIK's Mission in Kosovo and the difficulties of achieving a unified mission

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<sup>47</sup> As one UN Municipal Administrator from the former GDR put it: "They learn best by being thrown into cold water and learning from their own mistakes, just as East German municipalities did after unification."

<sup>48</sup> C.f. interview with Sarit Jafa, Head of Division for Monitoring and Service Development, Department for Local Administration, UNMIK, Pristina, 24 July 2001.

<sup>49</sup> Add to this roughly 39,000 KFOR troops many of which with various civilian support functions.

approach. This section limits itself to commenting on co-operation with regards to capacity-building and training activities in the area of civil administration.

Although OSCE has been tasked to function as the main capacity-building organization, there has been a proliferation of capacity-building and training providers throughout Kosovo with many of the major UN agencies, international organizations and NGOs running their own capacity-building programmes. Some examples have been provided under section 3.3. No lead agency is de facto responsible for an integrated training and capacity-building strategy making it at times difficult to avoid duplication and overlap and almost impossible to ensure a co-ordinated approach. All agencies undertake their own training needs assessment and depending of the outcome, design their own training and capacity building programmes, often copying what others have already been doing for quite a while. Some agencies have offered the municipalities with sophisticated tailor-made training strategies but without the means to implement them.<sup>50</sup>

At times Kosovars felt overwhelmed by the number of capacity-building experts and consultants from different organizations and countries<sup>51</sup> trying to make Kosovo's new civil administration more efficient. Sometimes, less but better and more carefully planned training would have been more. For example, top Kosovar civil servants have experienced a virtual training overkill in the first half of 2001, with Municipal Presidents and CEOs constantly being invited to multiple study tours to many Western countries. The training in general has often been donor- and supply-driven and was organized in a top-down approach while the real needs of the emerging civil service call for a demand-driven, bottom-up approach where capacity-building is delivered according to a carefully undertaken training needs assessment in the field. At times, municipalities were asking for very basic training in simple skills but donors were more interested in delivering

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<sup>50</sup> Note the example of the EU Human Resources Management Officers, funded by the European Agency for Reconstruction, who were deployed to municipalities in the Spring of 2001, undertaking comprehensive municipality training needs assessment studies after other agencies had already been running capacity-building programmes for two years. The training plans delivered to the mayors did not include trainers or funds and implementation was sought through other agencies, who were understandably quite reluctant to implement training for the EU.

sophisticated and often pre-fabricated training packages. Still, it must be said that many initiatives are beginning to deliver improvement as civil administration in Kosovo takes shape.

#### *Assessment*

The assessments of the complex mission structure and its effects on the implementation of UNMIK's mandate differ widely within the mission. While some have described it as a "hopeless failure"<sup>52</sup>, others find the structure has worked "quite well" given the complexity of this construct. Even those, however, are rather skeptical that UNMIK can serve as a structural model for future state-building exercises, in particular with regard to ensuring the protection of minority rights, where a much more authoritarian or leadership oriented structure is required.<sup>53</sup>

### **4.2 Co-operation with the local actors**

The difficulties to find a constructive working modus between UNMIK and political actors at the local level has been described in detail above. At the central level, the system of co-heading administrative departments has been criticised as window-dressing, giving the locals the wrongful illusion of real power sharing. The consultative central institutions (IAC, KTC) are another point in case. Driven by demands for independence, UNMIK has at times created false hopes and expectations in order to open the lid on the quest for self-determination and real power sharing. As most of those hopes proved elusive, local actors became more and more impatient and the aftermath of the 17 November elections will put future co-operation between UNMIK and the Kosovars to the test.

UNMIK has also been slow in designing and implementing a strategy of "Kosovarization", turning international posts over to local staff. On a bigger scale, this is

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<sup>51</sup> Besides being represented through various international organizations and their programmes, many countries also run their own activities and try to influence developments on the ground in a particular way, adding much to the confusion.

<sup>52</sup> Interview with a senior UNMIK official.

<sup>53</sup> Interview with Tom Koenigs, Deputy Special Representative of the Secretary General for Civil Administration, UNMIK, Pristina, 17 August 2001.



starting only at a time when international personnel is significantly scaled down, leaving less opportunity for supervision and "joint" learning of international and local professionals.

## **5. Which were the main problems in setting up effective administration and how have the intervening institutions dealt with the problems?**

### *Lack of resources and slow Mission deployment*

The build-up of the Mission -- with the exception of the OSCE Pillar<sup>54</sup> -- was, as is so often the case with post-conflict rehabilitation efforts, rather slow and a few months elapsed before UNMIK had fully set-up shop in all municipalities deploying civil administrators to all Kosovo cities and villages. UNMIK seems to have been aware that a slow deployment would have negative consequences for achieving early results in rebuilding a democratic civil administration. Being quick, however, required having the necessary resources and staff at hand. The lack of UNMIK staff in the summer of 1999 was addressed by a hasty recruitment of Mission members. It appears paradoxical that the very measure by which UNMIK addressed a slow Mission build-up proved counterproductive in the end: emergency recruitment meant that not all of the new UNMIK employees, often from outside the UN system and with little practical experience, had the qualifications needed to do the job properly. Also, UNMIK, in particular UNMIK Police, found it sometimes difficult to reconcile different working and management styles among the many nationalities and agencies which formed the Mission.<sup>55</sup>

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<sup>54</sup> The OSCE's Kosovo Verification Mission had deployed roughly 1200 people throughout Kosovo in late 1998 to monitor the international agreement between the FRY and the UCK brokered by Richard Holbrook. This Mission was temporarily withdrawn prior to the NATO bombardment but was basically kept on stand-by in neighboring Macedonia. The OSCE, therefore, was quick in re-deploying its UNMIK component to the province.

### *Self-appointed structures*

UNMIK had considerable problems in asserting its rule in the Province. The second strategy of UNMIK to counter its initial operational weaknesses has been to embrace existing administrative structures to the extent possible. As has been described above, the self-appointed and illegal administrative structures at the municipal level have been largely accepted by UNMIK. After UNMIK realized that it was not in a position to run the province by itself, it invented JIAS, the model for sharing administrative power at the central level. In sum, UNMIK was not fully in control of the power structures in the province, and has, instead, often been sidelined and marginalized by the Kosovars.<sup>56</sup>

The inability of the Mission to fully neutralize self-appointed administrative structures in the first phase of the Mission has led to many subsequent problems and failures. After the NATO intervention, UNMIK was at first mainly preoccupied with creating a secure environment, coping with a massive influx of returning refugees, distributing humanitarian aid and reconstructing basic infrastructure before it began with its state-building exercise. Thus valuable time was lost, in which the self-installed governmental structures had time to consolidate and foster.

### *Lack of authority*

UNMIK has also never fully succeeded in establishing its authority to the extent necessary for implementing its own mandate and defending its role as a guarantor of law and order at the local level. The police and military support structure to back-up UNMIK's civil administration component was not always at the disposal of local UN Administrators due to a division of civilian and military/police structures of UNMIK. In cases of disagreement between the UN Administrators and the local political forces, or in case of outright opposition, KFOR and UN Police were sometimes reluctant to assist the UN Civil Administrator in operations which could have endangered their own personnel

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<sup>55</sup> Interview with Karin Rudebeck, International Co-Head, UNMIK Department of Local Administration, Pristina, 23 July 2001.

<sup>56</sup> Interview with a senior UNMIK Official, Pristina, July 2001.

or might have spoiled their relations with the local power structures.<sup>57</sup> This general lack of preparedness (or the inability) to intervene and or to effectively police on the ground is a common problem of all international peacekeeping and state-building missions.<sup>58</sup> Also, it must be said that many UN Administrators did not have the stamina to stand up against local leaders. This partial lack of authority vis a vis the local counterparts is still somehow characteristic for the Mission.<sup>59</sup>

The proliferation of international actors and programmes at the local level further undermined the authority of the UN Administrators. In many ways, the international community has been neutralizing itself at the local level, allowing the locals "to play UN today, KFOR tomorrow and another agency the next day."<sup>60</sup>

#### *Mission management and command structure*

The enormity of the tasks in Kosovo and the comprehensive mandate led to the creation of a Mission incorporating several international organizations and agencies under one roof. The idea, new and appealing as it appears, was to gather all available expertise in various specialized organizations and agencies required for doing the job. The problem was, however, that such a complex structure bringing together many different organizational cultures and bureaucratic interests requires strong leadership and good co-ordination. The problems involved with co-ordination between the different Pillars of UNMIK has been exemplified above in the area of capacity building. Observers and senior UNMIK staff have described the structure as a "hopeless failure", being responsible for most of the remaining problems of civil administration in the Province.

#### *Be aware of cultural differences*

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<sup>57</sup> Interview with Sarit Jafa, Head of Division for Monitoring and Service Development, Department for Local Administration, UNMIK, Pristina, 24 July 2001.

<sup>58</sup> Note in this connection also the extreme case of the UN Mission in Somalia.

<sup>59</sup> Asked whether UNMIK has applied too soft a strategy for establishing its rule, the Regional UN Administrator for Western Kosovo (Peja/Pec Region), David Mitchels, stated: "Being tough was impossible in the beginning but a few more tricks from the colonial system would have helped." Interview, 17 July 2001, Peja/Pec.

<sup>60</sup> Interview with Sarit Jafa, Head of Division for Monitoring and Service Development, Department for Local Administration, UNMIK, Pristina, 24 July 2001.

UNMIK has also been suffering from cultural differences within this complex and multifaceted mission, which had to reconcile vastly different management styles and ways to address conflict. The impact of cultural differences between UNMIK and the Kosovo counterparts on the success of the mission should not be underestimated either. Kosovar leaders at all levels, having mastered years of Serbian oppression, civil war and ethnic cleansing displayed an amazing degree of self-confidence and self-awareness. Many of UNMIK's staff have been simply overwhelmed by their boldness and simply been outwitted in their daily contacts. There has been also the habit of new Kosovar civil servants to politicize any, even insignificant, administrative decisions. A lack of transparency of the local civil servants vis a vis their international counterparts has already been mentioned. Recently, administrators of the leading party (LDK) have also been increasingly less willing to co-operate with UNMIK and are trying to dis-associate themselves from UNMIK. This is an attempt to put the blame for expected failures of civil administration, both at the central as well as on the local level, on the UN.

#### *Human resources deficits*

UNMIK personnel, in particular in the beginning stages of the Mission, has not always been top-quality and many of its staff had to learn the specific requirement of their position on the job. In re-building civil administration capacities, UNMIK had to rely on the local human resources available, often lacking experience, basic skills and being highly politicized. No capacity-building programme can address such profound deficits in the short term or can produce an effective and modern civil service from scratch. UNMIK has also been facing a problem with getting the key qualifications needed in civil administration for the low salaries foreseen by the Kosovo Unified Budget for local civil servants. A typical municipal employee would earn between DEM 180 (handyman, cleaner) and 540 (director of municipal department), too little to attract and retain quality personnel.

## 6. Conclusions and Recommendations

### *Draft clear and realistic mandate*

Any mandate for an international state-building mission must be drafted carefully and limit itself to what can be realistically achieved. In Kosovo, UNMIK tried to be in charge of virtually everything and over-stretched itself. Together with its KFOR component, this Mission was de facto a combination of traditional peace-keeping combined with state-building at all levels. An assessment of the military component of the international community's engagement in Kosovo will be done elsewhere but it can safely be assumed that the military part of the exercise was the easier one, similar to previous state-building exercises, such as Bosnia. While KFOR's mandate was rather clear, UNMIK's mandate defined mission goals but not the individual steps leading towards them. This lack of a general blueprint is somewhat surprising, given the fact that this was by no means the first state-building mission of the international community.<sup>61</sup> Despite the fact that all such future endeavours will have their peculiarities and require a tailor made approach, there are surely some fundamental ground-rules worthwhile to be generally followed, in particular in matters of structure and logistical planning but to a lesser extent also in matters of policy. A senior UNMIK member has suggested a "co-ordinated contingency plan for civil society disasters" ready for application in the future.<sup>62</sup>

### *Ensure co-ordination and leadership for complex mission structures*

No single one international organization alone can master the complex challenges typical for post-conflict rehabilitation and state-building environments. If several organizations are to participate in the exercise, a smooth co-ordination between the actors involved and a clear distribution of work between all agencies involved must be ensured, however, to address the often dramatic situation on the ground. Given the UNMIK experience, it appears questionable that such co-ordination and the necessary leadership can be achieved by a structure as complex and independent as UNMIK's four Pillars at the

<sup>61</sup> It has been suggested by some UNMIK representatives that a general blueprint for state-building could not address the different realities and conditions in individual countries concerned.

centre and the great number of additional agencies, NGOs and nation states operating in its orbit, running their own programmes and activities. One suggestion has been to unify all agencies under one command structure and to eliminate additional nation state programmes.<sup>63</sup> Given the highly individual cultures of organizations and the, often diverging interests of nation states within one Mission, such a delegation of power and authority seems somewhat unlikely, unfortunately. While arguing for a clear line of command and strong leadership on the ground, it appears at the same time advisable to provide for a reasonable operational freedom of the mission. UNMIK, i.e. its UN Pillar in particular, suffered from being strangled by thigh management control exercised by UN headquarters in New York, in particular in budgetary matters. This has led to unnecessary delays of policy if it depended on the mobilisation of (often modest) financial resources.<sup>64</sup>

*Ensure early deployment and allocate resources necessary to carry out the mandate*

The potential dangers of a delayed mission deployment and its long term effects on the success of UNMIK have been described in chapter 1. It appears absolutely essential for any mission to deploy on the ground as soon as possible after the end of an armed conflict in order to avoid a power vacuum be filled by unwanted political forces which later on can be removed at high cost only. It is also important to show a massive presence in the early days of any mission. The recruiting process for international peace- or state-building missions needs to be reformed. It has been suggested to decentralize the complicated and time consuming staffing procedure, away from HQs into the hands of the Missions proper.<sup>65</sup> Another suggestion has been to establish a core group of experienced international Mission members ready for quick deployment in any potential

<sup>62</sup> Interview with Karin Rudebeck, International Co-Head, UNMIK Department of Local Administration, Pristina, 23 July 2001.

<sup>63</sup> This could be done by requesting individual states and other donors to finance a common fund for particular activities, such as capacity building or economic development, under the authority of one executing organization, i.e. the UN, the EU, the OSCE or one particular NGO, who would then administer and co-ordinate all related programmes.

<sup>64</sup> Interview with Tom Koenigs, Deputy Special Representative of the Secretary general for Civil Administration, UNMIK, Pristina, 17 August 2001.

<sup>65</sup> During the first year on the ground, when UNMIK had relied on New York administered recruitment procedures, only 50% of its staffing table had been filled. After starting to hire staff through UNMIK directly, the staffing problem had been redressed within a few months. Interview with Tom Koenigs, Deputy Special Representative of the Secretary general for Civil Administration, UNMIK, Pristina, 17 August 2001.

Mission.<sup>66</sup> The question of sufficient resources in the initial stage, matching political declarations to intervene (in terms of state-building) with the resources necessary to do the job properly is as old as international missions and seems unlikely to be resolved any time soon.

*Be credible and consequential*

There is no room for a half-hearted approach if international state-building missions are to be successful. An international mission with the mandate to temporarily assume executive (and other) power must do so. Leaving entire areas of lawlessness unattended will undermine the credibility of those who are supposed to ensure law and order and create conditions in which the rule of law can become a basic principle. Violations of minority rights in Kosovo are a telling case. On quite a few occasions, including civil administration procedures, UNMIK has been too relaxed about breaches of its own regulations by local counterparts which has had lasting effects on the credibility of the Mission and its mandate.

*Provide for early democratic legitimization*

Kosovo has shown that any UN Mission, regardless of its size, is unlikely to fully control a post conflict country or territory for various reasons, e.g. lack of resources and lack of determination to intervene decisively. If that is the case, it appears advisable to aim for an early legitimization of local institutions to share administrative and executive power once the UN has fully established its rule. This is not an argument for hasty elections but can be a valuable tool for dismantling existing illegitimate or obstructive structures and for ensuring involvement and ownership of legitimate local elements in running a protectorate.

*Set timeline and benchmarks for withdrawal*

<sup>66</sup> An interesting initiative in this regard has been OSCE's REACT Project (Rapid Expert Assistance Co-operation Teams). Since 2001, a database, shared between the OSCE Secretariat in Vienna and the Ministries of Foreign Affairs of all 55 Participating States comprises at any given time a core group of experts in different key areas ready for deployment on short notice to build-up a viable nucleus mission structure in any post-conflict situation.

It appears also advisable to clearly outline a timeframe for the hand-over of authority, based on measurable benchmarks. The experience of Kosovo, and Bosnia to a lesser

extend, have shown that local political/administrative actors are most usefully engaged in

the process if given real authority and a certain freedom of action in a clearly defined framework. The pressure of a predetermined withdrawal date as supposed to rendering

assistance 'as long as it may be required' (UNSCR 1244) may also help triggering serious

engagement by the local actors. The UN at times seems too reluctant to entrust local

actors with real power and responsibility. One problem with regards to an early

withdrawal is the fact that many international state building Missions become self-

perpetuating. International staff, which are remunerated quite well, are interested in

keeping their positions and departments and agencies, in their bureaucratic power

struggle, at times fight for an extension of their programmes and funds beyond what is

really necessary. The "Kosovarization", i.e. the increasing localization of international

posts may also serve as a valuable tool in that regard. UNMIK has only recently started

with a hand-over process of the power positions in the Mission. By the end of 2002,

OSCE for its part, is planning to have handed over to OMIK's local staff one in five

professional jobs.<sup>67</sup> These two aspects of international missions help create missions of

long duration which in turn foster dependencies on the local side as Bosnia has most

prominently shown.

*Is the glass half full or half empty?*

UNMIK has taken on a complex and difficult mandate covering all areas of state-building

in Kosovo. Much has been achieved since June 1999 and this paper does not intend to

downplay the many bigger and smaller success stories of the international interim

administration mission which are often times difficult to see from the outside. It is easier

to point at shortcomings than to outline the numerous small successes achieved by many

dedicated UNMIK staff. The overall assessment of the mission in general as well as in

the field of civil administration is a mixed picture, in the end, ranging from "remarkable

<sup>67</sup> As a preparation, the OSCE has run a National Professional Officer trainee programme, where selected local staff is trained on the job for roughly one year before they can qualify for professional posts.



progress achieved"<sup>68</sup> to "a considerable failure, given the amount of engagement"<sup>69</sup>. The achievements are mainly in rebuilding effective administrative structures. "The people of Kosovo recognize that, today, most public things now work. The courts, schools, hospitals and health clinics, tax collection system, railways, roads, radio and television, the postal system, the cadastre and offices issuing public documents have long been up and running."<sup>70</sup> The challenges are to ensure proper involvement of Kosovars in this new administration and to provide for a responsible handover of administrative powers in the medium term. The biggest test for UNMIK is yet to come. Not long after the November 2001 elections, both Kosovo Albanians and Kosovo Serbs will confront the international community with their frustrations, namely that Kosovo will neither be an independent state in the near future nor that it will ever again come under full Serbian rule.

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<sup>68</sup> Interview with Karin Rudebeck, International Co-Head, UNMIK Department of Local Administration, Pristina, 23 July 2001.

<sup>69</sup> Interview with a senior UNMIK staff, Pristina.

<sup>70</sup> Hans Haekkerup, in: UNMIK at Two, Pristina, June 2001, p.1.

**OSCE's Institute for Civil Administration (ICA)  
Capacity Building Programmes for Kosovo's New Civil Service**

*Seminar Programme*

In operation since December 1999, ICA's Seminar Programme offers flexible, praxis-oriented 1-2 day training seminars to municipal staff across Kosovo. These seminars provide training in sector-specific, often technical issues and emerging topics in Kosovo's public management. Seminars are usually delivered regionally with attendees from several neighboring municipalities invited to a common location and trained in groups of 25-35 people.

To date, ICA's Seminar Programme has covered a variety of public management subjects, including Personnel Management and Human Rights Awareness in the Civil Service, Budget Planning and Citizen's Participation in Local Government, Project Planning, Effective Meetings Management, Water and Waste Management, Urban Planning, etc. and new topics are added to the programme reflecting the administrative dynamics in the Province. A total of 2120 mostly senior civil servants have attended these seminars as of late June 2001.

After the municipal elections in October 2000 all newly elected members of Kosovo's new Municipal Assemblies were invited to an intensive two-day "Post Election Municipal Assembly (PEMA) training" on the new UN Regulation on Self-Government of Municipalities. Out of a total of 895 newly elected Municipal Assembly members, 597 have been trained in the PEMA seminar. A similar exercise will be undertaken with the 120 members of Kosovo's new Assembly, to be elected on 17 November 2001.

By March 2001 every new municipal Chief Executive Officer (CEO) in all 30 municipalities received a comprehensive one-week management-training course in Norway to prepare them for their crucial role as leaders of the municipal executive.

For newly elected Municipal Assembly Presidents (mayors) the Institute is conducting a special series of seminars once every quarter during 2001. The first was in January on conflict resolution in "Kosovo after the Municipal Elections". 25 municipalities were represented in this two-day seminar lead by the Norwegian peace researcher Johan Galtung. Other seminars included the "Role of the opposition in a parliamentary system", "Economic development" and "Citizens participation and Human Rights in local administration".

ICA's Seminar Programme also provides training in basic computer skills, including word processing and database management, for municipal employees. Until the end of June 2001, 861 staff people have received basic computer training.

In all ICA's short-term seminars from December 1999 until end of June this year a total of 2.120 people have received training.

#### *Medium Term Programme*

This is an in-service training program for senior and mid-level civil servants in municipalities and central administration. The Medium Term Programme provides a comprehensive introduction to the core competencies required of modern public managers. The Programme's 20-day curriculum – distributed over six weeks – includes Law, Economics, Public Finance, Human Resource Management, Public Management, Urban planning/Rural development and Conflict Resolution.

The curriculum – which is designed after recommendations by a joint OSCE/Council of Europe training needs assessment mission and is in accordance with Western European training of civil servants – covers the basic areas of knowledge and skills needed for a multifunctional, generalist public servant. The participants have to attend the entire course and after each component they have an examination. At the conclusion of the course they are awarded certificates of completion noting their relative mastery of the subject.

Courses are taught by OSCE seconded staff with university teaching experience in their respective fields. Professional local staff joins them as counterparts, in order to achieve a good exchange, and transfer, of knowledge and lecturing skills. Lately, the Institute has hired four local Programme Managers for a "train the trainers" programme in order to gradually nationalize the teaching faculty.

Every fourth week one new course starts. A total of 179 senior civil servants from all municipalities of Kosovo have received the training until the end of February of 2001.

#### *Long Term Programme*

The Institute for Civil Administration's Long Term Programme is still under discussion with the University of Pristina, which is a possible counterpart. The intention was to design a pre-service education for students who wish to enter Kosovo's civil service. The plan was to create a one-year course of formal education in modern public administration theory and management knowledge. This plan has recently been dropped, due to the lack of interest of young qualified people for joining the public service. Unless Kosovo's civil service manages to become more attractive for the younger generation, this puts the long term prospects for the creation of a modern civil service in the province in serious jeopardy.

#### *International Programmes*

Training programmes have also been arranged with the School of Public Administration of Slovenia in Ljubljana, the Galilee College in Israel, with the Swiss "Institut de Hautes Etudes en Administration Publique" (IDHEAP) for a "training of trainers" programme and with the "Deutsch-Franzoesische Jugendwerk".

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**East Timor:  
Assessing UNTAET's Role in Building Local Capacities  
for the Future**

**Professor James J. Fox  
Research School of Pacific and Asian Studies  
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**EAST TIMOR:  
ASSESSING UNTAET'S ROLE IN BUILDING LOCAL CAPACITIES  
FOR THE FUTURE**

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**Introduction**

United Nations operations generally begin with optimism and often end in soul-searching. The obstacles and uncertainties that confronted the United Nations Administration in East Timor (UNTAET) at the outset of its mission did not dampen initial enthusiasms for the possibilities for the creation of the new nation of Timor Lorosa'e. At this stage, however, it is too early to assess with clarity the extent to which these possibilities have been achieved.

The creation of Timor Lorosa'e is still in process. There is, as yet, no constitution for the nation and no firm date set for independence. The foundations of the state and its course for the future have yet to be clearly set forth. This process, which will take time, will provide the crucial evidence on how well the United Nations has done in building the essential capacities for nationhood.

At the beginning of its mission, the United Nations had three tasks: (1) to conduct peacekeeping operations; (2) to sustain and reconstruct a devastated area with a significantly displaced population; and (3) to establish the political, economic and social underpinnings for a new nation. The transition to nationhood was at the heart of all of these tasks.

The first of these tasks was carried out with a high degree of professionalism that was a credit to all of the participating nations. The second task involved a complex (and at times uneasy) partnership between the UN, the multilateral banks, particularly the World Bank, and a host of international NGOs. Coordination was critical and the United Nations' role was central but much of the task was driven by the exigencies of the immediate situation and dependent on the particular policies of individual donor nations. The task of reconstruction is far from complete and a portion of the East Timorese population has not yet returned.

The third task – establishing the basis of a new nation – is certainly the most important of these undertakings and the one for which the United Nations as an institution has had primary responsibility. It is an elusive task with an array of components that appear to be at odds with one another. Thus in transforming a small province of Indonesia into a separate nation, the United Nations laid different foundations from what had been before.

Under Indonesian rule, for example, East Timor had had an inflated government bureaucracy of approximately 33,000 public servants. By contrast, the UNTAET set an

affordable limit to East Timor's civil service (including teachers and health personnel) of 10,500 to 11,000.

Similarly, under Indonesian rule, the economy and particularly the agricultural/food sector of East Timor was centrally directed and broadly subsidized. In its place, UNTAET has set about establishing the basis of a market economy for Timor Lorosa'e, eliminating all previous support systems for farmers and introducing the US dollar to replace the rupiah as the means of local exchange as well as international trade.

On the other hand, UNTAET adopted Indonesian law as the legal framework for East Timor and used this law for its judicial system but then almost immediately began to issue regulations and directives, some of which made an uneasy fit within this official framework. Despite the functioning of the courts, issues relating to land and property rights have been left unresolved and, without clear resolution, the possibilities of investment in a market economy are limited.

Similarly, while acknowledging East Timorese leaders' desire to establish Portuguese as the official language of the new nation, UNTAET has relied on English as its working language and has supported the use of Indonesian in the court system and in schools. As a result, though directions have been tentatively indicated, many important issues concerning law, land and language have, in fact, been left for future resolution by an independent Timor Lorosa'e.

The purpose of UNTAET was precisely to effect a transition from a dependent administrative structure to an independent self-supporting administration. To appreciate this process, it is essential to have some idea of East Timor's previous institutional structures.

### **East Timor Prior to Indonesian Occupation**

Prior to the Indonesian occupation, East Timor was a colony with limited development of local capacities. Education was confined to a small minority of the population, most of whom were subsistence farmers whose livelihood was largely based on local exchange.

In 1959, the Portuguese began a policy to increase elementary education. From 1959 to 1969, the number of students enrolled in elementary school rose from 4,898 to 27,299; at the secondary (Lycee) level, there was an increase in enrolments from 175 to 376. In the mid-sixties, seminary schools, which provided an elite education, enrolled approximately 65 students. The technical school enrolled another 333 students annually. The Salesian training/agricultural colleges at Fatu Maka and Fui Loro provided additional education to a relatively small number. The Chinese of Dili maintained their own schooling system in Chinese with graduates going on to universities in Taiwan (*Timor: Pequena Monografia*, 1970:89-101).

As the distinguished German geographer, Joachim Metzner, noted in his monograph, *Man and Environment in East Timor*, the only study of its kind on East Timor during the



Portuguese period: "Reliable statistics are...hard to come by...The only available sources are the reports of the annual tax assessment...These comprised the only statistical source in Portuguese Timor, so there were no statistics whatsoever on the size of the sucos, or on migration, agricultural production, cultivated areas, interregional commerce, or on the degree of monetization and turnover at weekly markets" (1977:xxviii). Given the lack of reliable statistics, it is difficult to construct a baseline for assessing East Timor's local capacities prior to 1975. (For a brief history of East Timor, see Fox 2000; for background on the territory's physical and social environment, see Fox 2001a.)

### **East Timor as a Provincial Administrative Unit**

The period following the Indonesian invasion in 1975 was a fearsome and destructive time. By the early 1980s, the apparatus for a provincial administration had been put in place with a formal structure no different than that of any other province in Indonesia. This formal structure comprised sixteen government departments. A Provincial Statistical Office (Kantor Statistik, Propinsi Timor Timur) had also been established and had begun to produce annual reports in a standard format: *Timor Timur Dalam Angka*. These reports document the establishment of local capacities and the steady buildup of a large administrative bureaucracy.

In 1982, for example, there were already 4745 civil servants in the provincial administration with 2912 of these administrators working at the district level (Tingkat II). There were, however, a further 805 individuals considered as candidates for the civil service – an indication that the local administration was undergoing rapid expansion. These numbers do not include 2610 school teachers, most of whom (2226) were elementary school teachers (*Timor Timur Dalam Angka*, 1982).

Indonesia's largest investment in local capacities was in education. By 1985, there was an elementary school in every village in the province. Gavin Jones in a recent paper, "East Timor: Education and Human Resource Development" has documented the expansion of education in East Timor under Indonesian rule. This expansion went from 47 elementary schools with 499 teachers and 13,489 pupils in 1976-77 to 652 schools with 6656 teachers and 127,792 pupils by 1994. By this same time, there were 21,779 students at the junior high school level, 18,303 at senior high school level and 2,658 students at tertiary level (Jones 2000:46-47).

This expansion of education produced a remarkable difference among the population at different age levels. Based on 1995 SUPAS figures, illiteracy was extremely high (80% or more) for the population over the age of 40 but dropped dramatically to around 20% for boys and 30% for girls in the 15-19 age group. By 1995, 35% of the age group 24-29 had completed at least lower secondary school compared with just 1% in the 40-59 age group. Although many thousands of East Timorese were sent for study in Java and elsewhere in Indonesia, there was a high drop-out rate among these students and many of those who did complete tertiary education, chose not to return to the province. Nonetheless, by 1995, there was a core of about 500 East Timorese with university level education living in the province (see Jones 2000:46-51) and this number continued to increase during the second half of the decade.

In 1996, in preparation for the 7<sup>th</sup> National Five-Year Plan, the Provincial Department of Labour (Depnaker) carried out a detailed profile study of the work force and projections for the future based on expected education levels. This study projected a work force by the year 2000 of over 107,000 individuals with training at senior high school level and potential of over 34,000 with more advanced training including many with university education ("Perencanaan", Depnaker 1996).

Despite this considerable investment in education and a substantial investment in the expansion of irrigation capacities for rice, the economy of East Timor was dominated by its relatively undeveloped agriculture. (Indeed the major problem for Indonesia – and the continuing problem for East Timor in the future – was and will be the lack of employment opportunities for the high school educated who no longer regard farming as a suitable occupation.) In the 1995 Intercensal Population Survey, 73% of employed workers identified agriculture as their primary source of income although only 30% of the province's GDP derived from agriculture ("Antar-Sensus", 1995). This imbalance between a high level of employment in agriculture and agriculture's low contribution to GDP reflects an extremely low labour productivity in agriculture.

The economist Anne Booth has admirably described this situation. After more than two decades of Indonesian rule: "East Timor remained poor and underdeveloped. The great majority of the population were dependent on agriculture for most of their income, and a combination of small average landholding sizes, low productivity per hectare and a dearth of off-farm employment opportunities meant that farm household incomes were very low. The minority of the labour force employed in the urban services sector (mainly in the public sector) was much better off, with the result that there were quite sharp disparities in the personal and spatial distribution of consumption expenditures and incomes" (Booth 2001:248).

In effect, there was a serious bifurcation in the provincial economy of East Timor. A majority of the population lived in rural areas where they were employed in near subsistence level agriculture whereas, by contrast, a minority were located in towns, with Dili as the largest of these urban centres. In these urban centres, those who were employed worked mainly in a much enlarged public service.

While the older rural population remained largely illiterate, the educational system was rapidly drawing youth from the countryside and training them for non-existent positions in urban areas. Although many of the better educated East Timorese sought suitable employment outside of the province, a major problem that East Timor faced was a growing number of unemployed younger school graduates. This problem was further exacerbated by the employment of a large number of non-East Timorese in government service. The agricultural sector offered limited opportunities to the urban youth who had no desire to return to a life of bare subsistence farming.

This bifurcation in the economy with its corresponding sharp differentiation in the age, education and potential capacities of the East Timorese population constitutes the principal problem facing East Timor in its development. The problem itself has been further heightened by the return of a large number of young East Timorese graduates from advanced training schools and universities in Java and elsewhere.

The United Nations Transitional Administration has done little to address this problem and, if anything, has exaggerated it even further by moving to reestablish the educational system while giving little attention and less investment to East Timor's agricultural sector.

### **The UN Rhetoric of Local East Timorese Incapacity**

Given the nature of the UN's primary role, that of providing for East Timor's transition to independent nation status, perhaps UNTAET's most striking policy inconsistency was the decision, taken in the first months of its mission, to establish a large administrative bureaucracy filled entirely by international personnel. This was an immensely costly decision resulting in several hundred million dollars in expenditure on international advisors and administrators and on the logistics needed to bring them to Timor. It severely limited employment opportunities for local personnel and hampered the possibilities for administrative experience and training for the East Timorese who would eventually take over from the UN.

To justify this decision, the UN committed itself to an initial rhetoric that pervaded the mission, claiming fundamental incapacities coupled with a significant lack of knowledge and experience among local East Timorese. Ironically, the fact that the upper echelons of the Indonesian bureaucracy, which had inhibited local promotion, had left East Timor was cited as a reason for an overwhelming and exclusive international administrative apparatus. Too few of these international personnel had the language skills, particularly Indonesian, to communicate with local East Timorese. This meant that they did not have the means of judging local capacities. Even more galling to East Timorese with deep local knowledge of their territory, only East Timorese who had returned after years in the diaspora and who could communicate with the UN's international staff were judged capable of administration. They were the ones who were relied upon for an understanding of local conditions.

A further aspect of this rhetoric was the assertion that UNTAET's role was to foster genuine participation and 'national ownership' in new forms of governance, whereas in fact the forms of administration that were put into effect closely replicated the Indonesian system, with which local East Timorese were well-versed but nevertheless initially excluded.

For the whole of its first year, UNTAET's policy was more exclusive and less participatory than that of the previous Indonesian government. Excluded from significant participation were the majority of educated local East Timorese, including most former

local administrative personnel. These officials could, at best, hope to become drivers for the flood of international personnel who took over the processes of administration

Such rhetoric was still rife, for example, in the publication, *East Timor: Building Blocks for a Nation*, produced by a UN country team in November 2000, even as UNTAET policy was beginning to change. In the sections on 'Good Governance', 'Institution Building' and 'Capacity Building' are the following statements:

"In the immediate aftermath of the events of September 1999, East Timor faced what was essentially an institutional vacuum...The challenge for East Timor is nothing less than building a new nation from almost zero... It is imperative to foster national ownership over the nature, direction, and management of the transition process. Without this, there can be no sustainability. Bearing this in mind, the structure of UNTAET has been changed to ensure the direct participation of East Timorese, particularly at the senior levels, and to actively involve East Timorese in the executive management of the transition...After long periods of systematic underdevelopment of human resources, it is not surprising that East Timor faces a lack of skilled and experienced people to build the new nation...Although a number of well-qualified and experienced East Timorese from the diaspora have returned to help rebuild the country, they alone cannot fill even a small percentage of the 9,000 or so posts in the public service" (*Building Blocks* 2000:94-97).

#### **Shifts in the Policy of 'Timorisation'**

At the time when *East Timor: Building Blocks for a Nation* was written – at the end of the first year of the UNTAET mission – the East Timor Development Agency (ETDA) had begun to build up a register of local human resources, which as of July 2000, listed only 7025 East Timorese, mainly from rural areas. The register for Dili where most skills were likely to be found had not yet been completed.

Through the second half of its first year, UNTAET was subjected to a rising chorus of criticism, including that from former UNTAET officials, over the slowness of its operations and its "failed Timorisation" (see Chopra 2000). At the Lisbon Donors meeting in June 2000, the UN's Special Representative, Sergio de Mello, expressed his own frustration at the Mission's inability to achieve its intended goals:

"There are several problems intrinsic to a UN mission operating as a civilian administration, including: the staff profile of a UN mission of this kind, their understanding of the local culture and their ability to perform sectoral governmental functions; our recruitment processes, and UN procurement rules and regulations...At UNTAET we are very much aware of the frustration of the East Timorese people and others at the slow progress in reconstruction and development" (de Mello, Statement 2000, 5-6).

In response, de Mello appointed a number of Timorese leaders to a cabinet and established a National Council of East Timorese in June 2000. Recruitment of East Timorese to the administration, however, proceeded at a slow pace and so, by the time of

the December Donors' meeting in Brussels, when the targets for recruitment and training set in Brussels had not been met, the chorus of criticism directed at UNTAET only increased.

Following the Brussels Donors' Meeting, earlier policies were adjusted, extra resources were allocated to the recruitment of East Timorese, and further pressures were placed on internationally-staffed ETTA departments to train as well as to recruit more local staff. The rhetoric about East Timorese incapacities was toned down.

By the end of May 2001, prior to the Donors' Meeting in Canberra in June, UNTAET was able to report that 86% (8600+) of a planned civil service of approximately 10,500 had been recruited and that this number included 51% of senior civil servants ("Background Paper for Donors' Meeting", Canberra 2001: 13-16).

By the end of June, all 13 districts were headed by an East Timorese District Administrator. A Civil Service Academy had been established and was already involved in training; and a Public Service Commission had been established to develop policies and guidelines for the civil service (de Mello, "Presentation" 2001:17).

The problem that has bedevilled UNTAET operations from the beginning, coloured its perceptions, affected its recruitment efforts, and will continue to frustrate the development of administrative capacities is the problem of language. The language of the UN's transitional administration is English. From the outset of the Mission, too few UNTAET staff members had the language background, particularly in Indonesian, for intelligible and productive communication. Without this capacity, UNTAET staff were hardly in a position to assess the capabilities of local Timorese or to work effectively with them.

In the UNTAET/World Bank "Background Paper" for the Donors Meeting in Canberra, this problem was clearly highlighted in relation to UNTAET's administrative handover: "almost all the documentation produced by the transitional administration – major reports, policy papers, Cabinet submissions and decisions, directives, procedures, manuals and forms – is available only in English. In the short term, this means that the core material of government is unintelligible to the East Timorese who should be able to understand and act on it, seriously impeding the transfer of authority to them. In the medium term, the archival legacy left for an independent East Timorese administration will be meaningless to most civil servants. The barrier is no less with oral communication as most international staff do not speak a language of East Timor. This limits the participation by East Timorese in day-to-day activities such as meetings, planning discussions and general supervision, hampering the capacity development efforts" ("Background Paper" 2001:15-16). This reliance on English has in no way facilitated East Timorese leaders who have repeatedly reaffirmed their commitment to the use of Portuguese as the official language of the new nation of Timor Lorosa'e.

During its first year, the operations of the UN in East Timor were filled with frustration. The UN agreements of the 5<sup>th</sup> of May 1999 regarding the vote on autonomy called for a continuing UN presence whatever the outcome of the vote. No serious contingency

planning, however, appears to have been undertaken during the intervening four months. In any case, the extraordinary destructive events in East Timor during September 1999 required a scale of planning by the UN that would probably have been outside the scope of any contingency planning had it occurred.

This resulted in an internal tug-of-war within the UN on responsibilities for the Mission and a large-scale, hastily organized UN-World Bank Joint Assessment Mission that tried to set some of the initial parameters for reconstruction and development. The UN Special Representative was indeed given unprecedented authority but the structures for UN operations and the mechanisms for resource mobilization for the Mission seem to have followed established bureaucratic procedures. The mobilization of efforts was slow, often reactive and frequently ineffective because of the struggle over procedures between the Mission in the field and the UN officials in the Headquarters in New York. In particular, the selection of personnel for the Mission adhered to routine requirements.

Astri Suhrke has argued convincingly that much of the initial lack of progress in the Timorisation of the UNTAET's Mission was the result of the framework set by the United Nations' constitutive rules and the logic of consensus politics in the UN itself ("Reason and Reconstruction", 2001). From this perspective, the Special Representative's ability to move efforts forward in spite of these rules, politics and procedures could perhaps be seen as heroic.

In retrospective, one can conceive of alternative ways of proceeding. A Mission with fewer, but better selected, international civil personnel – one that relied upon and, as quickly as possible, engaged local East Timorese – would have been far less costly. Such a Mission would not have gone through the disruptive process of rapid mobilization and equally rapid demobilization, which now seems to be the pattern of most UN missions. Over a longer period, such a Mission could have become involved in addressing major capacity building problems within the country.

### **Major Capacity Problems: Challenges for the Future**

For the United Nations, building capacities in East Timor should have involved more than just creating an administrative system and staffing it with capable personnel. It should have involved the formulation and initiation of effective local policies that might allow East Timor the possibility of a sustainable future. Certainly the United Nations, through the international banks and the international community, has laid the foundations for an open free market economy based on a respect for the rule of law, good governance and fiscal responsibility. More specifically, however, there remains the need for development policies that will address some of the chief problems that will face the new nation. These are problems that are grounded in the nature of the territory itself and its history and will affect its future economic prospects.

The nexus of these problems centres on the present imbalance between a rural sector that employs 60-70% of the less educated population on the basis of low production, near-

subsistence agriculture and an urban sector whose better-educated younger population remains largely unemployed. While this constitutes the nexus of the problem, its ramifications are far more extensive. Some of the related aspects of this problem in full context may simply be listed as follows:

- Prospects of increasing budgetary expenditures
- Limited government revenue generating capacities
- No immediate likelihood of substantial income from the Timor Gap resource
- Overwhelming dependence on international assistance
- Virtually no viable local industries
- Significantly diminished trade
- Limited international investment and investment opportunities
- A lack of legal security in property rights and uncertainty over land law
- An education system still turning out more new graduates
- A continuing flow of youth with rising expectations to urban centres
- A small civil service that can employ only a fraction of these graduates

The *East Timor Consolidated Budget* for 2000-01 was a constrained budget that set recurrent spending at \$ US 43.63 million and capital spending at \$ US 15.60 million. The largest proportion of this budget – approximately 37% -- was allocated to health, education and social affairs with an additional 17% allocated to activities and training related to law and order (Fox 2000b: 44-46). Despite the assertion in the budget that East Timor's economy is "predominantly agricultural with around 90 per cent of the population living in rural areas and dependent on agriculture for their livelihood and employment" (*East Timor Consolidated Budget* 2000-01: 25), only about 1% of the budget was allocated to agriculture.

East Timor's Projected Budget expenditures for 2001-02 were set at 65 million with forward projections to increase to 80.2 million in 2002-03, 99.8 million in 2003-04 and 103.3 million in 2004-05. In the 2001-02 budget, expenditure on health, education and social affairs was maintained, accounting for 38% of the budget. Justice, police and emergency services plus new expenditures on defence accounted for another 17% of the budget. Agriculture, on the other hand, was included as part of "Economic Affairs". This portfolio was allocated roughly 2.5% of the total budget, equal to the allocation to the Central Fiscal Authority responsible for drawing up the budget (see Annex 1, "Background Paper", 2001).

Certainly during its Mission, UNTAET did little to address any of the major problems of agriculture in East Timor. Since these problems are at the core of future development for the new nation, it is difficult to support the view that the UN has satisfactorily developed the necessary capacities for a sustainable future. In its approach, the UN has explicitly adopted the currently fashionable emphasis on "encouraging private initiatives" that has been strongly promoted by the World Bank. Hence in its first budget, UNTAET explained that "for the longer term, it is envisaged that the Department [of Agriculture] will generally take a non-interventionist approach to agricultural development" (*East*

*Timor Consolidated Budget 2000-01:25.*) This means, for example, in practical terms that no agricultural extension service has been planned for East Timor despite lack of education among farmers; no provision has been made for the import of agricultural inputs, particularly fertilizer, despite the low nutrient levels of Timor's soils; and no plans, as yet, have been formulated for local seed production facilities in the territory.

For the past three years, Timor has experienced some of the highest rainfall for over a century. Three consecutive "La Niña" years have greatly benefited farmers after nearly a decade of prolonged drought. Basking in its non-intervention policies, UNTAET has taken full credit for these conditions by claiming that even without the rehabilitation of many of East Timor's most important irrigation systems, rice production has reached 80% of its pre-ballot level and that despite the large number of displaced farmers (in West Timor in particular) maize production has reached 100% of this 1998 level ("Background Paper", p. 20, 2001). Since UNTAET maintains no agricultural monitoring capacity and has made no provision for the establishment for an agricultural survey bureau for assessing production, it can be confident that its claims can not be seriously challenged by evidence to the contrary.

It is disheartening to realize the UNTAET's Mission will come to an end just as the El Niño-Southern Oscillation cycle shifts back toward drought conditions. The opportunities of the last two years will have been squandered and East Timor may soon have to face an El Niño drought without policies or provisions for reliable food security.

Certainly agriculture is likely to be a sector where considerable reformulation will occur when the East Timorese have a greater say in planning their own development (da Costa 2001:141). Already the newly appointed transitional cabinet includes a Minister for Agriculture, Estanislau da Silva, who served on the agricultural team of the Joint Assessment Mission and whose views do not necessarily coincide with those of the UN and World Bank.



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**Comparing Experiences with Post-Conflict State Building in Asia and Europe:  
The Case of East Timor, Bosnia and Kosovo**

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**Peacebuilding and Spoils of Peace:  
The Bosnia and Herzegovina Experience**

**Dr. Michael Pugh  
Plymouth International Studies Centre  
University of Plymouth**

## Peacebuilding and spoils of peace: the Bosnia and Herzegovina experience

Draft Paper for Council for Asia Europe Co-operation, Task Force on Peacebuilding through State Building. *Comparing Experiences with post-Conflict State Building in Asia and Europe: the Cases of East Timor, Bosnia and Kosovo*, Bali, Indonesia, 15-17 October 2001.

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*'One Man's Disaster is Another Man's Marketing Opportunity'*  
(Italian construction company, 1980 earthquake)

### 1. Introduction: from politics to political economy

We might recall the words of Lawrence of Arabia (T.E. Lawrence). He once commented that: 'War upon rebellion is messy and slow, like eating soup with a knife'. The same can be said of peacebuilding. It has grown increasingly complex and is now conceived as social engineering on a grand scale. In effect, East Timor, Bosnia and Herzegovina, and Kosovo (NATO's Republic) are micromanaged protectorates.

The complexity of peacebuilding has been deconstructed in various ways: content and outcomes versus process; contributions to negative peace and positive peace; international competence balanced against local needs. Attempts at synthesis include the concept of 'peacebuilding as politics', as formulated by an International Peace Academy project.<sup>1</sup> In this respect, peacebuilding is politics because it demands appropriate goal-setting, a choice of priorities and criteria for exits. All these dimensions require decision-making that is political in a broad sense. Peacebuilders need to map intergroup relations, negotiate with local hegemonies and establish 'stable' political processes.

However, the view that peacebuilding is about politics and political choice does not advance the argument very far. It is a truism. We should ask: what kind of politics?; what drives the politics?; and what function does 'authoritarian stability' perform? One refinement of the peacebuilding = politics thesis would be to give greater weight to the political economy of modern wars in the belief that conflicts are not necessarily about ethnicity or divergent ideological positions. Self-determination was clearly a prime factor in East Timor. Researchers have also stressed ethnic grievances to explain other cases. But this ignores the fact that several ethnic groups have intermarried and have lived in mutual respect for many years. It ignores the irrelevance of

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<sup>1</sup> Elizabeth Cousens and Chetan Kumar (eds), *Peacebuilding as Politics*, Boulder: Rienner/New York: International Peace Academy, 2001.

ethnicity to mafia organisations, which co-operate even in wartime with scant regard for ethnic battle lines. But, what do we mean by the 'political economy' of war and transitions? A definition of peacebuilding that includes this essential dimension is:

*'a contribution to human security that combines, security sector transformation, rights-based and accountable governance, physical reconstruction, and integrated economic and social development'.<sup>2</sup>*

This paper stresses the importance of understanding the landscape of each political economy in transition from war to relative peace. It draws on the experience of peacebuilding in Bosnia and Herzegovina (BiH) where, in September 2001, the economic situation was officially described as 'dire',<sup>3</sup> and there is no sense that a genuine multi-ethnic state is being created.<sup>4</sup> The paper is consciously provocative. All perspectives and agendas should be contested, including the neo-liberal 'Washington consensus' for promoting development through market forces and contraction of the role of the state and public ownership. Indeed, this is an ideological construction that has aroused widespread opposition in the context of development as well as transition to relative peace.<sup>5</sup> We begin by considering what drives politics in transitional societies: greed or grievance? We then consider the presumptions of neo-liberalism and offer a critique of two aspects (economic policy, empowerment and accountability).

## 2. Greed and grievance

At the risk of doing an injustice to a current debate on whether modern conflicts are about 'greed' (economics) or 'grievance' (protest), we can say that both sides of the debate exhibit flaws.<sup>6</sup> Paul Collier's emphasis on predatory and criminal economic activity de-legitimises

<sup>2</sup> Based partly on a concept developed from a social policy perspective by Ulla Engberg and Paul Stubbs for the UNDP in Travnik, BiH: *Social Capital and Integrated Development: a civil society grants programme in Travnik, Bosnia-Herzegovina*, Plymouth International Paper, No. 11. University of Plymouth, 1999.

<sup>3</sup> OHR Press Release: High Representative and PIC [Peace Implementation Council] Steering Board call on Alliance Government, 13 Sept. 2001.

<sup>4</sup> Jonathan Steele, 'Self-serving leaders keep Bosnia divided', *The Guardian* (London), 16 April 2001, p.13; OHR, High Representative addresses UN Security Council, Press release, 24 Sept. 2001.

<sup>5</sup> Susan George, 'Democracy at the Barricades', *Le Monde diplomatique*, August 2001.

<sup>6</sup> See, François Jean and Jean-Christophe Rufin (eds), *Economie des Guerres Civiles*, Paris: Hachette, Collection Pluriel, 1996; Mark Duffield, 'Post-Modern Conflict: Warlords, Post-Adjustment States and Private Protection', *Journal of Civil Wars*, Vol. 1, No. 1, 1998, pp. 65-102; Paul Collier, 'Economic Causes of Civil Conflict and Their Implications for Policy', World Bank, 15 June 2000; Mats Berdal and David Malone, *Greed and Grievance: Economic Agendas in Civil Wars*, Boulder, CO: Lynne Rienner, 2000; International Committee of the Red Cross (ICRC), *Forum: war money and survival*, Geneva: ICRC, 2000; Neil Cooper, 'Conflict Goods: the challenges for peacekeeping and conflict prevention', *International Peacekeeping*, vol. 8, no. 3, 2001, pp.21-38.

protest against ethnic discrimination, abuse of rights, denial of education and so on, and it ignores the structures and activities of governments that bring about collapse by suppressing protest and often by cutting social welfare to meet World Bank criteria.<sup>7</sup> David Keen's original emphasis on 'greed' has now shifted towards 'protest', arguing that greed is largely the product of grievances and suggesting that we should look at how grievances are manipulated by greedy actors, such as the RUF in Sierra Leone.<sup>8</sup> This, however, fails to give adequate weight to economic factors that lie behind 'protest': not just 'greed', but economic survival. Indeed, without a definition of 'greed' the debate is somewhat artificial. We can say that the two dimensions, economics and politics are intertwined. Protest is frequently linked to economic structuring and performance. Schierup reminds us that in Yugoslavia 'structurally embedded economic warfare started years before the manifestly ethnically based political warfare' of the 1990s.<sup>9</sup> It began in the 1970s because the 'official' economy driven by local communist and nationalist elites of Yugoslavia fostered 'profoundly authoritarian' coalitions of bureaucrats, workers and patriarchs by failing to satisfy consumer demands and allowing a private, grey and informal economy to grow up. In effect, they chose fragmented integration into the capitalist system and encouraged regional corporatism and populist quests for nationalist autonomy as the answer to dysfunctionality in the 'official' economy.<sup>10</sup> In Kosovo and the Bosniac sectors of BiH, this reinforced traditional patrimonialism, in which a small number of patriarchs dominated majorities.<sup>11</sup> In reaction to efforts in Belgrade to re-centralise the Yugoslav Federation's economic power in the 1980s, local nationalist elites intensified their carving out of economic empires.<sup>12</sup> Schierup's analysis restores the structural parameters of political economy to a central position and opens the way for considering the fusion of politics and economy that was to occur in wartime and the relative peace that followed.

<sup>7</sup> Paul Collier, 'Doing Well Out of War: an economic perspective', in Berdal and Malone (n.6 above), pp.91-111. Collier is a consultant at the World Bank.

<sup>8</sup> David Keen, 'A response to Paul Collier's "Doing Well Out of War" and other thoughts', paper presented to CODEP Conference, 18-20 June 2001, London, School of Oriental and African Studies.

<sup>9</sup> Carl-Ulrik Schierup, 'Prelude to the Inferno. Economic Disintegration and Political Fragmentation of Socialist Yugoslavia', *Migration*, no. 5, 1993, p.8.

<sup>10</sup> Carl-Ulrik Schierup's points are in: *Migration, Socialism and the International Division of Labour*, Aldershot: Avebury, 1990, pp.232, 244-56; 'The Spectre of Balkanism', in Schierup, *Scramble for the Balkans: Nationalism, Globalism and the Political Economy of Reconstruction*, Basingstoke, Macmillan, 1999, pp.36-39; 'Prelude to the Inferno' (n.9 above), pp.5-40. See also, Wayne S. Vucinich, 'Nationalism and Communism', in Vucinich (ed.), *Contemporary Yugoslavia: Twenty Years of Socialist Experiment*, Berkeley and Los Angeles: University of California Press, 1969, pp.236-84.

<sup>11</sup> M.K. Skulić, *Uzroci sadašnje ekonomske krize un SFRJ*, Belgrade, 1982, cited in Schierup, 'Prelude to the Inferno' (n.9 above), p.244. See also, Jens Stilhoff Sørensen, 'The Threatening Precedent: Kosovo and the remaking of crisis', *MERGE paper on Transcultural Studies* 2/99, Umeå/Norrköping, 1999.

<sup>12</sup> Schierup, 'Prelude to the Inferno' (n.9 above), p.8.

The political economy of transitions might be caricatured as 'warfare by other means' in which entrepreneurs claim the spoils of peace. This affects the control and distribution of resources, exportable goods, social assets, employment, welfare provision, financial flows, and scarce consumer items. Of course the political economy of transitions is not just a zero sum balance sheet of winners and losers. For most people it is about economic survival, for which informal structures – bartering, patrimonialism and the black economy – are essential life-rafts. [vufoil: street seller] What external actors often refer to as 'criminality', an abnormality requiring a neo-liberal cure, is more appropriately constructed as a normal consequence of the structuring of the global economy, albeit with culturally-specific filtering, such as the mox of clientism and social ownership in socio-economic relations in BiH.

Furthermore, peacebuilding, and its injection of resources, can provide fertile ground for parallel economies, corruption and 'criminality', and agency interventions become structural components of social systems in transition. Indeed, significant problems arise from economic structuring by external agencies. Intervention ideologies incorporate moral virtue and paternalism.<sup>13</sup> Recipients have been objectified and assumed to be 'helpless victims' and incapable of decision-making or assessing the value of aid. But the host society is not, somehow, outside of the process of peacebuilding and should be consulted and involved from the start. UN Security Council Resolutions 1242 (Kosovo) and 1272 (East Timor), mandated this. But in East Timor the process of 'Timorisation' has been slow and halting, in large part because the 'lead agency' was the UN Department of Peacekeeping Operations whose military approach to problems gave a low priority to empowering local communities.<sup>14</sup>

### 3. The hubris of neo-liberalism: observations from BiH

Solutions introduced from the outside have tended to rely on policies that often suit the donor's interests. USAID argues that: 'Americans benefit as the economies of transitional and developing nations become more open and market oriented and expand'.<sup>15</sup> It is an approach that seems to contribute (in the case of BiH at least), more to the causes and effects of social instability than to their disappearance.<sup>16</sup>

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<sup>13</sup> B. E. Harrell-Bond, *Imposing Aid: Emergency Assistance to Refugees*, Oxford: Oxford University Press, 1986, pp. 16–17.

<sup>14</sup> Astri Suhrke, 'Peace-keepers as Nation-builders: Dilemmas of the UN in East Timor', *International Peacekeeping*, Vol. 8, No. 4, winter 2001 (forthcoming)

<sup>15</sup> USAID, Strategy for Economic Growth, presentation to Congress on 1998 USAID Budget

<sup>16</sup> This observation is adapted from Jean Copans, 'The Sahelian drought: social sciences and the political economy of underdevelopment', in K. Hewitt (ed.), *Interpretations of Calamity from the Viewpoint of Human Ecology*, London: Allen & Unwin, 1983, pp. 83–97; Paul Susman, Phil O'Keefe and Ben Wisner,



The broad economic picture in BiH makes for dismal viewing. Aid dependency and poverty is widespread. Of course one should not underestimate the damage to the BiH economy wrought by the breakup of Yugoslav federal trade and transfers, and the legacy of pre-war economic arthritis. The war itself reduced per capita GDP to about 20% of its pre-war level, and from this low base growth was in double figures in the four years after the Dayton Agreement. But in 2000 growth was a mere 6% on an economic base still approximately 50% of pre-war levels.<sup>17</sup> Moreover, growth in the 1990s did not reflect a growth in production, which remains low, but was mainly fuelled by transfers from abroad such as donor programmes. The state depends on foreign aid for 13% of its budget, without which the situation would have been much worse. The revenue deficit in 2000 was US\$360.36 million, with Republika Srpska having a 73% shortfall on expected revenue and the Federation 31.5%.<sup>18</sup> Tax evasion and corruption costs the BiH government in the region of US\$500 annually in lost revenue (equivalent to the budget deficit). The Dayton agreement crippled the central state's economic prospects by giving revenue raising powers to the two entities, and therefore the central government cannot count on the cantons and municipalities to contribute to state finances.<sup>19</sup> Foreign investment has hardly grown, deterred by cumbersome bureaucracy, multiple levels of decision-making, the legal and illegal costs of authorisations and lack of local purchasing power. The foreign trade deficit remains at over 60% of GDP.

Unemployment has steadfastly remained high, at over 40%, and workers remain unpaid for long periods at a time. Undeclared work is a prominent feature of BiH because regulated

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in Hewitt, pp. 280–81; Susan Willett, 'Insecurity, Conflict and the New Global Disorder', *Institute of Development Studies Bulletin*, vol. 32, no. 2, April 2001, 35–45.

<sup>17</sup> GDP was US\$8.2 billion for 1991; US\$4.4 billion for 1999. But in 1999 US\$3.2 billion was needed to service external debt (*World Bank Country Study*, March 1996; *USAID Country profile*, August 2000, economic issues; and *Central Bank of BiH Report* September 2000).

<sup>18</sup> International Crisis Group, 'Bosnia's Precarious Economy: Still Not Open for Business', ICG Report no. 115, Sarajevo/Brussels 7 August 2001 (accessed 10 August 2001 at [www.crisisweb.org/projects](http://www.crisisweb.org/projects)).

<sup>19</sup> Peter van Walsum, OHR Economics Division, in 'UN Envoy says Officials Involved in Corruption', UN Wire, 17 August 2000, <http://www.unfoundation.org>. Examples abound. The RS Customs Service uncovered a smuggling operation when it investigated the GMD–Hercegovina company of Trebinje for tax avoidance. Open Broadcast Network (henceforth OBN), 8 January 2000, OHR E-mail service. As a percentage of GDP the estimated black economies in western Europe range from 3–7% for Denmark and Sweden to 29–35% for Greece. European Commission Report cited by Martin Walker, 'EU 'victim of growing black economy'', *The Guardian*, 6 April 1998, p. 13. Other estimates are for France and Germany 4–14%, Belgium 12–21%, the UK 7–13%, Italy 20–26%. Indeed, in his investigation into a missing \$1 billion of public funds in BiH in December 1999, US Ambassador Frowick used this argument to play down allegations of corruption. See Xavier Bougarel, 'Ten-Year Chapter of Errors: Mixed Motives in the Balkans', *Le Monde diplomatique*, September 1990; 'Kako i gdje je skršena milijarda', *Dani* (Sarajevo), 20 August 1999, pp. 18–19; 'Otkriti i napasti temelje kriminala i korupcije', *Oslobodjenje*, (Sarajevo), 18 September 1999; R. Jeffrey Smith, 'In Bosnia, Free Enterprise Has Gotten way Out of Hand', *International Herald Tribune*, 27 December 1999, p. 5.

employment is taxed and legitimate earnings and welfare provision are inadequate. In 2000 there were 340 strikes and demonstrations, mostly against low pay or non-payment of wages and pensions.<sup>20</sup> Pensions, though paid more regularly since reforms in late 2000, barely cover the essential minimum for existence. The cost of living measured as a ratio of earnings against prices of basic consumables has steadily worsened as price inflation has burgeoned, especially in Republika Srpska (over 12%). The ICG's estimate that most Bosnians are getting poorer makes one wonder how people survive at all.<sup>21</sup> A significant part of the answer is that they are dependent on retail activity and direct employment as a consequence of the international presence (notably in Sarajevo), on foreign aid (accounting for perhaps as much as 20% of GDP) and on the black economy. To dismiss the black economy as 'criminal' and distorting, is part of the discourse that presumes normality and legality are represented by 'honest' market capitalism.

The conventional explanation for recovery failure is that the external actors have not been consistent and forceful enough in pushing the economy towards privatisation, the free market and access to foreign investors. At the UN Security Council in September 2001, the High Representative, Wolfgang Petrisch, blamed poor economic performance on the lack of urgency and concerted political will in restructuring state conglomerates, privatising utilities, and promoting the Single Economic Space.<sup>22</sup> On the contrary, I want to suggest that this agenda may be flawed, by exploring two aspects in the external neo-liberal agenda: economic strategy and democratic governance. The role of the external institutions has been a substantial determining factor – through the investment of over US\$5 billion in five years, the conditionality for receiving assistance that limited Republika Srpska's aid receipts, and in dictating macro-economic policy.<sup>23</sup>

• *Inappropriate economic strategies?*

All donors agreed that priority should be given to moving BiH from a wartime to a peacetime economy, through demining projects to help agricultural recovery and physical reconstruction of

<sup>20</sup> ICG, 'Bosnia's Precarious Economy' (n.18 above).

<sup>21</sup> Ibid.

<sup>22</sup> OHR, High Representative addresses UN Security Council, Press release, 24 Sept. 2001.

<sup>23</sup> Margaret Cobble, 'External Economic Institutions and Peacebuilding in BiH', PhD in progress, University of Plymouth. Republika Srpska lagged behind the Federation because donors made funding conditional on implementing obligations under Dayton. The main agents in determining economic policy have been the World Bank, IMF, the EBRD, European Commission and USAID. The World Bank's charter prohibited it from adopting political conditionality, but its economic conditionality is not in doubt: dismantling of state, collective and social ownership to foster private sector growth.

the infrastructure. Significant gains were made in restoring schools, communications and power supplies for example.<sup>24</sup> However, these were always subject to segregation on ethnic lines and the imperative of obliterating socialism. The twin priority (now enshrined in the Balkan Stability Pact), was accorded to macro-economic modernisation, integration into global markets and undifferentiated consumerism – as if this were some kind of 'manifest destiny'.<sup>25</sup> This is not to say that the external agenda was pursued coherently. Until 1998/9 when the Office of the High Representative (OHR) acquired the competence to effectively coordinate civilian peacebuilding, the external institutions frequently acted in competitive ways.<sup>26</sup> Nevertheless, the IFIs and major aid donors broadly operated within a neoliberal ideological framework, which they attempted to coordinate at donors conferences.

A largely successful effort was directed at establishing central financial institutions to stabilise the currency, set up a central bank, reform the commercial banking sector and establish revenue raising powers. These measures were necessary so that BiH would conform to IMF requirements and purportedly attract investors. Beyond this, policies of marketisation and privatisation have been non-negotiable conditionalities in south-east Europe. Any resistance to this agenda is punished, for example USAID withdraws funding from authorities that do not privatise.

However, this macro-economic strategy deriving from the neo-liberal 'Washington consensus' can be contested on two grounds. First, the external agencies, especially the IFIs, claim to be promoting economic liberalisation, and regard the old clientist systems of war entrepreneurs as inefficient and corrupt. But in practice they reinforce clientist parallel economies.<sup>27</sup> In place of the pre-war statist order in BiH, local leaders manoeuvre with the international agencies to

<sup>24</sup> Elizabeth M. Cousens and Charles K. Cater, *Towards Peace in Bosnia: Implementing the Dayton Accords*, Boulder: Rienner/New York: International Peace Academy, 2001, pp.89-90.

<sup>25</sup> See Gearoid O'Tuathail, Andrew Herod and Susan Roberts, 'Negotiating Unruly Problematics', in Herod, O'Tuathail and Roberts (eds), *Unruly World? Globalization, Governance and Geography*, London: Routledge, 1998, pp.1-24; Roland Paris, 'Peacebuilding and the Limits of Liberal Internationalism', *International Security*, vol. 22, no. 2, 1997, pp.54-89. Orthodox economic theories construct a spatial correlation between society, territory and economy – with a state or state-like authority acting as an intermediary between the global markets and the goals of citizens: Angus Cameron and Ronen Palan, 'The Imagined Economy: Mapping Transformations in the Contemporary State', *Millennium*, vol. 28, no. 2, 1999, pp.267-88. (p.275); Béatrice Hibou, *The Political Economy of the World Bank's Discourse from economic catechism to missionary deeds (and misdeeds)*, Les études du CERI, no.39 Paris, Centre d'études et de recherches internationales, March 1998.

<sup>26</sup> Cobble (n.23 above).

<sup>27</sup> Michael Pugh, 'Protectorates and Spoils of Peace: Interstemic manipulations of Political Economy in South-East Europe', in Dietrich Jung (ed.) *The Political Economy of Intra-state Wars: Confronting a Paradox*, COPRI (in preparation).

negotiate areas of collaboration and to assert control.<sup>28</sup> The external agencies have enabled patrimonies and nationalists to strip assets and plunder socially-owned capital, inevitably replicating the impact in rich countries of widening the gap between rich and poor. The Bosniac Party of Democratic Action (SDA) controls utilities such as the PTT, Elektroprivreda, and Energoinvest. The privatisation of banks in BiH permitted war entrepreneurs to steal savings and engage in money laundering to finance nationalist projects. The Croatian Bank of Mostar is dominated by the leader of the Democratic Croat Union's (HDZ) right wing; the Hercegovacka Banka of Mostar was closely linked to the Croat Defence Council (HDO) and a faction of 'Generals' led by Ante Jelavić (who was sacked from the three-man state Presidency in March 2001 by Wolfgang Petrisch). It included directors of the Mostar Aluminium Company, Pension Fund and Monitor Construction Company.<sup>29</sup>

- 2) Second, in their efforts to extend marketisation and privatisation, the external actors are trapped in the contradictions between state building and state demolition. The external actors have to build a successor state with new administration. In the case of BiH, the external actors even invented new state symbols, including the national flag. At the same time the external actors regard old statist economies as being completely dysfunctional. So they insist on state contraction on the basis of the neo-liberal economic ideology that legitimises reductions in welfare-spending, the stripping of socially-owned assets and the privatisation of essential services. Some public services were restored to a basic level in the first four years of reconstruction, but facilities such as street lighting and pavements continue to make ordinary life hazardous. [vufoil: Sarajevo station]

The two pressures are not only contradictory, the economic benefits of transitions are very uneven [vufoil: Mostar]. Consequently differentiation develops between (a) those able to participate in the 'manifest destiny' of global capitalism and (b) the excluded poor, unemployed and uncompetitive.<sup>30</sup> The dominant strategy of external agencies does little to assist the most vulnerable sections of society or to reduce the potential for resentment and economic discrimination. The result is a hollow state in which the priority is given to what Susan Strange called 'casino capitalism' rather than social cohesion, social justice or social ownership. [vufoil: quite literally in Sarajevo]. This, in turn sustains mafia welfare and increases dependence on the black economy.

<sup>28</sup> Marcus Cox, 'Strategic Approaches to International Intervention in Bosnia and Herzegovina, paper at Third International Security Forum, Zurich, 19-21 October 1998.

<sup>29</sup> Dani [Sarajevo], 6 August 1999, pp. 16-19; European Stability Initiative, 'Reshaping International Priorities in Bosnia and Herzegovina', part 1, 'Bosnian Power Structures', Berlin, 14 October 1999.

<sup>30</sup> Cameron and Palan (see n.25 above), pp.269-71.

Commentators from the field of economics, including the Nobel prize winner, Amartya Sen, and the colossus of global capitalism, George Soros, have argued that market fundamentalism without freedom is inappropriate.<sup>31</sup> Sen contends that global capitalism is inevitable and can be made to work for the poor if priority is given to health and education spending. Soros has argued that neo-liberal fundamentalism is the greatest danger since Communism because of the social damage it causes.<sup>32</sup> On this issue it is critical to distinguish between technological globalisation that facilitates communication, transport and exchange, and the construction of economic policies as global destinies that actually aggravate social crisis. The former reflect inventiveness and ingenuity, the latter are the interests of economic and elevated to the status of theology. Blind insistence on the introduction of neo-liberal economic values and processes may not be appropriate to integrated social development in transitions. In many contexts, investment in social ownership and the reintroduction of the state into welfare might be reasonable alternatives to dependency on NGO aid, employment with UN agencies or mafia welfare.

Besides, the more inappropriate the imposed values, the more likely that external agencies will get involved in micro-management. In BiH, each external initiative seems to set in train unlooked-for consequences that require further intrusion.<sup>33</sup> It was originally envisaged that the international agencies would be in the BiH for a year. This was extended to five years and the international presence is now regarded as an indefinite commitment.

#### • Accountability and empowerment?

Since Boutros-Ghali's *An Agenda for Peace* (1992) democracy and elections have been introduced in war-torn societies as the route to 'democratic peace'. Elections are intended to generate political alternatives to violence: political legitimacy would mitigate conflict. But we have seen in the Balkans that democratic elections by themselves do not necessarily produce a change in the culture of governance.<sup>34</sup> Moreover, as we know from experience in 'western'

<sup>31</sup> See Amartya Sen, *Development as Freedom*, Oxford, Oxford University Press, 1999.

<sup>32</sup> Faisal Islam, 'Soros: May Day Protestors Do Have a Point', *The Observer* (London), 6 May 2001.

<sup>33</sup> The Arizona market south of Brcko was encouraged to bring ethnic groups together. It allowed crime to flourish, required more policing, monitoring of police, dismissal of police.

<sup>34</sup> See David Chandler, *Bosnia: Faking Democracy after Dayton*, London, Pluto, 1999; Michael Pugh and Margaret Cobble, 'Non-Nationalist Voting in Bosnian Municipal Elections: Implications for Democracy and Peacebuilding', *Journal of Peace Research*, vol.38, no.1, January 2001, pp.27-46; UN Foundation, UN Wire, 'Bosnia: UN Official Regrets Nationalists' Success in Elections', 15 November 2000.

societies, elections can be a cosmetic element of political legitimacy. Some critics argue that in Europe, as well as in North America, governance is determined by corporate interests rather than voters.<sup>35</sup>

In BiH, elections have legitimised the war nationalists. And when the OSCE and OHR blocked nationalists from carrying out their policies, the patriarchs and war entrepreneurs simply ruled locally through parallel structures. To some extent, the same may be true of Kosovo – though the expulsion of Serbs by the UÇK and the delay in holding elections until September 2000 may have improved voting for Ibrahim Rugova's moderates.

In the political economy of peacebuilding in BiH the balance of accountability still lies externally. Providers try to drive the recovery process towards the free market and are usually accountable to their own funders and foreign governments. It seems to be a nonsense for external actors to insist on electoral democratic processes if the peacebuilding process itself is not democratically organised and accountable. It is especially problematic for the legitimacy of peacebuilding when unelected Tsars (OHRs) dismiss elected representatives in the name of democracy and peace implementation.<sup>36</sup> Similarly, the insistence on adherence to legal and human rights standards is undermined if external actors are themselves in a condition of denial.<sup>37</sup> Perhaps there should be a serious appraisal of the democratic accountability of external actors in transition processes.

### **Alternative strategies**

Peacebuilding requires carefully calibrated assessments of the needs of a society. It has to tread a fine line between reforming the system which contributed to instability and vulnerability in the first place and conserving traditional values and structures that maintain social cohesion and stability. In theory, peacebuilding should integrate local knowledge and not undermine local mechanisms which appear to work effectively (such as bartering for scarce goods). Local

<sup>35</sup> George Monbiot, 'Stealing Europe', *The Guardian*, 20 June 2001, p. 15; Monbiot, *The Captive State: the corporate takeover of Britain*, London: Pan, 2001.

<sup>36</sup> So many elected representatives have been dismissed by OHRs in BiH that during the April 2001 crisis over the Herzegovacka Banka a Croat police chief declared that it was an honour to be fired by Wolfgang Petritsch. 'Bosnia: Firing by Petritsch "An Honor", Police Chief Says', UN Wire 26 April 2001 ([www.unfoundation.org](http://www.unfoundation.org))

<sup>37</sup> The Bush administration has refused to ratify rights conventions, has attacked the universal principles of the International Criminal Court and has nominated as US ambassador to the UN a man widely alleged to have covered up human rights abuses while ambassador to Honduras in the 1980s. In May 2001 the United States was voted off the UN Human Rights Commission; the House of Representatives promptly voted to withhold overdue payments to the UN in retaliation. UN Wire, 'US: Continued Questions over "Teflon Ambassador" Nominee', 7 May 2001; 'US: Flouting Bush House Votes to Withhold UN Dues', 11 May 2001 ([www.unfoundation.org](http://www.unfoundation.org))

communities must be an integral part of the decision-making to create stakeholders in peace, and to give recovery a 'bottom-up legitimacy' that might also safeguard against the exclusion of underprivileged groups and the externalisation of decisions in New York and elsewhere.<sup>38</sup>

As commentators from the field of development have argued, there is a need to consider 'social capital' in terms of 'norms' and 'trust' and 'networks of solidarity' and ask what this really means in specific settings.<sup>39</sup> Local leaders may have political goals which are designed to undermine peacebuilding processes. Equally, however, they may work with it in order to manipulate it for their own advantage. In this respect a nuanced view of local politics is important: some may have technical priorities that can be harnessed.

In the economic policy, the World Bank's country assistance strategy for BiH of May 2000 began to shift its ground. It approved a US\$14.6 million credit repayable over 35 years for educational development and welfare net policies for the most vulnerable. Nevertheless economic growth and employment will continue to be led by the private sector, and association with the EU may continue to emphasise export-led policies and marketisation.<sup>40</sup>

Greater emphasis on self-reliance and relocalisation has been suggested by NGOs in the more general context of the 1995 Copenhagen World Summit for Social Development and its follow-on conferences. As applied to societies targeted for development assistance, neo-liberalism is a 'one-size-fits-all' for global integration through opening up markets and export-led growth. The IFIs have substituted 'poverty reduction strategies' for 'structural adjustment programmes' in dealing with developmentalism, but they have not changed their macro-economic conditionalities or provided additional and adequate means to sustain public social services, employment and local productive capacity.<sup>41</sup> The poverty reduction strategies have been

<sup>38</sup> See generally, Andrew Maskrey, *Disaster Mitigation: A Community-Based Approach*, Oxford: OXFAM Publications, 1989.

<sup>39</sup> Philip Peirce and Paul Stubbs, 'Peacebuilding, hegemony and integrated social development', in Pugh (ed.), *Regeneration of War-torn Societies*, Basingstoke, Macmillan/Palgrave, 2000, pp. 157-76.

<sup>40</sup> UN Foundation, UN wire, 'Bosnia-Herzegovina: World Bank Announces assistance Strategy', 25 May 2000.

<sup>41</sup> In what appeared to be a 'pre-emptive' move to capture the social development agenda emerging from the Copenhagen World Social Summit of 1995, the UN, OECD, IMF and World Bank issued a joint document, 'A Better World for All' (June 2000) that outraged NGOs. It represented an 'unholy alliance' between the UN and northern-dominated Bretton Woods institutions, marginalised voices from the south, represented the poor as victims in need of northern medicine, failed to recognise the role of the IFIs in generating poverty and disregarded the need for welfare, wealth distribution and workers' rights. NGO Caucuses, 'NGOs Call on the UN to Withdraw Endorsement of "A Better World for All"', 28 June 2000: [www.earthsummit2002.org/wssd/wssd5/wssd5NGOs.htm](http://www.earthsummit2002.org/wssd/wssd5/wssd5NGOs.htm).

described as 'blind to the crucial role of basic social services': only 10% of OECD overseas development assistance goes to basic social services (5% if water and sanitation is excluded).<sup>42</sup>

Alternative political economic frameworks fostered in relation to debates over development programmes tend to coalesce around: halving numbers living in extreme poverty, universal primary education, reduction in child mortality rates and so on. Suggested mechanisms to achieve these goals include: donor states meeting the UN target of 0.7% of GDP for development assistance, debt cancellation, currency speculation taxes, military expenditure limits and land reform. But there is a less formulaic approach to developing alternative economic approaches to the Washington consensus, though protectionism is not ruled out. Strategies should reflect the traditions and needs of particular societies. BiH has some similarities to poor countries targeted for developmental assistance, and its ethnic divisions and clientist structures are not the only imperatives operating on the political economy. As a former managed economy which placed some emphasis on social ownership one could envisage greater priority accorded to state-led infrastructural reform, state-run health and education services, improved and regular pay for public sector workers and non-profit-making co-operative ventures.<sup>43</sup>

## 5. Conclusions

Two general conclusions can be drawn from this survey.

First, as suggested with regard to welfare, new forms of relationships between state and civil society are necessary – rather than an insistence on treating societies as economic units and treating individuals as *homo economicus*. Remedies proposed by 'think tanks' such as the International Crisis Group (ICG) and European Stability Initiative seem to require 'more of the same'.<sup>44</sup> They recommend even greater external management to secure the manifest destiny of the market. They seek to break the clientist structures that exercise a stranglehold on the economy and condemn the 'failure of the international community's efforts to ensure the rapid

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<sup>42</sup> German NGO Forum World Summit on Social Development, 'Putting basic services in the centre of PRSP', working group 20/20, [www.earthsummit2002.org/wssd5/wssd5r8g.htm].

<sup>43</sup> To counter, for example, the situation where doctors take disinfectant from the Sarajevo hospital for use in their private clinics.

<sup>44</sup> ICG, 'Is Dayton Failing? Bosnia Four Years After the Peace Agreement', Sarajevo, 29 October 1999; European Stability Initiative, 'Taking on the commanding heights. Integration of network industries as a tool of peace building: a proposal for the Peace Implementation Council', Discussion paper Berlin/Brussels/Sarajevo, 3 May 2000.



and effective privatisation of the commanding heights of the Bosnian economy'.<sup>45</sup> This is presented as 'rationalisation'. It is quite true that bureaucratic barriers are hindering legal economic activity. But what is this 'rationalisation'? It is actually widely-discredited structural adjustment with a vengeance. Privatisation and marketisation is likely to increase unemployment and poverty even further. Those parts of the economy that have been privatised have been captured by the same political patrimonies that competed for the spoils of Yugoslavia's collapse. Moreover, elements of privatisation are incompatible with accountability. Denial of public information on grounds of 'commercial confidentiality' has become the new screen behind which government regulators can hide. It further underestimates the extent to which marketisation might foster divisions in society and, through deregulation, facilitate mafia activities.

Second, assuming that the international agents of neo-liberalism are willing to commit themselves to 'trusteeship' for an indefinite period, such policies ignore an inherent contradiction in the promotion of de-regulation and democracy through an unaccountable, dirigiste and authoritarian governance. Perhaps the participants need to ask: who ultimately owns peacebuilding? The 'west' is not ultimately responsible for transformations. It does not have an inalienable right to determine the definitions of universality and global norms. The 'west's' claim to be nursing peripheral societies into inevitable global capitalism derives from economic and military power not from discovering a 'golden rule of economics' or from an ethical or civilisational superiority.<sup>46</sup> Local communities have to own their future – a key criterion being the right to make and unmake their own laws. We need not argue that *only* capitalism is a source of 'greed' and 'grievance', but outsiders do need to re-think the impact of the neo-liberal *mission civilisatrice*.<sup>47</sup> It is a contradictory kind of transformation that aims both to build states on the one hand, and to privilege the market over society on the other.

<sup>45</sup> ICG (n.17 above) 2000.

<sup>46</sup> See Thomas Frank, *One Market Under God: Extreme Capitalism, Market Populism and the End of Economic Democracy*, New York: Secker & Warburg, 2001.

<sup>47</sup> Roland Paris, 'Echoes of the Mission Civilisatrice: Peacebuilding Operation in the Post-Cold War Era', *Review of International Studies* (forthcoming).

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**Building East Timor's Economy**

**Dr. Helder da Costa  
East Timor Study Group  
and  
Dr. Hadi Soesastro  
Centre for Strategic and International Studies (CSIS)**

## **BUILDING EAST TIMOR'S ECONOMY**

Helder da Costa  
Hadi Soesastro

### **Introduction**

Peace and reconstruction on the eve of the new millennium are dramatically altering the physical and economic landscape of East Timor and have the potential to bring many tangible benefits to its people. Building a viable economy is an essential part of state building in independent East Timor.

Like other nations emerging from a trauma, such as Bosnia and Herzegovina (World Bank, 1996), East Timor has experienced its first stage of peace and the beginnings of political, economic, and social recovery. However, the reconstruction program needs to be accelerated and extended throughout the country if it is to meet the aspiration of its citizens. Institutional and policy foundations must be firmly and swiftly laid to prepare East Timor for sustainable recovery and growth, so as to enable the country to rely increasingly on its own to design and implement the policies required, and institutions for long-term development. An essential ingredient to provide that firm foundation is effective macroeconomic management to encourage trade and investment and foster the private sector.

As East Timor begins to move towards a self-functioning economy, attention has been focused on the issue of how to properly manage the flow of aid, encourage growth in production, promoting exports, and ultimately boost consumption and social welfare. The new country's development efforts will have to start from scratch with scant domestic resources (Da Costa, 1999). It provides the potential for the future government to commit to market-based economic growth, that is to a development strategy that allows full exploitation of the country's comparative advantage in agriculture, fishing, oil and natural gas, and tourism activities (Saldanha and da Costa, 1999).

Recognizing the daunting task of rebuilding the East Timor economy in the post-conflict era, due to the decline in economic activities in recent times, reliance on foreign aid, aid management, appropriate trade and investment policies pose formidable challenge for East Timor's policy makers in the future. One of the most important tasks is to transform appropriate institutional arrangements and bureaucratic structures. The core strategies proposed by Larcombe (1999) include developing an overall economic program for government, establishing a new currency and capital works, redirecting resources to give greater emphasis to meeting basic social needs. To that end, it is imperative to establish an integrated institutional and policy framework for managing monetary policy, collecting taxes and controlling expenditures, regulating trade and investment, and coordinating aid.

### **Economic Development in the Past**

The civil war in the 1970s had severely damaged East Timor's already fragile economy. Agricultural output fell sharply in the mid-1970s. East Timor's incorporation into Indonesia following the civil war was followed by large transfers of resources, but these transfers did not bring about greater economic viability to that new province. East Timor became highly dependent on Jakarta. There were questions whether this was Jakarta's strategy to keep the province under its fold. However, this was not only East Timor's fate. Under the highly centralized structure, other provinces were equally made increasingly dependent on the center.

Following a period of rehabilitation, consolidation and stabilization under Jakarta's rule, the economy of East Timor began to grow at respectable rates since the early 1980s. From 1983 to 1990, real GDP grew by an average of 7.8 percent per annum (Saldanha, 1994). In the 1990s, up to 1996, East Timor's economy experienced growth of about 10 percent per annum. East Timor was not spared from the effects of the Asian crisis. Real GDP slowed down to 4 percent in 1997 and experienced negative growth of minus 2 percent in 1998.

Under Indonesia's rule, the economy underwent a major structural change. The contribution of agriculture to regional GDP steadily declining from about 60 percent in 1981 to 42 percent in 1986, 37 percent in 1990, and 25.5 percent in 1998. However, about 75 percent of the population continued to live in the rural sector and drew their livelihood from agricultural activities. A similar trend could be observed in the rest of Indonesia.

Economic activity rapidly increased in three sectors: (a) construction; (b) trade, hotel and restaurants; and (c) transportation and communication. The construction sector reached a peak in 1984 with a contribution of about 22 to regional GDP. Manufacturing and mining activities remained small. The government was very important for the economy, accounting for more than 20 percent of regional GDP throughout the period under Indonesian rule for more than two decades. However, the growth of the economy that was driven by the above economic activities did not benefit the local, "indigenous" population as they did benefit the non-Timorese, the migrants (*pendatang*) that dominated trade and other services, the civil servants from outside the region that occupied the higher echelons in government, and building contractors from outside the province.

For security reasons, that province was officially declared close until about the late 1980s. However, this did not prevent the inflows of migrants and other workers that were either related to or were paying bribes to local civilian and military officials. When the province was declared open, the influx of migrants, mostly from the eastern parts of Indonesia, increased rapidly. Unemployment among East Timorese increased, especially among the educated youth (Soesastro, 1994). Unemployment statistics in East Timor and the rest of Indonesia are suspect, but estimates suggest that in 1998, open unemployment was about 6 percent and underemployment about 11 percent.

The development of East Timor's economic viability was recognized in the late 1980s. The transfer of resources from Jakarta of about \$100 million annually was unsustainable. Through these large transfers Jakarta also failed to win the hearts of the people. They desire a just treatment and participation in the affairs of the region, including in the development of the economy. Economic viability was to be achieved through economic integration of the province into the national economy (of Indonesia), and the promulgation of strategic development plans to overcome major bottlenecks and enhance the region's comparative advantage (Soesastro, 1991). Such a focus could be built on the development potential areas as cash crops, livestock, and tourism. This would have to be complemented by improving inter-island shipping networks, by extending the physical infrastructure, and by continuing large investments in carefully devised programs of education and health.

As the security situation remained dangerous there was no way that the province could develop its tourism. Private investors were also discouraged. The opening up of the economy in the late 1980s was argued on the basis of making the region attractive to private investment, including foreign direct investments (Soesastro, 1988). No foreign

investors ever entered the province, and until mid-1999 only 10 domestic investment projects were registered with the Board of Investment (BKPM). The 1991 Santa Cruz massacre was a turning point in the province's development. Indonesia's incorporation of East Timor rapidly lost support from within the region itself. The security situation became more unbearable. There were increasing calls for granting autonomy status (Saldanha, 1994) or for providing some "special treatment" (Soesastro, 1995) to East Timor. While these issues were being debated upon, East Timor's economy became even more dependent on transfers from Jakarta and on the public sector, led by the local government that by the late 1990s had become very corrupt.

By 1996, per capita GDP in East Timor was \$ 431, less than half of Indonesia's average (\$1,153). An estimated 30 percent of households, about twice that for Indonesia, were below the poverty line. Life expectancy averaged 52 years, compared with the Indonesian national average of 61.5 years. Infant mortality was as high as 149 per 1,000, a rate that was amongst the worst in the world. However, the socio-economic conditions of East Timor were not significantly worse than those in the province of East Nusa Tenggara, which includes West Timor. East Timor may turn out to be luckier than East Nusa Tenggara because of its off-shore resources. However, building a viable economy cannot rest simply on the exploitation of those resources.

### **The Destruction of 1999**

The outbreak of violence led by the militia began on the night of 30 August 1999 after the closing of polling stations. The destruction that followed the announcement of the results of the ballot was almost total. It cut across all sectors of the economy and throughout the territory, and it affected both physical infrastructure and "soft infrastructure". About 75 percent of administrative buildings and 80 percent of social infrastructure (schools and clinics) were completely or partially destroyed. Perhaps more than half of the population were relocated, in large part by force. Some 300,000 persons were estimated to be internally displaced and more than 200,000 went to West Timor.

The markets collapsed, and shortage of transportation aggravated the situation. Agricultural production was disrupted and a large proportion of livestock was lost. The coffee sector remained intact. All power generators, except in Dili and Bacau, were damaged or destroyed. Before the disturbance total generating capacity was about 40 megawatts. Most of the 12,000 telephone lines were damaged. The modern sector of the economy, almost exclusively run by non-Timorese, also collapsed. Real GDP was

estimated to have declined in 1999 by 38 percent (IMF, 2000) or even more, by 40 to 45 percent (Joint Assessment Mission, 1999). Prices of goods increased by 200 percent and those of manufactures increased by more than 500 percent from August to October 1999.

Most critical, however, was the disappearance of the administrative structures of the government, as most high echelon officials have fled the territory. Government archives were lost, and the institutional memory was gone. Budgetary transfers from Jakarta ceased in early September 1999. No new structure can be created without the ability to make payments, including wages and salaries. Nothing was left of the central bank regional office, and banks have been looted and destroyed. All transactions shifted to a cash basis of payments. The total size of the civil service in East Timor as a province of Indonesia was around 28,000. Of this, about 10,000 were accountable to the central government, and about 25 percent of the total were non-Timorese, that filled top echelons in both vertical and provincial administration. The departure of judges, prosecutors, and court clerks created a serious void in the legal system. Likewise, the departure of police personnel left behind only one senior police officer.

The health system completely broke down due to the departure of all senior health staff, including 130 of the 160 doctors, and the complete loss of all equipment and drugs. During the Indonesian administration the total health sector work force was about 5,000, distributed among 67 sub-district centers and 309 fixed satellite sub-centers. The situation in the education sector was equally distressed. Approximately 95 percent of schools and other educational institutions were destroyed. The provincial administration lost 70 to 80 percent of senior administrative staff and secondary teachers. About 90 percent of teachers at the secondary level were non-Timorese, whereas 75 percent of teachers at the primary level were Timorese.

On 20 September 1999 the first multinational force (INTERFET) arrived in East Timor to restore peace and security. On 29 September donors, UN agencies and representatives from East Timor met in Washington, DC to support World Bank's role in donor coordination and endorsed a proposed Joint Assessment Mission (JAM) to East Timor. JAM, accompanied by an IMF mission, visited East Timor in October/November 1999. It identified priority reconstruction objectives and provided estimates of external financing needs. It also adopted a comprehensive development framework approach, covering 8 sectors. The donors meeting in Washington agreed about the need for an early deployment of the mission based on lessons drawn from other post-conflict countries, where lack of coordination between relief and development planning had delayed the transition from emergency relief to more sustainable support.



East Timorese organizations and communities also did mobilize quickly to reconstruct their territory. CNRT, the Catholic Church and local NGOs were active in distributing humanitarian aid and were organizing local reconstruction committees.

On 9 December, the World Bank Board of Executive Directors established a Trust Fund for East Timor (TFET) to assist East Timor during the transition to independence. On 17 December an International Donors' Conference was held in Tokyo. They pledged a total of about \$523 million for 3 years to rebuild East Timor, in addition to \$700 million a year reserved for UNTAET from the UN assessed contribution budget. The donors supported the coordinated approach to the rebuilding of East Timor, and endorsed the establishment of TFET under the trusteeship of the World Bank, to complement the UNTAET trust fund, the Consolidated Fund for East Timor (CFET) for recurrent expenditure, equipping the civil service and capacity building. It was also agreed that TFET priorities be determined every six months by key East Timor counterparts. This was initially undertaken by CNRT technical groups and the National Consultative Council (NCC). Later, this function was taken over by ETТА, the East Timor Transitional Administration, established by UNTAET and CNRT in June 2000.

In a Memorandum to the Executive Directors of 3 November 2000, World Bank's President, James Wolfensohn, made the following assessment: "The state of affairs in East Timor is similar to that in some other post-conflict situations in which the World Bank has conducted rapid assistance programs, such as West Bank/Gaza, Bosnia/Herzegovina, Kosovo and Rwanda. Some lessons learnt from these operations are applicable to East Timor, but there are also substantive differences. In a positive sense, East Timor does not face internal conflict and the political leadership is relatively unified on crucial economic and reconstruction issues. The degree of destruction of basic infrastructure was however much greater, the institutions of the state suffered total collapse, and a strong cadre of East Timorese public sector managers are not yet in place. Security remains a long-term concern. UNTAET has a key role to play in building East Timorese institutions and effecting a transition of authority to the East Timorese." (World Bank, 2000).

### **Economic Rehabilitation under UNTAET**

UNTAET is currently entrusted with the task of rebuilding the structure of governance including a public administration capable of providing basic services. Despite immense difficulties in the first half of 2000, much has been accomplished through UNTAET's

emerging governance and administration structures from the start up phase. With the stabilization of the humanitarian and security situation in East Timor, a more urgent task in this newly emerging country is to establish a small, competent and transparent government from the beginning. UNTAET is slowly establishing the foundations for the major reconstruction and development program.

East Timor's endeavor to rehabilitate and reconstruct the economy has been supported by generous external financial assistance from the broad international community. This assistance has taken the form of grants and donations to avoid the creation of external liabilities for the future independent country. The country is experiencing an on-going revival of economic activity, led by growth in construction, commerce and trade, and basic services. This observed recovery is led by agriculture, commerce, basic services and reconstruction of public and residential buildings.

The first Joint Agricultural Donors' Agriculture Mission in November 1999 reviewed the priorities for the transitional period and recommended a community empowerment and governance program and identified several priority areas for reconstruction of agriculture. These include support to : (i) vulnerable groups, including the victims of violence and those who had lost their productive assets; (ii) restoration of basic agricultural infrastructure, including irrigation systems and access roads; (iii) restoration of livestock; and (iv) provision of agricultural services (World Bank, 1999b) . The first Agricultural Rehabilitation Project (ARP) was designed to respond to these priorities. These include restoration of priority assets (livestock and farm tools) and emergency vaccination, rehabilitation of small irrigation schemes and access roads, establishment of Pilot Agricultural Service Centers (PASCs) and community radio stations.

The second Agricultural Donors meeting in March/April 2001 reviewed the overall impact of agricultural sector assistance during the post-emergency phase. While most projects were at their early stages, emergency food relief, seed multiplication and rapid impact programs appeared to have been well received by rural households. The focus on the past assistance on irrigated areas left upland farmers, who are amongst the most vulnerable groups, largely unassisted. Rural markets were not yet working well and farmers cited problems with unavailability of inputs, lack of transportation, equipment, high prices of fuel and lack of distribution networks (Joint Agriculture Donor's Mission, 2001).

Against this situation, the Division of Agriculture Affairs (DAA) of ETTA formulated a number of priorities for the agricultural sector. These include: (i) ensuring food security

through improvements in production of staple crops; (ii) promotion of internal markets; (iii) improvements to farming systems in upland areas; (iv) reducing deforestation through watershed management; (v) creating a sustainable income generating fisheries sector and (vi) promoting greater agricultural productivity, with special emphasis on coffee (Division of Agriculture, 2001).

Agriculture is projected to grow strongly. Coffee output is expected to be about 8,000 tons in 2000 and 2001, having recovered from less than 5,000 tons in 1997 and 1998. Rice and maize production could reach as much as 75 percent of the 1996/7 bumper levels (UNTAET and World Bank, 2000b). The reconstruction effort is particularly intense during FY 2000-1 and FY 2001-2 and total investment is projected to average about 50 percent of GDP during these years. Coffee exports accounted for half of agricultural revenues prior to the conflict. Production, primarily of a high quality Arabica hybrid variety organically grown in the upland areas of central East Timor, increased substantially and became a major income earner for small holders. Coffee is one of the few cash crops and foreign exchange earners in East Timor. From the small producer to intermediaries and final crop processing and storage, the coffee sector has survived nearly intact. The 1999 violence came after the harvest and therefore did not affect the basic production regimen employed by East Timor's smallholders. The USAID-supported NCBA has worked closely with approximately 17,000 coffee farm families (roughly 10% of the population) through a cooperative network, Cooperative Coffee Timor (CCT), producing specialty coffees for export. The program includes production, training, and extension services as well as the development of processing, transport and warehousing facilities. It is the single most important means of providing immediate assistance to large portion of East Timor's farm families (USAID, 2001).

Private reconstruction activity and hence investment is expected to be more intense in the first year due to housing reconstruction. This high transitional level of investment is expected to be supported by grant assistance from abroad. East Timorese domestic savings will be negative for the next years before gradually recovering to their traditional level of about 20 percent of GDP that prevailed in 1995-1997. Given the severe domestic supply constraints many goods and materials used in the reconstruction process must be sourced abroad. The external accounts are therefore likely to register large deficits in fiscal year 2000-1 and fiscal year 2001-2 as imports are projected to rise sharply, reflecting the high import content of capital projects (UNTAET and World Bank, 2000a). Once again, this deficit would be financed by capital grants from abroad and foreign investment.

The UN and international agencies are working to create a police force, a court system, a new military force, an education system and a health-care system. Much of this is paid for from a \$170million trust fund administered by the World Bank. East Timor is heavily dependent on foreign aid, with just \$25million of its annual budget of \$305million coming from taxes and fees (UNTAET, 2001). One test for East Timor will come when the UN presence begins to scale down in the next few months. UN estimates suggesting projected annual revenues from all sources of \$65million a year will fall far short of the \$100 million required to remain viable.

Thus far, UNTAET has increased the size of the civil service from 9,070 to 11,154. The bulk of the increase is made up of 1000 extra teachers, 400 extra police and 600 soldiers. Employment generation activities for more than 30,000 people have also been implemented in all districts through bilateral and multilateral activities, the so-called Quick Impact Projects (UNTAET and World Bank, 2000b). Substantial progress has been made in establishing the rule of law and building a legal system. A judiciary has been established as well as institutions for economic governance, such as Central Payment Office, Central Fiscal Authority, and Revenue Services. As East Timor is moving fast along the path towards full independence in late 2001 or early 2002, major efforts should be aimed at integrating political, administrative and socio-economic plans so as to achieve a smooth transition to independence.

In its first donors' coordinating meeting in Tokyo, the donor countries pledged around US\$ 523 million in grant funding for a three-year reconstruction effort (2000-02). The fund comprises US\$ 157 million in support of humanitarian programs, and US\$ 366 million in support of governance and administration, capacity building and reconstruction in East Timor to ensure its smooth transition to future independence (World Bank, 1999a). This is by far the largest contribution of aid inflows to East Timor. Despite numerous obstacles, donors have managed to achieve modest disbursement levels and have successfully established aid institutions for channeling assistance to enhance the speed and responsiveness of operations. To date, the largest pledges have mainly come from five countries: Japan (US\$129 million), the US (\$98 million), Portugal (\$91 million), European Union (\$68 million), and Australia (\$44 million). A complete breakdown of donor assistance by pledges is presented in Table 1. Not surprisingly, the greatest lag between commitments and disbursements was in the infrastructure category, while disbursements for capacity building and technical assistance have been more in line with commitments.

A more recent set of targets for the delivery of donor assistance was presented in the

Canberra donor conference in June 2001. The Consolidated Fund for east Timor (CFET) projected at US\$65 million has since been approved by the donors. The so-called modest, fiscally responsible and sustainable medium term consolidated budget is expected to cover the needs for the recurrent and capital costs in East Timor (UNTAET, 2001).

The budget for East Timor (Table 2) will largely depend on foreign aid, although it is expected that the introduction of a simple-to-administer tax and fee regime could yield total revenues of about US\$ 17 million in 2000, rising to US\$30 million in the year 2001 (UNTAET and World Bank, 2000a). A summary of estimates by sector (eight sectors) is presented in Table 3. A key feature of the development of the budget is the establishment of a framework in which resource allocation decisions are made against clear outputs targets and policy objectives.

Despite substantial pledges, low disbursement to the UNTAET Trust Fund has caused serious problems that are constraining expenditure. Key among these has been the government procurement capacity as well as regulations, as distinct from classic UN peacekeeping operations. Furthermore, with no substantive national development planning apparatus, or indeed no agreed consolidated budget in these early stages of reconstruction and development, it would have been unwise to forge ahead with rapid disbursement while clear priorities for Trust Fund expenditure were not in place. The slow disbursement is largely explained by two main factors. The first is the "pipeline effect" of the phase-in of programs. This reflects the planning phase of agencies, with recent intensive program implementation. The second factor is that while urgent expenses were being met from other international agencies, additional delays were due to unforeseen difficulties in the first half of 2000 in the procurement of certain goods and services. Nevertheless, problems of funds flow mechanisms are being overcome.

Overall, the budget for 2001-02 is helping to jump-start the economy through investment in key productive sectors and support for the resumption of trade, macroeconomic stabilization, rehabilitation of economic and financial institutions, and restoration of appropriate legal, and regulatory framework.

Indeed, East Timor is receiving generous support from donor countries to finance its reconstruction program and a large part of recurrent expenditure during the transition. This support will not continue indefinitely, and future government services will need to be financed from domestic resources. It is therefore imperative for UNTAET that investment funds are used wisely during the transitional period, and do not create burdensome recurrent obligations for the future independent state. However, it is unlikely

that the donor community will show the same willingness to provide long-term financial support. Aid fatigue (Raffer and Singer, 1996) may eventually come into play. It is likely that the need for such support will also be lower as East Timor further consolidates its revenue collection effort. It is clear that to generate sustained future increases in income, the tax base must be strengthened and broadened, and investment must rise.

### **Critical Economic and Social Issues**

The fragility of East Timor's economy manifests itself in its colonial legacy, an imposed trade dependence on its neighboring countries, limited domestic market, lack of educated and trained entrepreneurs, and high energy and transport costs.

On balance, the state of East Timor's economy is now characterized by an artificial economy that is not sustainable. The capital, Dili, appears to be bustling, but most restaurants, hotels, vehicles and apartment rentals are part of a bubble economy fed by the huge foreign presence. The official currency, the US dollar, has displaced its major rivals, the Indonesian rupiah and Australian dollar, but not without controversy and no small profiteering at the changeover, when many traders simply rewrote prices from \$A to \$US, effectively doubling them at a stroke. However, the real problem is outside the capital, where most people are living on less than \$US1 a day. Unemployment is rampant, about 80 percent, hospitals and clinics nearly non-existent and illiteracy common.

The on-going transition period needs to maintain priority activities in order to meet basic needs (food, shelter, water, health, education) as well as in order to maintain the conditions of political stability, personal security, reconciliation and economic recovery. The problem is one of fostering economic development with underdeveloped essential ingredients: capital, skilled labor, technical know-how, institutional infrastructure and policy direction. The limited size of the domestic market precludes economies of scale. Crucial choices have, therefore, to be made on the scale, timing and phasing of investments in support of economic development. Enhancing the country's capacity to absorb investment and aid flows for efficient use in promising ventures would be a crucial issue.

One big issue facing the new government will be over how much agreement there is about "quarantining" the gas revenue rather than spending it all on current expenditure. East Timor's real economic future lies in the wealth of gas in the Timor Sea, which under the 90-10 per cent split wrestled out of Australia will provide \$7billion over 20 years.

However, this has hit a hitch with the decision by US-owned Phillips Petroleum and its partners to defer exploitation of the biggest field because of Timor's decision to raise an extra \$1 billion in royalties. There is a common view that the country should save at least 50 per cent of the money in a trust fund. It is expected that East Timor's economic growth will be incremental rather than rapid. This means the oil money, and the question of how to spend it, will be central to the country's future for years (Da Costa, 2001).

An endowment fund could act as a stabilizing force, safeguarding income from resource sales that rightly belong not only to East Timorese citizens of today but to those of the generation to come. Saving too much would mean wasting development opportunities and increase the risk of corruption, while saving too little would be risky given the uncertain nature of oil and gas revenues (Francino, 2001)

While it is unclear whether there will be a centralized planning body as currently exists, it is highly likely that the future administration will require continued international staff as part of capacity building. As the United Nations scales down its mission, calls have been made by the East Timorese political parties to have an exit strategy, for example, the "Timorisation" process, enabling more East Timorese into important decision-making roles.

Apart from gas revenue, East Timor will have to rely on coffee production, tourism and agriculture to be less dependent on aid. The GDP grew by 15 per cent in 2000-01 and is expanding, but this is from a base of almost zero and fueled mainly by reconstruction, development and humanitarian aid, supplemented by the local coffee industry and its prospects in a recovering world market. While many doubt the country's economic viability, East Timor is arguably well endowed on a per capita basis, with natural resources both onshore and offshore. The projected oil and gas returns for the medium term from the Timor Sea are promising, and this export income will be supplemented by earnings from marble, coffee, and other agricultural produce as well as tourism.

Given that three-quarters of the population is engaged in agriculture, a future independent East Timor will strengthen traditional agriculture by increasing crop yields and providing access to rural banking and microcredit facilities, which will increase output and improve the ability to market surpluses. Appropriate policies will provide a sound basis for sustained economic growth and poverty alleviation via export-oriented primary activities.

East Timor should actively engage in trade with its neighboring countries if it wishes to develop its economy rapidly. A future independent East Timor will welcome sound investment by firms that wish to operate in an environment free of artificial barriers to

trade. But a secure investment climate will need appropriate laws protecting property rights and contracts, establishing a fair commercial code, codifying labor relations, and minimizing the cost of doing business.

### **The way forward**

The daunting task of rebuilding East Timor places many formidable challenges for the people of East Timor. With the overall reconstruction efforts in East Timor, despite sluggish beginnings, it can be said that the world's newest new nation is gradually moving in good shape, giving rise to a new confidence among all parties involved. The support of the international community and full participation of dedicated and motivated East Timorese and their willingness to take charge of their own affairs has the potential to bring many tangible benefits.

Looking beyond donor assistance, the real issue perhaps is how to support investment projects to ensure sustained growth and poverty alleviation without relying solely on public finance beyond UN transitional administration. The challenge will be to assist and encourage the private sector to undertake projects, with donors offering complementary finance by offering political risks guarantees or insurance. Likewise, more efforts should be given to capacity building within East Timor, thus ensuring a capable system of governance that fosters and complements private sector-driven growth.

Ultimately, the degree of success of this effort will be determined by activities in the private sector, which generate output, savings, investment and trade. Hence the role of public policy is to create a policy environment within which the private sector can expand and flourish.

To facilitate these efforts, three important roles of government can be proposed: first, establishing and maintaining simple, transparent and stable rules for private sector activities; second, maintaining efficiency, particularly in addressing market failures in the areas of health, education, public infrastructure, law and order, and protecting the poor; and third, enhancing efficiency and equity with a view to limiting distortions and shielding the poor. More importantly, creating a sound macroeconomic environment for growth will be a major challenge for the future government in East Timor. In addition, the government should be fully committed to providing fiscal, monetary, trade and investment policies that are capable of stimulating economic development by allowing resources to be allocated efficiently, maintaining macroeconomic stability, and promoting competitive private sector development. In this regard, the policy environment should be



directed toward achieving the following challenges:

- *Institutional and Regulatory Framework.* The need for an overhaul of the legal and institutional settings so as to remove harmful restrictions, modernize laws and enabling stability environment for private sector activities.
- *Macroeconomic.* The need to adopt new policies regarding fiscal and monetary measures so as to bolster the efficiency of markets, as well as encouraging savings and investment.
- *Optimal use of natural resources.* Policies designed with the aim of expanding supply of resources and rationalizing their use.
- *Economic Integration.* Achieving many of the above mentioned challenges depends to a large extent on setting up East Timor economic relations towards greater integration with regional and global markets.

Key elements of an economic policy framework for East Timor have been identified in Hill and Saldanha (2001). They will be summarized below.

(a) *Monetary and Exchange Rate Policy.* As a small economy East Timor need not attempt to run an independent monetary policy. It should link its currency to that of a larger, well-managed economy.

(b) *Fiscal Policy.* To have a lean and cost-effective government, East Timor could limit the size of the government sector to around 20 percent of GDP. This implies a budget at the outset of independence of some \$60 million, excluding air flows. To achieve some degree of fiscal self-reliance, the community needs to be quickly educated that government services are not costless.

(c) *Maximizing the Benefits from Aid..* The flows of aid to East Timor may continue to be relatively large, up to 10 percent of GDP, for some years to come. There needs to be a guarantee of some minimum level of aid flows over the medium term so as to provide the basis for planning major investment projects, whose priorities must be set by the Timorese community itself.

(d) *Managing a Natural Resource Boom..* There is yet uncertainty about the size of the revenues derived from the Timor Gap. This uncertainty should not be a basis for developing a budgetary strategy. Explicit measures need to be enacted to ensure that the revenues from oil and gas will be invested wisely.

(e) *Trade Policy*. East Timor has very little choice but to maintain an open trade regime. There are benefits for East Timor to joining ASEAN.

(f) *Commercial Environment*. East Timor should create an environment that would make it attractive to the private sector and foreign investment. This means redressing the highly insecure ownership arrangements, the high cost structures, the shortage of skilled and semi-skilled labor, and the poor infrastructure.

(g) *Relations with Indonesia*. East Timor needs to forge a practical development partnership with Indonesia. For this to happen, a number of complex issues need to be resolved. The management of open borders with West Timor is critical.

(h) *Agriculture and Rural Development*. Agriculture will be the key to East Timor development and social progress.

(i) *Financial Development*. East Timor needs to move cautiously in developing the financial sector. It should leave the formal sector initially to foreign banks. The government should not use a heavy-handed regulatory approach in developing the rural, informal credit markets.

(j) *Infrastructure*. Rehabilitation and development are vital. In terms of road networks, the main task is that of preserving and maintaining the network, not expanding it. Electricity will probably always be expensive, but electricity subsidies will have to be ended.

(k) *Social Policies*. There is an array of social problems and challenges. However, prioritizing will be critically important. Priority should be given to mass public health programs and investment in mass primary and vocational education.

(l) *Land Ownership*. There are no easy solutions to this highly complex and policy sensitive issues. However, workable compromises can be devised. In the mean time the government should register as much land as possible that is not subject to competing claims.

The challenge is to ensure that a viable and vibrant nation can rely on its resources and that short and medium term initiatives are compatible with sustainable development in the longer term.

(Tables 1 to 3)

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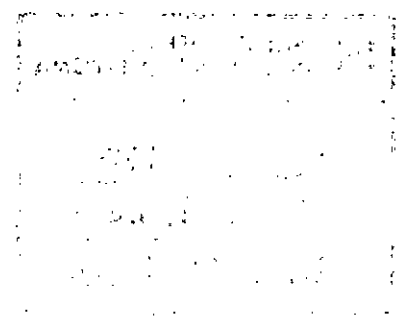
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## A POPULAR CHALLENGE TO UNTAET'S ACHIEVEMENTS

Written by an as yet unnamed group of East Timorese linked to RENETIL which includes Dr Lucas da Costa and Jose Antonio Neves.

UNTAET has recently published in the September issue of its broadsheet *Timor Tais* 20 of the UN's major achievements in East Timor. Many of these achievements are either misleading or things that UNTAET has been forced to do under pressure from Timorese people, civil society and leaders and international critics.

We wish to clarify UNTAET's claims.

It is time for UNTAET to be held accountable, once and for all, for not fully achieving its mandate, and for now preparing to withdraw and redefining its mandate according to the few things it has done rather than what it was supposed to do.

The Transitional Administrator himself must be held accountable as the one exercising absolute power in East Timor. He should be removed for the final phase of the UN mission and true accounting of the successes and failures of UNTAET needs to be conducted by the international community.

It is time for a popular dialogue on the ineffectiveness of the governing authority and what must be done for East Timor's future.

1. The Establishment of Peace and Security : First Interfet and then the PKF have helped secure the border with West Timor. External security has been a main focus of UNTAET. However, internal security is not a UN achievement. If there is peace inside East Timor, it is because the Timorese have behaved with discipline and cooperated fully with the UN on the understanding that the UN would deliver on the functions of government.

The aim of the transitional administration was not only peace and security -a peacekeeping force alone could have been deployed for that. The aim of UNTAET was to do much more.

2. Addressing Humanitarian Needs : The humanitarian enterprise was orchestrated by the office of the Coordination of Humanitarian Assistance before the creation of UNTAET. But UNTAET failed to adequately integrate the humanitarian pillar into its new structure. More seriously, UNTAET failed to make an adequate transition from the emergency phase to the phase of development. The emergency phase was certainly over by June 2000, but UNTAET continued to approach the political environment as if it was still in an emergency phase, so international agencies were not supported in the transition to development.

3. Creation of ETTA Cabinet: The appointment of Timorese cabinet ministers follows the refusal of UNTAET to share power with the Timorese or to include them in the transitional administration. Timorese cabinet appointments only followed bitter and damning criticism of UNTAET and the Transitional Administrator and his inner circle. The appointment of such a cabinet clearly did not include sharing of any executive power. The claim the creation of the ETTA Cabinet, or the creation of ETTA altogether, as a visionary step is contrary to the UNTAET story. Precisely because it was a response to criticism and not a methodical plan, it has amounted more to tokenism than to sharing of power.

4. Creation of National Council : The National Council followed the dissolution of the National Consultative Council. During the creation of the NCC , there were supposed to be representatives of all aspects of Timorese society, in addition to the existing political entities. However, the Transitional Administrator personally excluded these other representatives of women, youth groups, traditional leaders and others. In reaction, Timorese opposed such an unrepresentative body. Already it was an appointed body without any popular will behind it. It was a compromise to create the National Council, but it was also something that UNTAET was forced into establishing. Furthermore, there was no mechanism established through which NC members could consult with the grassroots and return with their opinions. It was taken for granted that NC members represented the grassroots, but this was not necessarily the case.

5. Constitutional Public Hearings : Consultation is one thing, dialogue is another. Consultation based on a short-term approach did not give Timorese time to formulate their views and to air them. Everything was being done at the same time, including civic education, political campaigning, civic registration, voter registration, and constitutional consultation. This represents a big rush, not an opportunity for the freedom of expression of Timorese regarding the future constitution.

6. Civic Education : Because of the non-involvement of East Timorese civil society, the Initial plans for civic education were rejected. This led to civic education beginning too late, and being too little too late. Had UNTAET had a culture of Timorese inclusion in the first place, civic education would have had the time to complement the political process undertaken by Timorese people themselves.

7. Civil Registration : The process of civil registration made many mistakes that have been widely noted by international observers of this year's elections and by the Independent Electoral Commission. These mistakes made it difficult to establish a reliable voter list, but the hard work of the IEC helped correct this. Had it not been for the IEC, UNTAET would have left a deeply flawed list of the country's population. Although, drawing up civil and voters' lists reflected again the big rush approach of UNTAET.

8. Creation of a Defence and Police Forces : The vision for the defence forces was developed by an expert group of consultants from King's College, London, and funded bilaterally. Why was this expertise not part of the highly paid staff of the transitional administration? The new Timorese police force is doing well and should be strengthened in the last phase. It has the difficult task of having to police outside a context of a functioning rule of law and order.

9. Establishment of a Civil Service : Because there was no possibility of including Timorese in the transitional administration as defined by the UN's staffing table, a separate civil service had to be established. However, this began very late in 2000. There is still no skills audit that has been conducted of the country on which to base the recruitment of civil servants. There has not been adequate translation services to train Timorese to assume the role of international members of ETTA, with the result many positions will disappear. Capacity has not been built for a functioning bureaucracy.

10. Establishment of a Functioning Judicial and Legal System : In few areas is the gap between claim and reality greater than in terms of a functioning judiciary. This is key to the rule of law and the peaceful settlement of disputes. Short-term training of judges cannot equal the kind of training and experience required for such positions. Cases are slow to be dealt with and detentions without trial are considered international violations of civil and political rights. The ineffectiveness of the judicial system gives East Timor the reputation of violating such rights.



The Serious Crimes Unit of UNTAET has been severely criticized by the press and the fact that the charges against it have not been addressed by the Transitional Administrator diminishes the importance of the tragic events of 1999.

11. Physical Reconstruction : The country is still littered with the destruction from 1999. It is the most dramatic feature of the Timorese landscape, still. Slowly this is being addressed by Timorese themselves, in small ways in different places. Other buildings have been rebuilt through bilateral donations. UNTAET has done little on this front and claims that it is not part of its mandate. But the mandate refers to "rehabilitation" which includes reconstruction. The blueprint of the World Bank flows from the mandate of UNTAET and its work is based on reconstruction of the country. It is to claim the reconstruction is not part of UNTAET's mandate.

12. Timor Sea Arrangement : The negotiations regarding the Timor Gap have not included transparent Timorese participation. Considering that the results of this agreement could dictate the economic future of this country, there has been no real and representative Timorese participation in the talks.

13. Creation of Radio UNTAET : In an society, the radio is an important from of communication. Radio UNTAET has been a useful instrument of information that has helped disseminate information. But only recently has it managed to reach the most remote places in East Timor. The radio should have been established much earlier.

14. Basic Public Services : The experience of East Timorese in terms of basic services does not match UNTAET's description. Most people are dependent on well-water. The water of East Timor, due to lack of major industries, has not been polluted. However, if the water is potable why do so many in UNTAET rely on bottled water? Power failures are the order of the day. An independent assessment is really needed for all aspects of infrastructure and health and education. To obscure the real problems in order to claim UN success will do a grave disservice to the Timorese people.

15. Road Rehabilitation : There is road construction in a number of areas. Yet, those responsible leave behind markers along the way. Some are from governments, some from NGOs and some from individual military contingents. Why is there not a national road programme? The result is that UNTAET mostly mends potholes.

16. Formation of a Central Fiscal Authority : It is not clear to Timorese what financial state the country will be in when UNTAET leaves. The budget of the government is US\$65 million. Some 15% is collected from local revenues. UNTAET is currently avoiding spending anything outside this figure on the basis of "sustainability". But UNTAET should be spending more than this figure on East Timor so that pressure is not put on the new Timorese government. It does not make sense for the transitional administration to do only what the future government will be able to afford. It needs to create a structure that is affordable to the future government, which is why UNTAET should be doing all the things that the future government will not be able to afford to do.

17. Collection of Taxes : How can the transitional administration legitimately collect taxes when it is not delivering basic services to the population? With such low wages set by UNTAET, on what grounds can the UN then tax the population? This kills private initiative. Furthermore, the executive is not elected. This means there is taxation without representation.

18. Establishment of a Central Payments Office: There is still not a functioning bank in East Timor. What little banking exists is done by outside banks, from Portugal or Australia. The Central Payments Office serves more to fulfil the dollarization campaign than much else.

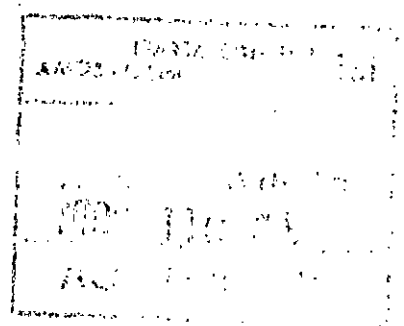
19. Establishment of a Small Enterprises Project : How can this succeed given the tax system? What little of this project that exists has been done by the community empowerment and local governance project of the World Bank, which UNTAET fought hard to prevent from coming into existence.

20. Rehabilitation of Arable Land: There is no evidence of this. Some was done by CNRT.

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**Comparing Experiences with Post-Conflict State Building in Asia and Europe:  
The Case of East Timor, Bosnia and Kosovo**

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### INTRODUCTION

"Humanitarian Intervention" seems to have become quite a popular term, though the matter itself dates only back to Security Council Resolution 688 (1991)<sup>1</sup> That resolution dealt with the humanitarian atrocities, which Saddam Hussein had committed against his own Kurdish compatriots in Northern Iraq, and the humanitarian assistance granted to the victims. Since that first international intervention on mainly humanitarian grounds, other similar engagements of parts of the international community followed: Somalia and the former Yugoslavia marked areas of bitter experience and of numerous lessons to be learned.

If there is one feature common to all examples of "humanitarian interventions", it is the overwhelming importance of the role, which the military played in their implementation. At the end of World War II such an emphasis on the military seemed quite normal to the authors of the United Nations Charter as most signatories to the Charter still maintained sizeable armed forces in the field.

Following tradition and experience, the Charter deals essentially with international conflicts, i.e. disputes between independent states. As that has historically been the domain of the military, it is not surprising that the Charter addresses it repeatedly. If that core document of International Law would be redrafted today, it is doubtful, if such an emphasis upon the military as in Articles 42 to 45<sup>2</sup> would survive. The fact, that the "Military Staff Committee"<sup>3</sup> fell victim to the confrontations of the Cold War era indicates that the committee was indeed a still-born baby. In discussions of a future reform of the Charter that committee may fall by the way-side as another expression of the privileges of the "Permanent Five" Members of the Security Council.

Among the lessons learned by the United Nations – if such international organisations are capable at all of developing a learning curve – is the realisation, that the threat of force, if it is to be effective, may also require the will to use such force. Regularly such force has been defined as military power. The strategic principle itself has a long tradition among military planners, who were held responsible for their nations' security against external threats. More recently however most armed conflicts and crises have not occurred between sovereign nations, but within states. That development found the international community ill prepared for this kind of conflicts. In the absence of an instrument suited to deal with such problems, nations turned to their military, to tackle the issues at hand. Apparently Dag Hammarskjöld's

<sup>1</sup> Security Council Resolution 688 (1991); 5 April 1991

<sup>2</sup> UN Charter, Chapter VII, Articles 42 - 45

<sup>3</sup> Ibid. Articles 46 and 47

words are still valid to this day: "[This] is not a job suited to soldiers, but a job only soldiers can do."

## The Role of the Military in the Former Yugoslavia

### **Lessons Learned by the United Nations**

Originally UN soldiers were deployed into the conflicts on the territory of the former Yugoslavia under a mandate governed by Chapter VI ("Pacific Settlement of Disputes").<sup>4</sup> The basic assumption for the deployment under those conditions was a rather benign environment in the area of the mission. If that assumption proved wrong, those Blue Helmets found themselves ill prepared as for the training and equipment necessary to deal with hostilities from one or more of the parties to the conflict.

It would be unfair not to give Denmark full credit for her most valuable initiative in this field. Against the explicit will of the UN Denmark deployed one company of Leopard I – main battle tanks to Tuzla in Northern Bosnia, to reinforce their own contingent of Blue Helmets. These Danish tanks were immediately attacked by the Bosnian Serbs, but returned fire very successfully and thereafter were never challenged again. Under the protection of those Danish tanks humanitarian convoys would reach their destinations unhindered. It is certainly legitimate to identify the Dayton Conference as a direct lesson from this Danish experience. Before one could finally meet at Dayton there was a truly remarkable military contribution to the humanitarian side of the international intervention under UN auspices, NATO's Operation "Provide Promise".

That operation was not only the longest air – lift operation ever conducted – it lasted from February 1993 to January 1996 – it also delivered a humanitarian assistance of 176.000 tons of food, medicine and supplies in more than 14.500 sorties and demonstrated one of the impressive capabilities of NATO's air forces.

By comparison, the contribution of NATO's air forces through "Close Air Support" missions to the process of convincing the leaders of Serbia, Croatia and Bosnia – Herzegovina to come to the conference table in Dayton was of lesser importance than the manifestation of the international political will on the ground. Particularly with the deployment of the tri – national Rapid Reaction Force (RRF)<sup>5</sup> it was possible to demonstrate, that a credible threat of the use of force can achieve positive results.

So when the Security Council finally provided their own troops with a mandate more suited to cope with belligerents, the Blue Helmets rather successfully turned belligerence of the former combatants into compliance.

### **Dayton Peace Accord Implementation**

The Dayton Peace Accords continued with its military "Implementation Force" – IFOR, what UNPROFOR had already commenced under the authority of the Security Council, namely to provide an environment for hope and for stable peace based on a very convincing demonstration of military capabilities.

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<sup>4</sup> Ibid. Articles 33 – 38

<sup>5</sup> The RRF was composed of units from France, the Netherlands and the United Kingdom and in the summer of 1995 deployed into Bosnia – Herzegovina.

Within quite a heterogeneous array of international agencies and even more NGOs, who all tried to help establish lasting structures for democratic government, it has actually been the military, who played first fiddle.

One ought not to forget, that IFOR's mission was NATO's first ever "out – of – area" operation, i.e. outside its own former area of responsibility of the Cold War. But it was also NATO's first ever joint operation with former adversaries turned members of the "Partnership for Peace" (PfP) – programme together with the Russian Federation and non – NATO – partners. So it was a real challenge!<sup>6</sup>

Unfortunately however the USA had decided to ban the UN from the Dayton Conference. Though the UN, and especially their Secretariat under Secretary General Boutros Boutros – Ghali, had been charged by the Security Council under US – leadership, strongly and critically supported by France and the UK, to deploy insufficient forces into the former Yugoslavia, and though there were some 50.000 Blue Helmets under UNPROFOR's mandate still in the field, mostly in Bosnia – Herzegovina, no other nation demanded, that their own organisation for peace and international security, the UN, be present at the peace talks. The more recent discussions on the authority of the Security Council, who after all holds primary responsibility to maintain international peace and security<sup>7</sup>, were caused by this political mistake of the Clinton administration.

Other questionable decisions concerning the same area of conflict were to follow.

The Dayton Peace Accord was mainly focussing on the military implementation of its agreements. As most participants to the peace talks thought of NATO's existing institutions, when implementation was being discussed, no single authority was designated to responsibly organise in a comprehensive way the political and administrative, military and judicial, economic, humanitarian and other civilian aspects of the mission.

Resulting deficiencies in the field required numerous ad hoc arrangements to ease co-operation. Among the authorities tasked with the implementation of the Dayton Peace Accord the "Office of the High Representative" gained prominent importance. Dependent on the personality of the High Representative one can state, that he has been the actual ruler of Bosnia-Herzegovina. Through the newly founded "Joint Civil Commission" he attempted to run the most complicated country.

But since there was a very complex network of authorities with politically driven command arrangements, he always has to consult with key parties to develop a common understanding of the situation at hand and the objectives to strive for. As a fall-out of Dayton UN Secretary General Boutros Boutros-Ghali had been tasked to establish a 2.027 strong United Nations Civil Police force from scratch. He tasked his department of peacekeeping Operations, DPKO, to organise the "International Police Task Force, IPTF"<sup>8</sup> and sent a senior UN diplomat to Sarajevo as his Special Representative, SRSG, to head the UN Mission in Bosnia-Herzegovina, UNMIBH. With the presence of those three authorities, the IFOR commander, the High Representative and the SRSG, trying to achieve progress towards a political objective which was not clearly defined, the international intervention was facing interesting times.

<sup>6</sup> National Defense University: "Lessons from Bosnia", The IFOR Experience; Wentz, Larry (ed.); Washington, 1997

<sup>7</sup> UN Charter, Article 24.1

<sup>8</sup> UN Security Council Resolution 1035 (1995) had originally authorised an IPTF of 1.721 CivPol Officers, which was later increased to 2.027.

The Dayton agreement set the scene for the creation of Bosnia-Herzegovina as "One country of two entities and three nations." This political objective defined the military tasks. For NATO the mission of the "Implementation Force", IFOR and of its successor "Stabilisation Force", SFOR meant breaking new ground in quite a number of areas.

As for the deployment as one of the most difficult phases of any operation, IFOR had an easy start, as many of its initial contingents had already been present as Blue Helmets with UNPROFOR. So they only switched their head-gear to become IFOR formations. But with UNPROFOR's memories of hostile behaviour of the former warring fractions in mind, IFOR focussed very much on force protection. As one of their commanders put it: "My three main priorities are: 1. Force protection; 2. Force protection; 3. Force protection."<sup>9</sup> This has certainly been a result of the American Somalia trauma with its philosophy of "Zero Risk".

### **Separation of the Former Warring Fractions**

Officially IFOR's first priority was the separation of the former warring fractions. As IFOR made explicitly clear, that they were ready to enforce compliance with the Dayton Peace Accord and hence use overwhelming force whenever necessary, the rather formidable opposing forces were fairly quickly separated. To all of them IFOR's tremendous firepower was a convincing deterrent.

To assess IFOR's success in this task one has to count the numbers of former fighters that had to be dealt with: By the end of 1995, when the Dayton Peace Accord was signed, the strength of the Muslim "Army of Bosnia - Herzegovina" (AbiH) was 216.826 soldiers, while the allied forces of the "Croatian Defense Council" (HVO) comprised 47.747 men. Their former adversary, the "Army of the Republika Srpska" (VRS) counted 154.525 fighters. The Dayton Agreement called for a significant reduction of these forces, and a balancing of the two entities.

With IFOR's capabilities well understood, road blocks were shut down, checkpoints, which had not explicitly been authorised were bulldozed, and the units of the former warring fractions were placed in cantonment areas and barracks under tight IFOR control. Understandably IFOR's resolve was often challenged, but the former adversaries generally complied.

More important still than IFOR's superiority in firepower was its dominance in the area of information. IFOR demonstrated to the former belligerents that they could monitor their units any time of the day or night even under difficult weather conditions. "We don't have arguments. We hand them our pictures and they move their tanks."<sup>10</sup> As a result, all heavy weapons were put into storage under IFOR supervision: 84 main battle tanks, MBTs, from the AbiH, 42 of the HVO and 312 of the VRS; 1.840 artillery pieces from the AbiH, 788 from the HVO and 1.012 from the VRS; in addition some 200 infantry fighting vehicles and 39 air craft and helicopters.

Specific difficulties arose from the media presence throughout the country. Media reports of incidents often reached the home country and higher headquarters before the responsible commander on the ground was aware of the situation and able to react. E-mails by individuals

<sup>9</sup> General (ret.) Dr. Klaus Reinhardt, Tutzing, 13 July 2001

<sup>10</sup> Major General William Nash, (USArmy), Commanding General Multinational Division (North)



in the field and internet homepages distributed information at a speed never before experienced.

At the same time the Republika Srpska continued with an active dis-information campaign against IFOR and NATO as a whole. But as NATO's Rules of Engagement do not allow for dis-information and deception the activities of the Bosnian Serbs could not be undermined. Electronic media are the preferred source of public information in Bosnia, but IFOR had to rely more on printed materiel like the publications "The Herald of Peace" and "Mircko" and in addition on posters and hand bills. IFOR radio transmitted on AM, but the people in Bosnia listen to FM. So there were many lessons to be learned.

### **Transformation of the Armed Forces**

The Dayton Peace Accord divided Bosnia – Herzegovina into two political entities; the Bosnian Federation with an ethnic majority of Bosniaks and Croats, holding 51% of the territory, and the Republika Srpska holding the remaining 49%.

As IFOR's entry into the territory of the fundamentally divided Bosnia – Herzegovina was to bring a halt to hostilities, the transformation of the three armies, that existed into only two, who were even to accept each other as partners in the provision of security for Bosnia – Herzegovina was the greatest challenge.

Militarily the Bosniak or Muslim "Army of Bosnia – Herzegovina" (ABiH) and the "Croatian Defence Council" (HVO) were to be integrated into the "Army of the Federation of Bosnia-Herzegovina" (Vojska Federacije, VF)

The USA instituted a programme called "Equip and Train" (E&T) and sent a consultancy firm "Military Professional Resources Inc." (MPRI) to introduce NATO doctrine and standards.

It may be assumed, that this programme contained a hidden agenda, since it not only visibly raised the level of military professionalism in the newly established "Vojska Federacije", VF, but also helped introduce military equipment from Western production under the objective of increased commonality while simultaneously replacing equipment from former Soviet and indigenous Yugoslav productions.

The results in this re-equipping process were good, but in the improvement in training they were spectacular. The significant force reductions of 15 percent each in 1999 and 2000 allowed for a concentration on specialisation and familiarisation. Due to the absence of functioning military education facilities much of that training had to be conducted in the form of refresher courses in-country or abroad and was focussing on a "Train the Trainers" programme. Much of this education took place in Turkey and the USA, but also in other countries as Malaysia and Germany.

As most of these training measures were done as joint endeavours, they helped to successfully integrate the former warring fractions of Croats and Bosniaks into the Federation Army. With the prospect of further downsizing of the armed forces, there will be little need to recruit new soldiers for another three to five years. Instead the focus has to remain on the transformation of the armed forces into an increasingly professional and basically non-political instrument. Since the new government in Sarajevo has cut the defence budget for 2001 to the equivalent of a mere 130 million US \$, it will remain a real challenge to have former members of the Croatian forces accept the considerably lower salary level in the Federation Army. Political reliability as a pillar of public security is the main objective of this transformation process.

### **"Army of the Republika Srpska"**

More of a challenge is of course the case of the "Army of the Republika Srpska" (Vojska Republike Sprpske, VRS). The Bosnian Serbs' idea of independent statehood shaped the political and military considerations of the Dayton Peace Accord, which allowed the self-proclaimed – with the strong support of, if not under the orders of Slobodan Milosevic – Republika Srpska to remain as a separate entity within Bosnia-Herzegovina. The nationalist Bosnian Serbs were allowed to believe that they were only technically a part of Bosnia-Herzegovina, while their real country was the "Republika Srpska", who would enjoy closer ties with Belgrade than with Sarajevo. The existence of a separate army was therefore considered as crucially important if not vital for its non-Bosnian statehood.

It has been said, that the Serbs would prefer an independent "Army" of one general and a ceremonial platoon to a functioning military under joint or integrated command at the level of Bosnia-Herzegovina. Under such conditions the future of the country is closely linked to that of the armed forces.

The geographical shape of the Republika Srpska, almost completely divided in two halves, determined the basic organisation of the army. But the still existing structure of four corps is endangered by the reduction of their strength. The length of the "Inter-Entity-Boundary Line" requires increased manoeuvrability and thus a departure from the pre-war Yugoslav principle of mostly territory-based formations.

Though the 1996 sub-regional arms control agreement was accepted by the Republika Srpska, the VRS blocked its proper implementation, by declaring that quite a number of weapons which were to be destroyed were maintained under the provision of "decommissioning". But in a successful joint effort the High Representative, the OSCE regional office and numerous other international organisations put pressure on the government and finally achieved positive results. Especially SFOR's scrutiny of the VRS brought secret transfers of weapons and equipment from Belgrade to a complete stop and thus promoted unwilling but visible compliance with the political demands of Dayton.

As a result the VRS is presently slightly below the authorised number of 11.414 regular soldiers plus a few thousand men, doing their compulsory military service. The equipment quantitatively within the permitted limits is nearing obsolescence, but the economic situation does not allow for modernisation.

### **The Future of the Armed Forces**

Both armies within Bosnia-Herzegovina are aware that they have to face further reductions. The objective of these planned reductions is a level of one third below present strength to be reached by 2005. A realistic number for both forces together would be lower than 20.000. At the same time the defence expenditure would have to be brought down to about 2 % of the GDP, as opposed to presently 4.3 % of the GDP for the VRS and 6 % for the VF.

Despite the unsatisfactory level of integration of the armed forces they can not be considered a threat to internal security and stability within the country and even less so for any neighbouring state. This was reflected in NATO's decision not only to further reduce SFOR's active strength, but simultaneously to delegate the command authority from the Supreme

Headquarters Allied Powers Europe, SHAPE to Allied Forces Southern Europe, AFSOUTH. The successful creation of an independent political district of Brcko, separating the two halves of the Republica Srpska in the direction West-East and at the same time allowing almost free right of way for the Bosniaks in the direction North-South are indicative of the political progress in the country.

The symbolic value of that step even exceeds its real importance.

The "Joint Committee on Military Affairs, originally imposed upon the former adversaries, is finally beginning to function. Thus the three sides agreed to the Bosnia-Herzegovina Joint Defence Policy on 11 May 2001 and even to the deployment of a joint VF-VRS Military Observer Team, to serve under the flag of the UN in the peacekeeping operation between Eritrea and Ethiopia, UNMEE.

Engineers from both the VF and the VRS are co-operating in the construction of two roads across the Inter-Entity Boarder Line.

General Atif Dudakovic, Commander of the VF Joint Command, though admitting that there are still three ethnic armies in his country, has even suggested to restructure them armed forces into one.<sup>11</sup>

The recent political development in Croatia and Serbia may also help to improve conditions for enhanced integration of the former spearheads of nationalist confrontation.

The signs of successful integration within Bosnia-Herzegovina are indeed victories for the basic concept of Dayton.

### **Military Support for Civilian Matters**

Based on the provisions of the Dayton Peace Accord, in the first phase of its deployment IFOR focussed almost entirely on the military aspects of its mission, neglecting the civilian dimension. As civil-military affairs in support of a peacekeeping operation were new for NATO, a common understanding had to be developed among the military leadership at all levels of IFOR of their roles, missions and capabilities vis-à-vis the civilians.

This does not only refer to the civilian authorities of the entities in Bosnia – Herzegovina but also to the international agencies as the High Commissioner for Refugees (UNHCR), the International Committee of the Red Cross (ICRC), the High Commissioner for Human Rights (HCR) and the hundreds of humanitarian relief organisations.

Communicating and sharing information with their representatives was another new experience for NATO. Mutual understanding would develop rather slowly; unnecessary competition and duplication of efforts out of mistrust had to be identified and consequently avoided. But both IFOR and their civilian partners realised, that unity of effort was required if they wanted to succeed.

Most importantly however, IFOR provided for a secure environment and thus created conditions under which the stabilisation process could begin.

This was not apparent when IFOR first arrived in the area. Also their willingness to co-operate with the International Police Task Force, IPTF was less than satisfactory. The IPTF imposed upon the UN without warning demanded a completely new approach to the matter of internal security. Without any executive authority and therefore unarmed, the IPTF suffered from slow and lagging support from the international community, particularly the willingness of the UN general Assembly to provide the necessary funds and the Member States of the UN with its reluctance to make available sufficient numbers of Civil Police officers at the required

<sup>11</sup> Colonel General Atif Dudakovic: Interview in: Jane's Defence Weekly, 18 July 2001, p.32

levels of professional competence.

|| As IFOR/SFOR had been created independent of the UN, there were no provisions for mutual support. Even though the "political masters" of IFOR/SFOR had established the International Criminal Tribunal for the Former Yugoslavia, ICTY in The Hague they did not task their military forces to apprehend the war criminals accused by the ICTY. That had an immediate bearing upon the willingness of ordinary citizens in Bosnia-Herzegovina to accept the rulings of the international community in other fields.

When the Bosnian Serbs "ordered" the Serb inhabitants of Sarajevo to leave for their "own" Republika Srpska and to leave behind a "torched earth" scenario, the still fledgling IPTF<sup>12</sup> got no help from IFOR's heavily armed forces to maintain law and order. Such deficiencies in the basic understanding of each other's tasks had to be remedied, and the willingness to take joint actions, whenever necessary, improved only slowly through trial and error.

But when both sides, IFOR and IPTF had learned their lessons, co-operation went more smoothly and successfully. The call for the military to lend armed conviction to the determined advice which IPTF would give the indigenous police, resulted in quick response. Such rapid reaction with military means enabled the international community to declare separatist actions illegal, to stop ethnic segregation and "cleansing", to promote integration and to rebuild an atmosphere of basic confidence in basic democratic institutions.

Only through such joint actions was it possible for the High Representative together with the Special Representative of the Secretary General and the IPTF Commissioner as well as the IFOR/SFOR Commander to have the discrimination by vehicle licence plates ended through the distribution of new ones, which did no longer give their holders ethnic identity away. In a similar vein, new passports were issued, again to promote integration against any secessionist attempts.

Without reliance on military support the return of refugees would have been impossible. The same holds true for quite a number of other tasks. It was the military, that took the first initiative in mine reconnaissance and mine clearing. Military engineers and signal specialists spearheaded the reconstruction of communications, roads, bridges and air fields. Military hospitals, though only tailored for their own patients created a feeling of confidence within the civilian communities. Even the discovery and opening of mass graves was initiated by the military.

Finally, the organisation of elections was strongly supported and also controlled by the military. As some civilian observers concluded, the international military presence proved a real multi-purpose instrument to implement peace and stability for Bosnia-Herzegovina. Nevertheless it must be stated, that the strategic deterrence which SFOR constitutes to this day will be required for quite some time to come. Without the clear demonstration of the political will of the international community to stay convincingly present in the war-torn country the promising development could easily collapse.

|| The slowly growing atmosphere of stability is the crucial prerequisite for the economic development of Bosnia-Herzegovina. The continuing role of the military under such circumstances may perhaps best be described as that of a catalyst, the presence of which is indispensable for the process of which it is not really a part.

<sup>12</sup> Only between 150 and 350 CivPol officers had arrived in Bosnia-Herzegovina and were just trying to organise. UN Secretary General Boutros-Ghali stated: "It is not feasible to assign to this unarmed force the task of enforcing law and order in a country awash with weapons, all the more so when it has no legal authority to do so." Security Council, S/1996/210, 29 March 1996, par.42

## KOSOVO

As the international intervention in the Kosovo happened only several months after the similar operation in Bosnia-Herzegovina one would have assumed that most of the shortfalls of the former would be avoided and that the mission would have been organised convincingly.

Unfortunately that was not the case. Despite the geographical proximity of the two crisis areas, the character of the conflicts were profoundly different. Equally different was the kind of the international response, given the differences in the situation under international law. If there has been one visible improvement between the operation in Bosnia-Herzegovina and in the Kosovo, it lies in the fact, that the role of the international community is more clearly defined.

The Security Council lived up to its responsibility for world peace and international security and provided the legal base for the deployment of an international presence on the ground in the Kosovo-province of the Federal Republic of Yugoslavia (Serbia/Montenegro). Admittedly this had not been an easy task, given the questionable NATO air force intervention against the Yugoslav regime of Slobodan Milosevic. It had required the draft of a Security Council resolution at the G 7(+1) summit in Cologne to achieve consensus with the Russian Federation and China, but resulted in a mandate for the civilian part of the intervention<sup>13</sup>, which accounts for quite a number of good ideas.

### "International Security Presence"

The role of the military however remains rather vague, since Resolution 1244 as explicit as it may be in other fields refers to the military only as the "international security presence", completely avoiding its definition as "military".

The numerous tasks however given to that "security presence" reveal, that only military means were meant to tackle them.

Apparently the apprehensions on the part of some non-NATO countries that the UN might once again appear as an agent of NATO may have caused the over-cautious formulations in Resolution 1244.

Nevertheless in the absence of any realistic alternative the military part of the peace operation in the Kosovo fell upon NATO. Only NATO's integrated command structure is capable of rapidly reacting to the demands of such a mission, while national elements of other countries can only be added to the functioning headquarters of NATO formations. Reluctantly even Moscow had to accept that realistic approach. As a result, NATO formed Kosovo Force, KFOR as a new integrated command to shoulder the complex tasks of the "international security presence".

Without the convincing military presence of NATO forces on the ground, the "Military-Technical Agreement" signed on 9 June 1999 by Yugoslav generals with General Sir Michael Jackson at Kumanovo airfield<sup>14</sup> would not have resulted in the quick and complete

<sup>13</sup> UN Security Council Resolution 1244 (1999), 10 June 1999

<sup>14</sup> Ibid. Annex II

withdrawal of all Yugoslav military, para-military and police presence from the Kosovo as a prerequisite for any peaceful development in the area.

Concluded in New York KFOR's agenda starts with the task of "deterrence of any resumption of hostilities", which had already begun on the ground; it went on with the "demilitarisation of the Kosovo Liberation Army, UCK and of other armed Kosovo-Albanian groups" and demanded to create "a secure environment to allow for the safe return of refugees and internally displaced persons, in which the international civilian presence can function, establish a transitional administration, and provide humanitarian support."<sup>15</sup>

The meaning of such a task becomes only clear, when one realises, that more than 450.000 Albanians had been forced to leave their homes and were either abroad in neighbouring countries or elsewhere in Europe or internally displaced. Of those almost all have returned to their home areas, though many were confronted with heavily damaged houses. KFOR units quickly engaged in support for the reconstruction.

After the return of the Albanians another migration of up to 150.000 Serbs, who left for Serbia proper started. It remains doubtful, if many of those will return to the Kosovo.

The next task on the list was rather unusual as hardly any armed forces in the world are prepared for it. Resolution 1244 determined, that the "international security presence" "guarantee public security and order until the international civilian presence can take on responsibility for that task." Consequently soldiers from many nations found themselves in the role of civilian police, not only arresting criminals who had been caught red-handed, but also establishing and running local prisons, controlling traffic and trying to help collect taxes and fees, while searching for former lawyers and advocates and administrators to re-establish the first traces of law and order in a province, which had actually been under Serb siege over a suppressed Albanian population for more than ten years.

The search for missing people and the identification of bodies recovered from mass graves was another contribution to the establishment of basic confidence in new and stable social conditions.

Meanwhile KFOR had to initiate the clearing of mines and to provide continuous physical protection to minorities against attempted revenge from the local or regional majority. Though ill-prepared for it, many military formations still find themselves involved in riot control operations, trying to keep hostile ethnic groups from clashing violently.

The military started to re-open schools and established hospitals, it provided support for the arrival of international agencies and was keen to accelerate their establishment in the area to get rid of their burden as quickly as possible.

KFOR has clearly been established as a military command organisation, built around existing elements of NATO, which are prepared to rotate regularly. Despite differences in doctrine and structure and some difficulties in the area of inter-operability, the co-operation with military elements from non-NATO countries works well. Today the units from 37 nations have formed KFOR into a convincing instrument of international political will.

Sadly however there are no provisions for an equally smooth co-operation with the civilian side of the international presence. Whether the two parts of the international humanitarian intervention function properly, depends mostly on the "chemistry" between the civilian head

<sup>15</sup> Ibid. Para. 9 a), b), c).

of the UN Mission in Kosovo, UNMIK, the Special Representative of the Secretary General, SRSG, and NATO's Commanding General of KFOR, COM KFOR.

As UN Secretary General Kofi Annan said in a speech at Georgetown University:

"...peacekeeping is not, and must not become, an arena of rivalry between the United Nations and NATO. There is plenty of work for both of us to do. We work best when we respect each other's competence and avoid getting in each other's way.... More than ever, the distinction between political and military aspects of our work are becoming blurred."<sup>16</sup>

### International Civilian Presence

While NATO had impressively demonstrated its competence through the comparably smooth deployment of NATO's ground forces after the end of the "Allied Force" air campaign, and the exemplary implementation of the multitude of tasks, despite criticism from some media and visiting politicians, the performance of the "International Civilian Presence" left much to be desired.

Though the political leadership in all member states of NATO had had sufficient time to consider the political development in and around the Kosovo, long before the decision to embark on operation "Allied Force" had been taken, no preparations for a civilian participation in the conflict containment and peace building efforts necessary to stabilise the situation in the Balkan had been undertaken.

While no provisions at all have become known of any timely identification of administrative or judicial experts to be sent to the Kosovo for the reconstruction of a wholly destroyed country bare of all functioning institutions, the arrival of others was extremely late and thus severely endangered the peace building process.

The deployment of civil police officers to establish a secure environment for the return of law and order was even slower than it had been for IPTF in Bosnia-Herzegovina three years before. SRSG Bernard Kouchner for instance complained that his own country, France did not send him any Civil Police officers.

In the absence of any executive arm in the Kosovo, the importance of the international military presence gained a weight incommensurable with its capabilities. Under such circumstances KFOR's relative success in the disarmament of the former UCK is quite remarkable.

The main task of the international Civil Police in the Kosovo can not be the continued maintenance of internal security throughout the country, but assistance in the recruitment, training and finally monitoring of a completely new indigenous police force, allowing for a multi-ethnic composition proportional with the percentage of ethnic groups in the whole Kosovo society. The late arrival and rather limited strength of international Civil Police caused a delayed demilitarisation of the Kosovo Liberation Army, UCK and provided for their increased political role, which also results in their strong presence within the newly formed Kosovo police, possibly endangering the objective of its education towards democratic values and human rights principles. As a goal the newly formed "Kosovo Police Service" will have to provide the necessary confidence of all citizens of that province in the rule of law. But for the time being, extreme shortages continue in the numbers of new Kosovo Police Officers and of the international Civil Police.

<sup>16</sup> Kofi Annan "The Future of United Nations Peacekeeping". Georgetown University, 23 February 1999; UN Press Release SG/SM/6901.

Therefore KFOR troops are still often called upon as the only security presence in many parts of the Kosovo. As a lesson truly learned from unsatisfying experiences in Bosnia-Herzegovina Resolution 1244 provides for the legal conditions for the "international security presence" i.e. the military of KFOR, to co-operate in an unlimited manner with the "International Criminal Court of Justice for the Former Yugoslavia" ICTY.<sup>17</sup> That provision avoids lengthy discussions on the opportunity of arresting suspected war criminals. Unfortunately however, an impartial judiciary together with an efficient court and prison system, both a fundamental prerequisite for a democratic police, have not yet reached the desired level of performance.

It must not go unnoticed, that in addition to the aforementioned tasks, KFOR has enabled the international community also to prepare the first democratic elections in the Kosovo, and to have it organised and monitored and finally completed in a way that may promote public confidence in the ongoing process of political stabilisation.

### External Security

The political development around the Kosovo has lead to a certain shifting of emphasis in KFOR's actions. At first observation and interdiction efforts were required to cut off cross-border movement by "fighters" of the "UCPMB" trying to unite a handful of Albanian villages in the 5 km-wide demilitarised "Ground Security Zone" along the border with Serbia. But then the tensions within Macedonia resulted in the provision of border control operations to avoid a spread of hostilities across that line of demarcation. Arrogance on the part of the Slav Macedonian majority vis-à-vis their fast growing minority of Albanian compatriots has triggered a feeling of dissatisfaction on the side of the latter, triggered probably by observations of increasing human rights standards for their Albanian relatives in the Kosovo. KFOR was immediately up to the new challenge and could successfully block the transfer of weapons and members of the newly founded Macedonian "UCK". KFOR's rapid reaction helped stabilise the situations in both cases by a demonstration of political will and determination, based on the principle of justice and impartiality.

The Security Council, realising the importance of the "international security presence", KFOR has apparently overcome its own reservations vis-à-vis the fundamental role of NATO and therefore openly refers to it in a recent Resolution concerning KFOR's role for the stability of the Balkan beyond the boundaries of the Kosovo.<sup>18</sup> Though KFOR has not been an agency of the UN, the Security Council even asks it to be kept informed of its activities.

Certainly not intended as a part of KFOR's mission, its role in the area of economic build up in the region ought not to be overlooked either. During the first two years of its mission, KFOR built up a sizeable infrastructure of logistic bases and communications. For that purpose a considerable labour force was mostly locally hired, promoting the standard of living in a time of need and transition.

<sup>17</sup> UN Security Council Resolution 1244 (1999), Para. 14

<sup>18</sup> UN Security Council Resolution 1345 (2001), 21 March 2001



As Macedonia has served as the logistic rear area for many contingents, the spending of NATO formations for that country alone amount to between 500.000 and 1.000.000 US \$ per day. The contribution by the military to the economies of a number of other Balkan nations as Albania, Bulgaria and Greece is remarkable. This may be exemplified by the maintenance of a ground support route from Greece through Macedonia into the Kosovo and the reconstruction of the rail-link between Prishtina and Skopje.

Some 4.000 NATO soldiers are stationed in Macedonia, another 1.200 in Albania and a permanent communications headquarters, "COMMZ East" in Bulgaria. In response these nations have granted KFOR a right of passage in the air, by rail and road and rivers, wherever possible and the use of their ports and airfields for support of their contingents in KFOR.

### **What does the Future hold for Bosnia-Herzegovina and the Kosovo?**

Whereas the political future of Bosnia-Herzegovina as foreseen by the Dayton Peace Accord may be questionable as for the chances of its realisation, the future of the Kosovo is very much in doubt. While the militarily convincing presence of SFOR will have to be continued for an extended period of time, to ensure a peaceful development in Bosnia-Herzegovina, to avoid a renewed outbreak of hostilities among the ethnic and religious entities, there seems to be a chance for consolation under conditions, where economic progress may cause closer co-operation. The ethnic entities may remember, that they lived in relative prosperity side by side for quite some time and may realise, that mutual understanding and ethnic and religious tolerance are necessary to live on together. If all of those ideas come true, Dayton may finally succeed.

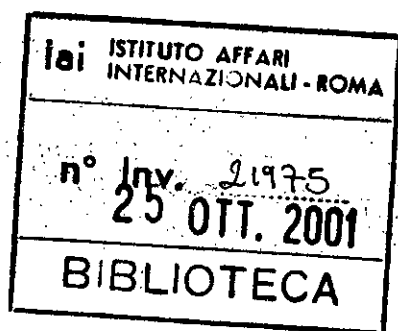
Despite the determination with which NATO intervened with military might in the Federal Republic of Yugoslavia (Serbia/Montenegro) by air forces and consequently and with consent of the Security Council on the ground, there is no clarity about the political objective of that intervention.

As long as the authoritarian regime of Milosevic ruled in Belgrade, the idea of a return of the Kosovo to the status quo ante was widely rejected, while after the political changes in Belgrade, the opinion of the political leadership in the West seems to have shifted away from sympathy with the Albanian minority in Serbia towards the Serb minority in the Kosovo. No longer does political correctness rely on the principle of self-determination for the Albanians but instead insists on the validity of existing borders and the territorial integrity of the Federal Republic of Yugoslavia.

As such an approach to future political development will hardly be accepted by the Kosovo Albanians, armed conflict is still a menacing possibility in that part of Europe.

Therefore, stability, the favourite term of present day political discussions, requires continued military presence in the area to keep the lid on what has long been defined as the powder keg in the Balkans. In the end human rights for the Albanians in the Kosovo – and for that matter, in Macedonia as well – will have to be coined in a sort of referendum, probably leading to far reaching autonomy if not independence.

Finally it has become clear, that the role of the military in both international interventions discussed above is far from the classical expectations of organised warriors, but rather that of instruments of international politics. Not even the "ultima ratio regis", but almost the international political community's first choice.



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**Council for Asia Europe Cooperation  
Task Force Workshop**

**Comparing Experiences with Post-Conflict State Building in Asia and Europe:  
The Case of East Timor, Bosnia and Kosovo**

**Sanur Beach Hotel, Sanur, Bali  
October 15-18, 2001**

**Securing East Timor:  
The Military and External Relations**

**Dr. Rizal Sukma  
Centre for Strategic and International Studies (CSIS)**

**SECURING EAST TIMOR:  
THE MILITARY AND EXTERNAL RELATIONS**

**Rizal SUKMA  
CSIS, Jakarta**

**Prepared for the CAEC's Project on  
State-Building in East Timor, Bosnia and Kosovo**

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**Introduction**

For newly-independent state, the task of guaranteeing military and external security constitutes one of crucial challenges in the state-building process. As East Timor is now in the transition towards independence as a sovereign state, the country also faces such crucial challenge. Given the violent historical and political context of East Timor's struggle for independence, the paramount importance of the task is indeed self-evident. The history of East Timor, from Portuguese colonialism to two decades of Indonesia's rule from 1976-1998, has been a history deeply marked by constant anguish, oppression, and violence. As that history was primarily defined and imposed on the East Timorese by external forces, either by 400 years of Portuguese primitive colonialism or 23 years of Indonesian brutal rule, the need to guarantee the country's security as an independent state becomes imperative.

No one would deny that the imperative for assuring East Timor's external security cannot be separated from the question of internal politics and security. However, this paper specifically addresses the challenges facing the East Timorese future government in ensuring its external security. The internal dimension of this issue will only be addressed in the broader context of national security challenges. In that context, the consolidation of internal security through the removal of the potential for violence, the establishment of a regular defence force, and the challenge of managing democratic civil-military relations, would constitute three important internal tasks. Externally, East Timor's relations with Indonesia and Australia, and its place in the wider Southeast Asia region, would have important bearing on the country's national security.

The discussion is divided into four main sections. The first section analyses the problem of consolidating internal security. It discusses the problem of dismantling remnants of violence, the establishment of East Timor Defence Force (ETDF), and the question of civil-military relations. The second section specifically examines security challenges facing the country, both perceived and actual. The third section explores the problems facing East Timor's external security and the strategy through which the country would ensure its external security, especially within the wider context of its relations with Indonesia and Australia in particular and with the

region in general. Finally, the fourth section draws some lessons to be learned from the process of guaranteeing external military security as part of state-building process in East Timor.

### **The Internal Dimension: Security Consolidation and the Military**

The withdrawal of the militia and the TNI from East Timor after the historic vote in favour of independence, and the violence and carnage that proceeded it, has left the country with a challenge of consolidating its internal security.<sup>1</sup> That challenge, however, cannot be separated from an obvious task of guaranteeing its external security. And, the linkage between the need to maintain internal security on the one hand, and the imperative for ensuring external security on the other, lies in the question of dealing with former members of the Armed Forces for the National Liberation of East Timor (Falintil). Internally, the question of re-organising the Falintil is related to problem of dismantling remnants of violence, which includes the question of disarmament and the reintegration of former combatants. More importantly, as a consequence of the decision to establishment of the ETDF in September 2000, East Timor is also faced with the question of ensuring democratic civil-military relations as a means to guarantee the absence of tension in the future. Externally, the establishment of the ETDF is also meant to provide the country with a minimum capability to ensure external security.

#### *Removing Potentials for Violence: Managing the Falintil*

Soon after it took control over the territory, one of important problems faced by the United Nations Transitional Authority in East Timor (UNTAET) was the issue of Falintil's status. The UN Security Council Resolution No. 1272, that mandates the UNTAET with overall responsibility for the administration of East Timor, including the responsibility to restore peace and maintain law and order, did not mention specifically the future status of Falintil. Except assigning military observers to monitor the Falintil in the cantonment area, UNTAET initially did not devise a comprehensive plan on how to deal with this issue. The difficulty and sensitivity of the issue was evident when the attempt by the International Forces in East Timor (Interfet), which acted on the mandate given by the UN Security Council Resolution No. 1264 to disarm "armed groups" including Falintil, was simply unable to do so in the face of Falintil's refusal to disarm.<sup>2</sup> Moreover, UNTAET's reluctance to address the challenge posed by the need to demobilise the Falintil troops was also caused by its hesitation to create a rift with East Timorese leaders.<sup>3</sup>

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<sup>1</sup> The specific problem of internal security is dealt with separately by James Fox and Dionisio Babo Soares.

<sup>2</sup> *Independent Study on Security Force Options for East Timor*, The Centre for Defence Studies, King's College, London, paragraph no. 12.

<sup>3</sup> Patrick Candio and Roland Bleiker, "Peacebuilding in East Timor," *The Pacific Review*, vol. 14 no. 1 (2001), p. 70.

Falintil's attitude was indeed understandable. As a group that formed the core of armed struggle against 23 years of brutal Indonesian rule, it is not surprising that the Falintil expects its role in the struggle for independence to be recognised and its status as a *de facto* army respected. For that reason, the Falintil clearly felt that it should continue to have a role in the future. However, immediately after the Popular Consultation, the Falintil soon felt that its presence was being marginalised, its status demeaned, and its needs in the cantonment area neglected.<sup>4</sup> As acknowledged by UN Secretary-General Koffi Anan in his report to the Security Council in July 2000, "difficult living condition, lack of supplies and lack of clarity about their current and future role have recently led to concerns over discipline and morale."<sup>5</sup>

Such condition clearly brought about some implications for security. Uncertainty in their status and poor living condition in the cantonment area forced many Falintil members to move outside the cantonment area. For example, it was estimated that around 700 Falintil members were "on leave", either to rejoin their family or work outside the cantonment area. However, some of their activities, such as taking part in politically sensitive issues as land and property, screening refugees, and offering protection in the markets of Bacau, Laga, and Dili, raised concerns among UNTAET officials.<sup>6</sup> By June 2000, Concerns over the breakdown of discipline among the ranks of Falintil were increasingly voiced by UNTAET officials. Indeed, the characterisation of the Falintil on 23 June 2000 as "almost in a state of revolt" by CNRT president and Falintil supreme commander Xanana Gusmao showed the magnitude of the problem.

Such developments clearly brought about a number of security implications. First, several incidents of violence involving members of Falintil had become source of security concerns. After an incident involving two Falintil members in Dili, for example, around 60 members of Falintil left the cantonment to seek revenge.<sup>7</sup> Second, dissatisfaction with UNTAET's in its dealings with Falintil, distrust over the capacity of the Peace Keeping Force (PKF) to undertake its duty, and internal divisions within its leadership, began to grow.<sup>8</sup> There was worry at that time that if this development continued, the relationship between members of the group and the UNTAET in general, and the PKF in particular, would be seriously affected. Third, there were incidents also where the small number of militia returning to East Timor have been subject to intimidation. Even more worrying were reports that some Falintil members also intimidated local communities. This would certainly increase the possibility of violence in the society.<sup>9</sup>

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<sup>4</sup> Prior to the Popular Consultation, under the 5 May 1999 Agreement, Falintil accepted the cantonment of its troops. After the arrival of Interfet, it agreed to move to a single cantonment area in the Aileu district.

<sup>5</sup> Report of the Secretary-General on the United Nations Transitional Administration in East Timor (for the period 27 January to 26 July 2000), 26 July 2000, p. 8.

<sup>6</sup> *Independent Study on Security Force*, paragraph 24.

<sup>7</sup> *East Timor Defence Force: The Price of Security*; Indonesia-Policy Archives: CDPM-East Timor, taken from <http://www.indopubs/tarchives/0258.html>.

<sup>8</sup> *Ibid.*, paragraph 40.

<sup>9</sup> Edmund Tee, "It's a Difficult Birth of A New Nation," *Straits Times*, 13 February 2000.

The situation posed a dilemma for UNTAET. On the one hand, due to the limitation of its mandate, the UNTAET was constrained by legal restriction to quickly address this issue. The Security Council Resolution 1272 does not explicitly authorise the UN to form a defence force in East Timor. In that context, the UNTAET was cautious not to be seen as conferring legal status on Falintil. The poor living condition within the cantonment area, for example, was believed to have been partly caused by the inability of UNTAET and other international organisations "to find a mechanism for the delivery of essential supplies that are consistent with mandates barring them from assisting armed groups."<sup>10</sup> On the other hand, the situation continued to worsen and began to cause alarm. For example, there was an increase in the number of incidents involving Falintil's members. The potential for violence associated with the presence of Falintil members outside the cantonment area became greater.

As the problem grew and began to pose security challenge, UNTAET had no choice but to address this issue in a more constructive way. In March 2000, it was agreed that a "Falintil Study Group" was formed to discuss the future of Falintil. In July, UNTAET agreed to allocate US\$ 100,000 from the Consolidated Budget of East Timor to provide food for two months to the Falintil personnel and their dependants.<sup>11</sup> A more significant measure to address the problem of Falintil was taken in June 2000 when a group of researchers from London-based King's College was asked to conduct a study to consider security and defense needs of East Timor. In September 2000, based on the result of the study by King's College, the East Timor Transitional Cabinet decided that, in order to meet its security and defense interests after the departure of both UNTAET and the PKF from East Timor, the country would establish the East Timor Defence Force (ETDF).

*The Establishment of ETDF:  
Rationale, Process, and Progress*

The decision to establish the ETDF in fact constituted a significant change in East Timor's attitude towards defense. Initially, there was no plan to establish such a national defence force for East Timor. Both Xanana Gusmao and his deputy, Jose Ramos Horta, had on more than one occasion talked about not establishing a military. The CNRT had previously stated that it was committed to a gendarmerie based on the "Costa Rica" model instead of a regular national defence force.<sup>12</sup> It was likely also that such position was influenced by Indonesia's bitter experience of military interference in civic affairs.<sup>13</sup> However, that position changed with the destruction of East Timor by pro-Indonesia militias in September 1999. In early November, Vice-Commander of Falintil Taur Matan Ruak made it clear that some Falintil members wanted to be "trained for integration into a security force."<sup>14</sup>

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<sup>10</sup> *Independent Study on Security Force*, paragraph. 19.

<sup>11</sup> Report of the Secretary-General, 26 July 2000, p. 8.

<sup>12</sup> *Independent Study on Security Force*, paragraph. 37.

<sup>13</sup> Anthony Smith, "East Timor: Status Quo Ante Bellum," *Panorama*, No. 2 (2000), p. 21.

<sup>14</sup> *Independent Study on Security Force*, paragraph 38.

While accepting the temporary role of the UNTAET and the PKF in assuring East Timor security, Falintil leaders were legitimately concerned about the future security of the country after the departure UNTAET and PKF. Ruak, for example, stated that "one day they [PKF] will leave, and we must be prepared to keep the peace."<sup>15</sup> The need to create the ETDF was strengthened by the occurrence of several incidents at the border and the penetration of militias to East Timor territory in mid-2000. For example, on 24 July, a group of militias managed to cross into East Timor, undetected by both the Indonesian military and the PKF, and led to the killing of a New Zealand peacekeeper, Pte. Manning. The incident was seen as a reminder that the situation at the border would continue to be a flashpoint for the foreseeable future.

Based on such rationale, the UNTAET began to undertake preparatory measures towards the establishment of ETDF. In line with the recommendation put forward in the study by King's College, it planned that the force would consist of a light infantry force of 1,500 regular soldiers with a phased approach to reach that number over three years, and 1,500 reservists, with former Falintil members represent the core of the force. In November 2000, UNTAET met in Dili with the representatives of a number of interested Governments to discuss how the new force might best be set up.<sup>16</sup> In the meeting, Portugal and Australia committed themselves to play a leading role in the provision of initial training of the future East Timor Defence Force. It was also planned that some 500 to 800 recruits were to be trained in January 2001, so that by the time of independence East Timor would have a battalion-strong force in place.<sup>17</sup>

A regulation On The Establishment of a Defence Force for East Timor was passed by UNTAET on 31 January 2001. Through the regulation, the ETDF sets itself to be a modest force with two main missions: to defend East Timor, its people and territories; and to provide assistance to the civilian community at the request of the civilian authorities during natural disasters and other emergencies.<sup>18</sup> In carrying out that mission, the ETDF is charged with the tasks of stopping militia incursions and deterring aggressors.<sup>19</sup> In this regards, the ETDF makes it clear that its military strategy would essentially be defensive, and that the ETDF should be capable of defeating small scale incursion by hostile groups and of delaying a larger force until external assistance arrives.<sup>20</sup>

With the decision to establish the ETDF, the Falintil was officially dissolved on 1 February 2001 and Brigadier-General Taur Matan Ruak is appointed as Commander-in-Chief. All activities related to the development of the Defence Force are coordinated by the Office of Defence Force Development (ODFD) within ETTA.

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<sup>15</sup> *Asiaweek*, 17 March 2000.

<sup>16</sup> Report of the Secretary-General on the United Nations Transitional Administration in East Timor (for the period 27 July to 16 January 2001), 16 January 2001, p. 4.

<sup>17</sup> *Ibid.*

<sup>18</sup> See, UNTEAT's regulation On The Establishment of a Defence Force for East Timor. Sec. 2. Article 2.2.

<sup>19</sup> UNTAET Fact Sheet.

<sup>20</sup> *Force Development Plan for the East Timor Defence Force*, Annex A, Office of Defence Force Development (ODFD), p. 14.



However, for the duration of UNTAET's mandate, the Transitional Administrator will have command and control of the defence force. Until the ETDF is in a position to safeguard the country's security, the UN-PKF remains responsible for the defence and security of East Timor until independence. The preparation process progressed according to the plan. For example, the recruitment and selection process for the first 600-member battalion of the new ETDF, composed entirely of Falintil, was completed on 28 January, and 250 of these recruits completed their basic training at Aileu in June.<sup>21</sup> On 7 July, new permanent barracks for ETDF were opened at Metinaro. On 21 July, the first 247 cadets graduated from their basic training, and the advanced training is under way. By mid-2002, it is expected that the first battalion of 408 soldiers would be ready for operational deployment.<sup>22</sup>

### *The Question of Civil-Military Relations*

As East Timor intends to become a democratic country, the establishment of a military force clearly raises the question of how civilian control of the military is assured. It should be noted in this regard that for any country emerging from an armed struggle for independence, those who were involved in the struggle would want to see their special role be recognised. As mentioned earlier, many Falintil commanders and members argued that there should be a role for the armed forces in building East Timor. Therefore, given the fact that the ETDF is composed of former Falintil guerrilla fighters, who played instrumental role in resisting Indonesia's rule and paving the way for independence, the question of civil-military relations in East Timor becomes more relevance.

Interestingly, this issue has not become a major concern for UNTAET, East Timorese leaders, and elements of East Timorese civil society. An UNTAET official, for example, maintained that "civil-military relations is not an issue here, but the real concerns should be on the civilian police role in ensuring internal stability."<sup>23</sup> She believes that being a "very discipline" force, the ETDF would be very strict on its defence function and the need for the military to stay away from politics.<sup>24</sup> Elements of civil society, while maintaining that there is a need to raise this issue, were also of the view that civil-military is not yet an issue for East Timor.<sup>25</sup>

Such optimism, however, is not unfounded. With UNTAET as the primary arbiter of state-building in East Timor, this issue was surely addressed. When UNTAET passed the amendments to UNTAET Regulation 2001/1 on The Establishment of A Defence Force for East Timor in June 2001, several changes were made regarding civil-military relations. First, the amendments included new provisions prohibiting members of ETDF to become "members of a political party, organisation, or association or participate in any activities of a political party, organisation or association." It also prohibits ETDF members from publicly making

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<sup>21</sup> UNTAET Fact Sheet.

<sup>22</sup> See, Progress Report of the Secretary-General on the United Nations Transitional Administration in East Timor, 24 July 2001.

<sup>23</sup> Nicola Dahrendorf, Security Adviser to SRSG UNTAET/ETTA, interview, 23 July 2001.

<sup>24</sup> Ibid.

<sup>25</sup> Arsenio Beno, NGO-Forum, interview, 21 July 2001.

any opinion of a political nature.<sup>26</sup> Such legal provision is also expected to be included in the future Constitution of East Timor. In that context, the prospect for democratic civil-military relations in East Timor is indeed very encouraging.

### **The External Dimension: Threat Perceptions and Security Challenges**

The birth of East Timor as a nation is closely related to hostile external environment. More than two decades of Indonesia's brutal rule, and the tremendous damage inflicted by pro-Indonesia militias after the Popular Consultation in September 1999, clearly serve as a reminder to many in East Timor of their vulnerable position. Within such circumstance, it is inevitable that the external dimension of state security would become a major concern. Like in many other states, East Timor's perceptions of sources of threat are also characterised by the concerns over traditional and non-traditional threats. More unique to East Timor situation, there is also a problem of ensuring the security of Oucusse enclave in Indonesia's territory of West Timor.

#### *Traditional and Non-Traditional Sources of External Threats*

The first major component of East Timor threat perceptions is certainly the pro-Indonesia militias. Even though there has been a marked decrease in militia activities since December 2000, the concern over the threat posed by militia remains strong. It is still strongly believed that the militia will continue to pose serious challenge to East Timor stability and security. Moreover, it has been maintained that "there is a concern that some militia elements have adopted a strategy of lying low until independence in the belief that the international military presence will be removed from East Timor"<sup>27</sup> Such high level of suspicion towards the militia is based on three observations by the UN. First, the militia is believed to have the ability to operate and train unhindered in some areas. Second, illegal cross-border trade and movement by members of militia continue to take place, providing them with contacts and intelligence.<sup>28</sup> Third, it is believed that the militia still retains easy access to weaponry, including hand grenades, semi-automatic and fully automatic small arms.<sup>29</sup>

Even though the possibility is small, there is also perception among East Timorese leaders that Indonesia, especially the military, would continue to be a potential source of threat. However, few envisage that such a threat is in the form of Indonesia's desire to re-occupy East Timor through invasion.<sup>30</sup> It has been mentioned, for example, that in the context of growing separatist movements in Aceh

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<sup>26</sup> See, UNTAET Regulation 2001/9, Section 21, 29 June 2001.

<sup>27</sup> See, Progress Report of the Secretary-General on the United Nations Transitional Administration in East Timor, 24 July 2001, p. 9.

<sup>28</sup> See, Interim Report of the Secretary-General on the United Nations Transitional Administration in East Timor, 2 May 2001, p. 4.

<sup>29</sup> See, Progress Report of the Secretary-General on the United Nations Transitional Administration in East Timor, p. 9.

<sup>30</sup> "Ready to Fight," *The Economist*, 16 June 2001, p. 36.

and Irian Jaya (Papua), Indonesia's military might be tempted to destabilise East Timor for internal political purposes. In that context, "destablizing East Timor has and could still be a future strategy to demonstrate that breaking away from Indonesia involves great human and material cost."<sup>31</sup> It has been suggested also that "local Indonesian Army and militia leaders have a vested interest in continuing to control the border, particularly given the potential benefits from illicit trade between West and East Timor."<sup>32</sup>

Despite the current concerns over the militia and Indonesia, the major challenge to East Timor security in the future is largely posed by a number of non-traditional security threats. The most difficult challenge, first of all, would stem from East Timor's territorial water. UNTAET's Sergio de Mello, for example, identifies refugees from conflict-torn areas in Indonesia such as Moluccas, the use of East Timor as transit for human trafficking, and organised crimes as possible security threats that might affect the stability of East Timor in the future.<sup>33</sup> In that context, it has been acknowledged that "East Timor's maritime approaches cannot be sealed. The length and diversity of the coastline allow for a variety of threats ranging from illegal activities, to covert incursion, to over invasion. Incursion by sea whether overt or covert will be difficult to deter, to detect or to respond against."<sup>34</sup>

#### *The Problem of Oucusse Enclave*

In addition to traditional and non-traditional security challenges, East Timor faces a unique security challenge with regard to the Oucusse enclave within Indonesia's West Timor territory. The enclave opens onto the coast of the island of Timor and is encircled by border it shares with Indonesia. In addition to the reality that the enclave is difficult to defend, "being surrounded by Indonesian territory in West Timor makes Oe-cussi's transport and communication links with Dili and other regions of East Timor all the more difficult."<sup>35</sup> Such isolation clearly raises security concern among the people in the enclave. Unfortunately, until today, no agreement has been reached between Indonesia and the UNTAET on this issue. In that context, this issue should receive a special attention from both Indonesia and the UNTAET. A special arrangement, acceptable and mutually beneficial to both parties, should be found for the enclave.

#### **Foreign Relations and External Security**

East Timor's external security and defense needs are at the moment guaranteed by the UNTAET and the PKF. In the long run, however, security challenges facing East Timor as discussed above are clearly beyond the capacity of ETDF to deal with. It clearly needs sustained international support. As de Mello put it, "arguably East Timor's greater security for the future, as well as its biggest asset,

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<sup>31</sup> Candio and Bleiker, "Peacebuilding in East Timor," p. 81.

<sup>32</sup> Ibid.

<sup>33</sup> Interview, 19 July 2001.

<sup>34</sup> *Force Development Plan*, p. 12.

<sup>35</sup> Arsenio Bano, "A Peace Zone: An Option for the Future of the Timor Enclave," manuscript, p. 2.

is the support it receives in the international community at large"<sup>36</sup> It is therefore imperative for East Timor to ensure that foreign policy and diplomacy would serve as the first line of defense. Indeed, "as a small country, East Timor's external security and development will always rely on effective diplomatic relations in the region and more broadly."<sup>37</sup> In that context, many believe that the security of East Timor will depend on two requirements. First, the external security of East Timor can be assured through a special relationship with Australia on the one hand, and a good neighbourhood relations with Indonesia on the other. Second, East Timor's security will also be best served through its integration to the wider Southeast Asia region.

*Australia's Security Guarantee  
and Good Relations With Indonesia*

For years to come, East Timor will continue to depend on the international assistance and support for its survival. As MacIntyre has argued, "without international support the new state will very probably fail at its two most fundamental and intertwined tasks: providing stability and security, and facilitating economic growth and development."<sup>38</sup> Australia stands prominently in fulfilling East Timor's need for such support. The leading role of Australia in pushing for Indonesia's change of mind on East Timor issue, and later in responding to the East Timor crisis in September 1999, clearly demonstrated that East Timor occupies a special place in Australia's domestic and foreign policy. On its part, many East Timorese have looked towards Australia for help, a place of refuge, and protection. It has been acknowledged also that for East Timor "Australia matters greatly too, because in addition to aid, it is the country most likely to come quickly to East Timor's assistance in the event of a serious external threat."<sup>39</sup> In that context, the Australia-East Timor relationship "is bound to remain a complex one, highly charged with emotion on both sides."<sup>40</sup>

As East Timor is now moving toward independence, the question of external security guarantee will become a matter of national significance for the country. In this regard, the nature of relationship with Australia will clearly dominates foreign policy agenda. Several ideas and suggestions have already been made on this issue. For example, there might be a suggestion that East Timor should enter a security or defence arrangement of some form with Australia.<sup>41</sup> It has been suggested also that a "free association" with Australia might be the best alternative.<sup>42</sup> Others, such as MacIntyre, argued that a formal security or defence arrangement with Australia is a

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<sup>36</sup> Sergio Viera de Mello, "Presentation to the National Council, 28 June 2001, p. 19.

<sup>37</sup> UNTAET and The World Bank, Background Paper for Donors' Meeting on East Timor, Canberra, June 14-15, 2001, p. 17

<sup>38</sup> Andrew MacIntyre, "An International Strategy for the New East Timor," in James J. Fox and Dionisio Babo Soares, eds., *Out of the Ashes: Destruction and Reconstruction of East Timor* (Adelaide: Crawford House Publishing, 2000), p. 240.

<sup>39</sup> Ibid., p. 236.

<sup>40</sup> Jamie Mackie, "Indonesia, Timor Loro Sae and Australia: The Future of a Triangular Relationship," *The Indonesian Quarterly*, vol. 28, no. 2 (Second Quarter, 2000), p. 179.

<sup>41</sup> MacIntyre, "An International Strategy," p. 240.

<sup>42</sup> Smith, "East Timor: Status Quo Ante Bellum," p. 24.

bad idea and potentially harmful primarily because East Timor already enjoys a *de facto* Australian security umbrella. More importantly, a formal defence arrangement with Australia would increase the likelihood of difficult relations with Indonesia.<sup>43</sup>

Whatever the nature of that relationship might be, it is extremely important for East Timorese leadership to take into account Indonesia's view on this matter. It can be argued that Indonesia, for domestic political reasons, does not wish to see East Timor, having freed itself from Indonesia's control, to become an Australian dependency. Such a possibility would heighten the Indonesian suspicion that Australia, if the opportunity arises, might also want to encourage and support Papua's independence in order to expand its influence in West Pacific. Even though Australia might not have any intention to realise such agenda, the perception remains in some quarters in Jakarta that Canberra's role in helping the birth of independent East Timor was part of its grand design to dominate Indonesia's eastern flank. Therefore, it is important for East Timor to evolve into a truly independent state in its own right. And, that would require a good and workable relationship with Indonesia.

The importance of Indonesia for East Timor, both in politico-strategic and economic terms, is self-evident and beyond doubt. It has been acknowledged, for example, that "as a micro-state in the midst of Indonesia's massive and volatile archipelago, East Timor will have to establish a workable relationship with Jakarta."<sup>44</sup> More importantly, "a hostile, resentful Indonesia would make it extremely difficult for East Timor to prosper..."<sup>45</sup> In that context, while acknowledging the East Timorese bitter memory of Indonesia's brutal rule, the country leadership has begun to undertake measures that underline the strategic importance of having good relationship with Indonesia. For its part, Indonesia has also recognised the importance of fostering good relations with its former province. However, it is recognised also that "both must work hard at building a benign and mutually favourable long-term relationship."<sup>46</sup>

### *The Imperative of Regional Cooperation*

Beyond Australia and Indonesia, East Timor's external security can also be best served through its integration into the existing networks of regional cooperation, both in Southeast Asia and in the wider Asia-Pacific, including the Southwest Pacific region. Within Southeast Asia region, the Association of Southeast Asian Nations (ASEAN) could serve as a venue "to cement East Timor's credentials with the region as an entity independent from Indonesia"<sup>47</sup> and, at the same time, to demonstrate its willingness to work with Indonesia within the larger regional framework. Within the wider Asia-Pacific region, the Asia Pacific Economic Cooperation (APEC) and the ASEAN Regional Forum (ARF) would provide an opportunity for East Timor to

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<sup>43</sup> MacIntyre, "An International Strategy," p. 241.

<sup>44</sup> Candio and Bleiker, "Peacebuilding in East Timor," p. 81.

<sup>45</sup> Alan Dupont, "The Strategic Implications of an Independent East Timor," in Fox and Soares, eds., *Out of the Ashes*, p. 199.

<sup>46</sup> S. Wiryono, "Australia-Indonesia Bilateral Relations: Some Factors and Observation," paper delivered at Indonesia-Australia Bilateral Conference, Jakarta, 22-23 March 2001, p.11.

<sup>47</sup> MacIntyre, "An International Strategy," p. 243.

engage in both multilateral economic and security cooperation respectively. Meanwhile, East Timor may also find itself welcome in the South Pacific Forum (SPF).

However, East Timor is yet to resolve the question of regional affinity, especially in the context of formal membership. As a country located between Southeast Asia and South Pacific, East Timor certainly sees the benefit of having relationship with both regions. There is indication that East Timor, if possible, would like to join both ASEAN and SPF. Xanana Gusmao, for example, has stated that an independent East Timor "will focus upon regional friendliness, with applications for membership with ASEAN....and the South Pacific Forum."<sup>48</sup> However, as far as its membership in regional organisation is concerned, many doubts whether such dual membership would be acceptable to ASEAN. On this issue, it is not clear yet whether East Timor leadership would finally opt for membership in ASEAN or the SPF. Indeed, for East Timor, this issue would become an area where careful consideration is clearly needed.

### **Conclusion: Lesson Learned**

East Timor presents an interesting case study for the process of peace-building through state-building. This paper has addressed that process in terms of the country's efforts to guarantee its external security, both through the establishment of a regular defence force (the ETDF) and through the management of foreign relations and diplomacy. It argues that while the establishment of the ETDF might provide the country with a minimum capability to ensure its external military security, the nature of external threats facing East Timor compels the country to rely on foreign relations and diplomacy as the first line of defence. Within that context, the paper has also addressed issues related to the creation of ETDF and the importance of good bilateral relations with Australia and Indonesia on the one hand, and its integration into regional cooperation on the other.

On the question of the establishment of ETDF, it is clear that the reintegration of former guerrilla fighters into a regular defence force proved to be an effective solution to the problem of removing potential violence in East Timor. The smoothness by which the task is performed under the supervision of the UNTAET has been made possible by three factors. First, as the mandate to state-building is conferred to the UNTAET by the UN, it has a relatively free hand in laying down all necessary legal basis and blue print for the establishment and development of ETDF. Second, as the number of Falintil members was small, the questions of demobilisation and reintegration of former combatants did not present a difficult problem for UNTAET. These questions were effectively overcome by making the Falintil as the core of ETDF. Third, as the establishment of ETDF was based on clear legal provisions, the prospect for East Timor to establish democratic civil-military relations is bright indeed.

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<sup>48</sup> Quoted in Smith, "East Timor," p. 25.

As the birth of East Timor as an independent state was marked by severe security problems, security challenges the country would face in the future are indeed tremendous. In this regards, it is clear that the ability of East Timor to respond to such challenges, both in traditional and non-traditional senses, would be constrained by the limited capacity of the ETDF. Therefore, as a micro-state such as East Timor, the external security of the country will be best served through the utilisation of foreign relations and diplomacy. On this front, Australia's *de facto* security umbrella, good relations with Indonesia, and the country's integration into a web of regional cooperation, would provide a maximum guarantee for East Timor external and military security.

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**A State in the Making:  
International Actors in East Timor**

**Mr. Landry Haryo Subianto  
Centre for Strategic and International Studies (CSIS)**

## A STATE IN THE MAKING:

### Intervening Actors in East Timor

*Landry Haryo Subianto*

#### I. INTRODUCTION

On 5 May 1999, Portugal and Indonesia came to a comprehensive agreement on the future of the territory of East Timor. According to James Cotton (1999), 'the agreement is in fact a culmination of an extended process, and one which for a long time seem destined not to succeed.'<sup>1</sup> Indeed, the agreement provided for a significant UN presence, requiring for them to supervise a direct, secret and universal ballot of the population of East Timor. Despite all efforts the UN had shown to tacitly respond to the rapid change of Indonesian government's position and the crucial role it played in managing the ballot (through United Nations Assistance Mission in East Timor-UNAMET), political upheaval were quickly followed by mass-organised violence and clashes between pro-Jakarta militias versus pro-independent supporters and could not be prevented.

The first signs of a major crisis in the Indonesian sub-region began on August 30, 1999, following the nationally held referendum. In the UN-organised vote, 98.6 percent of eligible voters cast their ballots on August 30<sup>th</sup>, with 78.5 percent of the people of East Timor voting in favour of eventual independence. The violence following the announcement of the vote resulted in more than 75 percent of the entire population—estimated at about 800,000—in being displaced.

Furthermore, many of the most skilled East Timorese people fled the country, as did most of the senior and middle-level managerial, administrative, and professional personnel, who were mostly Indonesian. Hundreds, or possibly thousands, of people were either killed or missing and almost entire permanent buildings, both private and public, were burnt and flattened during Operation Earth Scorch (*Operasi Sapu Bersih*); allegedly committed by the TNI-supervised pro-integration militias. In short, following the destruction, there was no sign of physical civilisation by the state of infrastructure left standing, and the land was destroyed and abandoned. Those who were in East Timor after the series of devastating events would agree that there was no building—let alone doctors or judges—left in the land that was functioning or which could be used or hired.

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<sup>1</sup> See James Cotton, 'Peacekeeping' in East Timor: An Australian Policy Departure in *Australian Journal of International Affairs*, Vol. 53, no. 3, 1999 pp. 237-246.

Although UNTAET was fully equipped with a broad mandate to rebuild East Timor, and was authorised to govern the territory (widely seen as unprecedented in the history of UN missions), it was nevertheless immediately faced with difficult challenges. More than just reconstructing the physical infrastructures of East Timor, the immediate and critical tasks the mission was to undertake included gaining back the confidence of the people as well as wrestling with numerous security problems, especially with militias who had fled to the western part of the island. It is in this context that the existence and importance of UNTAET should be understood.

Therefore, departing from all the grievances and horrible events the East Timorese had to live with—as clearly observed by James Traub (2000), today this ‘impoverished island is the laboratory for an experiment in what is known at the United Nations as “nation-building”. However, what makes the issue more interesting is that UN (UNTAET) is not a usual external player in the process of state building in East Timor. Indeed, as Traub believes, “UNTAET is not just helping the new country’s government—it is that government.”<sup>2</sup>

Accordingly, the discussion presented in this paper is three-fold. *Firstly*, it will describe and analyse the role of UNTAET in the process of state building in East Timor, including initial strategies and policy that was formulated towards the completion of its mission. Some major constraints and challenges that UNTAET faces are also discussed in this section. This section also highlights the performance of the mission in the subsequent stage, especially on UNTAET’s serious efforts to firmly bring peace to East Timor and to establish some embryonic governing institutions and mechanisms as major pre-requisites for the modern country East Timor is expected to be. *Secondly*, the paper looks at the role of international institutions as well as that of various NGOs as an important element in the process of state building, including their relationship with UNTAET. *Lastly*, the paper highlights some lessons that can be drawn from the mission’s experience in East Timor, including the comparison with a more or less similar case of United Nations Transitional Authority in Cambodia (UNTAC).

## II. UNTAET AS AN ORCHESTRATOR OF STATE BUILDING PROCESS:

### Missions and Strategies

As has been commonly known, UNTAET is a UN mission in East Timor—operating under the Department of Peacekeeping Operations—led by Mr. Sergio Vieira de Mello, a Brazilian who serves as the Special-Representative of Secretary-General (SRSG) and who has also served as the Acting Special Representative prior to the establishment of the UN Interim Administration Mission in Kosovo (UNMIK). Based on the Security Council Resolution no 1272 (1999), UNTAET is ‘endowed with overall responsibility for the administration of East Timor, and empowered to exercise all legislative and executive authority, including the administration of justice’. Resolution 1272 also underlined that the mandate of UNTAET shall consist of the following elements: (a) To provide security and maintain law and order throughout the territory of East Timor; (b) To establish an effective administration; (c) To assist in the development of civil and societal services; (d) To ensure the co-ordination and delivery of humanitarian assistance, rehabilitation and development

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<sup>2</sup> See James Traub, ‘Inventing East Timor’ in *Foreign Affairs*, Vol. 79, No. 4, July/August 2000 pp. 74-89

assistance; (e) To support capacity-building for self-government, and; (f) To assist in the establishment of conditions for sustainable development.<sup>3</sup> Indeed, the UNTAET mandate is broad, and based on the definition of peacekeeping at the UN, the various tasks that UNTAET has to perform can be categorised as a multi-dimensional peacekeeping.<sup>4</sup>

Contemplating on the wide spectrum of the mandate, and available resources to the UN at the time, it is not an exaggeration to assume that UNTAET was given a tremendously "ambitious and complex" operation, indeed, one of the largest and most costly missions that the UN has had to undertake.<sup>5</sup> Recent data on the strength and budget of UNTAET in comparison to other peacekeeping and state building missions seems to confirm the above presumption.

The size of the staff and budget allocated for the mission is in fact enormous. Personnel-wise, UNTAET was designed to incorporate three components, namely: the administrative component, personnel responsible for humanitarian assistance and relief work, and a military component. After 18 months in existence, the total strength of UNTAET (as of April 30, 2001) is 9,646 uniformed personnel (including 8,162 military, 1,360 civilian police and 124 military observers) who are supported by some 1,051 international civilian personnel and 1,928 local civilian staff. The appropriation for the period of July 2000 - June 2001 reached US\$ 563 million (gross).<sup>6</sup>

Moreover, contrary to the strong international supports and generous financial assistance UNTAET may enjoy, by the time the mission finally came to East Timor, there was nothing on the land. There were barely any buildings that the mission could utilise--let alone able medical doctors, administration clerks, or judges. At the same time, UNTAET was also cognizant that public expectation on their performance was excruciatingly high. Therefore, reflecting back to the initial condition when he started his job, the SRSB maintains the argument that "...we have to start from the scratch."<sup>7</sup> He also admitted that

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<sup>3</sup> See Security Council Resolution 1272 (1999) adopted by the Security Council at its 4057<sup>th</sup> meeting on 25 October 1999 at UN site: <http://www.un.org/peace/etimor/docs/9931277E.htm> accessed on May 30 2001 (11:12)

<sup>4</sup> See UN definition of Peacekeeping at <http://www.un.org/Depts/dpko/field/pkccp.htm> accessed on August 13 2001 (14:06). Furthermore, as identified in the Brahimi Report, such a mission can also be determined as a peace-building operation, which is defined as 'activities undertaken on the far side of conflict to reassemble the foundations of peace and provide the tools for building on those foundations something that is more than just the absence of war'. Thus, the Report concludes that peace-building includes but is not limited to reintegrating former combatants into civilian society, strengthening the rule of law (for example through training and restructuring of local police, and judicial and penal reform); improving respect for human rights through the monitoring, education and investigation of past existing abuses; providing technical assistance for democratic development (including electoral assistance and support for free media); and promoting conflict resolution and reconciliation techniques. See *Report on the Panel on United Nations Peace Operations: A Far-Reaching Report by An Independent Panel (Brahimi Report)* at <http://www.un.org/peace/operations/docs/part2.htm> accessed on August 13 2001 (13:45)

<sup>5</sup> See UNTAET News Archive, "Secretary-General Pledges Quick Action to Set Up Transitional Administration for East Timor" 25 October 1999 at <http://www.un.org/peace/etimor/news/251099.htm> accessed on August 13, 2001 (13:41)

<sup>6</sup> See the East Timor-UNTAET Facts and Figures at <http://www.un.org/peace/etimor/UntactF.htm> accessed on May 30, 2001 (11:08)

<sup>7</sup> Interview, 19 July 2001 in Dili, East Timor.

the mandate given to UNTAET was "colossal", and stressed that given the circumstances "...it is impossible to establish a new administration, democratic institutions, restore public services and revive an economy in just over two years."<sup>8</sup>

Building a properly functioning state in the short timeframe of just a couple of years might sound impossible, but laying the foundation for state building is not a new thing for UN nor for its personnel. In that regard, it was observed that UNTAET (especially in its initial first six months) adopted a mixed approach, from approaching local leaders to setting up institutions coherent with the overall aims and objectives of the mission. Such a general approach had been previously applied, most notably in Cambodia and Kosovo. UNTAET could enjoy some modalities that UNTAC (Cambodia) could not, however. Primarily, UNTAET was not burdened by the issue of legitimacy nor of internal conflicts. Although militias posed a serious threat to the mission, the magnitude and danger was not-at the level of that found in Cambodia, or Bosnia-Herzegovina or Kosovo.

Based on UN's prior experience in Kosovo, a common strategy that is likely to be applied in East Timor is largely incorporated in at least four integrated phases<sup>9</sup>:

Phase 1: The mission would set administrative structures, deploy international civilian police, provide emergency assistance for returning refugees and displaced people, restore public services, train local police and the judiciary. In addition, in close cooperation with relevant institutions, it would also develop a phased economic recovery and reconstruction plan, thus seek to establish a self-sustaining economy. At this stage, UNTAET would also facilitate, the establishment of East Timorese provisional institutions (albeit in a very limited manner), so that East Timorese would have more opportunity to be involved in the state-building process, and thus strengthening their sense of ownership to the process.

Phase 2: UNTAET would finalise preparations and conduct the elections, as well as the necessary political arrangements (such as conducting a national-wide civic education program, and approaching numerous political parties) to ensure the success of elections.

Phase 3: Based on the outcome of the elections, UNTAET would help to set up the institutions necessary for democratic governance. In this regard, UNTAET would transfer its remaining administrative responsibilities while supporting the consolidation of East Timorese post-election institutions.

Phase 4: As the new institutions (especially the legislative-like ones) decided on the date of independence, system in which to run the state, and its supportive arrangements, the UN mission would then be downsized to a minimum scale, both in terms of personnel and responsibilities. This would thus be their exit-strategy. However, realising that independence would not necessarily immediately lead to a workable state system, especially in the defence and economic sectors, the presence of the PKF and especially international institutions would be maintained after independence was announced.

***Harmonising international efforts in Humanitarian Relief and Reconstruction.*** One of the most challenging tasks that UNTAET is supposed to undertake is to co-ordinate and

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<sup>8</sup> As quoted from UNTAET and the World Bank Press Release, *East Timor Moves from Emergency Reconstruction to Development Mode*, 15 June 2001.

<sup>9</sup> As adapted from UNMIK Official Web Site at <http://www.un.org/pcacc/kosovo/pages/kosovo12.htm> accessed on 13/08/01 at 14:10

to integrate various UN agencies, funds and programmes in the process of state building. There are around twelve UN-related institutions actively involved in the process of state building in East Timor, whose jobs mainly deal with the reconstruction, repatriation, humanitarian relief, and capacity-building of the region. Although these institutions may share a relatively similar general objective, they are nevertheless "independent" in action, albeit closely co-ordinated, and will sometimes opt for different strategies and framework. At this point, UNTAET was primarily tasked to "harmonise" the various efforts of international communities and institutions in order to achieve efficient and co-ordinated results, as mandated by Resolution 1272.

UNTAET was fortunate because prior to, and just after its establishment, there were several studies undertaken by different institutions (most notably the World Bank), as well as academic communities, mostly on social and economic capacity assessment. One of these early studies was the Joint Assessment Missions (JAM) administered by the World Bank. Information gathered by, and recommendations proposed through JAM have proven to be extremely useful.

As it was among the first field-study/assessments carried out just after the concerted violence in East Timor, and because the team was comprised of analysts from both international and East Timorese specialists, JAM was able to identify the most urgent needs of the people and prioritise the reconstruction programs (including cost estimates) in order to look beyond the short term. The JAM team was able to go beyond immediate post-conflict humanitarian needs to fostering international commitment to the reconstruction processes in East Timor. JAM addressed eight core sectors, namely: (1) community empowerment; (2) macroeconomic management; (3) civil service; (4) the judiciary; (5) agriculture; (6) education; (7) health, and (8) infrastructure.<sup>10</sup>

As described by Sarah Cliffe, then Deputy Mission Leader of the JAM, the recommendations were presented at a donor meeting in Tokyo on 17 December 1999. The meeting (and the subsequent donor meetings held every following six-months) was highly praised, and was viewed as the 'model' donor meeting since, for the first time, such a meeting was jointly (and relatively successfully) chaired by both the World Bank and UN secretariat. Much credits during the initial stage of the UNTAET presence should be directed to this initiative. JAM and the series of donor meetings that followed functioned as a medium for consultation, the sharing of dialogue, and co-ordination among donors. They also served as a sort of "monitoring forum" for various institutions (both governmental and non-governmental) to the performance of the UN mission in completing its attempt of state building.

Through this series of meetings, the Transitional Administration, international donors, and people of East Timor were able to sit together and formulate benchmarks, measures, and even a time-table that could help to ensure the progress and success of the mission. On top of that, however, the meetings helped to secure financial flow and assistance, both toward

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<sup>10</sup> See Sarah Cliffe, *The Joint Assessment Mission and the Reconstruction in East Timor* in James J. Fox, and Dionisio Babo Soares (eds), *Out of the Ashes: Destruction and Reconstruction of East Timor* (Adelaide: Crawford House Publishing, 2000) pp. 252-254.

general reconstruction and capacity building in East Timor as well as for the mission's budget.

Realising the sheer magnitude of responsibility and daunting challenges posed by the scale of the work, difficulty in co-ordinating various agencies as well as balancing the speed and efficiency of delivery that the mission had to perform, the SRSG was forced to formulate priorities for the mission. Although many considered it as a little too late, Mr. de Mello presented these priorities at the donor's meeting in 1999, two-and-a-half months since he arrived in East Timor. The priorities were set as follows: (1) to establish a mechanism through which the most pressing political and technical decisions could be made jointly; (2) the settlement and (voluntary) return of all those who had fled East Timor; (3) re-establishment of law and order; (4) continuing to meet basic humanitarian needs and resuming agricultural production to provide a livelihood for the vast majority of the population; (5) establishment of the civil service; (6) providing people with an opportunity to work to avoid longer-term reliance on external assistance, and; (7) human rights, justice and reconciliation.

***Transitional (Governing and) Administrative Authority.***

UNTAET also performs a pivotal role as the transitional acting government of East Timor. Thus UNTAET is tasked and authorised to govern the land and its population. What this implies is not just one branch of government, the executive, but also legislative and judicial authority.

It must be admitted, however, that initially UNTAET and the SRSG himself seemed to lack vision as to what kind of structure, and mechanisms UNTAET should exercise in East Timor. As in its harmonising role, there is another major challenge that UNTAET had to grapple with, namely that performing an effective administrative role requires close co-operation with local political leadership. Mr. de Mello, upon arrival to Dili, was quick in forging a close personal relationship with the leaders of CNRT, especially with Xanana Gusmao. Ironically, prior to the establishment of UNTAET, Xanana Gusmao had submitted a proposal to the UN Secretary General for the future structure of transitional administration in East Timor, but his proposal received little support from the UN at that time.<sup>11</sup>

Ideally, the Transitional Administration should have devised an administrative body, proportionally composed of both capable international and local personnel. This is because, as promulgated in the mandate, the UN should "support the capacity building for self-government". This policy was not, however, the case at the beginning of the administrative development. According to some UN officials, this was due to the complicated bureaucratic procedures within the UN pertaining to the recruiting of local people and difficulties in finding available (and qualified) personnel on the East Timorese side. Contrary to that view, many also believed that perhaps the UN was insensitive towards the expectations and wishes of East Timorese to be included in the administration, which caused the initial structure to be almost exclusively composed of international staff.

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<sup>11</sup> See Jarat Chopra, "The UN's Kingdom of East Timor", in *Survival*, Volume 42, Number 3, Autumn 2000, pp. 27-39

As described by Chopra, however, the problem was rooted in the circumstances of UNTAET's inception. He maintains the argument that the planning phase in New York involved no genuine contact with, nor participation by, East Timorese representatives.<sup>12</sup> After so many embarrassments and long debates, the UN's unilateral decision not to include the Timorese in the planning of the transitional administration structure quickly triggered public frustration in East Timor, especially among the leaders of CNRT. The Timorese leaders felt strongly the need to reorganise themselves and began unilaterally to reconstitute the structure at the sub-district, and even at the village levels. Soon, a virtual administrative gap quickly existed between the *de jure* UN authority and *de facto* CNRT control over the land and people of East Timor. Although personal closeness between the SRSG and Xanana Gusmao had, to some extent, closed the gap, the lethargy of administrative and re-constructive developments reflected the inability of the transitional administration. This inevitably disillusioned the East Timor leadership,<sup>13</sup> and leaders of the CNRT began to publicly express their dissatisfaction in greater frequency.

Apart from the sluggishness UNTAET displayed in its early days, the mission was committed, albeit in a reactionary, belated and limited mode, toward the participation of as many East Timorese as possible. Having established basic guidance for the operation as promulgated through UNTAET Regulation 1999/1 (on 25 October 1999), De Mello also endorsed the establishment of a National Consultative Council (NCC) on 2 December 1999. This Council consisted of 15 members representing CNRT (7), political groups outside CNRT (3), the Catholic church (1), and UNTAET (4) including the SRSG himself as the chairman. It is noteworthy that after extended discussions between pro-autonomy groups, the CNRT, and UNTAET, the inclusion of these groups into the NCC was finally agreed. This was an important step on the path towards reconciliation.

The main duty of the Council was to establish mechanisms for consulting with East Timorese civil society, including religious groups, women, and youth.<sup>14</sup> In addition, the Council would make policy recommendations on significant executive and legislative matters. The Council was also tasked to create joint sectoral committees covering several core sectors vital to the advancement of the state-building process in East Timor. As this council is consultative in nature, thus, every decision and recommendation passed by was 'accepted at de Mello's sufferance.'<sup>15</sup>

However, it was strongly felt that the Council suffered from poor communication and co-ordination problems. UDT (*Uniao Democratica Timorense*) leader Joao Carrascalao's complaint perhaps confirmed such an allegation. He publicly stated that the workability of the Council was too dependent on the CNRT. Understandably, as an influential body, the CNRT played a very pivotal role in the decision-making process, but they suffered from chronic internal miscommunication problems, which affected the performance of the Council. Too many conflicting interests, coupled with the technical and legal unreadiness of

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<sup>12</sup> Ibid

<sup>13</sup> Ibid

<sup>14</sup> For details, see UNTAET Regulation No. 1999/2 On the Establishment of a National Consultative Council, 2 December 1999. It can be accessed at <http://www.un.org/peace/etimor/untactR/etreg2.htm> accessed on 24 August 2001 (19:06).

<sup>15</sup> See Chopra, "The UN's Kingdom of East Timor", p. 32.



the CNRT to discuss important matters, e.g. the Timor Gap issue, has weakened the Council.<sup>16</sup>

Pushed by growing discontent and public demands, UNTAET was forced to modify—if not rectify—its overall policy. UNTAET top officials, however, were right in identifying that one of the most crucial problems that needs to be solved immediately was the problem of incorporating East Timorese to the public administration structure. In April 2000, de Mello reacted and announced his intention to accelerate the “Timorisation” process by appointing Timorese deputies of central departments and district offices. However, his promise of doing so in a matter of weeks proved unrealistic. In subsequent days, he maintained an argument that it was so extremely difficult to find able and available East Timorese to be included in the transitional administration.<sup>17</sup> Such a crisis-driven decision was received with mixed-feelings, especially by all 13 UN district administrators. One of the reasons was simply because these administrators saw such a strategy as ‘outside any broader integration strategy’ in which transparency and democratic selection should be the principle.<sup>18</sup> Indeed, all these tensions within the transitional administration proved nothing but the fact that the speed of delivery, and democratic principles need to be reconciled through a very delicate mechanism of which the UN mission did not possess.

During the months of May and June, the transitional administration was constantly bombarded by demands of power-sharing. As a result, de Mello reacted again in June proposing the expansion of the NCC and a plan for co-governance in which East Timorese would hold cabinet posts for all portfolios other than foreign affairs, defence, justice and finance. The proposed alternatives were technocratic or political models,<sup>19</sup> and the CNRT welcomed the political model. This, however, does not include executive power-sharing of transitional administrator as stipulated in resolution 1272.

A new National Council was established in July 2000, and commenced its role as the first ever all-East Timorese legislative assembly on 23 October 2000.<sup>20</sup> According to its initial regulation, the Council shall consist of 33 distinguished persons representing political parties (inside and outside CNRT), religious groups, civic organisations, and districts (all 13). In its first session, Xanana Gusmao was elected Speaker of the Council. The Council has seven standing committees, which correspond to the Cabinet portfolios. The Council was planned to work just until the campaigning period (July 2001) of incoming election, which was to be held in August 2001.<sup>21</sup>

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<sup>16</sup> See BBC Monitoring Newsfile, ‘Timor Politician Slams Poor Coordination in National Council’, 6 December 1999.

<sup>17</sup> See Chopra, ‘The UN’s Kingdom of East Timor’, p. 33

<sup>18</sup> Ibid

<sup>19</sup> Ibid

<sup>20</sup> See UNTAET and the World Bank, Background Paper for Donors’ Meeting on East Timor, Brussels, 5-6 December 2000, p. 5.

<sup>21</sup> Although the Council was able to endorse or formulate some legislative initiatives, nevertheless, it could not be able to become a self-interlocutor for various different views and interests of its members. The resignation of its Speaker on 23 March 2001 was seen as the peak of internal conflict within the Council. See “Interview with Xanana Gusmao” in Tempo weekly magazine, 29 April 2001.

Moreover, ETTA was then established on 7 August 2000. It was meant to 'integrate East Timorese into all major decision-making areas within the Administration'. Although initially it was planned that East Timor would hold all portfolios except foreign affairs, defence, justice, and finance, the final composition of the ETTA Cabinet (until before the August election) was as follows: (1) Five Timorese were appointed to hold five portfolios-Foreign Affairs, Internal Administration, Infrastructure, Economic Affairs, and Social Affairs; (2) International staffs from UNTAET hold four other departments-Police and Emergency Services, Justice, Political and Constitutional Affairs, and Finance. In addition to those departments, ETTA also consists several Timorese to lead some key offices/agency, including the Office of Inspector General, and the National Planning and Development Agency (NPDA), an agency that was considered important in formulating the development strategy, including the capacity building of the future independent East Timor. Most of these ministers and high officials were chosen from the Diaspora of East Timor resistance (FRETILIN).

Apart from the fact that ETTA had provided larger window of opportunity for the East Timorese to comprehend, formulate, co-ordinate, and partly determine the path, priority and strategy of development, nevertheless, it still merely functioned as "the vehicle" for capacity building prior to the full-administrative hand-over. ETTA was then immediately challenged by several constraints, mostly related with the capacity building efforts. As identified in the Background Papers for Donors' Meeting in Brussels (December 2000) and Canberra (2001), there are three main hindrances facing the advancement of ETTA. These constraints are: (1) lack of an overarching plan to co-ordinate capacity building initiative; (2) slow recruitment, and hence inability to complete full training needs analysis or start capacity building for the management levels, and; (3) language constraints which mitigate against on-the-job transfer of skills from international staff.

Although the NPDA had been properly assigned to co-ordinate all capacity-building efforts, nevertheless, plans should also be demand-driven from the departments, who best understand their own training needs. Unfortunately, many departments did not have sufficient Timorese managers to generate and verify job-descriptions. Most of them especially those who used to work for bureaucracy under Indonesia, could not fully comprehend the nature of shorter chain of command the UN tried to implement. They always urged for constant guidance of which the UNTAET/ETTA had no time to formulate. Solving that problem was not easy, as in the meantime, supply of qualified candidate for senior positions might not be sufficient in all sectors. Actually, there had been no major difficulty in attracting qualified candidates at the lower levels, but it has not been as easy at the senior levels (level 5-7), and ETTA is still formulating the best solution to those problems. However, it is worth to note that until January 2001, ETTA has hired nearly 7,000 of the 10,554 civil servants projected for the fiscal year 2000/01.

Indeed, due to its limitations, ETTA could not always deliver things that had been promised to the people. For instance, it could not yet provide a sea-transportation (ferry) from Oecussi enclave to Dili port, while negotiation with the Indonesian authority to have a "safe-land-corridor" through Indonesian territory also seemed to go nowhere.<sup>22</sup>

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<sup>22</sup> Interview with NGO activist in Dili, 20 July 2001.

Despite all shortcomings of ETTA, this transitional administration, however, had been relatively successful in at least addressing several key sectors through its sector program approach as outlined in the SRSG speech at the Donors Meeting in Brussels. It had been able so far to deal with the finance/budget issue, as well as managing foreign affairs concerning with East Timor relationships with Indonesia and Australia. In preparing East Timor for independence, ETTA had played a pivotal role in addressing as well as establishing and strengthening defence institution, justice system, repatriation mechanism, police, infrastructure, land issues settlement, border control, economic affairs including agriculture, and obviously health and education.

The success of last election on August 30 to elect 88 members of the Constitutional Assembly, in which Fretilin party came out as the majority winner by winning 55 seats (57.3%), really paved the way for the next step towards independence. As a result, UNTAET will likely downsize its current strength-if not completely pull out in just several months after independence, except its PKF and Civpol. If thing goes as scheduled, then, we can expect to see the Assembly accomplish their duties (crafting the constitution and other important arrangements e.g. date of independence, system of state etc) within the next 90 days. And after the establishment of government, ETTA will transform itself into a fully functioning government of East Timor, and inherit all executive powers the UNTAET previously held. At this point, UNTAET will strictly serve as advisor or "gap-filler" to the incoming government on several sectors where the government is lack of able personnel.

### ***Overseeing Security and Public Order***

Maintaining security and public order was among the highest priorities of UNTAET. It must be admitted, however, that security and order were relatively well managed under UN PKF. Indeed, the credits should also be given to the initial Australian-led security mission (INTERFET). INTERFET was a peace-enforcement operation, mandated to restore peace and security, to protect UNAMET, and facilitate humanitarian assistance before the arrival of the UN peacekeeping force.<sup>23</sup> They completed the mission with a relatively satisfactorily result.

Despite some criticisms on the way INTERFET conducted its mission, which was considered as insensitive towards the sentiments of Indonesian public, and over-cautious in performing its duties (e.g. a rather harassing way in checking the civilian East Timorese on the streets), nevertheless INTERFET had been successful in restoring public order, and securing the land, by establishing a good and sound relationship especially with Indonesian military authority. They, in close co-operation with the Indonesian army in particular, had been successful in preventing more bloodshed between the militias and those who opted for independence.

In subsequent days, UN Peacekeeping Force (UNPKF) replaced INTERFET, and immediately resumed the security mission in East Timor. With current strength of over eight thousand troops from 31 countries and just over a thousand civilian police from 38 countries, their mission was mainly focused on maintaining the security and order as well as

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<sup>23</sup> See UNSC 1999 as quoted from Sue Downie, *The United Nations in East Timor: Comparisons with Cambodia* in Damien Kingsbury, *Guns and Ballot Boxes: East Timor's Vote for Independence* (Clayton: Monash Asia Institute, 2000) p. 122.

disarming the former pro-integration militias. However, despite a relatively positive degree of calmness and order, violence and misunderstandings intermittently occurred, mostly between the militias and PKF. In late July and early August 2000, for instance, two PKF soldiers were killed in the exchange of shooting with militias in the villages near the border, and in late August representatives of UNHCR were deliberately attacked during a visit to West Timor. The latter incident had caused a rather strained relationship between the civilian UN mission with their military counterpart, partly because the former believed that the latter was not able to provide a full security protection for the civilian missions, and to disarm or arrest those responsible for the terror (militias).<sup>24</sup> Up until April 2001, the fatality of the mission was recorded to reach 16 personnel, most of them were the military (and others are civilian police and observers).

A series of incidents have only showed that the militias were proven to be an immediate threat to the security of East Timor.<sup>25</sup> They posed a serious implication not only on security *per se*, but also on the issue of reconciliation. At this point, the Transitional Administration's support for reconciliation, including its approach toward Indonesian elite to establish some co-operative mechanisms in disarming and arranging the repatriation of the former militias, and putting those who were responsible for the post-Election fiasco on trial, was seen as inconclusive and thus heavily criticised. Despite the fact that UNTAET have been active in making bilateral talks over the RI-East Timor borders, including the possible arrangement for the Oecussi enclave, many felt that the UN could have done a better job on reconciliation. Reconciliation is in fact a very delicate and time-consuming process, and it even became more difficult to be accelerated under UNTAET partly because the process itself have been very much exacerbated by either lack of UNTAET's persuasion to both Indonesia and the militias on this particular issue, or doubt over sincerity and political-will of both Jakarta and the militias towards reconciliation and tribunal initiatives. Nevertheless, despite a very slow progress, things are moving ahead on its track, although there is no clear indication as to how and when these issues are going to be reconciled in a peaceful and effective manner.

### III. MANAGING A WIDER AND DEEPER PARTICIPATION

#### **International Organisations in East Timor:**

##### ***Role, Strategies, and Constraints***

Security Council resolution 1272 of 25 October 1999, which established the UN Transitional Administration in East Timor, "recognizes that, in developing and performing its functions under its mandate, UNTAET will need to draw on the expertise and capacity of Member States, United Nations agencies and other international organizations, including the international financial institutions".<sup>26</sup> Indeed, the above statement reflects the importance of other international institutions, including donors, and NGOs. The UN

<sup>24</sup> See Katsumi Ishizuka, "UNTAET: Some Current Issues" in *Peacekeeping and International Relations*, Vol. 29, No. 5/6, Sep-Dec 2000, pp. 5-7, accessed from <http://www.umi.com>

See Katsumi Ishizuka, "UNTAET: Some Current Issues" in *Peacekeeping and International Relations*, Vol. 29, No. 5/6, Sep-Dec 2000, pp. 5-7, accessed from <http://www.umi.com>

<sup>25</sup> Interview with SRSG Sergio Vieira de Mello in Dili on 19 July 2001

<sup>26</sup> As quoted from a speech delivered by Mr. Finn Reske-Nielsen, UN Development Coordinator, on behalf of the UN Agency Country Team in East Timor Informal Consultation between Donors and UN Agencies, Brussels, 5 December 2000.

agencies, funds and programmes have responded positively to this challenge by supporting the Transitional Administration in their respective areas of expertise and competence. There are more than a dozen of UN agencies involved in the state building process in East Timor. In general, these organisations provide substantial supports and assistance especially in humanitarian relief and economic reconstruction at the aftermath of crisis, and institutional building and thus paving the way to the independence of East Timor.

*Emergency and Humanitarian Assistance.* The broad objective of the humanitarian agencies is to provide emergency assistance to the Internally Displaced Persons (IDPs) and other vulnerable populations in East Timor, while creating conditions for more sustainable development. In this regard, during its first six-month, the initial objective of the UN was not to robustly institutionalise the humanitarian operation, but to move as quickly as possible to physical reconstruction and transitional activities. The rationale for such an action is that in the absence of physical facilities that can be used and a very low quality of life, a speedy emergency package was one of the most tangible responses the international institutions could deliver. Thus, providing shelters, re-building schools and public facilities (i.e. roads, sanitation, health facilities), and delivering foods and clothes, were examples of these activities at the early stage.

*Institutional and Capacity Building.* Simultaneous to their responsive emergency and humanitarian assistance, another role (and challenge) the UN had to perform is to build firm and sound institutions and national and local capacity necessary to the development of independent East Timor. This particular task is definitely far more complex than delivering and providing basic human needs such as foods and clothes since it comprises many additional factors (such as the availability of resources, complex policy formulation, and cross-sectoral planning and programs). It also takes a much longer term before economic, social, political and cultural institutions of East Timor can work at its fullest speed, and can be fully accountable to the people. Therefore, some of these international institutions are determined to get involved in the state building process before and after the independence, and thus maintaining their long term commitments and presence in the territory.

According to *the Common Country Assessment (CCA) for East Timor* (November 2000), these agencies, funds, and programmes have been active in East Timor since late 1999. Some even had started their activities during the Indonesian period, and thus, were able to maintain a close communication and co-ordination with local people. UNICEF, UNDP, UNV, WHO, ILO, UNFPA, WFP, UNHCR, FAO, UNOPS and IOM maintain a presence in East Timor as part of the broader UN family in the territory operating under the overall authority of the SRSG. Even some of these organisations operate not only in the East Timor per se, but also in the territory's immediate neighbour, West Timor. Co-ordination of agency programmes and activities is provided through the UN Development Co-ordinator System.

On top of that, the World Bank and other financial institutions including Asian Development Bank are central to the process of development in East Timor. As financial assistance is key aspect in the provision of emergency kits, and material for reconstruction/rehabilitation, especially at the early stage of re-development process, these financial bodies had performed a remarkable job in East Timor. They managed to secure the flow of financial assistance from international community, and forwarded the aid to the

people, especially through its Trust Fund for East Timor (TFET).<sup>27</sup> The TFET portfolio concentrates on basic post-conflict reconstruction, including physical rehabilitation of key social and economic infrastructure and support to the recovery of private sector.

Moreover, a survey collaboratively undertaken by the Bank and UN (such as the JAM), and a series of similar studies by other institutions before the popular ballot and in the aftermath of crisis have allowed many international missions identifying clearly the crucial and immediate needs of the East Timorese people. Despite its rather rhetoric tone in many of their documents, it must be admitted however that the interplay and close co-operation of these organisations had posed a major significant impact on the initial process of development (reconstruction and rehabilitation) in East Timor. It affected not only in terms of relieving the people from protracted disaster and anguish, but more importantly in bringing back their self-confidence and optimism about their future, and in maintaining the humanitarian concerns and sympathy of international communities to their agony.

Following the report prepared by Joint Assessment Mission, these organisations closely work together, identifying common challenges and constraints, formulating as well as co-ordinating common strategies and policies while leaving some specific issues to certain concerned specialised institutions. It is almost impossible, however, to evaluate the activities and progress of each institution/organisation. But, there are some generalities found with regards to the on-site constraints, causes of problems, measures, and strategies, as perceived and formulated by these institutions.

Pertaining with constraints and challenges facing the international organisations, apart from security threats posed by the militias, it must also be admitted that aid co-ordination was, and is, the major issue, especially at the initial stage of recovery efforts. Co-ordination is considered as vital to ensure effectiveness. Lessons learned from post-conflicts situations as well as in other countries have highlighted the importance of aid co-ordination. Arguably, nations emerging from conflict are often characterised by weak institutional mechanisms for co-ordination, which coupled with the rapid flow of financial and material inputs, result in duplication and sub-optimal allocation of resources. Therefore, a central principle of international institutions' strategy (especially that of the World Bank) in East Timor is to maximise the effectiveness of the considerable donor resources available in the short term by focusing on co-ordination of aid flows. On aid co-ordination, there has been an understanding between major financial organisations like the World Bank and the Asian Development Bank (ADB) on which sectors the money should go. The World Bank prepares projects in the sectors of health, education, agriculture (including irrigation), support to small and medium enterprise and economic capacity building, whilst ADB takes the lead in micro-finance and infrastructure rehabilitation projects including roads, ports, power, water sanitation and telecommunications.<sup>28</sup>

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<sup>27</sup> TFET was created as one component of overall assistance promised to East Timor in a meeting of donors on December 17, 1999 in Tokyo. TFET is guided by three overarching principles: (1) maximise East Timorese leadership and participation; (2) encourage effective donor co-ordination, and; (3) get the right balance between timelines and quality. To date, 10 donor countries have pledged more than US\$ 168 million of which US\$ 142 million have been deposited with TFET.

<sup>28</sup> Interviews with representatives from World Bank and ADB, Dili, July 18, 2001.

For other institutions or agencies, due to their specific experience, interests and concern, they adopted the so-called sectoral approach to ensure that there would be no overlapping in conducting the national reconstruction and rehabilitation in East Timor. As reported in CCA, setting a division of labour among these international institutions had been very delicate. While the Bretton Woods institutions play a leadership role in ensuring the inflow of money, other UN agencies also play leading roles in humanitarian assistance, development and capacity building complementary to the TFET and in partnership with UNTAET/ETTA. These agencies have played important roles in reconstruction (UNDP, UNOPS, UNICEF) and in the delivery of humanitarian assistance (UNHCR, UNICEF, WFP, UNFPA, UNDP, WHO, FAO, WFP, UNV, and UNOPS).

Moreover, as stated earlier, with limited resources the UN System agencies have made important contributions in areas where they have specialised expertise and comparative advantage. UNDP, for instance, is very supportive to ETТА in governance, civil society organisations, and mobilisation of resources and delivery of assistance on behalf of other donors. UNHCR is the leading institution in providing for the emergency needs of internally displaced persons, especially shelters and income generating activities. UNICEF orchestrates programs/projects on teacher training and recruitment, rural water supply and sanitation and school rehabilitation, establishing a routine immunisation system and child rights promotion. In addition to those activities, WHO administers public health planning, communicable control and disease surveillance.

Nevertheless, as admitted by the UN Development Co-ordinator, "East Timor is a "country" in special circumstances. In this complex post-conflict situation, the activities of the UN system do not fall neatly into categories. Many activities overlap the areas of rehabilitation, humanitarian assistance, reconstruction, reconciliation, and development. Activities in these areas are often inter-dependent and cannot be easily placed in a single category."<sup>29</sup> Although this statement sounds rather apologetic in substance, but contextually speaking, it reflects the situation on field, especially during the first months of missions. Situations on the field looked so chaotic, people and international organisations seemed to be so rushed to kick in, while knowledge on and trust from the people of East Timor was not sufficient.

To improve a better communication and co-ordination with the Transitional Administration and local elements from within East Timor, some measures and initiatives were formulated and implemented. One of these initiatives was to establish regular bi-weekly co-ordinating meetings between the SRSG, UNDC, East Timor leadership especially from CNRT (later on followed by representatives from NC, ETТА, NGOs, and other invitees), and Heads of UN agencies operating in East Timor.

At the top official level, such an attempt seemed to be positive towards the organisational strengthening of the missions. However, situation at the lower level more or less resembles that of the "Dog-In-the-Pond-Phenomenon", in which situation seems to be so calmed on the surface, but all four legs beneath rumble altogether, and create chaotic currents. Basic miscommunications often took place, and personal amity among UN staffs could not be firmly built. Complaints, and negative sentiments often aired, although not publicly. As one

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<sup>29</sup> See *The 2000 Annual Report of the Development Co-ordinator*, p.1

of the UN staffs revealed, "working environment within the missions is very competitive and unfriendly"<sup>30</sup> not only at the policy-level, but also at individual level. There is also a sense of pessimism among the UN staffs towards the ability of ETTA in administering the development process in East Timor because some of them believe that "timorisation" does not necessarily lead to a more effective governance. A staff from one UN agency observes that although East Timorese hold top positions at some departments within ETTA, yet "international advisors (still) run things in East Timor."<sup>31</sup>

But to those who are familiar with the initial stage of UN missions would not be surprised by such a kind of situation. Difference in vision and approach among various UN agencies is one of the characteristics of the entire international missions in East Timor. Even from the very beginning, UNTAET and especially the World Bank, for example, did not share same vision and strategy to the state building in East Timor. The former tends to adopt a speedy, top-down directive, elitist-approach especially at its initial stage, whereas the former insisted more on the urgency to speedy deliverability with as much people's participation and initiatives as possible, as was reflected in the case of CEP.

Down to a very micro/individual level, although both were equally criticised of being insensitive towards local culture and people, but staffs of UN agencies are relatively more specialised, well-equipped, and possess a reliable technical know-how in conducting relevant projects, while their counterparts from UNTAET/ETTA were seen as lack of skills due to a rather instant recruitment mechanism. The skill-gaps between the two, let alone with the East Timorese—according to general perception of the international staffs of both UNTAET and UN agencies, had posed a major problem in the field.

Apart from higher specialised skills and experience the staffs of UN agencies posses, another crucial factor that determine the general behaviour and commitments of UN agencies is the fact that unlike UNTAET, these agencies, along with numerous NGOs and donor countries, will retain their existence in the "independent" East Timor. Thus, realising that they will be in the land for literally an indefinite period, thus, it is understandable if they focus on the issue of institutional-capacity building, and do not specify their "exit-strategy" as that of the case of UNTAET. Moreover, this situation should also be understood in a sense that UNTAET is now being at the spot of public attention and expectation, at least up until the independence, whereas the international organisations mostly act as supporting bodies to the humanitarian and development efforts led by UNTAET. Thus, because UNTAET is central in orchestrating immediate development in East Timor, and its timeline of existence is also relatively fixed and shorter compared to that of the other UN agencies, thus public's judgement on UNTAET is much detail and immediate. This was not the case for other UN agencies. Indeed, it takes much more time before we can fully assess the performance of some of these international institutions because of their specific characteristics (e.g. open-ended). It is also reckoned that the real significance of these institutions will be considerably more prolific once East Timor becomes a fully independent state. Thus, independence will only mark the beginning of a more intensive involvement of these institutions in the state building process.

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<sup>30</sup> Interview with a UN officer in Dili on 20 July 2001

<sup>31</sup> Interview with a UN officer in Dili on 20 July 2001



***Relationship with the Non-Governmental Organisations (NGOs):  
Competitive or Co-operative?***

From the very beginning, NGOs have been always considered as an integral part of state-building process in East Timor. During the Indonesian period, they were well known to be among the staunchest proponents of the East Timor independence. UNTAET also fully recognises the importance of NGOs as partner and stakeholders of the development in East Timor. An organisation called the NGO Forum has recorded that there are 110 international and 150 national NGOs that have been officially incorporated with the Forum. It reflects not only the fact that NGOs on East Timor were great in number, but they also possess the ability to co-ordinate activities among themselves, and to create a workable and solid network. Their activities and advocacy posed significant impacts on the development programs.

In general, like NGOs elsewhere, the roles and agenda the NGOs in East Timor exercise are as follows: (1) acting as a means of check and balance to the government, and monitoring the transparency, accountability and effectiveness of development programs; (2) promoting democracy and community empowerment through intensive public education and campaigns; (3) advocating some critical individual and communal problems, most notably the violation of human rights, and injustice; (4) building up a strong and workable networking, not only among the national and international NGOs, but also a network with the government, and business alike. In short, it can be concluded that NGOs help the strengthening, and capacity building of the country as a whole.

With regards to the relationships of NGOs-UNTAET/ETTA-International Institutions-Donors, it is observed that in general all actors are mutually interdependent as they are pursuing more or less similar interests and objectives. But understandably, they sometimes opt for different strategy and approach in accomplishing their own respective missions. For instance, with its prosaic bureaucratic culture, governments and UNTAET/ETTA tend to adopt a procedural approach, which can be very complicated and slow. On the contrary, NGOs are more flexible and informal in executing its policy, although it must be admitted that such flexibility and informality sometimes risk the accountability. This situation had created a common impression that governments and NGOs cannot work together, and their relationship is only marked by harsh and constant exchange of criticisms.

Initially, according to the NGO Forum, some NGOs do work alongside the Government, as is the case with NGOs working in health, or water and sanitation, where the government does not have enough resource to finance these sections, or considered as less politically important. Other NGOs, however, work quite independently from the Government, especially in agriculture, environment, education, capacity-building, social welfare, human rights, and media sectors. These are sectors of which the government is lack of vision as to how the program should be administered and managed so that people will maximally benefit from it. And it is in these sectors competitions—even conflicts frequently occurred between UNTAET/ETTA (and other UN and international institutions) and NGOs.

Regardless their position *vis-à-vis* the Administration, NGOs are normally critical in evaluating and assessing the progress of development in the territory. One of their criticisms towards the UN missions is that these missions, especially UNTAET, are too concerned about—even obsessed by—the formal independence of East Timor, and they seemed to be

so rush in leaving the country once the independent date is agreed. Actually, many expect the missions would be more relaxed and more people oriented rather than being too overwhelmed by their own legal and political agenda.

Moreover, NGOs' critical evaluation, assessments, proposals, initiatives, and recommendations on several sectors submitted to the Donors' Meetings had helped the international community and donors in identifying and understanding the shortcomings, as well as achievements of the Mission. In the end, such a critical attitude had posed a very positive impact on the state-building process in East Timor.

Indeed, we just cannot always view NGOs and the Administration in a diametral, or black-and-white position. There were in fact several cases in which the NGOs were able to propose some very stimulating and sensible initiatives, and received full support from the Administration. The success of Civic Education program was perhaps one example of how Government and NGOs could closely work together, and become successful at the end. With intensive communication and an open-minded attitude from both Transitional Administration and NGOs, some initial hurdles can be overcome, and differences can be reconciled.

On the contrary, education is perhaps one of the most complex problems in which relations between the Administration and NGOs (and also the Church) are yet harmonious. According to some NGOs dealing with education sector, the rather authoritarian attitude of the Government prevented them from working closely, and co-operatively with the Government. Even in some extreme circumstances, UNTAET/ETTA could easily stop the NGOs activity simply by cutting off their financial and technical supports. Thus, it is difficult to claim that NGOs and the Transitional Administration are either in absolute synergy or friction, because they are mutually interdependent towards each other.

#### **IV. SOME LESSONS LEARNED: Agenda for the Future**

From the description above, it is clear that given the unfortunate circumstances, the UN has been doing a formidable job in the making of East Timor as an independent state. Indeed, if we judge its performance by the standards of what people expect, thus, the UN mission does not perform as good as people had expected. There are shortcomings, and criticisms towards the way the UN undertakes its duty and responsibility, especially on sluggish progress and mistakes UNTAET had committed during the first six months. But it must be admitted that with some on-site modifications of the original plan as formulated by New York, UNTAET had been able to improve its overall performance, deliverability, and relationships not only with the other international organisations and donors, but more importantly its relations with the people and leaders of East Timor.

Furthermore, there are some lessons that can be learned or compared from the experience of UNTAET. Basically, these lessons can be categorised into two broad themes, namely: (1) lessons for the Peacekeeping organisational development—as it had been formulated through the Brahimi Report, and; (2) lessons for the international co-operation on state-building process.

On lessons for the next possible peacekeeping operation, UNTAET's experience in East Timor, however, shares some similarities with that of the UNTAC in Cambodia. First, 'intense efforts should be made to reduce the delay between a negotiated settlement and

deployment of subsequent mission, and its associated mechanisms and infrastructure. UN peacekeeping operations should 'hit the ground running' and be prepared to take control immediately. UNTAET's, as well as UNTAC's, sluggishness in taking control of the territory was one of the biggest flaws of the East Timor mission.' There was a period of discontinuity between UNAMET and UNTAET, and in subsequent stage, such a discontinuity was reinforced by frequent turnover of personnel.

As also the case of UNTAC, 'the inadequacy of its advance planning affected UNTAET for the whole of its life cycle. Apart from the lack of capacity at UN Headquarters, advance planning was hindered by a disjunction between the negotiation at the Security Council and their implementation. All the senior leadership-designate of peacekeeping mission should be involved, where possible, in the negotiation and planning phases leading up to deployment'. The SRSG agreed that planning was a very critical issue that determines the success of certain mission, and he admitted that UN mission in East Timor did not have a good and comprehensive one. In security field, he noted that international intervention in East Timor began with a Multi-National Force and led from within the region (Australia). This was swiftly followed by its transition into a more orthodox PKF. Such transitions are indeed rarely easy, but in this case it was flawless, and the reason was simply because UNTAET was not equipped to deal with a transformation on this scale. Rather, the mission was almost entirely dependent on "blue-bereted" MNF officers seconded to the UN for its implementation. In the future, initial UNPKF should contain strong planning and logistics cells, and the Secretariat should begin advance planning of these operations with key potential partners to lay down blueprints and contingency plans for possible future transitions.

In the civil and political transition, the UN mission was also challenged by the fact that resolution 1272 did not provide the mission an instruction manual, and comprehensive plan. The SRSG admitted that approach adopted from the outset would not work. He actually planned to Timorise only the civil service with the delay on political transition just until the election or well before independence. Meanwhile, consultation with a selected few would suffice. It became clear, however, that consultation was insufficient, and thus, the mission accelerated the Timorisation process. On the one hand, he was asked to Timorise and delegate authority to the local population. On the other, the mission was also told that the funds allocated to UNTAET for this purpose could not go to the administration established! Therefore, the future UN missions would be constantly challenged by the question of how far or fast can the UN accelerate the power-sharing with local people.

The next critical lesson for the future UN mission is on the good mission governance, not only on the establishment of accountable, efficient and corruption-free ambience within the mission, but also on how the mission can be discipline and consistent in implementing its own rule of the game and law. In East Timor, corruption has been becoming a major issue. But equally critical is the issue of impunity. There were several unlawful acts committed by UN personnel i.e. sexual harassment, and traffic accidents, and no significant attention has been given on these matters. If the UN is about to retain people's trust and its credibility, thus, it must be able to find a firm and consistent solution to these types of problems.

Finally, on a specific administrative matter, it must be admitted that UN financial and administrative procedures were complex and time-consuming. This had been one of the

obstacles the UNTAC faced in Cambodia, but then, it repeatedly took place again in East Timor. Thus, greater delegation of financial authority and faster and more flexible procurement procedures would all have helped the functioning of UNTAET's administration.

Personnel-wise, the UN missions must develop a transparent and accountable recruitment procedure, which allows them to select people with skill and commitment. The recruitment system should also accommodate a smoother transfer of skills from international staffs to the local people who will run things after the mission is ceased. In that regard, the UN should consider the strategy to transfer the skills and knowledge of international staff to its local partners. In East Timor, it is found that the staffs who originally were not government employees often complained that their bureaucrats colleagues were very reluctant in "educating" their local partners, so the transfer of knowledge did not work well. On the contrary, these bureaucrats seconded to the mission often accused their non-bureaucrat colleagues as "not having sufficient experience and skills" in running public affairs". Thus, personnel backgrounds really matter at this point since backgrounds would determine personnel's way of thinking and action.

In an emergency situation or at the initial stage where the time for co-ordination and adjustment is a luxury the mission does not possess, perhaps it is preferable if the UN recruits its personnel in a "team-package", that is a team of experts/personnel from certain country/organisations that technically specialised on specific duties e.g. health, agriculture, budget and so forth. Several cases in East Timor confirmed the fact that Team-approach might yield a better result in a shorter period of time.

Henceforth, new recruitment procedures should not necessarily contradict the general quota-basis principle of UN, because as many people reckon, the case of East Timor is quite unique, and it may not happen again in the future. Therefore, it does not pose an immediate impact on the overall mechanism of the UN. However, still the UN should establish alternative or ad hoc procedures and mechanisms that can be temporarily applied in special circumstances. In short, the UN must develop a more sophisticated conception of the operation of multifunctional missions. The improvisation that characterised much of UNTAET's performance, noble though it may have been, cannot fully be the basis for future UN exercise in nation-building, if any.

With regards to the lessons for the international co-operation on state-building process, it must be admitted that co-ordination is the most difficult problem. To avoid duplication of efforts, and lack of synergy among various missions in East Timor, a better strategic co-ordination is needed between the components of large multi-purpose UN missions. Continued and close communications between the co-ordinator of mission, and other UN missions, donor countries and NGOs should be maintained at all cost. In the case of UNTAET, the Donors' Meetings would be good examples of how numerous missions, countries, and groups can be harmonised, and can collectively discuss, monitor, and set the various programs, benchmarks and assessments necessary for the success of the whole objectives. This model should be implemented in the future missions.

Lastly, international community should also bear in mind that the official independence of the country would not automatically end the process of state-building in East Timor. The

country will continually need supports from various countries, international organisations, both private and public. The East Timorese has energy and spirit to build their country, but only with strong supports and commitments of international society can the East Timorese build their nation in a democratic way.