



This paper uses a political settlement lens to argue that the United Nations Transitional Administration in East Timor (UNTAET), which administered the territory from October 1999 through to its independence on 20 May 2002, largely fulfilled the elements of the security and governance mandate conferred on it by the United Nations Security Council but that this was not sufficient to create the conditions for lasting stability in East Timor.¹ UNTAET succeeded in supporting the political and structural separation of the territory from Indonesia, in the process putting in place many of the elements of the machinery for the new state. However, it did not pay sufficient heed to the consequences of its decisions for the internal political settlement that was taking shape across Timor's elites and the wider society. In order to examine the evolving political settlement over the life of UNTAET, this paper looks at three areas: the political space that opened up under UNTAET; the organisation of the transitional government; and the making of the Constitution for the future state of Timor-Leste.

On 30 August 1999, the people of East Timor were given the opportunity to vote for independence² after 24 years of Indonesian occupation. The outcome was a convincing 78.5 per cent in favour. The announcement of the results signalled the beginning of a systematic and vicious campaign of orchestrated violence by pro-Indonesian militias, with the Indonesian state seemingly powerless to protect its citizens in the face of the onslaught. In the space of a few weeks some 250,000 people — almost one-third of the population — were herded across the border into West Timor, and towns-people were stripped of their possessions and their houses torched. Around 70 per cent of public infrastructure across the entire territory was destroyed: public buildings and government records were

burnt and communications, water supply and electricity infrastructure were comprehensively trashed.

The complicity of the Indonesian security forces in these events was described in unusually frank terms by an official UN mission sent to Timor in early September:

The involvement of large elements of the Indonesian military and police in East Timor in organizing and backing the unacceptably violent actions of the militias has become clear to any objective observer and was acknowledged publicly by the Minister of Defence on 11 September (United Nations Security Council 1999b: para. 19).

The response of the international community was swift and resolute. On 15 September, the UN Security Council authorised the immediate deployment of a multinational force to restore peace and security in East Timor and facilitate humanitarian assistance pending the establishment of a UN peacekeeping operation (UNSC Resolution 1264, 15 September 1999). Six weeks later, the Security Council mandated the successor UN peacekeeping mission to stabilise and administer the territory of East Timor through to independence (UNSC Resolution 1272, 25 October 1999). The mission was named the UN Transitional Administration in East Timor (UNTAET).

UNTAET was hailed as an outstanding success at the time of Timor's independence in May 2002: a welcome reprieve for the reputation of UN peacekeeping after a succession of lacklustre or failed missions. The mission could cite an impressive catalogue of achievements on humanitarian and security fronts:

- security had been restored across the territory and the militias effectively contained

- more than 200,000 of those displaced across the border had returned from West Timor and been successfully reintegrated
- the former guerrilla force, Falintil, had been demobilised
- national security forces — both police and military — had been built from scratch
- a broad-based transitional justice process was underway
- the bilateral relationship with Indonesia had been placed on a sound footing and border management significantly normalised.

The mission could also claim that it had accomplished an unparalleled process of state-building, creating the political structures and machinery of government literally from the ashes:

- comprehensive voter registration was completed
- peaceful elections were conducted for the Constituent Assembly charged with developing a constitution for the new state and, eight months later, for the president
- the national civil service was organised and largely recruited
- the physical infrastructure of government administration and service delivery was rehabilitated
- the basic structures of public finances and national economic management were up and running
- a public broadcaster was established and the nationwide infrastructure for radio transmission restored.³

In the euphoria of independence day, few if any in the international community foresaw the violence that would erupt in 2006, when the deep hostility between competing elite interests and between the country's two senior political leaders was played out in the streets of the capital and regional towns and elements of the security forces morphed into partisan enforcers for sectional political interests. Government buildings and a large number of homes were torched, around 150,000 people — 15 per cent of the population — were displaced and some 30 people were killed.

What went wrong in Timor-Leste? The answer would seem to lie, in part, in the character of the political settlement that took shape during the transitional period of UNTAET administration of the territory. The concept of 'political settlement' has gained wide currency in the past few years in the policy literature on state-building in fragile and conflict-affected states as the understanding grew that state-building is a deeply political process (OECD 2011:11) and that efforts to build the machinery of the state to a rational-bureaucratic template that ignores context are doomed to fail.

Although usage of the term is still far from settled, a political settlement can be broadly understood as:

... the expression of a common understanding, usually forged among elites, about how political power is to be organised and exercised, and about how the nature of the relationship between state and society is to be articulated (Rocha Menocal 2009:8).

In the policy literature, peace-building efforts are directed towards the development of a positive political settlement — one that is inclusive and stable — and the political settlement in turn is the foundation upon which the state is built.

What bearing does this have on an assessment of UNTAET's work and impact? Arguably, UNTAET built the wrong peace. Its focus was on the proximate causes of the conflict in East Timor: the contested divorce from Indonesia and the immediate aftermath; namely, the protection and return of one-third of Timor's population displaced across what had become an international border and held in thrall by the militias, the containment of hostile militia incursions from the Indonesian side of the border and the punishment of those responsible for the violence of 1999. This was where its mandate directed it.⁴

UNTAET did not engage closely with the deeper political history of Timor and the corrosive relationship between prominent elite personalities and their supporters that was a legacy of the 24 years of armed struggle and political resistance to Indonesian rule.⁵ As a consequence, a positive

political settlement was not forged within East Timor during the life of UNTAET and the institutions it nurtured deepened the fissures between sections of Timorese elites and between elite interests and the wider society.

To begin to understand why the political settlement evolved as it did, some clues can be found in the way that the UNTAET mandate took shape and, importantly, the standing of the Timorese resistance leadership in the process. The mandate had its roots in the political agreement signed on 5 May 1999 between Portugal, Indonesia and the UN which set out the ground rules for the proposed 'popular consultation' that would give the people of East Timor their chance to vote on independence. The standing of the three signatories was anchored in history. At the time of the Indonesian invasion of Timor in 1975, Portugal held Timor as a non-self-governing territory. It had committed to rapid decolonisation the previous year, and within weeks several political parties had emerged in Timor. Their positions on the political transition were sharply divergent, and in August 1975 one of the two major parties (UDT) attempted to seize power by force; its rival (Fretilin) counterattacked and the Portuguese administration withdrew in disarray from the territory. By early September Fretilin emerged as the victor and on 28 November 1975 it declared independence.

Indonesia, purportedly acting at the behest of the parties that had been vanquished by Fretilin, invaded on 7 December 1975. Portugal immediately took Timor's case to the UN Security Council, and continued thereafter to argue Timor's claims for self-determination in annual debates on the 'question of Timor' in the UN General Assembly. In 1982 the General Assembly requested the Secretary-General to initiate consultations with all parties directly concerned with a view to achieving a comprehensive settlement. The Secretary-General interpreted this narrowly to mean only Portugal and Indonesia, to the exclusion of the resistance movement leadership (CAVR 2005:111), setting in train a pattern of tripartite engagement that was maintained through to the agreement that was signed on 5 May 1999.⁶

The terms of the agreement are instructive. Article 6 specifies that, should the people of East Timor reject the proposal for special autonomy (i.e. vote for independence), then:

... the Governments of Indonesia and Portugal and the Secretary-General shall agree on arrangements for a peaceful and orderly **transfer of authority in East Timor to the United Nations** (United Nations Security Council 1999a: Annex 1, emphasis added).

To give effect to the transfer of authority to the United Nations, Portugal and Indonesia had first to withdraw their sovereign claims. In line with the terms of the 5 May agreement, the Indonesian legislature passed a law on 19 October 1999 repealing its 1976 law annexing East Timor (Crouch 2000:167). The next day Portugal advised the United Nations that it would relinquish its legal ties to East Timor and consider UNTAET to be its successor upon the adoption of the Security Council resolution mandating the mission (Chopra 2000:937).

Five days later, the Security Council resolved to establish the mission. Operative paragraph 1 of the resolution determined that UNTAET:

... 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 (United Nations Security Council 1999d).

The mandate was one of extraordinary breadth: the powers vested in the mission, to be exercised through the person of the UN Transitional Administrator, included all the classical powers of a state, albeit exercised as a trustee rather than as a sovereign (Stahn 2001:109, 115).

The Timorese themselves were largely absent from the mandate. Although the Security Council resolution does reference them, their role is a passive one of responding to the 'the need for UNTAET to consult and cooperate closely with the East Timorese people'. No express provision was made to include the Timorese in executive decision-making or in the administration of those decisions.

The implicit message of the Security Council was that the Timorese resistance movement should keep a low profile in the governing structures of the transitional state in deference to Indonesian sensibilities (Suhrke 2001:5).

As well as exercising quasi-sovereign powers, UNTAET was different from all previous peace-keeping missions in one other fundamental respect. In all other contexts, the parties to the conflict remained inside the territorial borders of the state in which the mission was deployed, forcing the resolution of a political settlement to centre stage. In Timor, however, the perpetrators of the violence had withdrawn across what had become an international border and were most unlikely to return in numbers that would destabilise the state. Those left within the territorial borders shared a common political goal of moving rapidly towards the creation of an independent nation.

This benign situation induced two fundamental misunderstandings on the part of UNTAET. First, it mistook the absence of government as a political vacuum, and paid insufficient attention to the complex political dynamic playing out around it. Second, it mistook the shared goal of independence as signifying a broader consensus about the institutional design of the new state.

These misunderstandings allowed UNTAET to press ahead with building the machinery of government as an essentially technical exercise without reflecting on the profound institutional consequences of the policy choices being made and which local interests they inadvertently favoured. And there was little time for reflection given the accelerated countdown to independence demanded by both the Timorese leadership and the Security Council, albeit for different reasons. The pressure was on to deliver the benchmarks set out in the strategic plan for the transition to independence, which marked out the steps to build up a civil service, a defence force, a police force, a constitution, a body of core legislation and political machinery.⁷ It was the outputs that counted, rather than the thoroughness of consultation and analysis that produced them. Yet the process and the outcomes had considerable bearing on the political

settlement in East Timor over this period.

To understand how the decisions taken by UNTAET inadvertently shaped the character of the political settlement that emerged, it is instructive to look at developments in three domains:

- the political space that opened up under UNTAET
- the organisation of government
- the making of the Constitution.

The Increasingly Contested Political Space

On its face, the Timorese resistance movement was speaking with one voice in the lead-up to the popular consultation in 1999. It was coordinated under the umbrella of the *Concelho Nacional de Resistencia Timorese* (CNRT), a body established in 1998 that brought together all major East Timorese political parties, the Catholic Church and civil society organisations to guide the political transition to independence. However, CNRT's overarching message of national unity and cooperation masked deep fault lines within the political elite. Surprisingly perhaps, the party divisions of 1974–75 had faded, despite the events leading up to the Indonesian invasion. The divisions among those who had fought and struggled on the same side for independence over the long years of occupation were much deeper, fuelled by ideology and grievance, parallel histories and tactical positioning to snatch the prizes of victory.

The bitter fruits of occupation that divided former comrades-in-arms in the armed resistance struggle have been comprehensively documented elsewhere (CAVR 2005; International Crisis Group 2006). Significantly, several of the leaders who were purged at various stages emerged as influential political spoilers during the UNTAET period. Other divisions opened up as the post-conflict political settlement began to take shape: the returning diaspora — wealthy, educated and fluent in the languages of the new political order — were deeply resented by those who had suffered through a quarter century of occupation and now found themselves marginalised economically and professionally; and young Timorese, whose activism had carried the resistance struggle through the decade of the nineties, were resentful of the older

generation of leaders and its impositions. But these divisions were yet to become apparent as UNTAET was designed and deployed.

In the lead-up to the popular consultation the UN, through its Department of Political Affairs (DPA), engaged with CNRT as the voice of the independence struggle and the CNRT flag was adopted as the symbol for the independence option on the ballot paper for the popular consultation. DPA and World Bank staff had considered ways of involving the Timorese in the management of the transition, and plans were made for a national consultative commission that would serve as a quasi-legislative body and as a framework for participation (Suhrke 2001:8). CNRT expectations were no less:

On the basis of the legitimacy that came from the 30 August referendum, the CNRT expected to be consulted at every level and to participate actively in the transition period (Ramos Horta 1999b).

Just days before the UNTAET mandate was resolved, CNRT elected a Transition Council to serve as the 'principal dialogue partner' with UNTAET (Walsh 1999). In the event, it was to be sorely disappointed. The politics of the new mission and a switch in responsibility at UN headquarters from the DPA to the Department of Peacekeeping Operations saw CNRT eclipsed,⁸ and it '... was not accepted by the United Nations as the primary legitimate Timorese body when the Transitional Administration was established' (Roland and Cliffe 2002:2).

Instead, UNTAET engaged narrowly with Timorese elites along the independence/autonomy axis that steered the popular consultation. This was reflected in the composition of the National Consultative Council (NCC), which was constituted in early December 1999, only weeks after the mission was mobilised, as 'the primary mechanism through which the representatives of East Timor shall actively participate in the decision-making process of UNTAET' (UNTAET Regulation No. 1999/2, section 1). Its membership included seven representatives of CNRT and three representatives of groups outside CNRT, these numbers purporting to broadly reflect the proportionate outcome

of the popular consultation (UNTAET Regulation No. 1999/2, section 2). A representative of the Catholic Church, the UN Transitional Administrator and a further three members of UNTAET made up the remainder of the council. All members were appointed by the Transitional Administrator.

Under pressure from civil society, UNTAET gradually expanded the breadth and authority of its consultative machinery. In April 2000, in response to complaints that the NCC was a secretive body, UNTAET opened proceedings to invited observers from non-government organisations and the guerrilla organisation Falintil. Three months later, in July 2000, a Regulation was made to replace the NCC with a more broadly based — but still appointed — National Council. The expanded membership of 33 Timorese accommodated a spectrum of civil society and sectoral representation — women, youth, the Protestant churches, the Muslim community, the NGO Forum, professional associations, the farming community, the business community, labour organisations and the 13 districts — as well as the 10 CNRT and political party members and the Catholic Church representative included in the NCC membership. Importantly, it was an all-Timorese body, empowered 'to act as a forum for all legislative matters related to the legislative authority of the Transitional Administrator' (UNTAET Regulation No. 2000/24), although the Transitional Administrator retained power of veto.

On the same day, a further Regulation (UNTAET Regulation No. 2000/23) was promulgated establishing a Cabinet for executive decision-making. Eight Cabinet portfolios were created, of which four were assigned to Timorese. These covered the soft social and economic development functions. Police, political affairs, justice and finance portfolios were held by international personnel, and the Transitional Administrator chaired the Cabinet. Controversially, three of the four Timorese Cabinet posts went to members of the diaspora; these three were also leading figures in Fretilin and UDT, the two dominant political parties which the following month would pull out of CNRT, leaving it with little voice in the Cabinet.

The crunch came at the national congress of CNRT held in August 2000, which brought into

the open the differences between the leadership of CNRT and its main component party, Fretilin, and to a lesser extent with UDT (United Nations Security Council 2001a: para. 6). Neither party joined the CNRT Permanent Council, reducing it to a rump of newer and smaller parties. Their withdrawal weakened CNRT politically and undermined its claim to primacy as the voice of the people and the natural interlocutor with UNTAET.⁹

Fretilin's withdrawal from CNRT freed it to campaign politically at the village level, stealing the march on its political opponents. Meanwhile, CNRT was left clinging to the principles it had spelt out in the *Pact of National Unity* approved at the August national congress, which focused on political cohesion and coalition. The pact enjoined parties to:

Undertake to work to guarantee stability, promoting National Unity and the politics of tolerance and the involvement of the diverse sectors of society systematically producing wide consensus and Platforms of Unity ...

Xanana Gusmao, as President of CNRT, railed bitterly against the political mobilisation underway in an open letter to the people of East Timor on 5 December 2000:

... some political groups have already begun to confuse the people by starting to register the population, others compel them to sign up for membership and threaten them with retaliation by FALINTIL ... other groups fly flags everywhere while at the same time spreading the winds of conflict amidst the population. Violence, lies and the psychological and emotional abuse of our people is starting to occur. The existing political tension reminds us of the democratic awakening of 1974 ... (Gusmao 2000).

UNTAET's approach to CNRT during the transition period is seen to have contributed to its collapse as an umbrella organisation and thus to the emergence of partisan political competition in the period immediately following the August 2000 national congress (Bowles and Chopra 2008:276–77; Garrison 2005:23 citing Chopra; Guterres 2006:188).

A year later, on 30 August 2001, the people of East Timor voted for a Constituent Assembly to develop a constitution for the emerging state. An additional task of the assembly would be to consider and pass all necessary legislation in the lead-up to independence. At the same time, executive functions would pass to a new and enlarged transitional Cabinet composed entirely of East Timorese. The Security Council was briefed in the lead-up to the election that the Cabinet, which was described as a 'Cabinet of National Unity', would be appointed by the UN Special Representative on 15 September and its composition would broadly reflect the outcome of the election (United Nations Security Council 2001b: para. 9).

Fretilin won a majority of votes in the election, and bargained hard over the formation of the Cabinet. The Transitional Administrator had appointed Mari Alkitiri, the Secretary-General of Fretilin, to assist him in determining the composition of the Cabinet, and finalisation of the Cabinet was delayed by several days while tough negotiations between them continued behind the scenes. The official announcement advised that 'The Government has 10 members from Fretilin, 3 members from the Democratic Party, and 11 independents' (UNTAET 2001).

While on its face UNTAET achieved the aim of a pluralistic Cabinet, when the allocation of functions within the Cabinet is unpacked the picture that emerges is one of Fretilin domination of the most strategically powerful positions. Six of the ten ministerial posts went to Fretilin, with independents assigned the softer social policy areas of education and health, as well as the foreign affairs and finance portfolios (functions that would largely come into their own after independence). Tellingly, Fretilin vice-ministers were assigned to the latter two portfolios. Fretilin also held the two strategically critical positions of Secretary of State for the Council of Ministers (managing the flow of government business) and Secretary of State for Natural and Mineral Resources (the predominant source of public revenue into the future). With the policy and executive powers of the Cabinet reinforced, Fretilin exercised considerable influence over the shape of

public policy in the final stages of the transition to independence.

The Organisation of Government

In the course of UNTAET's building of the machinery of state, a succession of decisions was taken that had the effect of shifting the distribution of power in subtle ways and creating winners and losers in the post-conflict settlement. The examples are legion: a few of the more far-reaching are outlined below.

The Language of Government and Law-Making

The political history of Timor created what seemed like an unbridgeable linguistic divide under UNTAET: the old generation of the resistance struggle and the diaspora favoured Portuguese as the expression of their patrimony and symbol of the resistance; the younger generation, who had carried the resistance struggle forward through the 1990s, were educated in Bahasa Indonesia. For many, there was no effective common language: the influential diaspora did not speak Bahasa; few of the youth spoke Portuguese; and the lingua franca — Tetun — was largely excluded from the equation.¹⁰ Whatever decision was taken on the official language, it would include or exclude particular interests: from jobs, from education, and from the more intangible benefits of nationhood and social inclusion.

Portuguese language had the edge from the outset. The *Magna Carta* agreed by CNRT at its founding convention in Portugal in 1998 positioned Portuguese as the official language and this position was reaffirmed repeatedly by the Timorese elites during the first year of UNTAET, despite widespread criticism.¹¹ The CNRT congress in August 2000 again proclaimed Portuguese as the official language, although Tetun was recognised 'as the national language, to be developed within a five to ten year period as a second option as an official language'. This offered little comfort to those left out in the linguistic cold. UNTAET itself tried to step back from the decision on official language as a choice that no external actor could impose, irrespective of mandate (Harland 2005:8). The effect was an intense and divisive public debate, uncertainty and dysfunctionality in critical areas of public policy such as the language of schooling and

the development of the judiciary, and a mounting sense in important sections of the community that the peace dividend that they had earned was bypassing them.

Establishing the Armed Forces

Decisions on whether there would be a standing armed force, its size and the method of recruitment were critical to the fate of the former guerrilla force, Falintil, which was cantoned in the iconic mountain township of Aileu through the first 18 months of the UNTAET administration, out of sight and with an escalating sense of grievance. Their future was uncertain: would they be rewarded as the heroic fighters of the resistance, or consigned to the anonymity of subsistence agriculture back in their home villages? And, as their prospects narrowed, who of them would be favoured over the others?

In the lead-up to the independence vote, the resistance leadership had 'vowed not to have a standing army in independent East Timor' (Ramos Horta 1999a:120). This position shifted over the following months. In the wake of the post-ballot violence, the UN assessed that the prospects of demobilising Falintil had largely evaporated; with memories of the Japanese and Indonesian occupations of the territory and the threat of the militia stationed across the border in West Timor, all major political leaders agreed that a defence force would be required (Smith 2003:80). Around April 2000, CNRT President Xanana Gusmao wrote to the UN Secretary-General proposing the establishment of a defence force based on Falintil, a proposal characterised by the UN as 'sensitive and complex' (United Nations 2000). In response, the UN accepted an offer from the United Kingdom to fund an expert group to identify options.

In the interim, the Falintil fighters remained sequestered in the cantonment, and the cantonment itself was left to fester. By the time the expert group from King's College London arrived in July 2000, the atmosphere in the cantonment was tense: conflict had broken out some weeks earlier between leadership elements, UN personnel had been controversially evacuated, and the Falintil leadership was deeply hostile towards UNTAET over its perceived neglect and disrespect. The Kings College

group reported in August, and on 12 September the Transitional Cabinet approved the establishment of the East Timor Defence Force. It was to be made up of two battalions: the first recruited exclusively from members of Falintil, and the second — to be recruited subsequently — open to all applicants.

This decision further divided the cohort of former fighters and its implementation intensified pre-existing rifts. The first battalion comprised only 650 places, while Falintil numbers were officially set at around 1,900. Registered Falintil who were not recruited instead received reintegration assistance to move back into civilian life. The defence force recruits were seen as the winners; those receiving reintegration assistance were the losers; and beyond this cohort, some hundreds of men not even accepted onto the registration lists during the demobilisation were the double losers. The selection process was controlled by the Falintil High Command, which recruited in its image. The resulting first battalion has been characterised as made up of Gusmao loyalists (Rees 2004:49) and dominated by Timorese from the eastern districts (Ball 2002:180), demarcating the fault lines of the 2006 conflict. Of the Falintil commanders and men who were excluded from recruitment, a sizeable minority had an acrimonious relationship with Gusmao and the Defence Force High Command and were politically identified, historically and contemporaneously, with Fretilin (Rees 2004:49).

Subnational Governance

If UNTAET was a bold attempt at state-building, the districts were a critical building block that was largely overlooked. The contemporary discourse on state-building places the evolution of a state's relationship with society at centre stage (OECD 2011:11). In East Timor in 2000, where some 80 per cent of the population lived outside the capital in small towns and villages, UNTAET would be judged by its capacity to deliver basic services at local level, and village political organisation was as important to effective local governance as it had been under the Portuguese and Indonesian administrations. On both counts, UNTAET scored poorly.

Planning for the mission envisaged the appointment of district administrators to each district to oversee the work of governance and public administration and to coordinate UNTAET activities at district level (United Nations Security Council 1999c: para. 69). Beyond this broad job description, administrators had little guidance: their role was not further defined and they were given few tools to reach out to and support local populations. Although the administrator positions were filled quickly, staffing and resources for the district administrations were patchy at best in an environment where the districts were out of sight and competition from Dili-based managers was direct and intense. The organisational arrangements for the districts were poorly conceived and executed, and engagement with local populations was weak at best.

UNTAET adopted the broad administrative divisions of subnational governance used during the Indonesian administration: 13 districts, each with several subdistricts, with administrative offices at each level. Under UNTAET, however, the subdistrict operation was limited to a modest policing and minimal administrative presence and staff were glacially slow to deploy: a year into the mission, many offices were yet to open.

The Indonesian system was decentralised, with district offices managing and determining expenditure priorities for substantial development and administrative budgets funded both from central appropriations and locally sourced revenue. Elected district assemblies played an advisory role (Ranis and Stewart 1994). UNTAET arrangements in contrast were idiosyncratic and inherently centrist in an environment where the centre had almost no capacity or — in some instances — inclination to engage with the districts and planning occurred in a vacuum.

Under the UNTAET arrangements, officials responsible for basic services such as health, education and agriculture reported directly to head offices in Dili, which determined policy and budget allocations. The district administration was left to coordinate the rump of functions, but without a budget allocation or a planning

template. If something needed funding, the district administrator would have to go cap in hand to the sectoral official in Dili. Policy questions, similarly, would be referred through the Office of District Administration in Dili to the relevant proto-department in the capital. These arrangements were a recipe for inaction in a post-conflict setting where the humanitarian engagement was winding back and the population was desperate for basic services.

These arrangements have left an uncomfortable legacy of structural and operational challenges that is still playing out: from basic logistic problems such as how to deliver a payroll to a government workforce scattered around the district, to high-order policy debates about the appropriate form and provisions of decentralised governance.

In Timor, the village has been the point of intersection of government and community for over a century. The Portuguese colonial administration appointed village and hamlet chiefs as intermediaries for the district and subdistrict administrative officials. The Indonesian system broadly preserved this organisational structure, but introduced elections for village chiefs. The clandestine movement within the resistance struggle was also organised around leaders at the hamlet, village and subdistrict levels, creating a powerful tool for population mobilisation. Within these arrangements, the village chief was a central figure, at 'the junction where clandestine powers, traditional political concepts, and the modern world collided with one another. He was still the crucial point of contact for the relationship between the 'inside' and the 'outside', between the local level and government' (Hohe 2002:580).

UNTAET had little understanding of indigenous political organisation, and barely engaged at the village level. Under pressure to broaden consultation, it introduced district advisory councils in July 2000 to ensure the participation of the East Timorese people in the decision-making process of the transitional government at district level (UNTAET /NOT/2000/14). Operation of the councils was haphazard, being contingent upon the relative commitment of the district administrator who chaired them, the

popular legitimacy of those appointed, the character of the matters discussed and even basic logistics such as a common language for discussions and ease of access to the district capital for meetings (unhelpfully, UN rules forbade the carriage of non-UN personnel in UN vehicles and little other transport, public or private, had survived the looting and destruction of September 1999).

In May 2000, CNRT Vice-President and Nobel Laureate Jose Ramos Horta requested the UN Secretary-General to replace all international district administrators with local leaders by August (*Sydney Morning Herald*, 24 May 2000). The spirit, if not the timetable or breadth, of this appeal got a response and on 26 September 2000 UNTAET announced the appointment of four Timorese administrators (later reduced to three) and six deputies. In time, other appointments followed. Those appointed were handed something of a poisoned chalice: an organisationally and structurally dysfunctional system, and a serious misfit between the actual character of the system and the community's experience of and expectations of government at the local level.

A legacy of UNTAET's concentration in and on the capital was the emergence of Dili as a burgeoning city-state geared to the international economy. Meanwhile the districts languished, buffeted by the loss of Indonesian commodity subsidies and bypassed by development while their young men drifted to Dili in search of opportunity in the cash economy. In the relationship between the emerging state and its society, the people of the districts were serious losers.

Resolution of Land Disputes

Timor's turbulent history left a complex web of land usage and entitlements in its wake. Much of the land was governed by customary usage, but land in urban areas had been alienated under the Portuguese administration and brought under formal title. Many of the title holders had left immediately before or during the period of Indonesian administration and their land and property was occupied by others, but with the political transition to independence underway, the original owners were returning to reassert their rights. The Indonesian administration

had increased the area of alienated land with the expansion of towns and redistributed areas of customary land vacated during the conflict, so that competing customary claims also emerged with the political transition. The mass exodus of population following the popular consultation left much of the urban housing stock vacant, albeit badly damaged, and this was swiftly reoccupied and repaired — not necessarily by the original owners. In Dili and other urban areas much of this housing was rented to international personnel at highly inflated prices. Thus three layers of occupancy and claim — Portuguese, Indonesian and UN transition — were in competition.

The UN determined not to proceed with adjudicative mechanisms for the resolution of property disputes, believing no foreigner had the legitimacy to intrude into such a fundamental area (Harland 2005:8). What efforts the UN Transitional Administration had made to tackle the land and property morass were brought to a halt in December 2000 when four of the five Timorese ministers in the transitional government threatened to resign over the land and property unit's acceptance of property deeds from the period of Indonesian administration, and its failure to consider those from the Portuguese colonial era (BBC 2000). The minister who spoke out in the media, one of the returning diaspora with property interests from the Portuguese period (International Crisis Group 2010:15), extracted control of the Land and Property Unit and suspended any further activity (Goldstone 2004:93).

Whatever policy — or absence of policy — existed, it was bound to favour one set of interests over others, where land usage is one of the most fiercely contested areas contributing to the outbreak and recurrence of conflict (United Nations 2010: para. 44).¹²

The Making of the Constitution

Constitutions encapsulate many of the formal elements of the political settlement at the time of their making, laying down the rules governing the distribution and exercise of power and the oversight of its use. Not surprisingly, therefore, political transitions are often marked by the over-

haul of the national constitution or — in the case of a completely new state such as Timor-Leste — by the creation of a constitution for the first time.

Although the development of a constitution was not expressly listed in the UNTAET mandate, the report to the Security Council on which the mandate was based did specify that one of the functions of the mission would be 'to assist the East Timorese in the development of a constitution' (United Nations Security Council 1999c:7), and UNTAET proceeded on the basis that the adoption of a constitution was a prerequisite for the transition to independence. In the words of the head of UNTAET's Office of Political Affairs, 'To effectuate the transition, UNTAET had to decide how to write East Timor's constitution, when and how to hold elections, and what positions should be elective' (Galbraith 2003:211). In essence, the drafting of the Constitution was a technical hurdle to be jumped in order to form a government with legitimacy in the eyes of the international community, to in turn allow for the transfer of power from the UN to the sovereign state of Timor-Leste.

In East Timor, the process adopted to develop the Constitution and some of its most important substantive provisions had the effect of marginalising key elite interests and contributed to the build-up of disaffection and frustration that played out over ensuing years. UNTAET, in consultation with the National Consultative Council and its successor, the National Council, led the process and some of the decisions that it took had far-reaching consequences. Significant among these were:

- the form of the body that would draft the Constitution
- the mechanism for determining the composition of the Constituent Assembly
- the timetable for developing the Constitution
- the provision for the Constituent Assembly to morph into the legislature at independence
- UNTAET's hands-off approach to the substance of the Constitution.

These are discussed further below.

The Process of Constitution-Making

Constitutional Commission or Constituent Assembly

Initially, two mechanisms were on the table for the development of the Constitution: an appointed Constitutional Commission or an elected Constituent Assembly. Proponents of the former point to the legitimacy that comes from wide popular consultation, the technical expertise and level of reflection involved and the elevation of the process above politics. Proponents of the latter point to the legitimacy that comes through the ballot box and, less expressly, to the advantage of speed. There was evidently some divergence of view at senior levels of UNTAET and the wider UN apparatus about the merits of the two models, but by late 2000 the position had firmed in support of a Constituent Assembly (Morrow and White 2002:34–35; Aucoin and Brandt 2010:251–54).

CNRT also shifted ground over this period. Its congress in August 2000 reflected that ‘the people of East Timor want to have a good and credible constitution, which constitutes the wishes and aspirations of the people and all civil society’, and went on to recommend the establishment of a commission made up of experts on constitutional law to draft the Constitution, drawing on data collected throughout East Timor (CNRT 2000:27). In December 2000, however, the President of CNRT, Xanana Gusmao, presented an accelerated ‘Calendar for Political Transition’ to the National Council which envisaged the drafting of the Constitution by an elected Constituent Assembly. In the end, the countdown to independence may have been the paramount consideration for both the UN and the President of CNRT. For the former, the pressure was on to complete a costly mission as swiftly as possible; for the latter, political authority was slipping away with the passage of time and the emergence of Fretilin from out of the shadows of CNRT.

The choice of a Constituent Assembly effectively narrowed the spectrum of people likely to be directly involved in determining the substance of the Constitution, excluding those without a political party power base and those wishing to engage in nation-building outside the party

political process. In consultations initiated by the National Council on the approach, civil society pressed hard for public participation in the development of the Constitution and the National Council member representing non-government organisations brought forward a draft Regulation proposing the establishment of national and district constitutional commissions to consult the people at district and subdistrict level and to feed the results into the Constituent Assembly (UN Department of Public Information, 27 March 2001).

The proposal split the National Council and spotlighted once again the depth of animosity between Xanana Gusmao and Fretilin. Fretilin rejected the proposal as political manipulation, triggering an acrimonious debate with Gusmao, who supported the proposal.¹³ Immediately after, Gusmao resigned, claiming that the National Council no longer reflected the views of the Timorese people (BBC, 28 March 2001), and committed instead to dedicate himself to working with civil society (Radio Australia, 29 March 2001).

For the first and only time in the life of the mission, the UN Transitional Administrator formally overruled the National Council and unilaterally promulgated a directive (number 2001/3) establishing constitutional commissions in each of the 13 administrative districts of Timor to consult widely and submit reports of their consultations to the Constituent Assembly. In the event, the gesture proved hollow as the Fretilin-dominated Constituent Assembly ignored the reports, which were dismissed as lacking legitimacy (Baltazar 2004).

The Electoral Mechanism

Having opted for a Constituent Assembly to draft the Constitution, the mechanism adopted to elect the assembly further narrowed the basis of popular representation. The assembly comprised 88 members: 75 were elected from a single national constituency using a closed list of candidates (i.e. voters cast their ballot for a party rather than for named candidates) with seats allocated in proportion to each party’s share of the total vote; the remaining 13 members were elected from single-member district constituencies (one for each

of the 13 districts) on a first-past-the-post basis. A consequence of this electoral system was that those elected largely owed their position — and their loyalty — to the party that placed them in a winnable slot on the party ticket, while they were not directly accountable to the voters (Ingram 2003:88).

UNTAET was concerned to achieve a pluralist assembly and favoured a single national constituency over more localised constituencies and the use of proportional representation to achieve this end. The inclusion of the 13 district seats was a concession to proponents of local representation. The combination of the two voting mechanisms, however, had the effect of magnifying the Fretilin vote. Although Fretilin won only 57.3 per cent of the overall vote (and 43 out of 75 seats) in the national constituency, it won 12 of the 13 district seats¹⁴ giving it 55 of the 88 seats or 62.5 per cent overall — a 5.2 per cent advance on its proportional vote share, which yielded it a bonus five seats. In partnership with a minor like-minded party, Fretilin commanded the necessary 60-seat super majority required for the passage of the Constitution. The consequence was a majoritarian assembly that created no incentive for compromise.¹⁵

Constitutional Timetable

The whole process of constitution-making was done at breakneck speed: initially only 90 days were allowed from the first sitting day of the Constituent Assembly to the adoption of the Constitution, mirroring the UN timetable for the Cambodian Constitution several years before. This period was subsequently extended by a further three months, incorporating a further round of what proved to be little better than token consultation on a text that had the necessary numbers for passage.

The key political actors seemed comfortable with a rapid timetable. On the eve of 2001, in a speech to the Timorese people, Gusmao had stated that,

if it is accepted that the Constitution should not be of a programmatic or ideological nature and that it should be simple and universal, the Constituent Assembly will not need a lengthy period of time to debate the

first Constitution of Timor. It will only require enough time to fine tune the draft ...

In fact, there were several drafts in the works. Fretilin, which was sitting on its own well-developed draft dating back to 1998, was also keen to move quickly.

The church, some of the minor political parties and Timorese civil society were deeply unhappy with the perfunctory process outlined. On 18 April 2001, the NGO Forum wrote to the head of UNTAET's Political Affairs Unit, criticising the rushed timetable and proposing that, without a significant extension, the Constitution that emerged should be regarded as an interim text only, allowing more time for broad-based input and consultation. They were guided, in part, by the South African experience where an interim constitution was put in place for three years while consultation and negotiation continued on a final text.

Beyond the substantive provisions of the Constitution, a legacy of the rushed timetable is the technical quality of the drafting itself that could play into future challenges to the interpretation of constitutional powers.

Transformation of Constituent Assembly into the First Parliament

The provision for the Constituent Assembly to morph into parliament at independence was another deeply contested decision. The mechanism was foreshadowed in Regulation 2001/2 on the election of a Constituent Assembly, article 2.6 of which stated that, 'The Constituent Assembly shall become the legislature of an independent East Timor, if so provided in the Constitution'. Not surprisingly, the assembly embraced the proposal, and the Constitution did so provide. For UNTAET, the transformation of Constituent Assembly into parliament kept the foot on the accelerator, avoiding the additional step (and cost) of a further election. For the Constituent Assembly, the provision ensured their relevance beyond independence.

The provision was problematic on a number of fronts. For the members of the Constituent Assembly, it created a serious conflict of interest in that it is difficult to be — or appear to be — objective about critical policy choices when they directly

affect your own interests and prospects. It was also problematic in a democratic sense, as the citizens of East Timor had elected a body to make a constitution, and not a body to govern them into the future. There was strong concern that voters had been denied the opportunity to hear and vote on the policy platforms of the parties as a prospective government, and concern that this deficit undermined the legitimacy of the future government.

When the implications became apparent, high-profile leaders including Xanana Gusmao and Bishop Belo and sections of civil society urged UNTAET to hold a further election to choose the parliament. UNTAET's response was to leave the decision to the Constituent Assembly on the grounds that it was the legitimate representative body for the Timorese people.¹⁶ This response bordered on the disingenuous since the Constituent Assembly was itself directly interested in the outcome and its position was clear.

UNTAET's Hands-off Approach on Constitutional Substance

UNTAET stood back from the deliberations governing the substantive provisions of the Constitution, on the grounds that the contents of the Constitution must reflect the sovereign act of an elected body:

... UNTAET went to considerable, perhaps extraordinary, lengths to ensure that there was little or no interference with the right of the East Timorese people, through the elected Constituent Assembly, to prepare whatever sort of constitution they wanted, and that right was exercised (Morrow and White 2002:43).

While the principle is sound, it can unravel in practice, and in March 2002 the UN High Commissioner for Human Rights reported that, in emphasising the 'representative democratic' model of government, the assembly seemed to be minimising the right of individuals in East Timor to participate in political life by contributing to the political debate surrounding the substance of the Constitution; instead, the draft constitutional texts of the parties were the focus of drafting (Morrow and White 2002:41).

Of the five constitutional drafts brought forward by political parties in the initial weeks of the Constituent Assembly, the Fretilin draft prevailed as the primary text (Garrison 2005:20) and the Constitution that passed was based on it. When the first draft of the Constitution was put to the vote, 16 assembly members voted against it, and when the final draft was put to the vote after a last round of perfunctory consultation, the outcome was similar. The parties voting against the text explained their concerns that the Constitution was a Fretilin document with only minor adjustments to the original draft (Carter Center 2004:41).

Substantive Constitutional Provisions

To the extent that constitutions encapsulate many of the formal elements of the political settlement at the time they are made, and political settlements are about the distribution of power within a political system, it is instructive to look at how Timor's Constitution distributes executive power. Two aspects in particular are significant:

- the centres of executive power
- the Executive's law-making powers.

Centres of Executive Power

CNRT anticipated a presidential system of government, with the powers of the president defined in the Constitution (CNRT 2000:27). In the wider popular imagination, Xanana Gusmao as the leader of the resistance struggle and President of CNRT was the ordained leader of the nation and the expectation was that, as president, he would embody the government. This was a natural assumption for a people who had lived under the Indonesian political system where power was concentrated in the president.

Throughout the UNTAET period, Fretilin leaders publicly talked up Xanana Gusmao as president. At the same time, the comprehensive constitutional draft that they had developed in 1998, and which they were positioning to become the master text for the Constituent Assembly's deliberations, provided for a semi-presidential system that concentrated power to initiate and execute policy in the prime minister, leaving the office of president with residu-

al powers to restrain specific expressions of executive and legislative power.

A sense of ambush prevailed across wide sections of the political elite as the implications of the Fretilin constitutional draft sank in. It was widely seen as a deliberate and devious emasculation of the office of president in order to eclipse the political power of Xanana Gusmao. A commentary on the Constituent Assembly's draft text by the Australian section of the International Commission of Jurists opens:

Although all but one of the submissions received by the committees of the East Timor Constituent Assembly propose a Presidential style of Constitution, and all major political parties proposed that there would be a presidential system and made it clear that Xanana Gusmao would be that President, the draft Constitution fails to set up such a system other than in title only. The power is vested in the Government as under a UK Westminster style parliamentary system ... making the office of President effectively totally subordinate to the Prime Minister (International Commission of Jurists 2002:1).

In a press conference only weeks before the scheduled presidential election in April 2002, Xanana Gusmao signalled a reluctance to stand as 'the only powers accorded the president under the draft constitution were the powers "to eat and sleep"' (Aucoin and Brandt 2010:270).

In the lusophone tradition, Timor's Constitution is unremarkable: it follows the semi-presidential model adopted by Portugal in 1976 after its military-led revolution, and by all the new states emerging over the same period from Portugal's former African colonies (Neto and Lobo 2009:1).¹⁷ In 1982 Portugal amended its Constitution in the transition to a fully civilian government to reduce the powers of the president. The resulting Constitution has been characterised by some academics as constituting a parliamentary system, although a better characterisation is as a premier-presidential regime, a subclass of semi-presidential systems (Neto and Lobo 2010). Under premier-presidential systems, executive power is

concentrated in the office of prime minister, but significant legislative and non-legislative powers are vested in the president. These powers include veto over parliamentary Bills and executive-made regulations, appointment of the prime minister, dissolution of parliament, and dismissal of the government and removal of the prime minister.

As significant as the fact of a semi-presidential system is the extent of the specific powers assigned to the president in Timor-Leste. In this, a comparison of the Portuguese and Timorese constitutions is revealing. While the Timorese Constitution has many of the features of the Portuguese, it narrows the powers of the president in subtle ways. For example:

- broad discretions in the Portuguese Constitution, such as the power to dissolve the parliament, are narrowed in the Timorese Constitution by the specification of very precise circumstances that may trigger the exercise of the power
- discretionary powers in the Portuguese Constitution become mandatory exercises of power in the Timorese Constitution; e.g. the presidential power to call a referendum¹⁸
- stricter criteria are imposed in the Timorese Constitution for the exercise of a discretion; e.g. in the appointment of the prime minister
- certain powers are contracted or omitted in the Timorese Constitution; e.g. the scope of matters that may be referred to the constitutional court for a ruling, or the provision for the president to Chair the Council of Ministers when requested by the prime minister (absent from the Timorese Constitution).

With Xanana Gusmao elected president and his bitter political opponent from Fretilin, Mari Alkitiri, appointed prime minister, the 'dual leadership system' of the Constitution had the effect of creating two rival power centres, with the potential to destabilise the state (Shoesmith 2003:232). While the prime minister had the power to lead on policy, the president held enormous moral authority with the people and was handed a powerful constitutional tool to frustrate the Executive through the exercise of the presidential veto over legislation. These

conditions set the scene for a fierce political contest over the following years.

Executive Law-Making

The Timorese Constitution extends wide law-making power to the Executive, a provision that attracted adverse comment during the drafting stage from the International Commission of Jurists:

The draft Constitution provides for delegation on a whole range of issues of the legislative function to the Government itself. This means that there will not be parliamentary scrutiny of Government action and legislation. Such a provision is quite out of step with modern Constitutions, particularly in a newly established country (International Commission of Jurists 2002:3).

Again, the provision for Executive law-making is consistent with the scheme in the Portuguese Constitution, which confers wide legislative power on the government along with a presidential power to veto executive legislation and a provision for the assembly to consider, amend and disallow legislation made by the Executive when it is exercising delegated powers. The more interesting consideration is the extent to which the Timorese Constitution amplifies the Portuguese scheme in favour of the Executive.

A notable area of difference is the breadth of matters on which the Executive may legislate. Both constitutions describe matters on which the parliament may delegate legislative authority, and matters for which the Executive has exclusive legislative power. In the Timorese Constitution, while the list of matters on which the parliament may delegate legislative power is shorter, the scope of various heads of power is rather more ample. Nor are the parliamentary checks as robustly stated: the Portuguese Constitution expressly stipulates that parliament is responsible for considering Executive legislation, and that Executive legislation must reference the legislation that authorises its making; the Timorese Constitution is silent on both.

A major difference between the two constitutions is in the scope of matters on which the Executive has exclusive legislative power. In the

Portuguese Constitution, this is limited to matters respecting the government's own organisation and functioning (art. 198(2)). This provision is repeated in the Timorese Constitution, but a further power is added, namely, to legislate exclusively on direct and indirect administration of the State (art. 115(3)). This head of power could be interpreted extremely broadly. As neither constitution empowers the parliament to scrutinise legislation made by the Executive in the exercise of its exclusive legislative power, this leaves the president as the first and last port of call where legislation is controversial, and his only power is that of veto. This arrangement has the potential to magnify hostility in a situation of cohabitation between a politically opposed president and prime minister: the precise situation that prevailed at Timor's independence.

Conclusions

UNTAET was mobilised to deal with the aftermath of the violent separation of the territory of Timor from Indonesia, and the consolidation of the political settlement with Indonesia and its militia supporters was centre stage. In essence, however, the transition in Timor involved two distinct political settlements: as well as building a constructive bilateral relationship with Indonesia that included provision for — and supervision of — those people who had left Timor and would not return, a new settlement needed to be forged within Timor among those who had struggled for independence to frame the distribution and exercise of power in the new state.

The internal settlement was largely under UNTAET's radar. There had been a strong elite convergence in the late 1990s, embodied in the formation of the *Concelho Nacional de Resistencia Timorese* in 1998, and CNRT had provided an easy reference point for the international community in the lead-up to the independence vote in August 1999. Yet this apparent unity masked deep divisions within: consensus on the goal of independence did not equate with consensus on how — and by whom — Timor should be governed. Within a year of UNTAET's deployment, the elite convergence had disintegrated, paving the way for conflicted politics. It is an open question whether the internal political

settlement that subsequently took shape would have been less divisive had UNTAET taken different decisions about how it engaged with elite and community interests, or whether it would simply have given the edge to different players without altering an inevitable outcome.

That UNTAET's decisions would affect the distribution of power in subtle ways was unavoidable. The judgement on the mission rests more on the extent to which it was alert to the potential consequences and framed its decisions with this in mind. Here, the report card is mixed. Its actions suggest that it mistook the absence of government as a political vacuum and, while it consulted narrowly, it largely drove the state-building agenda according to its own imperatives. In UNTAET's defence, when it was deployed state-building was seen more in terms of building the machinery of state than in terms of supporting an inclusive political settlement and state institutions that worked in the interests of the wider society: these insights entered the development discourse several years later.

UNTAET was under pressure from both the Timorese leadership and the Security Council to complete its mission quickly. In the stampede to build the core structures for an independent state and to finalise the Constitution so that a political transition could be effected, UNTAET ticked off on the expected outputs that had been laid out for it, but these did not translate into a stable platform for the state. A stable state would require rather more than the sum of the parts the mission was assembling.

The state-building process in Timor under UNTAET created clear winners and losers, and disadvantaged losers are a potential threat to stability as they work on the institutional margins to effect a realignment of power. This played out in the escalating tensions in East Timor through the UNTAET period and into the early years of independence. Although UNTAET consolidated the relationship with Indonesia and built the organisational framework for the independent state of Timor-Leste, it failed to nurture an inclusive internal political settlement as the essential foundation for a stable state.

Author Notes

Sue Ingram is undertaking research towards a PhD in the State, Society and Governance in Melanesia Program. She has worked extensively in public policy and post-conflict governance: as a senior executive in the Australian Government, as a member of United Nations and regional peacekeeping and assistance missions, and as a consultant. Sue has a long association with Timor-Leste: she undertook research in Portuguese Timor in 1974–75, and returned to the territory in 2000 to work with the UN Transitional Administration in East Timor. Sue held several posts with the UN over three years, including as administrator of Aileu district (where Falintil was cantoned), as director for transition planning in the Office of the Special Representative of the Secretary-General, and as Chief of Staff in the post-independence UN Mission in Support of East Timor.

Endnotes

- 1 The territory was referred to by the UN as East Timor throughout the period of Indonesian occupation and the transitional period to independence; upon independence the state adopted the name Timor-Leste. I follow this usage in this paper, using the name Timor-Leste for events from the date of independence.
- 2 The actual question put to voters in the plebiscite (referred to as a 'popular consultation') was whether they supported or rejected 'special autonomy' for the province of East Timor within the Republic of Indonesia. This was a face-saving formulation for the Government of Indonesia. The understanding underpinning the popular consultation — and announced by Indonesia's President Habibie in early 1999 — was that a vote against autonomy would be regarded as a vote for independence.
- 3 The main achievements of the mission are outlined in a fact sheet of April 2002 from the UNTAET Press office, *UNTAET's 25 Major Achievements*, available at <<http://www.un.org/en/peacekeeping/missions/past/timor/fact/fs01.PDF>>.
- 4 From January 2000, UNTAET issued daily press briefings. A content analysis of the topics covered in the six months to 30 June 2000 shows that around

one-third of topics (34.4 per cent) related to border, refugee and militia matters and other bilateral issues with Indonesia. Mission management topics came in second at 21.9 per cent.

- 5 For a detailed account of the schisms, see International Crisis Group (2006).
- 6 In the mid-1990s there was a change of personnel working on the Timor question at UN headquarters and efforts were made to engage East Timorese leaders outside the tripartite process (CAVR 2005: 122–23, 129).
- 7 This strategic plan was known as the ‘Transitional Results Matrix’. It covered ten domains (political affairs, administrative handover, defence force, foreign affairs, law and order, public finances, agriculture/economy, health, education and infrastructure) and outlined a series of outputs to be progressively achieved over successive quarters within each domain. The mission reported quarterly to donors against the matrix, with major reports provided every six months in advance of the six-monthly donors’ conferences.
- 8 The Department of Political Affairs, which had been the area within the UN Secretariat dealing with Timor in the lead-up to the political transition, had a deep understanding of the local context; the Department of Peacekeeping Operations (DPKO), in contrast, was new to Timor and had no accumulated contextual expertise. In framing the mission mandate, DPKO took Kosovo — a vastly different context — as its model and this along with the prevailing DPKO culture regarding engagement with parties to a conflict led to it treat CNRT as a faction rather than as the umbrella body for the independence struggle (Suhcke 2001:6–8).
- 9 ‘CNRT must exist because it represents the aspirations of the People and because it is the interlocutor between the Transitional Administration via the National Council.’ (CNRT 2000:14).
- 10 ‘But we cannot run a modern state with a basic language so our strategic choice now is to reintroduce Portuguese as our official language.’ (Ramos Horta 1999a:123).
- 11 As early as January 2000, the Tetun-language media had decried the language decision as that of a tiny minority trying to impose their will on a majority (Lalenok editorial, 18 January 2000).
- 12 The UN General Assembly report notes that ‘a recent study by the United Nations Environment

Programme concluded that 40 per cent of internal conflicts over a 60-year period were associated with land and natural resources, and that this link doubles the risk of conflict relapse in the first five years’.

- 13 The hostility with which the proposal was received by the Fretilin members of the National Council belied the fact that only days before the council had passed Regulation 2001/2 on the election of a Constituent Assembly which specified in article 2.4 that, ‘In its deliberations, the Constituent Assembly should give due consideration to the results of the consultations conducted by any duly constituted Constitutional Commission or Commissions’.
- 14 Fretilin would probably have won all 13 seats had its candidate in Oecussi not missed the deadline for registration.
- 15 Smaller parties in the Constituent Assembly complained that Fretilin ‘unilaterally imposed its will’ while open voting and tight party discipline ensured Fretilin members followed the party line rather than their own conscience (Babo Soares 2003:29).
- 16 This position was presented by Colin Stewart, of UNTAET’s Political Affairs Unit, at a public policy seminar on ‘The Transformation of Constituent Assembly into Legislative Assembly: Do we Need a New Election’ held in Dili in December 2001.
- 17 Semi-presidential systems are reportedly now the most prevalent regime type found in Europe (Roper citing Strom and Neto 2002:254).
- 18 Article 115(1) of the Portuguese Constitution reads, ‘Os cidadãos eleitores recenseados no território nacional podem ser chamados a pronunciar-se directamente, a título vinculativo, através de referendo, **por decisão do Presidente da República**, mediante proposta da Assembleia da República ou do Governo ...’ Article 66(2) of the Timorese Constitution, in comparison, uses the language, ‘O referendo **e convocado pelo Presidente da Republica**, por proposta de um terço e deliberacao aprovada por uma maioria de dois terços dos Deputados ou por proposta fundamentada do Governo’ (emphasis added).

References

- Aucoin, L. and M. Brandt 2010. East Timor’s Constitutional Passage to Independence. In L.E. Miller (ed.). *Framing the State in Times of Transition: Case Studies in Constitution Making*. Washington: Endowment of the United States Institute of Peace.

- Babo Soares, D. 2003. The Challenges of Drafting a Constitution. In D. Babo Soares, M. Maley, J. Fox and A. Regan (eds). *Elections and Constitution Making in East Timor*. Canberra: Pandanus Books.
- Ball, D. 2002. The Defence of East Timor: A Recipe for Disaster. *Pacifica Review* 14(3):175–89.
- Baltazar, A. 2004. An Overview of the Constitution Drafting Process in East Timor. *East Timor Law Journal* 9.
- BBC 2000. Unhappy East Timorese Leaders Threaten to Resign From Interim Administration. Supplied by BBC Worldwide Monitoring 2 December 2000. <<http://members.pcug.org.au/~wildwood/Resign.htm>>, viewed 11/4/2012.
- Bowles, E. and T. Chopra 2008. East Timor: Statebuilding Revisited. In C.T. Call with V. Wyeth (eds). *Building States to Build Peace*. Boulder/London: Lynne Rienner Publishers.
- Carter Center 2004. *The East Timor Political and Election Observation Project: Final Project Report*. <<http://www.cartercenter.org/documents/1691.pdf>>, viewed 18/10/2011.
- CAVR (Comissão de Acolhimento, Verdade e Reconciliação de Timor-Leste) 2005. *Chega! The CAVR Report*. <<http://www.cavr-timorleste.org/en/chegaReport.htm>>, viewed 28/7/2010.
- Chopra, J. 2000. Introductory Note to UNTAET Regulation 13. *International Legal Materials* 39(4):936–38.
- CNRT 2000. Outcomes of the CNRT National Congress 21–30 August 2000 (English version). Copy held by author.
- Crouch, H. 2000. The TNI and East Timor Policy. In J. Fox and D. Babo Soares (eds). *Out of the Ashes: Destruction and Reconstruction of East Timor*. Adelaide: Crawford House.
- Galbraith, P. 2003. The United Nations Transitional Authority in East Timor (UNTAET). *American Society of International Law* 97:210–12.
- Garrison, R. 2005. *The Role of Constitution-Building Processes in Democratization: Case Study East Timor*. Stockholm: International IDEA.
- Goldstone, A. 2004. UNTAET with Hindsight: The Peculiarities of Politics in an Incomplete State. *Global Governance* 10:83–98.
- Gusmao, K.R.X. 2000. Letter to the East Timorese. <<http://members.canb.auug.org.au/~XGLetter.htm>>, viewed 15/4/2011.
- Guterres, F. da C. 2006. Elites and Prospects of Democracy in East Timor. PhD thesis, The Australian National University.
- Harland, D. 2005. *UN Peacekeeping Operations in Post-conflict Timor-Leste: Accomplishments and Lessons Learned. UNTAET Governance and Public Administration: 1999 to mid-2000*. Paper presented in Dili, Timor Leste, April 2005. <<http://www.peacekeepingbestpractices.unlb.org/pbps/Library/untaet%2099-00.pdf>>, viewed 17/10/2011.
- Hohe, T. 2002. The Clash of Paradigms: International Administration and Local Political Legitimacy in East Timor. *Contemporary Southeast Asia* 24(3):569–89.
- Ingram, S. 2003. Mission Implementation: Developing Institutional Capabilities. In N. Azimi and C.L. Lin (eds). *The United Nations Transitional Administration in East Timor: Debriefing and Lessons*. Leiden: Martinus Nijhoff Publishers.
- International Commission of Jurists, Australian Section 2002. Commentary on the Draft Constitution Proposed for East Timor by the Constituent Assembly. Copy held by author.
- International Crisis Group 2006. Resolving Timor-Leste's Crisis. *Asia Report* No. 120. <<http://www.crisisgroup.org/en/regions/asia/south-east-asia/timor-leste/120-resolving-timor-lestes-crisis.aspx>>, viewed 22/9/2008.
- International Crisis Group 2010. Managing Land Conflict in Timor-Leste. *Asia Briefing* No. 110, Dili/Brussels, 9 September 2010. <<http://www.crisisgroup.org/~media/Files/asia/south-east-asia/timor-leste/B110%20-%20Managing%20Land%20Conflict%20in%20Timor-Leste.pdf>>, viewed 5/10/2011.
- Morrow, J. and R. White 2002. The United Nations in Transitional East Timor: International Standards and the Reality of Governance. *Australian Yearbook of International Law* 22:1–45.
- Neto, O.A. and M.C. Lobo 2009. Portugal's Semi-presidentialism (Re)considered: An Assessment of the President's Role in the Policy Process, 1976–2006. *European Journal of Political Research* 48:234–55.
- Neto, O.A. and M.C. Lobo 2010. Between Constitutional Diffusion and Local Politics: Semi-Presidentialism in

- Portuguese-speaking Countries. *American Political Science Association Annual Meeting Paper*. <<http://ssrn.com/abstract=1644026>>, viewed 26/3/2012.
- OECD (Organisation for Economic Cooperation and Development) 2011. *Supporting Statebuilding in Situations of Conflict and Fragility: Policy Guidance*. DAC Guidelines and Reference Series. Paris: OECD Publishing.
- Ramos Horta, J. 1999a. East Timor Beyond the Ballot. *Kasarinlan* 14(3):115–30.
- Ramos Horta, J. 1999b. Press Conference on East Timor by Xanana Gusmao and Jose Ramos Horta. Press Briefing Report for 28 September 1999, United Nations. <<http://www.un.org/News/briefings/docs/1999/19990928.etimor.doc.html>>, viewed 26/3/2012.
- Ranis, G. and F. Stewart 1994. Decentralisation in Indonesia. *Bulletin of Indonesian Economic Studies* 30(3):41–72.
- Rees, E. 2004. Under Pressure – Falantil-Forcas de Defesa de Timor Leste – Three Decades of Defence Force Development in Timor Leste 1975–2004. *Working Paper* No. 139. Geneva: Centre for the Democratic Control of Armed Forces.
- Rocha Menocal, A. 2009. State-Building for Peace: A New Paradigm for International Engagement in Post-conflict Fragile States? Paper prepared for Transforming Political Structures: Security, Institutions, and Regional Integration Mechanisms workshop organised by the European Report on Development.
- Roland, K. and S. Cliffe 2002. The East Timor Reconstruction Program: Successes, Problems and Tradeoffs. *CPR Working Paper* No. 2. World Bank.
- Roper, S. 2002. Are all Semipresidential Regimes the Same? A Comparison of Premier–Presidential Regimes. *Comparative Politics* 34(3):253–72.
- Shoesmith, D. 2003. Timor-Leste: Divided Leadership in a Semi-presidential System. *Asian Survey* 43(2):231–52.
- Smith, M. 2003. *Peacekeeping in East Timor: The Path to Independence*. International Peace Academy Occasional Paper Series. Boulder: Lynne Rienner Publishers.
- Stahn, C. 2001. The United Nations Transitional Administrations in Kosovo and East Timor: A First Analysis. *Max Planck Yearbook of United Nations Law* 5:105–83.
- Suhrke, A. 2001. Peacekeepers as Nation-builders: Dilemmas of the UN in East Timor. *International Peacekeeping* 8(4):1–20.
- United Nations 2000. Assistant Secretary-General for Peacekeeping Briefs Security Council, Describes Month of ‘Steady Progress’ in East Timor. Press Release No. UNIS/SC/1218, 28 April 2000.
- United Nations 2010. Report of the Secretary-General on Peacebuilding in the Immediate Aftermath of Conflict. A/64/866-S/2010/386, 16 July 2010. <<http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/PBC%20S2010%20386.pdf>>, viewed 21/1/2011.
- United Nations Security Council 1999a. Question of East Timor: Report of the Secretary-General. S/1999/513, 5 May 1999.
- United Nations Security Council 1999b. Report of the Security Council Mission to Jakarta and Dili, 8 to 12 September 1999. S/1999/976, 14 September 1999.
- United Nations Security Council 1999c. Report of the Secretary-General on the Situation in East Timor. S/1999/1024, 4 October 1999.
- United Nations Security Council 1999d. Resolution 1272 (1999). S/RES/1272 (1999), 25 October 1999.
- United Nations Security Council 2001a. Report of the Secretary-General on the United Nations Transitional Administration in East Timor (for the period 27 July 2000 to 16 January 2001). S/2001/42.
- United Nations Security Council 2001b. Progress Report of the Secretary-General on the United Nations Transitional Administration in East Timor. S/2001/719, 24 July 2001.
- UNTAET 2001. New East Timorese Government Sworn-in. Daily media briefing, Dili, 20 September 2001.
- Walsh, P. 1999. From Opposition to Proposition: The National Council of Timorese Resistance (CNRT) in Transition. Briefing note, 8 November 1999. Australian Council for Overseas Aid.



The State, Society & Governance in Melanesia Program (SSGM) is a leading centre for multidisciplinary research on contemporary Melanesia and Timor Leste. One of the most vibrant units in the ANU's College of Asia and the Pacific, an established world leader in regional studies, SSGM represents the most significant concentration of scholars conducting applied policy-relevant research and advancing analysis on social change, governance, development, politics and state-society relations in Melanesia, Timor Leste and the wider Pacific. For more information see <<http://ips.cap.anu.edu.au/ssgm/>>.

State, Society and Governance in Melanesia
School of International, Political & Strategic Studies
ANU College of Asia and the Pacific
The Australian National University
Canberra ACT 0200

Telephone: +61 2 6125 8394
Fax: +61 2 6125 9604
Email: ssgm.admin@anu.edu.au

Submission of papers
Authors should follow the Editorial Guidelines for Authors,
available from the SSGM website.

All papers are peer reviewed
unless otherwise stated.

The State, Society and Governance in Melanesia Program
acknowledges the generous support from AusAID for the
production of this Discussion Paper.