

The United Nations and Self-Determination in the Case of East Timor

Written by Jakob R. Avgustin

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JAKOB R. AVGUSTIN, FEB 27 2020

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This chapter will look at a case study of self-determination which became prominent in the UN in the 1970s and was only indirectly linked to the process of decolonisation as such. Portugal as a colonial power either neglected East Timor[1] or ruled with a heavy hand, leaving its people to eventually gain independence from decades of violence under Indonesian occupation. This chapter will not discuss the different definitions of self-determination or the historic development of this legal right. However, it will discuss the story of East Timor, highlighting the practice of the UN, particularly through the resolutions of the Security Council (SC), and assess the role of the UN from that perspective. Self-determination is understood in this chapter purely normatively – as a right of any people to declare and establish a sovereign and independent political entity. The underlying assumption being that given the UN, and the SC especially, is a political organisation, the road to the eventual outcome for East Timor is not expected to even appear straightforward. In fact, as this chapter will show, at times the UN actively obstructed the claim of the East Timorese people for their sovereignty, casting serious doubt on the organisation's supposedly favourable stance towards self-determination of peoples.

Short History

The small island of Timor, situated only about 500km north of Australia, has spent most of its history at the crossroads between major powers dominating maritime southeast Asia; it was first used as a trading post for China and India, and then in the seventeenth century the western part became colonised by the Dutch while the Portuguese took over the eastern part of the island. The Portuguese were not very efficient in establishing governance which resulted in two parallel systems of rule – the colonial and the indigenous one (Taylor 1994, 12). Even though the *Sentenca Arbitral* codified the border between the eastern and the western part of the island in 1915, the Timorese people all over the island fought the occupation by Japan in World War II with guerrilla tactics under the leadership of Australian commandos (Taylor 1994, 12–13). Even though Australia left the island in 1943, the Timorese continued their guerrilla fighting on the side of the Allies until the end of the war and at a high human life cost (Taylor 1994, 13). Despite their efforts and sacrifice, the island remained divided between two foreign masters after the war – the western part was incorporated into Indonesia while the eastern part remained under rather uninterested Portuguese administration which nonetheless used violence to rule. In the 1970s, as a civil war broke out between the pro-Portuguese and pro-independence movements in their Timorese colony, the Portuguese simply left, burdened by the coup d'état in their homeland (Calvocoressi 2001, 561). Despite official assurances in April 1974 that they would not interfere with the Portuguese Timor (Taylor 1994, 25), Indonesia took advantage of the opportunity and annexed the eastern part of the island, although neither the UN nor Portugal ever recognised this annexation. It is at that point that the situation of East Timor appears in the UN SC documents for the first time.

In fact, in its very first resolution on East Timor S/RES/384 (1975) the UN SC recognises 'the inalienable right of the people of East Timor to self-determination and independence in accordance with the principles of the Charter of the

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United Nations and the Declaration on the Granting of Independence to Colonial Countries and Peoples, contained in the General Assembly (GA) Resolution 1514 (XV) of 14 December 1960'. The UN SC was also 'gravely concerned about the deterioration of the situation' and the loss of life in East Timor, and deplored the 'intervention of the armed forces of Indonesia in East Timor'. It even regretted that 'the government of Portugal did not discharge fully its responsibilities as administering Power in the Territory'. The UN SC at that point called 'all States to respect the territorial integrity of East Timor as well as the inalienable right of its people to self-determination', and called upon Indonesia to withdraw and upon Portugal to cooperate fully with the UN so as to enable the people of East Timor to exercise freely their right to self-determination'. It also requested the UN Secretary-General to send a to East Timor for on-spot assessment. The UN GA also adopted its first resolution on East Timor in 1975 and then adopted a further resolution each year, all of which basically echoed the UN SC resolutions, but only until 1982.

Clear and unequivocal support of the UN SC for recognising the inalienable right of the people of East Timor to self-determination and independence continued in the following year with S/RES/389 (1976) reaffirming the previous resolution. The UN SC again called upon 'all States to respect the territorial integrity of East Timor as well as the inalienable right of its people to self-determination' and called upon 'Indonesia to withdraw without further delay all its forces from the Territory'. It also requested that the Special Representative of the UN Secretary-General continue their assignment. However, it is important to note at this point that S/RES/384 was adopted unanimously while S/RES/389 was adopted with Japan and the US abstaining, signalling their alliance with the strategically positioned Indonesia.

The next time the UN SC or the UN GA addressed the issue of East Timor wasn't until 1999. In the two decades of Indonesian rule, the people of East Timor were subjected to violence and isolation with about 80% of the male population killed in the first months of the occupation (Taylor 1994, 68) and almost a quarter of the population dying of disease or hunger according to the Commission for Reception, Truth and Reconciliation in East Timor (Chega! 2008). It seems as if the international community with all its institutions simply forgot about East Timor, even though in 1979 the president and his deputy were killed (Calvocoressi 2001, 561) and the agriculture economy and infrastructure in East Timor were practically destroyed (Taylor 1994, ix). Even the International Committee of the Red Cross didn't conduct any operations in East Timor until 2002. Even more, the UN Secretary-General Special Representative was denied access to areas in question and it seems as if there was an active effort of the West to support Indonesia and Suharto's regime and keep East Timor off the agenda (Calvocoressi 2001; Wheeler and Dunne 2001) despite incredible human rights violations and violence against the Timorese people.

Suharto, President of Indonesia from 1967 to 1998, was determined to quash any resistance in East Timor and was implicitly supported by the West with the US and the UK regularly supplying the Indonesian military (Calvocoressi 2001, 561). The international community definitely played a role in keeping East Timor off the agenda in terms of maintaining international peace and security for more than 20 years. Indonesia was an important strategic ally of the West during the Cold War and half of a small island in Southeast Asia and its people were not. Australia, its closest Western neighbour, was fully aware of Indonesia's plans to invade (Wheeler and Dunne 2008, 806) and in fact accepted the legitimacy of Indonesia's rule and even used its influence to smooth out criticism of Indonesia in the UN (Wheeler and Dunne 2001, 810). Even more, it seems Australia actively prevented the UN Secretary-General Special Representative to establish contact with the 'rebel' areas by seizing the radio transmitter with the order coming directly from the Australian Prime Minister (Taylor 1994, 72).

Nonetheless, many efforts were being undertaken in the background, particularly towards resolving the role of Portugal and its relationship with Indonesia. Even though Indonesia *de facto* administered the territory, Portugal still felt it had a right in deciding the destiny of East Timor despite the decision of the International Court of Justice in the Case Concerning East Timor (Portugal V. Australia) in 1995 which found that East Timor is a territory without self-government and the East Timorese are a people with a right to self-determination.

The Road to the Referendum

With Suharto's resignation in 1998, the ideas of independence gained new ground among the East Timorese and the new Indonesian President Habibie turned out to be a proponent of the idea of more autonomy for East Timor, even if

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not sovereignty. Further discussions between Indonesia and Portugal resulted in an agreement for an independence referendum to be organised under the auspices of the UN. However, it wasn't until May 1999 that Indonesia and Portugal signed the so-called *General Agreement* on the question of East Timor which then led to the report from the UN Secretary-General proposing an independence referendum and a UN observer mission which the UN SC enacted in the S/RES/1246 on 11 June 1999 with the establishment of the UN Assistance Mission in East Timor (UNAMET) which was established to assist with the organisation, implementation and supervision of the referendum on 8 August 1999. After 23 years of not having had the question of East Timor on its agenda, the UN SC suddenly became much more responsive to the developments in East Timor, adopting five further resolutions in that year.

Despite threats and intimidation, 98% of registered voters took part and 78.5% voted in favour of independence (Chesterman 2007, 194). What followed immediately however was a repetition of old behaviour from Indonesia – militias wreaked havoc in waves of violence, which might have indeed been coordinated from Indonesian governmental circles (Chesterman 2007, 195). Approximately 30,000 people were killed with thousands fleeing for their lives (Calvo-coressi 2001, 562). It must be pointed out that the UN, i.e. the international observers, in fact expected and warned of unrest and conflict following the referendum, yet the UN sent only a small force of 300 military troops and 400 police officers to that end (Paris 2001, 773). With this in mind, one could argue that the UN had indeed not learned much from the tragic experience in Rwanda, nor applied any of these lessons when it came to future cases of self-determination, for example in Sudan/South Sudan.

After the Referendum

Discussing why such grave failures in organising, observing and safeguarding the independence referendum process have occurred and whose responsibility they were, is beyond the scope of this chapter. However, they must be acknowledged as despite all the paperwork adopted via the UN, i.e. reports by the UN Secretary-General, and UN SC and UN GA resolutions, tens of thousands of East Timorese died as a result of those failures before and shortly after the independence referendum in August 1999. Some claim that this inability or even incapability of UN Secretariat bureaucrats to foresee and prevent such violence constitutes gross neglect (Bolton 2001, 142). With the UN SC permanent members tired of sending their troops all over the world throughout the 1990s, it was almost miraculous and indeed unprecedented that within three weeks of the referendum being held, a peace enforcement mission led by Australia had been established by the UN SC with S/RES/1264 (1999), and had indeed already been marching into the East Timor capital of Dili. What is even more impressive about this case is that the peace enforcement operation was undertaken with agreement of the 'aggressor' – even though Indonesia's agreement would not have been necessary for such action with UN SC authorisation.

The International Force for East Timor (INTERFET) was authorised under Chapter VII of the UN Charter and was authorised to use all necessary means to fulfil its mandate 'to restore peace and security in East Timor, to protect and support UNAMET in carrying out its tasks and, within force capabilities, to facilitate humanitarian assistance operations'. To demonstrate how acute the situation in East Timor was in terms of the UN SC response, it must be explained that the case of East Timor is one in only four instances where the UN SC determined under Chapter VII of the Charter that the situation constituted a threat to international peace and security, established a multinational military peace enforcement operation (not conducted under the UN flag), and authorised the use of all necessary means – all in the first resolution addressing the outburst of violence (R. Avgustin 2016).[2] In six weeks, INTERFET took charge of all critical points with Indonesian military retreating even before INTERFET units reached all parts of the territory. It took, however, two further UN missions – UN Transitional Administration in East Timor (UNTAET) and UN Mission of Support in East Timor (UNMISSET) – and almost three more years for East Timor to become an independent and sovereign country on 20 May 2002. In the same month, the UN GA also adopted a resolution with which it removed East Timor from its list of non-self-governing territories (A/RES/56/282). In September 2002, East Timor became a Member State of the UN (A/RES/57/3).

UNMISSET was replaced by the UN Office in Timor-Leste (UNOTIL) in 2005 which was replaced by the UN Integrated Mission in Timor-Leste (UNMIT) in 2006. Importantly, when new outbursts of violence occurred in 2006, East Timor did not make a plea for help at the UN but went directly to Australia, which again obliged with a new and, again, successful military operation. Operation *Astute* which completed its mission in 2013 included Portuguese

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troops which interestingly remained under their own chained command. The operation was not directly authorised by the UN SC, however it was given full support and acknowledgment *post festum* in 2006 with S/RES/1690.

From Independence to Sovereignty

In the process of declaring independence from effectively two masters, it would seem that East Timor gained a third one – the UN itself. The UN SC and all the missions it authorised practically took over the country and ran it for another decade after the independence referendum. UNTAET which was authorised to use all necessary means to fulfil its mandate was granted power and authority over the entire legislative and executive branches as well as administration over the judiciary. Since UNTAET completed its mandate in a territory where there was no effective governance, or at least none that could satisfy the UN expectations, there might be room to understand the UNTAET mandate. Yet, UNMISSET which took over in 2002 had a similarly broad mandate and was also authorised to use all necessary means. UN bureaucrats even negotiated internationally on behalf of East Timor (Chesterman 2007, 19). However, one should also take into account numerous pleas of East Timor's representatives for UN missions to be prolonged and/or strengthened; for example the Foreign Minister's February 2004 request that the UN SC extend the mandate of UNMISSET, or the letter from the Prime Minister in January 2005 in which he requested the continued presence of the UN. In fact, UNOTIL was established in 2005 following a proposal from the Prime Minister – it was then that this *de facto* UN administration softened into a political mission which supports further development of state institutions, democratic values, rule of law, and the promotion of human rights. This mandate continued with UNMIT until 2012 when it completed its mandate. It was in 2012 that the UN SC and the UN GA also adopted the last of their resolutions regarding East Timor. From 1999 to 2012 the UN SC adopted 25 resolutions^[3] regarding East Timor, the Secretary-General wrote more than 40 reports for the UN SC, and the UN GA adopted 36 resolutions.

Evaluating the Role of the UN

Analysis of the UN and its role in the international community can often be reduced to debates on its legitimacy and legality (De Wet 2004; Blokker 2005; Manusama 2006; Thakur 2006; Hurd 2007; Cronin and Hurd 2008; Dedring 2008) which lie at the heart of the debate on whether the UN is indeed merely a sum of its members. The theoretical frameworks underpinning explanations on both sides of that debate nonetheless do not provide any practical guidelines on how to evaluate the role of the UN and its actions. In fact, it would seem that up until the moment an action is discussed, most will argue about positions of certain member states, particularly the permanent members of the UN SC. It is only at the point when an action, i.e. resolution, is adopted that opinions begin referring to the effectiveness, purpose, responsibility, and even cost-efficiency of the UN as such.

Reasons for the prevalently unfavourable opinions vary widely; increasing membership (Snow and Brown 1996; Ziring et al. 2005), more complex notions of security (Roper 1993; Rothgeb 1993; Cortright and Lopez 2002; Smillie and Minear 2004; Thakur 2006; Trent 2007; Roberts and Zaum 2008), changed international relations due to new/different actors (Rothgeb 1993; Rupesinghe and Anderlini 1998; Hirst 2001; Malone 2004; Schoenbaum 2006; Trent 2007; Richmond 2008), changes regarding the nature of armed conflict (Snow and Brown 1996; Galtung et al. 2002; Roberts and Zaum 2008), a non-functioning UN SC during the Cold War (Roper 1993; Kegley and Raymond 1994; Snow and Brown 1996; Ryan 2000; Weiss and Collins 2000; Cortright and Lopez 2002; Malone 2004; Roberts and Zaum 2008), and even unclear provisions of the UN Charter (Bailey and Daws 1998). Discussions on cases of self-determination inherently expose the internal clash of the UN Charter between the principles of sovereignty and self-determination. That in itself makes for a troubling starting point in evaluating the role of the UN in such cases as favouring one principle inevitably makes the UN deny the other, almost as if it were a zero-sum game.

Evaluating the case of East Timor through the perspective of the UN SC permanent members is interesting as this tiny island really hasn't been of strategic interest to any of them. However, Indonesia was very much a strategic ally, particularly for the West and Australia. That state of affairs was important enough that the UN as well as the UN SC permanent members turned a blind eye to blatant human rights violations and suffering. Then, in the late 1990s, the balance shifted – first with Suharto's departure, but more importantly, with a significant change in Australia's public opinion. Indonesia's new President Habibie was going to consider increased autonomy for East Timor, but then-Australian Prime Minister Howard suggested postponing a referendum for another decade (McDougall 2007, 872).

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Australia hadn't been a big proponent of self-determination as such until that point anyway (Woodard 1999, 9), but the Australian public was appalled and consequently demonstrated enough pressure to have the Australian Government offer to lead INTERFET (McDougall 2007, 873). Due to media exposure even the US ended up contributing some troops and logistical support (Strobel 2001, 684). Notably however, Australian foreign policy shifted from a clear strategic and trade interest with Indonesia to connecting humanitarian and legal norms with concepts of national interest (Woodard 1999, 10). However, one shouldn't forget that East Timor most likely remains very interesting to Australia also because of its oil reserves.

Concluding Remarks

The case of East Timor does not provide a clear and definitive answer as to whether the UN has been a friend or foe overall. The UN definitely counts East Timor as one of its most successful cases and East Timor is a peaceful and stable country today, but one should understand that the UN became successful only after the people of East Timor finally voted for their own independence and due to a member state, whose own people demanded a significant change and military action. Now, it is important that the UN SC or any of the permanent members didn't stand in the way of that action – this is where East Timor could be counted as 'lucky' to have been of no strategic interest to any of them.

That position was also extremely unfortunate for the people of East Timor in the decades of Portuguese violent neglect and Indonesian brutality. In those years, the UN definitely was not upholding the right to self-determination for East Timorese, nor was it upholding any of the several (universal) declarations, resolutions and practices which were applied in several other situations, more or less successfully. It would seem that from the standpoint of the UN SC permanent members, East Timor just never quite made it to the top of the priorities list, particularly after the end of the Cold War when so many threats to international peace and security were dealt with. For example, the military action in Kosovo was taking place at roughly the same time. The French Ambassador to the UN at the time stated that the conflict over East Timor is an "orphan of the Cold War, where the interests of the major powers are circumstantial at best" (Carey and Walsh 2008, 355). However, even in 1999 with all the lessons of Somalia, Rwanda, former Yugoslavia, and others, the UN went to East Timor practically blind and deaf to all the warning signs. Once again, even though the referendum indeed took place, the UN failed the people of East Timor. Was it because the UN was pre-occupied with more 'important' events around the world once again, or was it because the UN SC permanent members were getting tired of policing those events around the world?

It would seem that the UN cannot be a friend or a foe to self-determination as such until its members, particularly the UN SC permanent members, or a strong enough 'outsider' like Australia in the case of East Timor, make it one or the other. Importantly though in the case of East Timor, it could be argued that the UN was definitely not a friend to the people of East Timor even without the right to self-determination in the equation. It is in this conclusion that the true incapability of the UN lies and continues to be present around the world.

Notes

[1] Officially the Democratic Republic of Timor-Leste since 2002, however this chapter will use East Timor throughout.

[2] The other three in the period till 2012 were *Operation Uphold Democracy* led by the US in Haiti in 1994, *Multi-National Force – Iraq* led by the US in Iraq in 2003, and *Multinational Interim Force* led by the US in Haiti in 2004 (R. Avgustin 2016, 95).

[3] For comparison, the UN SC adopted altogether 23 resolutions regarding Rwanda (excluding the ones referring to the International Criminal Tribunal for Rwanda).

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About the author:

Jakob R. Avgustin received his Ph.D. in International Relations from the University of Ljubljana in 2016. He is Editor-at-Large at E-International Relations and works in the Academic Services Office at the University of East Anglia. He researches the use of military force in international relations, particularly when authorised by the UN Security Council. His publications include *Realism in Practice: An Appraisal* (co-editor), and articles in *Sociology of Diplomacy: Initial Reading* and *Acta Diplomatica*. He is currently working on a chapter in an edited collection on Great Powers and post-Yugoslav states.