

Democratisation and Timor Leste after UNTAET: Towards participatory intervention

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The broad focus of this paper is on a project which forms one of the fundamental policy preoccupations of our age: the dissemination of Western-style democratic government across the globe. This significant project is often referred to as democratisation.

The study of democratisation straddles various disciplines. It delves into international law in its examination of the role of the powers of the United Nations (UN) with regards to intervention, often accompanied by the use of force, to facilitate democratic transitions.

It also focuses on international law in its analysis of the international human rights system, particularly as providing a foundation for what has been described as an 'emerging right to democratic governance' a supposed entitlement articulated in comprehensive form in Thomas Franck's influential article of the same name.¹ In this and other works Franck has sought to assert the possibility that democracy is 'emerging as global entitlement...increasingly promoted and protected by collective international processes'.²

The research also has foundations in political science in its examination of the mechanisms of transitional governance, the role of transitional constitutional frameworks and the adaptability of Western-style multi-party democracy to new cultural contexts. In this regard it may also incorporate aspects of the newly emerging discipline of legal anthropology, a cousin of comparative law.

More specifically, this paper seeks to examine certain aspects of the United Nations Transitional Administration in East Timor (UNTAET), a recent example of democratisation. UNTAET incorporated an electoral process as a fundamental aspect of its mandate and was undertaken on a multilateral basis. It can therefore be seen as a typical expression by the international community as to how such democratisation initiatives should be implemented. The mission serves as a case study for this paper.

UNTAET

Deployed in late 1999 UNTAET, via an internationally established Independent Electoral Commission (IEC), staged a Constituent Assembly election and culminated in a Presidential election in 2002. On 20 May 2002 the UN flag came down and the national flag raised over a newly independent East Timor.³

UNTAET represented the most comprehensive transitional administration attempted by the UN to date, combining peacekeeping and civilian administration. In it the UN sought to exercise sovereign authority over the territory of East Timor, effectively becoming the government of the state for the period of the mission.

One previous similar mission, the United Nations Transitional Administration in Cambodia (UNTAC) sought only to exercise control over 'administrative agencies, bodies and offices which could directly influence the outcome of elections' including foreign affairs, national defence, finance, public security and information.⁴

As expected, the conduct of the mission and its legacy has provided some valuable lessons for exponents of democratisation.

The hurried development phase of the mission was overshadowed by a battle for control between two prominent UN departments. The Department of Political Affairs (DPA) and the Department of Peacekeeping Operations (DPKO). The DPA had been closely involved in keeping East Timor in the

¹Franck, T.M. 'The Emerging Right to Democratic Governance', 86 *Am. J. Int. L.* 46 (1992).

²Note 1 at 46.

³Chesterman, S., *You, The People, The United Nations, Transitional Administration and State-Building*, Oxford, 2004, p.64.

⁴*Agreements on a Comprehensive Political Settlement of the Cambodia Conflict*. United Nations Department of Public Information Document DPI/1180-92077-Jan 1992-10M, Art. 6.

spotlight after the Indonesian invasion in 1975. It had also overseen the development of the INTERFET mission led by Australia to quell the extensive militia violence behind the Indonesian withdrawal.⁵

After an unfortunate internal ‘turf war’ the deployment of INTERFET and the subsequent UNTAET mission was overtaken by the Department of Peacekeeping Operations (DPKO). Given its historical involvement in the East Timor issue, and its subsequent involvement in negotiations leading to the 1999 referendum and the INTERFET mission, the DPA had become a focal point of knowledge and expertise on Timorese matters. Much of this expertise was lost in the transfer of authority to the DPKO.⁶

Jarat Chopra, a former UNTAET District Administrator, has noted the ‘kingdom-like’ status of the temporary government of East Timor, with the Special Representative of the Secretary General (SRSG) as its unelected head or ‘king’. The UN’s mandate over East Timor being part of a trend towards ‘increasing social and territorial control to remedy the breakdown of failed states, combat warring factions and topple abusive warlords’⁷ He asserts that UNTAET did not, therefore, itself sufficiently enshrine those democratic values it was attempting to instil into the East Timorese polity.⁸

Tanja Hohe has described how pre-existing local socio-political structures in East Timor have proven resilient in the face of both the Indonesian occupation and UNTAET. She notes that the United Nations neither sufficiently recognised nor had little effect on these structures in East Timor. This created a conflict between the attempt to build Western-style liberal democratic government under UNTAET and the existing indigenous political structures which retain a great deal of legitimacy amongst Timorese at village level.⁹

She concludes that the two will need to be reconciled to a greater degree in future interventions, or risk the collapse of local structures and the failure of international attempts to build, or perhaps recognise, existing government, particularly at the local level.

Suhrke has documented how the mission was restricted by its internationally imposed mandate which was devised externally, based on pre-existing governmental and electoral processes used in other locations. The mandate also imposed an unrealistically short time-frame for completion of the mission, which has had to be revised several times since, particularly in the face of several internal security crises.¹⁰

Suhrke has also noted how military and civilian staff were internationally recruited leaving few opportunities for comprehensive local involvement in the process. UNTAET allowed for little local engagement in genuine capacity building and yet fewer structures for local participation. These factors have combined to contribute to an erosion of many of the gains made during the UNTAET period.¹¹

The Democratisation Project

The world has witnessed a massive expansion in the number of new actors and agencies involved in governance and democratisation, to the extent that the project has become almost industrial in scale. USAID spends around 500 million US per year on democracy assistance and the EU and Scandinavian agencies are spending millions each year also in a effort to promote multi-party democracy in the developing world. World Bank policy is now also dominated by the rhetoric democratisation.

The single largest sector for the Australian aid program is governance, which incorporates democratisation initiatives. Spending on governance increased from \$26 million in 1998-99 to approximately \$832 million in 2006-07, representing 33% of the overall Australian aid dollar.¹²

Balakrishnan Rajagopal, whose work will be discussed in greater detail later in this paper, has observed that ‘The turn to democratisation in the 1990’s has witnessed an explosive proliferation of

⁵ Chopra, J., “The UN’s Kingdom of East Timor”, *Survival*, vol. 42, no.3, Autumn 2000, p. 28.

⁶ Shurke, A., “Peacekeepers as Nation-builders: Dilemmas of the UN in East Timor”, *International Peacekeeping*, Vol.8, Winter 2001, p.6.

⁷ Note 5 at 27.

⁸ *Ibid.*

⁹ Hohe, T., “The Clash of Paradigms: International Administration and Local Political Legitimacy in East Timor”, *Contemporary Southeast Asia*, Vol. 24, Number 3, December 2002. p. 569.

¹⁰ Note 6 at 1.

¹¹ *Ibid.*

¹² AusAID, “Annual Review of Development Effectiveness 2007”, Office of Development Effectiveness, Commonwealth of Australia, Canberra, 2008.

international institutions similar to the first wave of proliferation in the 1950's and 1960's that accompanied modernisation. While governments of Western countries remain the most vigorous promoters of democracy, they have been joined by a host of NGO's and IGO's.¹³

Despite great optimism and dedication associated with the project its outcomes have, however, so far been mixed. Many newly democratised states, such as Cambodia, have emerged as 'low intensity democracies'.

In her influential work on concepts of democracy and political transformation Marks describes the original conception of low intensity democracy as one in democratic hallmarks such as the holding of multiparty elections and the official separation of public powers 'are taken largely to suffice...in place of more far-reaching objectives, such as an enhanced respect for human rights, social justice, and the civilian control of the military.'¹⁴

Marks further indicates that low intensity democracy 'lies in providing some of the institutions and procedures associated with modern democracy, while leaving established centres of power substantially intact.'¹⁵ Such systems may also be described as 'cosmetic' or 'façade' democracy.

Gills, Rocamora and Wilson, the writers responsible for the original conception of low intensity democracy sought to look deeper into the structures behind the apparent façade. Indicating that '...although (these states) may have formally instituted some of the trappings of Western liberal democracies (for example, periodic elections), in a real sense these new democracies have preserved ossified political and economic structures from an authoritarian past. Not only have they not come close to operating a political structure modelled on actual Western liberal democracies, this is not part of a long-term agenda for the future.'¹⁶

The reality is that countries which have become test cases for the so-called 'democratic entitlement' may come to conform more closely to what Fareed Zakaria has described as 'illiberal democracies'.¹⁷ That is, authoritarian states which masquerade as democracies, largely through the charade of periodic elections, for the benefit of the recognition and financial patronage of the international community, while at the same time depriving their citizens of the most basic rights and freedoms.

Many questions remain as to whether East Timor will follow the same path. One of the chief problems faced by the government of this newly independent state is one of legitimacy. The legitimacy of the government of East Timor has been challenged several times since the initial UN-supervised electoral processes of 2000 and 2001, particularly during the crises of 2006 and 2008, the latter culminating in the attempted assassination of both the President and Prime Minister. These upheavals have been destabilising factors retarding State development.

Democratisation and Problem of Legitimacy: Perspectives from the South

The legitimacy of international interventions such as UNTAET is coming under increasing scrutiny by scholars from the South. At this stage we are still in the early stages of an important understanding of third-world perspectives on democratisation. We have however been assisted by a variety of scholars.

The problem of legitimacy in democratisation has been addressed in particular by scholars from the Third World Approaches to International Law (TWAIL) movement. TWAIL provides a unique southern perspective on a process which is largely driven from the north.¹⁸

¹³ Rajagopal, B., *International Law from Below: Development, Social Movements and Third World Resistance*, Cambridge, Cambridge, 2003, p. 153.

¹⁴ Marks, S., *The Riddle of all Constitutions: International Law, Democracy and the Critique of Ideology*, Oxford, Oxford University Press, 2003, p. 53.

¹⁵ Ibid.

¹⁶ Gills, B., Rocamora, J., and Wilson, R., "Low Intensity Democracy", in Gills, B., Rocamora, J., and Wilson, R., *Low Intensity Democracy: Political Power in the New World Order*, London, Pluto, 1993, p.3.

¹⁷ Fareed Zakaria, *The Future of Freedom : Illiberal Democracy at Home and Abroad*, 1st ed., New York: W.W. Norton & Co, 2000.

¹⁸ Rajagopal, B., *International Law from Below: Development, Social Movements and Third World Resistance*, Cambridge, Cambridge, 2003, Anghie, A., *Imperialism, Sovereignty and International Law*, Cambridge, 2005, Ayoob, M., "Humanitarian Intervention and State Sovereignty", *The International Journal of Human Rights*, Vol. 6, No.1, (Spring 2002) 2002.

Democratisation as implemented through multi-dimensional peace operations has been characterised by Rajagopal as the last stage of longer process of modernisation and development in the third world. Therefore 'if modernisation theory was based on the idea of the economic backwardness of the Third World, democratisation theory is based on its political backwardness, which, it suggests may contribute to its economic backwardness as well'. Democratisation, as implemented through multi-dimensional peace operations, can thus be characterised as the latest stage of longer process of 'modernisation' and 'development' in the third world.¹⁹

In this sense democratisation has overtaken modernisation as the 'driving ideology' behind international law as it guides the relationship between the North and the South.

Anghie has noted that 'the concept of 'good governance' provides the 'moral and intellectual foundation for the development of a set of doctrines, policies and principles, formulated and implemented by various international actors, to manage the third world state and third world peoples.'²⁰ As such international human rights law, now strongly influenced by the broad concepts of 'democratic governance' and 'legitimate governance' has 'acquired a far more intrusive and comprehensive character, than had previously been the case.'²¹

Anghie argues that the colonial subtext of international law is concealed even when it is reproduced, which could apply to the reproduction of international law in intrusive UN missions. He argues that the globalisation and governance models imposed by the West bear an uncanny resemblance to the earlier initiatives of commerce and 'civilisation'. Despite this they have been hailed as novel developments in international law and international relations.²²

In the context of human rights Ayoob has observed that 'those who define human rights and decree that they have been violated also decide when and where intervention to protect such rights should and must take place.' Consequently from the perspective of the developing world 'in so far as European hegemony is concerned, there is a continuum between colonial administrator, the Christian missionary, and now the human rights crusader.'²³

Ayoob has further noted the similarities with 'standard of civilisation' approach taken by European states until the end of the nineteenth century. An approach which insisted that only those states that had reached a pre-defined standard of civilised behaviour could assert the privileges of sovereign status. Thereby dividing the world into 'civilised' states and 'uncivilised' states.²⁴

On a broader level Baxi and Kapur have further observed how notions of universality in human rights discourse have been commandeered by free trade and free market actors to promote the rights of global capital rather than individual or collective rights.²⁵

Important questions are being asked as to the motives behind democratisation and governance programs as they are being conceived and applied by the North. This burgeoning problem of legitimacy will eventually need to be addressed if these projects are to continue.

Towards Participatory Intervention

Is democratisation worth doing at all, and if so how can the problem of legitimacy be addressed? These and other questions can only be answered by building into the programs the opinions, desires and aspirations of those on the receiving-end of this form of state-building.

If the international community is to engage in the process at all it must be done appropriately and at a measured pace in order to produce effective, lasting and stable results. This means long-term commitments to the rebuilding of civil society, using strategies which are properly assessed for their

¹⁹ Note 13 at 139.

²⁰ Anghie, A., *Imperialism, Sovereignty and International Law*, Cambridge, 2005, p. 255.

²¹ Ibid.

²² Ibid.

²³ Ayoob, M., "Humanitarian Intervention and State Sovereignty", *The International Journal of Human Rights*, Vol. 6, No.1, (Spring 2002) 2002, p. 81.

²⁴ Note 5 at 84-5.

²⁵ Baxi, U., "Voices of Suffering and the Future of Human Rights", 8 *Transnational Law and Contemporary Problems*, pp. 163-164. And Kapur, R., "Human Rights in the 21st Century: Take a Walk on the Dark Side", 28, *Sydney L. Rev.*, 2006, p. 665.

relevance to local conditions and acceptance by local actors. Programs need to be guided by practicality of application and genuine ability to contribute lasting skills to the local population.

This problem not only applies to particular missions but to all democratisation efforts undertaken by the international community. To serve the interests of true self-determination, democratisation could do better to aim at a 'ground-up' approach. This means genuine long-term capacity building by supporting civil society groups from village level upwards, as opposed to the rapid imposition of 'government' from the top down.

It also means long term commitments to reconciliation, to encouraging civil society groups and ultimately to engendering a respects for the diversity of opinions that go to make up a genuine democracy.

On a more fundamental level questions need to be asked about whether these populations actually want the model of democracy foisted upon them in the first place. The argument may therefore need to be formulated in a different way, in that we may need to reverse the model as we currently perceive it - to look how our democratic structures can adapt to existing or traditional systems of government and dispute resolution.

It is also important to note that the East Timorese had themselves, at an early stage, devised a clear and detailed trajectory for the transition to self-government and nation-building. That model advocated adherence to international human rights principles, freedoms, the rule of law, self-determination, cultural autonomy, environmental responsibility and a willingness to work within regional frameworks.²⁶ There has been a remarkably consistent commitment to these principles right up to the present day.

By 2000 both CNRT and Xanana Gusmao could see the writing on the wall. Xanana stated that: 'We are not interested in a legacy of cars and laws, nor are we interested in a legacy of development plans for Timorese. We are not interested in inheriting an economic rationale which leaves out the social and political complexity of East Timorese reality. Nor do we wish to inherit the heavy decision-making and project implementation mechanisms in which the role of the East Timorese is to give their consent as observers rather than the active players we should start to be.'²⁷

As Xanana could perhaps sense, in most cases UN missions are formed around the development of structures imposed from above, such as a centrally developed constitutional framework. Such an approach often emphasises initiatives devised primarily by state actors as expressed through the centralising power of the UN. This often overlooks the crucial role of civil society groups, social movements, NGO's, individuals and other non-state actors both within and outside the state.

The solutions offered by UN electoral initiatives often appear to be driven by a legalistic and regulatory mindset which prioritises the introduction of a Western-style constitutional framework, legislative, judicial and policing systems. This could be described as a 'law and order' or 'rule of the lawyers' model.

By contrast Tanja Hohe, another former UNTAET employee with considerable experience in East Timor, has observed the existing structures of local government and dispute resolution were held in place by the Portuguese and even the Indonesians, in the interests of maintaining a valid link between colonial administration and village decision making.²⁸

UNTAET then moved to install international staff as District Administrators, often very dedicated and hard working people but often also with little understanding of the existing *liurai* (kingship/ kinship) system or the *posto, suco* and *povocão* local government and dispute resolution systems.²⁹

In some cases misunderstandings driven by this lack of knowledge effectively de-legitimised the power of respected elders in the community, thereby alienating many East Timorese even before the mission got underway. The transitional administration also insisted on a precipitous move towards multi-party democracy at village level, creating tensions between families allied to particular political parties.

²⁶ CNRT (1998), MAGNA CARTA concerning Freedoms, Rights, Duties and Guarantees for the People of East Timor (Adopted at the East Timorese National Convention in the Diaspora, Peniche, on 25 April 1998), <http://easttimorlegal.blogspot.com/2009/01/east-timors-magna-carta.html>, (accessed 24 November 2009).

²⁷ Beauvais, J.C., "Benevolent Despotism: A Critique of UN State-Building in East Timor", *International Law and Politics*, Vol. 33:1101, 2001. p. 1101.

²⁸ Note 9 at 569.

²⁹ *Ibid* p.573.

Chopra and Hohe have discussed how efforts to implement a World Bank and Asian Development Bank (ADB) devised Community Empowerment and Local Governance project (CEP) led to another power struggle between the World Bank and the UN administration. UN officials were reluctant to relinquish power concentrated at the centre, being Dili, for the sake of the establishment of village and district level elections. The dispute was only resolved by the personal interventions of Kofi Annan and James Wolfensohn.³⁰

By way of solution Chopra and Hohe outline four broad options for intervention: reinvention, or the introduction of an entirely new uniform administration across the country; transformation, or the implementation of a modern state via the gradual transformation of existing structures into a formal localised administration; integration, in which the national and local are connected under a separation of powers enshrined in a constitution and reinforcement, in which the existing structures are strengthened and leaders fully reinstated. A revised model based on the less intrusive end of this spectrum may contribute to the long term sustainability of future UN democratisation outcomes.³¹

The irony of the imposition of the Western constitutional model is that it often results in the reinstallation or reinforcement a pre-existing elite thereby by alienating a large sections of the population, particularly the young. This certainly appears to be the case in East Timor and is probably the major source of its present difficulties.

This paper has previously mentioned the need for an altered perspective from a top-down approach to a bottom-up approach, which encourages the natural growth of democracy from its grassroots origins. An approach which encourages the emergency and primacy of civil society groups, necessitates long term involvement but which more closely replicates the organic evolution of our own system, This altered perspective is also being discussed by the TWAIL movement.³²

In contrast to what Rajagopal has described as the 'legalisation of international relations' international lawyers need to better understand the power of grassroots social and political movements which have, most prominently, emerged to highlight the globalising nature of international institutions such as the World Trade Organization. These movements can also be seen on the streets of many post-conflict states. International law has often not sought to involve itself deeply with the relationship between these two poles, and has often sought to repress the role of the latter.

These social movements may also be characterised as sources of *resistance* exemplified by the thousands of young people who take to the streets of Dili demanding a political voice. In many ways this resistance expresses a loss of faith or suspicion of the hidden agendas of national and international institutions and power bases. There may be a future in a 'people centred development' model applied to state-building in the form of an increased awareness of the need for active engagement of all actors in democratisation at village level rather than just the imposition of the a 'law and order' model.

Rajagopal notes that, seen from the perspective of the developing world, the discourse of democratisation, often using the language of human rights, has sought to position itself as the approved form of liberation or resistance in the developing world. Seen through the prism of classical development theory democratisation has sought to replace the previous development rhetoric of modernisation with democratisation.³³

This has given rise to a democratisation industry driven by international organisations, multilateral and bilateral aid programs and private foundations seeking to effect social transformation in the third world - all engaged in a grand experiment the outcome of which is still very much uncertain. This bias, reinforced by international law, towards the West and towards elites as the chief engines of social transformation ignores the important role of ordinary people in the democratisation process.

The purpose of UN involvement in East Timor was to facilitate its transition to independence. It was not about 'the delivery of a system' but rather about the all-important goal of self-determination. The legacy of the UN in East Timor demonstrates a need for the development of a body of expertise which seeks to improve the appropriateness, coherence, sustainability and legitimacy of such state building initiatives.

³⁰ Chopra, J. and Hohe, T., 'Participatory Intervention', *Global Governance*, 10 (2004), 298-305.

³¹ *Ibid* p. 299.

³² Note 13 at xiii.

³³ *Ibid*.