

# The Legality and Legitimacy of UN Peacekeeping Missions in East Timor<sup>1</sup>

Brendan HOWE      Yuji UESUGI\*

Graduate School of International Studies, Ewha Womans University, 52 Ewhayeodae-gil,  
Seodaemun-gu, Seoul 120-750, Korea  
*bmg.howe@gmail.com*

School of International Liberal Studies, Waseda University  
1-6-1 Nishiwaseda, Shinjuku-ku, Tokyo 169-8050, Japan  
*uesugi@waseda.jp*

## Abstract

East Timor is widely regarded as a success story for UN peacekeeping efforts, and indeed is promoted as such by the organization itself.<sup>2</sup> There are two sources of controversy, however, linked to assessment of the East Timor case. First, the UN involvement in East Timor went far beyond traditional peacekeeping, and, as such, the organization (and its members which took part) may have exceeded the scope of its legal competence. The approach in East Timor was, in practice, a state-building exercise, in which the UN fully assumed the nation's sovereignty in order to provide the foundations of good governance – reconciling conflicting interests (peace and security) and generating collective good (development). Here, therefore, the UN missions may be entering into the realm of legitimacy (moral justifications for action) rather than strict legality. This leads to the second, potentially larger area of controversy. If a UN mission is to be seen as legitimate under the UN's own terms of assessment, it must lay the foundations of long-term peace and development, i.e. human security. Despite the claims of the UN, it is debatable whether this has fully been achieved in the case of East Timor. This paper then, will assess the legality and legitimacy of UN peacekeeping missions in East Timor from a critical perspective.

**Key words:** United Nations, Peacekeeping Operations, East Timor, Legality, Legitimacy, Security Sector Reform

## I . Introduction

On Monday, December 31, 2012, the United Nations (UN) brought officially to an end its series of peacekeeping missions/administrations in East Timor, dating back to in July 1999, when the United Nations Missions in East Timor (UNAMET) was established by the Security Council Resolution 1246 in order to organize the popular consultation on independence. The

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\* Brendan Howe is a tenured Professor and former Department Chair at the Graduate School of International Studies, Ewha Womans University in Seoul, South Korea. He is the Editor of the *International Studies Review* and Series Editor for Palgrave Macmillan of the Pivot series on *Security, Development and Human Rights in East Asia*. He has held visiting research fellowships at Freie Universität Berlin (2014-2015), De La Salle University, Manila (2010), the University of Sydney (2008), Korea National Defense University (2007), the East-West Center, Hawaii (2003), and Georgetown University (1999-2000). Major publications include *inter alia*, *Post-Conflict Development in East Asia* (ed.) (Aldershot: Ashgate, 2014); *The Protection and Promotion of Human Security in East Asia* (Basingstoke: Palgrave Macmillan, 2013); *Participation, the State, and the People: Democratic Voices from South* (ed.) (Tokyo: UNU Press, 2010); 'Human Security and Human Development in Laos' (with Kearnin Sims), *Asian Survey*, vol. 51, no. 2, 2011; 'Human Security: A Global Responsibility to Protect and Provide' (with Ian Holliday), *Korean Journal of Defense Analysis*, vol. 23, no. 1, 2011; 'North Korea's Insecurity Dilemma', *North Korean Review*, vol. 6, no. 10, 2010; 'Between Normality and Uniqueness: Unwrapping the Enigma of Japanese Security Policy Decision-Making', *Modern Asian Studies*, vol. 44, issue 6, 2010; 'Three Futures: Global Geopolynomic Transition and Northeast Asia', *Modern Asian Studies*, vol. 39, issue 4, 2005 (IISS Award Winner). Brendan Howe's contributions to this volume were supported by research leave from the Graduate School of International Studies at Ewha Womans University, and the Korean Studies Department of the Freie Universität Berlin which is hosting his sabbatical.

Yuji UESUGI is a Professor at the School of International Liberal Studies, Waseda University, Japan. He holds a Master of Sciences in Conflict Analysis and Resolution from George Mason University, USA, and a PhD in International Conflict Analysis from the University of Kent, UK. His latest publications in English include *Peacebuilding and Security Sector Governance in Asia* (Zurich and Berlin: LIT, 2014), "Building a Foundation for Regional Security Architecture in the Asia-Pacific: Human Resource Development for Peacebuilding", in William T. Tow and Rikki Kersten (eds.), *Bilateral Perspectives on Regional Security: Australia, Japan and the Asia-Pacific Region* (London: Palgrave Macmillan, 2012), and others.

UN Transitional Administration in East Timor (UNTAET), which had a peacekeeping operation (PKO) mandate, ran from 1999 until 2002, with the aim of administering the territory, exercising legislative and executive authority during the transition period until independence, and supporting capacity-building for self-government.<sup>3</sup> At the end of this period, with East Timor celebrating the recovery of its independence not only from Indonesia, but also from the UN administration which followed, the UN felt able to laud its own achievements:

Widely regarded as a success story for the United Nations peacekeeping efforts, East Timor will officially become its own nation led by President-elect Xanana Gusmão on May 20, 2002. This comes almost three years after the August 1999 elections that resulted in 98 percent<sup>4</sup> of East Timorese voters choosing independence from Indonesia. In response to the bloody civil strife that followed the vote, the United Nations Transitional Administration in East Timor (UNTAET) was established to provide an integrated, multidimensional peacekeeping operation fully responsible for the administration of East Timor during its transition to independence.<sup>5</sup>

Indeed, the UN had played a vital role in East Timor's independence by organizing the 1999 popular consultation, which ended Indonesia's 24-year occupation. For Markus Benzing, the East Timor case study is particularly noteworthy as it is "the most radical 'state-building' exercise the United Nations has engaged in to date, in the most literal sense of the word, as the United Nations acted as midwife for a new state".<sup>6</sup> Optimistic assessments of the long-term future stability of East Timor upon independence proved, however, to be premature. The timing of Benzing's publication was particularly unfortunate as UN peacekeeping troops had to return in 2006 in the guise of the Australian-led International Stabilisation Force (ISF) after fighting between sections of East Timorese police and military forces set up by the UN administration, led to social and political instability. President José Ramos-Horta was critically injured in an armed attack on February 11, 2008, and Prime Minister Xanana Gusmão was also allegedly to have been attacked, again leading to the Australian government immediately sending

reinforcements to East Timor to keep order in response to a request from the government of East Timor.<sup>7</sup> This was despite the fact that, according to the *Supplemental Arrangement* exchanged between the UN and the government of East Timor, it was the responsibility of a UN peacekeeping mission — the United Nations Integrated Missions in Timor-Leste (UNMIT) — to provide law and order in East Timor, and thus decide such actions.<sup>8</sup>

UN operations in East Timor in fact, out of necessity, went far beyond peacekeeping. At the very least, they amounted to peacebuilding, or even peace enforcement, although the peace enforcement function was carried out by UN-mandated multinational military operations such as the International Force East Timor (INTERFET) and ISF. According to Hideaki Asahi, in the East Timorese context, “peace-building is tantamount to state-building”, with reference to top-down, state-centric processes with a structural focus on putting in place the central- and national-level institutions of the state.<sup>9</sup> Viewed from the perspective of a modern state model, it seemed that East Timor lacked experience of self-rule, effective central government institutions, and laws, regulations, and other normative codes of control to bind or unite local communities and citizens, despite the fact that an indigenous system of community governance and justice did exist in the territory. For example, an administrative ward such as *Aldeia* and *Suco* has served as basic units of local governance, *Lia Nain*, an indigenous ritual mediator, served in conflict resolution and justice mechanisms such as *nabe bite boot*<sup>10</sup> and *tara bandu*.<sup>11</sup> The UN was blind to existing local structures and mechanisms, which were alien to the typical western model of state-building. Thus, the first task of the international community was seen as being to foster the growth of indigenous “national” governance structures, which could serve as an overarching framework of state apparatus.

Accordingly, therefore, Kamalesh Sharma, Special Representative of the Secretary General (SRSG) of the United Nations Mission of Support in East Timor (UNMISSET), the successor UN mission which began life on 20 May, 2002, the same day as East Timorese (restoration of) independence, immediately identified the need to “Start from Scratch”,<sup>12</sup> overlooking the vital need to build on indigenous foundations. This inability of the UN to identify and work with local mechanisms and customs has undermined the legitimacy of the UN in the eyes of the local population.

Regardless of the necessity of such far-reaching usurpation of sovereignty and imposition of governance structures (at least at the level of national government), it is questionable whether the UN and members of the international community acting under the auspices of the UN, were legally empowered to carry them out, although one can argue that the authorization by the UN Security Council (SC) would be sufficient to undertake even such a broad usurpation of sovereignty. But perhaps an even larger question mark hangs over their efficacy. Despite claims to the contrary, the evidence of the 2006 upheavals suggested that initial state-building operations carried out under first UNTAET and then UNMISSET were a failure (although the 2007 elections were mostly peaceful, they were extremely divisive). Despite the peaceful 2012 elections, and the withdrawal of the overwhelming majority of external mission personnel, the underlying foundations for long-term peace, stability, and development, may yet to have been fully laid. Toward the end of its term, faced with growing frustration of the East Timorese leadership, and their sense of national pride against the usurpation of sovereignty and imposition of governance structures, UNMIT's legitimacy in the eyes of host population became eroded, further undermining its efficacy.

Under the UN's own terms of assessment, therefore, operations in East Timor may have fallen short of the standards required for legitimacy as well as those for strict legality. In an official document called "the United Nations Peacekeeping Operations Principles and Guidelines", the UN recognizes legitimacy as one of the measurements of success and divides the concept into two — international legitimacy and perceived legitimacy on the ground.<sup>13</sup> The manner through which the UN peacekeeping operations engaged in state-building endeavors in East Timor can therefore be criticized for having fallen short of the UN standards, namely: "the respect it (UN peacekeeping operation) shows to local customs, institutions and laws, and the decency with which it treats the local people all have a direct effect upon perceptions of its legitimacy".<sup>14</sup>

This paper first critically assesses the legality of the UN peacekeeping missions in East Timor. It then turns to address the more nebulous, but perhaps more important questions of legitimacy of UN operations and their cessation. There are major areas of concern when it comes to normative justifications for UN peacekeeping missions in East Timor related to human

security challenges such as Security Sector Reform (SSR), national/local ownership, unequal development and distribution of resources (especially with regard to youth, women, and rural communities), and the self-sustainability of governance structures.

## II. The Legality of UN Operations in East Timor

The United Nations had concerned itself with the East Timor question long before there was an independent state of that name, or even the possibility of such a state coming into being. In 1960, while the territory was still under Portuguese administration, the UN General Assembly (UNGA) ruled that “East Timor and Dependencies were a non-self-governing territory according to Chapter IX of the UN Charter, and to which the General Assembly Resolution on the Granting of Independence to Colonial Countries and Peoples applied”.<sup>15</sup> From 1975, after the Portuguese withdrawal from East Timor, which was followed by a tripartite civil war amongst East Timorese factions and the violent annexation of the territory by Indonesia, both the UNGA and the UNSC repeatedly condemned the Indonesian occupation and called for Indonesian forces to pull out. Crucially, however, the Indonesian actions were not condemned as an act of aggression (which would justify UNSC-authorized military action by others to reverse the act of aggression), nor were they identified as a breach of Article 2 (4) of the Charter requiring states to refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state.<sup>16</sup> Such a lukewarm reaction of the international community was the result of US policy in the Cold War era, in which Indonesia was seen as a seawall against the expansion of communism in South East Asia. Hence, it was not until a change in the international operating environment with the end of the Cold War, more norm-driven and interventionary foreign policy agendas among great powers, and the reinvigoration of international organizations, when combined with internal political changes in Indonesia, that progress on the East Timor question became possible.

In 1998, the authoritarian regime of Major General Suharto, who had effectively ruled Indonesia since a military coup in 1965, finally came to an end. That June, the new President, Habibie, proposed a special status for East

Timor which stopped short of full independence, but provided stimulus for further talks between the conflictual parties. In particular, negotiations at the UN between the two colonial powers, Indonesia and Portugal, ultimately led, on May 5, 1999, to the “Agreement Between the Republic of Indonesia and the Portuguese Republic on the Question of East Timor”.<sup>17</sup> The two parties, the Governments of Indonesia and Portugal, agreed that the Secretary-General of the UN should consult the East Timorese people on the constitutional framework for autonomy which was attached to the Agreement as an annex, through a direct, secret and universal ballot. The key points of the agreement were that:

- Article 1, the Secretary-General was to put the proposed constitutional framework providing for a special autonomy for East Timor within the unitary Republic of Indonesia to the East Timorese people, for their consideration and acceptance or rejection.
- Article 2, that an appropriate United Nations mission in East Timor be established to enable the popular consultation to take place.
- Article 3, that the Government of Indonesia would be responsible for maintaining peace and security in East Timor in order to ensure that the popular consultation is carried out in a fair and peaceful way.
- Article 4, that the UNSC, UNGA, the Governments of Indonesia and Portugal, and the East Timorese people be informed of the result.
- Article 5, if the proposed constitutional framework for special autonomy was acceptable to the East Timorese people, the Government of Indonesia would initiate the necessary constitutional measures, while East Timor would be removed from Portugal’s agenda and those of the UNGA and UNSC.
- Article 6, if not acceptable to the East Timorese people, “the Government of Indonesia shall take the constitutional steps necessary to terminate its links with East Timor thus restoring under Indonesian law the status East Timor held prior to 17 July 1976, and 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. The Secretary-General shall, subject to the appropriate legislative mandate, initiate the procedure enabling East Timor to begin a process of

transition towards independence.”

- Article 7, “During the interim period between the conclusion of the popular consultation and the start of the implementation of either option, the parties request the Secretary-General to maintain an adequate United Nations presence in East Timor”.<sup>18</sup>

At first sight, therefore, it seems that UN operations rest on fairly firm legal foundations. The UN was asked to become involved by the interested parties, Indonesia and Portugal (as East Timor at that time was not a constituted state, the UN was not required, in fact was not able to consult national authorities). Not only that, but the UN’s initial involvement was specifically to include consultation with the people of East Timor. The Agreement Between the Republic of Indonesia and the Portuguese Republic on the Question of East Timor also included clauses outlining the UN’s role post the consultation exercise. Indeed, the UN was obligated to maintain an adequate presence in East Timor until such time as full independence became a viable option. With the overwhelming rejection of the special autonomy proposal, the Governments of Indonesia and Portugal, and the Secretary-General, were therefore committed to making arrangements for a peaceful and orderly transfer of authority in East Timor to the UN, and, ultimately, to enabling East Timor to begin a process of transition towards independence.

UN involvement in East Timor was also legalized by relevant UNSC Resolutions. First, in July 1999, the Security Council passed Resolution 1246 which established the UNAMET in order to organize the popular consultation. Following the overwhelming vote in favor of independence, and the breakdown of law and order, with rampaging pro-Indonesian militia killing pro-Independence local civilians, driving many from their homes, and forcing the evacuation of many UNAMET personnel, the UNSC again met to endorse UN action in East Timor.<sup>19</sup> Resolution 1264 determined the situation to be a threat to international peace and security, thereby justifying Chapter VII enforcement actions in the form of a multinational military intervention (the UN-mandated, Australian-led INTERFET) followed by a peacekeeping mission (UNTAET).<sup>20</sup> According to UNSC Resolution 1272 of October 25, 1999, UNTAET’s mandate consisted of the following elements:



- To provide security and maintain law and order throughout the territory of East Timor;
- To establish an effective administration;
- To assist in the development of civil and social services;
- To ensure the coordination and delivery of humanitarian assistance, rehabilitation and development assistance;
- To support capacity-building for self-government;
- To assist in the establishment of conditions for sustainable development.<sup>21</sup>

Likewise, with independence, and on the same day, UNMISET was established by UNSC Resolution 1410 of May 17, 2002 to succeed UNTAET, and to provide assistance to core administrative structures critical to the viability and political stability of East Timor.<sup>22</sup> Thus at each stage, the involvement of the UN in East Timor was sanctioned through the explicit endorsement of UNSC Resolutions, the highest source of relevant positive international law.

Questions remain as to the legality of UN PKOs in general, given that they are not explicitly authorized, or indeed even mentioned in the UN Charter, falling somewhere in between Chapter VI concerning peaceful settlement of disputes and Chapter VII enforcement actions. Article 24 (1) of the Charter, however, notes that “In order to ensure prompt and effective action by the United Nations, its Members confer on the Security Council primary responsibility for the maintenance of international peace and security, and agree that in carrying out its duties under this responsibility the Security Council acts on their behalf”. PKOs, therefore, can be seen as falling within the Security Council’s remit, and UNSC Resolutions as bestowing legality on such operations. There remains a further question as to the extent to which states must give their explicit consent to be bound by international law, and whether PKOs can only legally be instigated with the consent of the host state, when for much of the early period of UN operations in East Timor there was no national authority to give such consent. But here the UN did the best they could, receiving explicit endorsement from the two former national authorities, Portugal and Indonesia, and also consulting the general population of East Timor directly, although failing to incorporate the views of East Timorese resistance organizations such as the CNRT (*Conselho Nacional*

*da Resistência Timorese* or National Congress for Timorese Resistance) and FRETILIN (*Frente Revolucionária de Timor-Leste Independente* or Revolutionary Front of Independent East Timor).

The biggest legal challenge, however, is that UN missions in East Timor actually went beyond the traditional mandate of PKOs which could be legally endorsed by the process outlined above. Since the end of the Cold War, under the new aspiration for the role of the UN in peacekeeping, peacebuilding and even peace enforcement, UN peacekeeping operations were deployed in internal conflicts such as in Cambodia, El Salvador, Mozambique and Angola, and given a mandate of state-building with the usurpation of sovereignty and imposition of foreign (in the sense of not indigenous) governance structures without serious and rigorous legal scrutiny.<sup>23</sup> Transitional administration and state-building endeavors have been assigned to UN peacekeeping operations as if they were the equivalent of tasks given to the UN by the mandate of the UN Trusteeship Council in the decolonization process.

UN PKOs had traditionally been viewed as forces placed between parties to a conflict with the aim of preventing future break-downs of peace and security, and for monitoring cease-fire agreements. UN missions in East Timor, from the very first, went beyond this very limited scope of competence and operations. East Timor, in fact, was a manifestation of post-Cold War comprehensive or robust peacekeeping within which the UN was envisaged as playing a greatly expanded role. UN Secretary-General Boutros Boutros-Ghali had outlined these expanded expectations in his 1992 post-Cold War “An Agenda for Peace: Preventive diplomacy, peacemaking and peace-keeping” which even in the title hinted at a controversial commitment to a much greater role, and went into more details in the main body of the work.<sup>24</sup> In this document Boutros-Ghali examined preventive diplomacy, peacemaking and peace-keeping, to which he added “a closely related concept, post-conflict peacebuilding”.<sup>25</sup> This “wider mission” required greater involvement and commitment from the UN and its Members, and Boutros-Ghali noted that peace-keeping had only “hitherto” required the consent of all parties, implying that this was no longer the case.<sup>26</sup> Such a view towards new requirements of peacekeeping was diminished after the critical failure of UN peacekeeping in Somalia and former Yugoslavia, which forced Boutros-Ghali to issue a “Supplement to an Agenda for Peace” in 1995, reiterating the

importance of the consent of the parties.<sup>27</sup>

Despite the serious set-backs of early 1990s, UN involvement in East Timor certainly seemed to reflect a new interpretation of peacekeeping, not only due to the lack of consent from all parties involved, but also due to the dramatically expanded roles undertaken by UN missions. The “Agreement” between Indonesia and Portugal included “arrangements for a peaceful and orderly transfer of authority in East Timor to the United Nations”. In organizing the “Popular Consultation”, UNAMET was undertaking tasks which went beyond a peacekeeping remit. UNTAET was set up with an explicit PKO mandate, and took over internal security operations from INTERFET, but its role also went well beyond traditional PKO. Indeed, as outlined above, its role included extensive governance and state-building activities. Finally, UNMISSET’s role was to be explicitly focused on long-term development, administrative, and governance structures. In other words, UN peacekeeping missions in East Timor had travelled a fair distance from the original PKO concepts of keeping conflictual parties apart and monitoring cease-fires. Moreover, they were not equipped with sufficient/adequate experience, capacity, resources and strategies to carry out massive state-building mandates. This point is particularly acute when we shift our analysis to the legitimacy of the UN missions in the next section, as perceived legitimacy on the ground is linked to the ability of the mission to meet with the expectation of the people in the host country.

The process of linking security and development in policy-making in order to secure a more durable peace has become known as Security Sector Reform (SSR). According to UN Secretary-General Ban Ki-moon, SSR “is a core element of multidimensional peacekeeping and peacebuilding, essential for addressing the roots of conflict and building the foundations of long-term peace and development”.<sup>28</sup> Absent explicit legal endorsement of this mission growth, however, it may be necessary to examine UN peacekeeping missions in East Timor through the wider lens of legitimacy – i.e. to what extent the broadening of UN responsibility was normatively justifiable through the need to do the right thing, but also the extent to which UN operations did then *do* the “right thing” in terms of the missions own criteria and objectives, and laying the foundations of long-term peace and development. The following sections analyze the performance of UN peacekeeping missions in East Timor

from these normative perspectives.

### III. The Legitimacy of UN Operations in East Timor

The UN's own criteria for the mission's legitimacy are twofold: international legitimacy and domestic legitimacy, or perceived legitimacy on the ground.<sup>29</sup> International legitimacy can be interpreted as the willingness of the Member States of the UN continuously to support the mission (in both financial and normative terms), as well as to provide legal foundations for the operation in the form of a mandate or UNSC Resolutions. As such it is broader in nature than the strict legal positivism of treaties, UNSC Resolutions, and findings of the International Court of Justice, implying that we must also consult subsidiary sources of international law such as "international custom, as evidence of a general practice accepted as law"; the "general principles of law recognized by civilized nations"; and "judicial decisions and the teachings of the most highly qualified publicists of the various nations".<sup>30</sup> Perceived legitimacy on the ground can be understood as a result of an even more complex and subjective process. In this section, we shall address two components of perceived legitimacy on the ground: credibility (capacity to carry out the given mandate) and commission (permission given to undertake some of the responsibility of sovereignty). A third domestic normative category which may be termed legacy, or achievement in laying the foundations for long-term peace and development, will be extensively addressed in the final analytical section of this paper.

#### (1) Pre-2006 Crisis

Among the key processes listed above in UNTAET's mandate, indigenous capacity-building, particularly capacity related to peace and security, features strongly. The UNSC characterized the continuing situation in East Timor as "a threat to international peace and security", invoking Chapter VII and authorized UNTAET to "take all necessary measures" to fulfill its mandate, and charging its military component with, *inter alia*, providing security and maintaining law and order in the territory, ensuring delivery of humanitarian assistance, providing security for UN personnel and property, and disarming and demobilizing armed groups.<sup>31</sup> UN missions in

East Timor were regarded by some “as successful examples of externally-led security sector transformation in so far as they managed to establish a local police force and local security governance institutions”.<sup>32</sup> Indeed, as pointed out by Ludovic Hood, “over 100,000 refugees and internally displaced persons (IDPs) were resettled, a civil administration was built from scratch, free and fair elections were held, and an independent nation emerged from centuries of Portuguese colonial rule, 24 years of Indonesian military occupation, and the devastating violence of 1999”.<sup>33</sup>

Ultimately, however, the security sector infrastructure established by the UN administration under UNTAET, and clashes between the disparate forces delineated by UN policies at this time contributed to the collapse of the initial period of rule of law. As summarized by International Crisis Group (ICG), “four years after Timor-Leste gained independence, its police and army were fighting each other in the streets of Dili. The April-June 2006 crisis left both institutions in ruins and security again in the hands of international forces”.<sup>34</sup> ICG traces the roots of the 2006 violence to decisions taken on the security sector in the years before and after independence in 2002.<sup>35</sup> Upon Indonesian withdrawal, the only major functioning security forces on the ground in East Timor were associated with the independence struggle, most prominently FALINTIL (the *Forças Armadas da Libertação Nacional de Timor-Leste* or the Armed Forces of National Liberation of East Timor), which stayed in cantonment at Aileu in the run-up to the popular consultation, and for another seventeen months afterwards, while the UN wondered what to do with it.<sup>36</sup>

The unwillingness, or inability of the UN to train the former guerillas and integrate them into the new security sector was reflected by the fact that FALINTIL was not mentioned in UNSC Resolution 1272, but was, rather, “perceived as a problematic residue of the twenty-four year struggle for independence; a view which neglected the popular support and legitimacy FALINTIL enjoyed, at least in the eastern provinces”.<sup>37</sup> Initially, Xanana Gusmão, commander-in-chief of FALINTIL even stated on various occasions that East Timor would not possess armed forces upon independence.<sup>38</sup> Gusmão’s pacifist philosophy soon shifted however, when, in November 1999, the UN failed to give proper treatment to FALINTIL fighters who were voluntarily in cantonment in Aileu. The UN administration

missed the opportunity to disband FALINTIL, and at the same time stored up resentment in their ranks while focusing on developing the police forces.

According to UNTAET regulation 2001/22, which in turn was based on UNSC Resolution 1272, the East Timor Police Service (ETPS) came into being in August 2001 (later known as the PNTL, *Policia Nacional de Timor-Leste* or National Police of East Timor), but training and selection processes for police recruits, conducted by the UN civilian police (CIVPOL) contingent, had begun in early 2000.<sup>39</sup> In order to overcome shortcomings in indigenous personnel, UN administrators recruited over 350 Eastern Timorese former officers of the Indonesian National Police (POLRI) who were given four weeks transitional training. They also commenced a three-month basic training of the first class of new police cadets in Dili in March 2000, and all PNTL cadets underwent six months of field training in which they were supposed to receive on-the-job training from CIVPOLs in the relevant district or sub-district police station. By independence in 2002, over 1,700 PNTL officers had passed through the Police Academy, rising to approximately 3,000 by the end of the first phase of UNMISSET in May 2004.<sup>40</sup> According to Hood, however, the UN's recruitment of cadets for the PNTL "was marred by inadequate consultation with the East Timorese on the force's composition, excessive reliance on former employees of the Indonesian police forces in East Timor, and the use of unsatisfactory 'western' [i.e. Euro-American.] procedures for determining candidates' suitability".<sup>41</sup>

At the same time, Edward Rees has blamed the absence of the statutory security forces that can deal with the challenges they faced upon independence, and indeed, even the generation of these challenges, squarely upon the UN and the role it played in the "metamorphosis of the 24-year-old East Timorese anti-Indonesian resistance movement (both the guerrillas and urban activists) into a professional defence force and police service".<sup>42</sup> The plan for what would become the F-FDTL (*FALINTIL-Forças Defesa de Timor-Leste* or Defence Forces of East Timor) was based on a study commissioned by UNTAET to King's College, London which offered three force configuration options: [1] a relatively large and heavily armed military of 3,000-5,000 personnel (preferred by FALINTIL); [2] a force of 1,500 regulars and 1,500 conscripts; [3] a force of 1,500 regulars and 1,500 volunteer reservists.<sup>43</sup> UNTAET chose the third, with UNSC Resolution

1338 enshrining the decision in January 2001, and urging the international community to provide financial and technical assistance and “encouraging” UNTAET to play the coordinating role.<sup>44</sup>

In particular, Rees points to what happened when the UN administration did finally address the central problem when on February 1, 2001, FALINTIL was retired and the force which was to become F-FDTL was established. 650 former FALINTIL were absorbed, but more than 1,300 former FALINTIL guerrillas were excluded shocking many who had understood that simply by being FALINTIL that they would become F-FDTL. “It is important to note that the UNTAET-shepherded process whereby it was decided who would join the first F-FDTL battalion and who would be demobilized... - was the key turning point in the development of East Timor’s security sector. And the key mistake”.<sup>45</sup> The actions and inactions of the early UN administrations in East Timor had, therefore, resulted in a poorly-trained and supervised police-force with little political legitimacy and tainted with the inclusion of recruits of senior officers from the former cadre of POLRI, a large number of former FALINTIL guerrillas as well as those who fought on the clandestine front left out in the cold, and a military at odds with the central administration and resentful of the UN. The politicization of, and divisions between the police and the military were exacerbated by the fact that the PNTL consisted primarily of *Kaladis*, people from the western provinces of East Timor, and the first battalion of the F-FDTL was consisted of former FALINTIL members who were mostly *Firakus*, people from the eastern provinces.<sup>46</sup>

## (2) Post-2006 Crisis

The 2006 crisis highlighted the inadequate development of state institutions for East Timor following the withdrawal of international security agents in the post-transition period. In fact, the fragility of the situation in East Timor and the necessity of the UN mission to continue its support for the state-building endeavors were identified by UN officials on the ground on the eve of the 2006 crisis. Ironically, it was during deliberations at the UNSC on the UN footprint in East Timor that the 2006 crisis erupted. The Special Representative of the Secretary-General, Sukehiro Hasegawa, who was the head of the United Nations Office in Timor-Leste (UNOTIL), was in New

York to convince the UNSC to extend the mandate of UNOTIL, but the major donors felt that it was time for the UN to terminate its presence, i.e. the international legitimacy of the UN mission in East Timor had expired.<sup>47</sup> Despite the timely warnings and suggestions from cautious UN officials on the ground as well as some commentators, the international actors and the East Timorese authorities both failed to address the internal dimension of the security threat posed by rivalries among political groups.<sup>48</sup> The report of the Independent Special Commission of Inquiry for Timor-Leste, which was formed by the United Nations High Commissioner for Human Rights at the request of the Secretary-General, found the fragility of state institutions and the weakness of the rule of law to be underlying factors that contributed to the crisis.<sup>49</sup> In response, UNSC Resolution 1704 approved the establishment of a multidimensional, integrated mission (UNMIT). This time the official mandate specifically included “enhancing a culture of democratic governance”.

Despite the ongoing instability, multiple successful elections were held in 2007. Ramos-Horta won the presidential polls on May 9 as an independent, against the FRETILIN candidate, Francisco ‘Lu-Olo’ Guterres. Then, on June 30,<sup>50</sup> parliamentary elections brought former President Xanana Gusmão to power, this time as prime minister, as a result of post-election maneuvers. The 2007 elections did not provide an overall victory for Gusmão’s CNRT (*Congresso Nacional da Reconstrução Timorese* or National Congress for Timorese Reconstruction). Actually, CNRT only gained 18 seats out of 65 seats in the parliament, while FRETILIN won 21 seats, which forced CNRT to form an alliance with other political parties in Parliament. According to Matthew Arnold, the significance of the 2007 elections was that FRETILIN, which had ruled with a strong parliamentary majority for five years, surrendered the government.<sup>51</sup> In fact, according to the constitution, the leading party should form a government, if necessary, forming alliance with other political parties. Given that FRETILIN won 21 seats (29 per cent of votes) and Gusmão’s CNRT 18 seats (24 per cent of votes), FRETILIN was the leading party and therefore CNRT was not in the position to form an alliance to create a majority. Hence, from its inauguration the Gusmão administration was based on contested legitimacy.

With such fragile legitimacy, the Gusmão administration faced the 2008 alleged assassination attempt by a rebel group made up of former



“Petitioners” (army deserters or those illegitimately sacked by the authorities in the 2006 crisis, depending on one’s perspective). Gastão Salsinha, a leader of the Petitioner/rebel group, never accepted that there were plans for the assassination of the president and prime minister, much less a coup.<sup>52</sup> Indeed, much of the evidence for the conspiracy appears sourced with the administration and the media, and we may never know the truth. Thus the entire murky episode reveals competing claims of legitimacy and illegitimacy. But Damien Kingsbury also sees the events as having broken a critical stalemate in East Timor’s political life. For him, the death of the rebel group leader, former Major Alfredo Reinado, allowed the government to begin its program of relocating IDPs back to their homes free from the fear of insecurity generated by political instability and civil unrest caused by a movement by the Petitioners; it undermined the bargaining position of lawless forces; it distanced both the prime minister and the president from the taint of association with Reinado which had dogged them until that point; and it enhanced their legitimacy, particularly that of Ramos-Horta who was in a very real sense “blooded”.<sup>53</sup>

For Matthew Arnold, that the incidents of February 2008 did not devolve violently out of control as happened in April and May 2006 is the best sign that East Timor was in fact stabilizing, and it is “notable that after the cantonment of the Petitioners in February 2008 and the surrender of the mutineers in April, the political tensions surrounding them calmed, and there has been no further violence directly related to them”.<sup>54</sup> The government was mostly able to complete the relocation of IDPs and closing down their camps, paying families up to US\$4,000 to return to their places of origin, equivalent of around eight years’ average income, and represented a significant incentive to most of the IDPs. Likewise, without Reinado’s shadow over the proceedings, there was eventually progress in resolving the claims of the Petitioners, even if not through returning them to the military, but with their acceptance of what appeared to be a generous pay-out offer of US\$8,000 each to rebuild their lives.<sup>55</sup> Thus by the end of 2008 East Timor was showing real signs of internal stabilization, reflected in the Australian Defence Force drawing down 100 of its 700 personnel contribution to the ISF sent to quell the troubles of 2006.<sup>56</sup>

From 2009 to 2012 and the end of the UN missions, the national

institutions of East Timor assumed control with increasing confidence. Policing operations were gradually handed over to the PNTL, until with the final drawdown of UN and ISF, only some limited external logistical and training support has been required. As a result, and in the aftermath of the 2006 crisis, Petitioners (newly recruited soldiers under UNTAET against the wishes and expectations of FALINTIL) have been effectively eliminated from F-FDTL, and F-FDTL has successfully been brought under the formal control of Xanana Gusmão. Furthermore, by placing F-FDTL and PNTL under the auspice of the Ministry of Defence and Security, and acting as the Minister of Defence and Security, Gusmão succeeded in extending his influence over both statutory security forces. Both the F-FDTL and PNTL officially remained politically neutral during the recent election campaigns. The elections in both 2007 and 2012, however, had allowed Gusmão to form a government, and thus, it was not necessary for him to mobilize the statutory security forces illegally. It remains uncertain whether F-FDTL and PNTL now owe their allegiance to the democratically elected government, regardless of the party or parties which emerge victorious in elections.

### (3) Perceived Legitimacy on the Ground

In a relatively short period of time since regaining independence, East Timor has actually developed a comparatively good record of democratic competition and has firmly established many of the conditions for a working representative democracy. Indeed, in 2012, the year in which only the tenth anniversary of new-founded independence was celebrated, East Timor was able to hold three sets of free and fair elections (two presidential and one parliamentary) without significant disruption beyond stone-throwing incidents, appearing to consign its recent fractious and violent past to the pages of history, and allowing the withdrawal of UN peacekeepers to proceed as scheduled that December.<sup>57</sup> Credit should be given to FRETILIN for playing the role of healthy “loyal” opposition party, after its defeat in the 2012 elections forced them to realize that they no longer enjoy the nation-wide support of the people (FRETILIN got less than 30 per cent of votes).

The trajectory of East Timor’s security sector governance indicates that the UN missions in East Timor were able to navigate and support the indigenous leadership to carry out their state-building, in particular

bringing a certain level of stability on the ground.<sup>58</sup> It would seem that by 2012, UN missions in East Timor and their indigenous counterparts had at least overcome the majority of the shortcomings of the earlier peacekeeping missions in terms of providing national stability and physical peace and security. At the same time, however, a closer analysis of the SSR in East Timor reveals that the UN missions in East Timor were often at odds with their indigenous counterparts. Evidence shows that the incumbent leadership had began to circumvent, and, since the second electoral victory in 2012, marginalize UNMIT, as its presence was increasingly seen as irrelevant to security in East Timor, even to the point that Gusmão criticized the UN for “trampling on East Timorese sovereignty”.<sup>59</sup> For example, overall security tasks were undertaken by Australian-led ISF and Portugal’s GNR (*Guarda Nacional Republicana* or the National Republican Guard), not UNMIT. Furthermore, despite the fact that the UN suspended the policing responsibility of the government of East Timor and authorized UNMIT to undertake interim executive policing,<sup>60</sup> UNMIT was ineffective in resolving the problem of the rebel group that was allegedly said to have attacked the president and prime minister in February 2008.

Reflecting upon the lessons of the 2006 crisis in which F-FDTL and PNTL confronted each other, the East Timorese government merged the Ministry of Defence and Ministry of Interior and created the Ministry of Defence and Security under which both F-FDTL and PNTL were placed, which left both statutory security forces under the supervision of Gusmão (acting as the Minister of Defence and Security as well as the Prime Minister). This move was against the policy of the UNMIT, which drew a clear line between the military and the police and advocated for functional separation of these statutory security forces.<sup>61</sup> After the 2008 attack of the rebel group, the Council of Ministers established a joint command of F-FDTL and PNTL, and these statutory security forces conducted a joint operation to find Gastão Salsinha and his group, who fled in the mountains,<sup>62</sup> despite the fact that PNTL was technically under the command of UNMIT, and policing responsibility of the government of East Timor was suspended by UNSC Resolution 1704 in 2006.

One of the mandates of UNMIT was to assist the government in conducting a comprehensive review of the future role and needs of the

security sector. This mandate was given to UNMIT in 2006, but the review report, “Securing the Future”, came out only in 2011, 5 years after UNMIT started its activities. Considering that UNMIT withdrew from East Timor in December 2012, it would not be wrong to say that the actual SSR assisted by UNMIT was not based on results of the comprehensive review of the security sector.<sup>63</sup> That is to say, only when the UN assistance toward SSR was coming to a close, and the withdrawal of UNMIT was in sight, did the East Timorese government agree to the publication of “Securing the Future” created through UN assistance.

Under the “Supplement Arrangement,” UNMIT was also legally authorized to screen PNTL officers and certify those who meet the standards set by the UNMIT. This arrangement was formed not at the request of the government of East Timor, but UNSC Resolution 1704, which also raises legitimacy issues. The government of East Timor kept demanding the return of policing responsibilities from the UN,<sup>64</sup> as the “Supplement Arrangement” stipulated that it was the Police Commissioner of UNMIT that was given an authority to decide when policing responsibility should be returned to the government of East Timor. In fact, the government of East Timor circumvented this “Supplement Arrangement” and conducted autonomous policing operations on several occasions without the endorsement of the UNMIT. For example, in addition to the joint operation with F-FDTL mentioned above, the government of East Timor organized another joint operation in the western districts of Bobonaro and Covalima for several months.<sup>65</sup> Furthermore, PNTL formed a “Dili Task Force” to address the problems of youth gangs and martial arts groups in Dili two years before policing responsibility was formally returned to the government of East Timor.

In short, despite the nominal positive outlook, the credibility of UNMIT as a security provider and interim law enforcer in East Timor in the eyes of the indigenous leadership had started decaying as early as 2008. The government of East Timor did not perceive the ongoing hosting of UN missions to be to its advantage, and thus did not extend its consent to continuing intrusion of its sovereignty by UNMIT. The UN is well aware of this challenge of eroding legitimacy:

Experience has shown that the perceived legitimacy of a United Nations peacekeeping operation's presence may erode over time, if the size of the United Nations "footprint" and the behavior of its staff becomes a source of local resentment; or if the peacekeeping operation is not sufficiently responsive as the situation stabilizes. Peacekeeping missions must always be aware of and respect national sovereignty. As legitimate and capable government structures emerge, the role of the international actors may well need to diminish quickly. They should seek to promote national and local ownership, be aware of emerging local capacities, and be sensitive to the effect that the behavior and conduct of the mission has upon the local population.<sup>66</sup>

12 years of UN involvement may be seen as having brought East Timor an interim stability. Yet the initial mistakes by UNTAET in security sector governance caused serious damage not only to the human security of the people of East Timor, but also to the credibility and legitimacy of the UN as an interim administrator. During the UNMIT period, the UN sought to make up for its lost credibility. Its involvement in bringing national stability remained ineffective, however, due to eroded legitimacy in the eyes of local authorities and population.

The UN missions in East Timor had set themselves much more ambitious targets than the provision of short-term national stability and physical peace and security, in line with much broader definitions of SSR, encompassing as they did, reference to sustainable development and the equitable development of civil and social services. These broader targets in this case were established in part because of the normative principles of equity, fairness, and human rights, upon which foundations the UN rests, and the new state of East Timor being constructed by the UN in its image. A more pragmatic reason was, however, an awareness that unjust social and economic settlements and distribution could cause discontent which could then spill over into the security realm. According to the UN Public Administration Programme (UN PAP), governance and violent conflict are intimately related with most occurrences of the latter being "caused and sparked off" by failures in the former, while there is also a reverse causality with conflicts pulling down governance and public administration institutions and structures. The process

of reconstruction is not only long and highly expensive, but also requires careful analysis of the causes of the conflict, and the nature of the governance and public administration that should be put in place to avoid its recurrence.<sup>67</sup>

## V. Conclusion

This paper examined the issues of legality and legitimacy of the UN missions, which undertook a major state-building endeavor in East Timor. In doing so, given that East Timor is seen by many as something as a test case, or even benchmark for a new form of peacekeeping, it has demonstrated some important lessons for the formulation of future legal and normative constraints, as well as implementation strategies. While UNSC Resolutions and references to Chapter VII enforcement and executive mandates will surely satisfy the legal foundation of such UN operations, at the same time, if UN peacekeepers fail to maintain a healthy relationship with local authorities and they neglect to nurture and respect local leadership and ownership, UN legitimacy on the ground will soon be jeopardized. The current mandates of UN PKOs have been expanded, but their strategy and operational priorities still remain those of traditional ones, i.e., they are geared towards achieving short-term peace and physical security. The legitimacy of UN operations will be consolidated if human security imperatives are also addressed by the UN presence on the ground, planning for sustainable peace and development after the withdrawal of the UN.

Xanana Gusmão claimed that the UN intervention must bear some of the blame for the events of 2006 as it did not do an adequate job in preparing East Timor for independence, lacked respect for local culture, and the conspicuous consumption of the UN bureaucracy was an affront to the mass poverty surrounding them.<sup>68</sup> Mericio Akara, founder of Luta Hamutuk, concurs, asking where the money went, while noting that if the US\$9 billion emergency aid from 2000-2002 had been spent in accordance with good governance and planning, the ongoing problems would be nowhere near as severe. The main problem he argues is that it was spent on consumption rather than investment.<sup>69</sup> While West Timor's budget of US\$400 million stretches to cover 4 million citizens, in East Timor US\$1.3 billion is spent on 1.1 million citizens. Francisco M. de Vasconcelos blames the discrepancy

on too many international advisors.<sup>70</sup> Exclusionary practices and the lack of capacity-building increased reliance on outsiders and led to local wariness about imposed and unreliable systems while “new institutions have not tended to provide human security or protection”.<sup>71</sup> Meanwhile, Erik Paul notes that, “while Australia spent more than A\$2 billion on its military intervention, what was needed was an equivalent Marshall plan to put the country on its feet”.<sup>72</sup> Ines Martins of La’o Hamutuk likewise criticizes international organizations for paying attention to physical security when the biggest problems faced in East Timor were the other societal sectors such as colonial legacies, the need for justice, accountability of perpetrators, rural poverty and land rights.<sup>73</sup>

These accusations are not groundless, nor were they a surprise to the United Nations. Furthermore, it is now conventional wisdom that local ownership is essential for successful peacebuilding, but still the UN practice on the ground continues to exclude local stakeholders in the design of UN operations as it was the case in East Timor. The very fact that UN missions are carrying out a human security mandate such as SSR is regarded as a serious infringement upon state sovereignty by a host nation; therefore, the UN legitimacy on the ground can easily be eroded if it is not handled with care. It can be argued that state-building assistance by the series of UN missions in East Timor was regarded as usurpation of sovereignty, and that as human security challenges were left unresolved, long-term prospects for peace and development remain uncertain, and the legitimacy of UN missions open to question, if not their legality. The UN needs to excel in midwifery, and should master strategic planning to assist local stakeholders in addressing human security challenges. This is not only the most relevant normative justification for UN involvement in post-conflict peacebuilding, but also it is a practical way to overcome the problem of fragile legitimacy in international state-building assistance.

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<sup>1</sup> Officially the Democratic Republic of Timor-Leste, and acknowledged as such or by the shortened form Timor-Leste by the international community as represented by the United Nations. Commonly known in English, however, as East Timor, and referred to as such by the United Nations during peacekeeping missions (with the exception of UNMIT). From this point on, therefore, East Timor will be used except when other

sources are referenced.

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- <sup>4</sup> Note that this figure is wrong. According to UNAMET, 451,792 voters registered and 98 percent of registered voters went to the polls. The result was 94,388 (21.5 percent) accepted, and 344,580 (78.5 percent) rejected the proposed autonomy (i.e. preferred independence). Hence, 98 percent was the voter turnout, and 78.5 percent voted in essence for their independence. The Department of Public Information, *East Timor, UNTAET, Background*, UN, May 2002. <http://www.un.org/en/peacekeeping/missions/past/etimor/UntaetB.htm> (accessed on November 10, 2014).
- <sup>5</sup> UN Foundation, “United Nations Peacekeeping Success Story: East Timor celebrates first independence day” Washington D.C., May 31, 2002. <http://www.unfoundation.org/news-and-media/press-releases/2005-1997/2002/un-peacekeeping-succes-story-east-timor.html> (accessed on October 5, 2014).
- <sup>6</sup> Markus Benzing, ‘Midwifing a New State: The United Nations in East Timor,’ in A. von Bogdandy and R. Wolfrum, (eds.), *Max Planck Yearbook of United Nations Law*, 9, 2005, pp. 295-372, 297.
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- <sup>11</sup> Belun and the Asia Foundation, *Tara Bandu: Its Role and Use in Community Conflict Prevention in Timor-Leste*, June 2013.
- <sup>12</sup> Asahi, p. 4.
- <sup>13</sup> UN Department of Peacekeeping Operations and Department of Field Support, *United Nations Peacekeeping Operations Principles and Guidelines*, 2008.



- <sup>14</sup> *Ibid.*, pp. 36-37.
- <sup>15</sup> Boris Kondoch, “The United Nations Administration of East Timor” *Journal of Conflict and Security Law* Vol. 6 No. 2, 2001, pp. 245-265, 247.
- <sup>16</sup> *Ibid.* p. 247.
- <sup>17</sup> *Agreement Between the Republic of Indonesia and the Portuguese Republic on the Question of East Timor* New York, May 5, 1999. <http://etan.org/etun/agreemnt.htm> (accessed on October 8, 2014).
- <sup>18</sup> *Ibid.* Emphasis on relevant sections of Article 6 added by authors.
- <sup>19</sup> Indonesia formally recognized the outcome of the consultation but some elements on the ground refused to do so.
- <sup>20</sup> The handover of command of military operations from INTERFET to UNTAET was completed in February 2000.
- <sup>21</sup> Peace and Security Section of the Department of Public Information in cooperation with the Department of Peacekeeping Operations, United Nations 2001, *United Nations Transitional Administration in East Timor* (UNTAET). <http://www.un.org/en/peacekeeping/missions/past/etimor/etimor.htm> (accessed on October 5, 2014).
- <sup>22</sup> *Ibid.*
- <sup>23</sup> Simon Chesterman, *You, the People: The United Nations, Transitional Administrations and State Building* (Oxford: Oxford University Press, 2004), pp. 236-257.
- <sup>24</sup> Boutros Boutros-Ghali, “An Agenda for Peace: Preventative diplomacy, peacemaking and peace-keeping” Report of the Secretary-General, A/47/277, June 17, 1992.
- <sup>25</sup> *Ibid.* paragraph 5.
- <sup>26</sup> *Ibid.* paragraphs 16 and 20.
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- <sup>29</sup> UN, *United Nations Peacekeeping Operations Principles and Guidelines*, pp. 36-37.
- <sup>30</sup> ICJ (entered into force on 26 June 1945), Statute of the International Court of Justice, available at: <http://www.icj-cij.org/documents/index.php?p1=4&p2=2&p3=0> (accessed on October 5, 2014).
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<sup>35</sup> *Ibid.* p. 4.

<sup>36</sup> *Ibid.*

<sup>37</sup> Kocak, p. 9.

<sup>38</sup> Kenji Isezaki, *Busoukaijo (Disarmament)*, (Tokyo: Koudansha) 2004.

<sup>39</sup> International Crisis Group, "Timor-Leste: Security Sector Reform", p. 8.

<sup>40</sup> Hood, p. 64.

<sup>41</sup> *Ibid.*

<sup>42</sup> Edward Rees, "The UN's failure to integrate Falintil veterans may cause East Timor to fail", *ONLINE opinion*, September 2, 2003. <http://www.etan.org/et2003/november/23-30/00un.htm> (accessed on October 13, 2014).

<sup>43</sup> Centre for Defence Studies, *Independent Study on Security Force Options and Security Sector Reform for East Timor*, King's College London, August 2000.

<sup>44</sup> International Crisis Group, "Timor-Leste: Security Sector Reform", p. 4.

<sup>45</sup> Rees, "The UN's failure to integrate Falintil veterans".

<sup>46</sup> Kocak, p. 9.

<sup>47</sup> Sukehiro Hasegawa, *Primordial Leadership: Peacebuilding and National Ownership in Timor-Leste* (Tokyo: UNU press, 2013).

<sup>48</sup> Selver B. Sahin, "Building the State in Timor-Leste," *Asian Survey*, 47 (2), 2007, pp. 250-267, 254.

<sup>49</sup> *Ibid.* p. 263.

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<sup>51</sup> Matthew B. Arnold, "Challenges Too Strong for the Nascent State of Timor-Leste: Petitioners and Mutineers," *Asian Survey*, 49 (3), 2009, pp. 429-449, 434.

<sup>52</sup> Mark Davis, "Timor-Hunt for the Truth", *SBS ONE*, April 16, 2008. <http://www.sbs.com.au/news/dateline/story/timor-hunt-truth> (accessed on November 27, 2014); Patrick O'Connor, "East Timor: Plot thickens as leader of alleged 'coup' attempt surrenders", *World Socialist Web Site*, May 2, 2008, <https://www6.wsws.org/en/articles/2008/05/etim-m02.html> (accessed on November 27, 2014).

<sup>53</sup> Damien Kingsbury, "East Timor in 2008: Year of Reconstruction," *Southeast Asian Affairs*, 2009, pp. 357-369, 360-361.

<sup>54</sup> Arnold, p. 449.

<sup>55</sup> Kingsbury, pp. 361-362.

<sup>56</sup> *Ibid.* p. 367.

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- <sup>66</sup> UN, *United Nations Peacekeeping Operations Principles and Guidelines*, pp. 36-37.
- <sup>67</sup> UN PAP (United Nations Public Administration Programme) (2012) *Governance and Public Administration*. <http://www.unpan.org/DPADM/AboutUs/OurWorkAreas/GovernanceandPublicAdministration/tabid/538/Default.aspx> (accessed on October 14, 2014).
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- <sup>72</sup> Paul, p. 113.
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