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# T I M O R L I N K

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Special issue:  
The autonomy debate

## Autonomy: Opportunity or threat?

This issue of *Timor Link* departs from our usual format in order to discuss the most pressing question facing East Timor: Indonesia's offer of autonomy. The report on the EU Troika visit to East Timor in June says that the autonomy offer has not had a balanced airing. But it was to be discussed at the forthcoming UN-sponsored meetings of Portuguese and Indonesian high officials in New York. The final communiqué from the last round of talks between the Portuguese and Indonesian foreign ministers announced that these discussions would end by the first half of 1999 with an autonomy model developed for East Timor. The communiqué also noted that these discussions would in no way prejudice the basic position of either party, as Portugal is bound by its own constitution to ensure the right of the East Timorese people

to self-determination.

The Timorese, the solidarity movement, NGOs and governments have responded to the discussion in different ways. But what is the special status likely to entail and what would be the implications of accepting limited autonomy for East Timor? The articles in this issue of *Timor Link* reflect varying strands of opinion, analyse the legal implications, and describe two experiences – from Aceh and Puerto Rico – of the status which Indonesia is offering East Timor. The article on Aceh shows that special



East Timorese demonstrators calling for the release of Xanana Gusmão. Representatives of five Timorese political parties have already issued a statement rejecting the offer of autonomy.

status for a particular territory is not a new idea in Indonesia; it may be that the consequences for the Timorese of accepting this status would not be new either.

## Britain's EU presidency

**The six-month British presidency of the European Union ended on 30 June 1998. CIIR's MILENA PIRES assesses the achievements and limitations of the British EU presidency's actions on East Timor and stresses the need for follow-up.**

In relation to East Timor, the British presidency will be best remembered for a three-day visit to the territory by three EU ambassadors in June 1998 (see *Timor Link* 44, August 1998). The full report of the visit has not been made public, but the conclusions have been released and they contain the strongest position the European Union has ever taken formally.

The report recognises the importance of bringing the East Timorese directly into the peace process; it calls for a ceasefire; and it calls on the Indonesian government to withdraw troops from East Timor. It also urges the international community to be more active and to provide more support for dialogue and the maintainance of stability. However, the conclusions stop short of a firm EU commitment to achieve any of these things.

### Peacekeeping role

For a ceasefire to succeed, the international community must put in place a UN peacekeeping force to provide safety and stability for all the Timorese. The international community must also step up the political pressure on the Indonesian government to withdraw its military presence and release all Timorese political prisoners.

In CIIR's view, the British government needs to press the European Union to go further than the action recommended in the report, by supporting a referendum, as called for by the East Timorese pro-independence movement. This should give options on independence, integration and association with another state and would provide a means for the East Timorese to exercise their right to self-determination.

### At the UNCHR

Earlier this year, at the UN Commission on Human Rights, the British government, on behalf of the European Union, negotiated a last-minute consensual statement, much weaker than the draft resolution it had promised to support. Foreign office officials have attempted

to justify this by claiming that a process of engagement is more useful than yet another condemnation of Indonesia.

The Foreign and Commonwealth Office (FCO) has informed CIIR that one recommendation in the consensual statement, the visit to East Timor of the UN Working Group on Arbitrary Detention, is due to be implemented towards the end of the year. However, public pressure must be maintained to ensure that the visit actually takes place. Indonesia has ignored or obstructed similar agreements in the past, for example, the visit by the UN Special Rapporteur on Torture which was agreed to in 1996.

### Further action

Many initiatives undertaken by the British presidency require further action. Some of these are the responsibility of the current — Austrian

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—presidency, for example, some aspects of the implementation of the Troika visit recommendations. However others, such as the UN Human Rights Commission consensual statement, are clearly the responsibility of the British authorities.

Meanwhile, developments in the talks between Portugal and Indonesia, under the auspices of the UN secretary-general, are moving fast. As a

direct result of agreements reached during the last round of tripartite talks, Portugal, Indonesia and the UN are discussing autonomy models. There is very strong East Timorese opinion against this. The European Union and its member states, including Britain, must monitor these developments and act to ensure that the East Timorese are able to exercise their right to

self-determination.

According to FCO officials, however, the British government's scope for action is limited because its position is to follow the lead of the United Nations. It is therefore not the FCO's process to run. An ethical foreign policy would suggest a more proactive approach on East Timor.

## A framework for political autonomy

**President Habibie's offer of autonomy for East Timor deserves serious consideration, argues MICHAEL SALLA of the American University's School of International Service.**

The resignation of President Suharto has ushered in a period of reform never seen before in Indonesia. The new administration under President Habibie is making genuine efforts to make the Indonesian political and economic system more representative, transparent and accountable. The government, the armed forces (ABRI) and the Indonesian public are also beginning to re-evaluate ABRI's proper role in politics and society more generally. President Habibie has abandoned former President Suharto's position that no special status is needed for East Timor. Habibie has offered as a solution to the conflict a wide degree of political autonomy, provided the East Timorese accept Indonesian sovereignty.

The political momentum created by Suharto's resignation, the impact on Indonesia of Asia's financial crisis, and the important change in Indonesia's position on East Timor has led to optimism that the East Timor problem will soon be settled. Many in the East Timorese community are hoping that the decolonisation process halted by Indonesia's invasion will eventually be resumed under UN auspices and that the East Timorese will exercise their internationally recognised right to self-determination through a referendum. And the upsurge of pro-independence demonstrations in Dili after Suharto's resignation indicates that in a referendum, the majority, given the option, would probably vote for independence.

The main problem with this optimistic scenario is that it underestimates Indonesia's capacity and resolve to hold on to the territory. While East Timor does drain development funds from the Indonesian central government, which can ill afford it in the current financial crisis, Indonesia is sufficiently large and powerful to maintain its military presence in East Timor. The Indonesian armed forces' extensive financial holdings in East Timor and, more importantly, the oil being extracted from ample reserves in the Timor Gap, considerably offset the cost of that military presence.

### ABRI's determination

The backbone of the determination to hold on to East Timor comes from ABRI. While the

generation of officers who rose to prominence partly owing to military service in East Timor is retiring, strong sentiment remains within ABRI as an institution that East Timor should not be allowed to leave Indonesia. The argument ABRI uses most often is that Indonesia would disintegrate if East Timor became a precedent for other regions, for example Irian Jaya (West Papua), Aceh, and so on.

Such an argument is weak, since East Timor has an international status these other regions simply do not enjoy, and was never part of the Dutch East Indies. The real problem for ABRI is one of institutional identity. ABRI has invested much of its prestige in East Timor and the present generation will not let the territory slip away, thereby dishonouring the memory of respected former superiors who still wield influence behind the scenes. Also, to let East Timor go would be to admit tacitly that Indonesian military intervention in the territory was wrong. This would cast an unwelcome light on those responsible for making the decision to intervene.

ABRI is also sensitive to the general evaluation of its traditional role in Indonesian society now taking place, which will almost certainly reduce its political influence. Letting East Timor go would be seen as further undermining ABRI's status.

### Direct talks

Indonesia has the capacity and resolve to hold on to East Timor despite the present era of political and economic reform, and the current financial crisis. Nevertheless, the olive branch of political autonomy that has been extended towards the East Timorese needs serious consideration. The gesture opens up a profound political dilemma for the East Timorese community. So far, the consensus has been that any solution will come through the dialogue between Portugal and Indonesia being conducted under UN auspices. From the perspective of the East Timorese diaspora, and many within the territory, Portugal represents the interests of the East Timorese. This made direct negotiations between East Timorese political leaders and Indonesia unnecessary and also unlikely, given the political differences that would emerge between externally based East Timorese parties if such negotiations were ever begun.

Despite Portugal's genuine attempt to represent East Timorese interests, it is home to a large diaspora that does not want to compromise its long held position on East

Timor. This makes it difficult, if not impossible, for Portugal to stand for anything less than a resumption of decolonisation under UN auspices. Political autonomy is thus viewed as a compromise that Portugal is unwilling and unable to make given the expectations of its political constituency. However, the present era of reform has put into question Timorese reluctance to engage in direct discussions with Indonesia.

### Tradeoffs

What form would political autonomy take if it was to offer a solution to the East Timor conflict? Political autonomy is a power-sharing arrangement where a regional or local government shares or divides with a central government a range of governmental powers. Political autonomy solutions typically have legislative and executive bodies at the regional level similar to the state governments in federal systems such as those of the United States, Australia and Canada.

In the case of East Timor, political autonomy would probably mean that the Indonesian government maintains control over defence, foreign affairs and currency, while a regional government would control most other areas. A police force controlled by an East Timorese regional government, and most probably made up of Timorese, would ensure law and order. An autonomous East Timor, however, would still remain part of a sovereign Indonesia. There are therefore a range of political tradeoffs that both sides would have to make if political autonomy were to be accepted as a solution. Recent cases of conflicts where political autonomy was adopted as a solution — for example, Northern Ireland and Palestine — are characterised by intense debate that has led to strong divisions emerging and violent opposition to the agreement. A political autonomy solution for East Timor would probably lead to similar debates and possible opposition.

Among those East Timorese agreeing to political autonomy would be some who see it as a 'victory' on the road to the final goal of independence. At the same time, there would be those in the Indonesian government who would view it as a 'victory' since Indonesian sovereignty would have been accepted. This is an important ingredient of a political autonomy arrangement created to settle a conflict. Both sides can simultaneously claim the solution as a 'victory', thereby

defusing criticism from more extreme factions of their respective political constituencies that do not want to compromise.

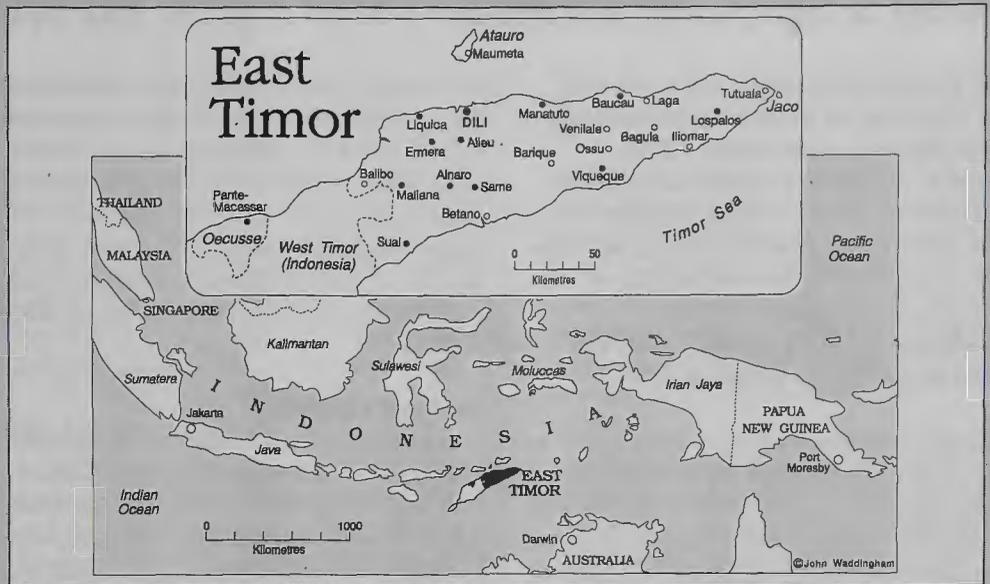
While it remains to be seen what shape any political autonomy agreement for East Timor would take, it is worth exploring what might be its key ingredients. A series of workshops held at the American and Uppsala universities over 1997-98 explored a range of political autonomy solutions. East Timorese participants have formed an East Timor Study Group that is currently developing a detailed political autonomy framework. Among the principles the Study Group proposed are four which I believe could underpin a political autonomy solution that enables both sides to claim the necessary 'victory'. These principles are the following:

- the East Timorese regional government would have powers of legislation and implementation in all areas other than defence, foreign affairs and currency;
- a consensual 'review' of both the agreement and its implementation after a specified period of time;
- a jointly appointed independent body that would arbitrate disputes between the East Timorese regional government and the central government;
- a referendum on the agreement where by those residing in East Timor would have the simple choice of either accepting or rejecting the agreement.

The last principle, concerning a referendum, would be crucial for legitimising the agreement among the East Timorese and internationally.

A solution to the East Timor conflict based on political autonomy offers a means to alleviate repression, poverty and instability for those still residing in East Timor. The price to be paid for this, however, is acceptance of Indonesian sovereignty. This dilemma posed by the Indonesian government's new flexibility is gradually being brought to light by the inability of Portugal to change its basic bargaining position over East Timor. For the first time in the conflict, the East Timorese community faces the challenge of finding consensus in order to play a direct role in settling the conflict. Much remains to be done to make all parties involved in the East Timor conflict aware of the advantages of a political autonomy solution based on principles such as those described above. The East Timor Study Group is presently pursuing this task. If proper and immediate attention is given to addressing the desperation of many still resident in East Timor, I am confident that a negotiated settlement to the conflict can soon emerge.

*Professor Michael Salla is working on a special autonomy project of the Peace and Conflict Resolution Programme, School of International Service, American University.*



## EAST TIMOR: Time for change

Timor, area 7,400 square miles, is one of the easternmost islands of the Indonesian archipelago and lies 300 miles north of Australia, its nearest neighbour. The western part of the island, formerly a Dutch colony, belongs to Indonesia, whereas East Timor was for more than 400 years a Portuguese colony.

In 1974 Portugal began decolonising East Timor. Newly formed political parties discussed options for the future. The Timorese Democratic Union (UDT) initially favoured federation with Portugal but then formed a coalition with Fretilin, the nationalist liberation movement, to demand independence. A small third party, Apodeti, was used as a vehicle for Indonesian propaganda in favour of integration.

On 11 August 1975 the UDT staged a coup to pre-empt Indonesian threats to intervene if Fretilin came to power. In the ensuing civil war 1,500 people lost their lives. By September 1975, however, Fretilin was in control of virtually all of Portuguese Timor, following the defection of Timorese colonial troops to the liberation movement's side.

Indonesia, like the United States, was worried by the proximity of an independent state with radical policies and continued to threaten East Timor, despite previous assurances that Jakarta would respect the right of the East Timorese to independence. In September 1975 Indonesia closed West Timor to journalists and on 7 December it launched a full-scale invasion of East Timor with the knowledge of the United States and the encouragement of Australia. After a fraudulent 'act of self-determination' in May 1976, East Timor was declared to be Indonesia's '27th Province' in July 1976. The United Nations regards the annexation as illegal.

The invasion and annexation of East Timor has been brutal: up to 200,000 people, a third of the population, have died as a result of Indonesian rule. But the majority of Timorese have not accepted subjugation: Indonesia has

been unable to eliminate the desire of the East Timorese for self-determination and an armed resistance movement still remains in the hills.

Although the invasion has been condemned by successive UN resolutions, the international community has done little or nothing to implement them, given the major economic and geopolitical interests of the United States, Japan and particularly Australia in the region. Indonesia's crucial strategic location and regional status – it has the world's fifth largest population, and large reserves of oil and other natural resources – have all encouraged the world to downplay East Timor's agony.

In recent years, however, several events have combined to break East Timor's isolation and bring its continued occupation to international attention. In 1989 the Pope visited the territory and in 1991 the planned visit of a parliamentary delegation from Portugal, still considered the administering authority of East Timor by the UN, created huge expectations of change. To great disappointment in East Timor, the delegation was forced in October 1991 to call off its visit.

On 12 November 1991 Indonesian troops shot and killed up to 300 East Timorese civilians during a funeral procession held at the Santa Cruz cemetery in Dili, the East Timorese capital, for a victim of repression. Witnessed by foreign journalists, the Santa Cruz massacre provided indisputable evidence of Indonesian atrocities.

The Santa Cruz massacre has forced governments around the world to criticise Indonesia's brutality, injecting new impetus into diplomatic efforts to bring about a solution to East Timor's suffering. Since 1983 the UN secretary-general has been entrusted with the achievement of a settlement to the dispute; and with the post-Cold War era providing a new international climate for negotiations, Indonesia faces increased pressure to reach a solution with Portugal and the East Timorese under the auspices of the UN.

# Aceh's special status

**In an attempt to persuade the world that East Timor will be treated magnanimously as the Republic of Indonesia's 27th province, the Habibie regime has offered the Timorese special status. Reference is often made to the special status granted to Aceh, a province on the northern tip of Sumatra, as the model. CARMEL BUDIARDJO of TAPOL explains what this status meant for the people of Aceh.**

Special status was granted to Aceh in 1957 to fend off a Muslim rebellion that had raged in the province for years. The Acehnese were allowed to take control of three areas: religion, customary law and education. This ended the rebellion but in the mid 1970s, a new rebellion erupted, this time under the Free Aceh Movement or GAM. By this time Aceh, which is very rich in natural resources, was being extensively exploited. It had already become a key source of foreign exchange for Jakarta, accounting for more than 10 per cent of budget receipts. Hardly any of this was ploughed back into the province.

Apart from a brief period in 1949-50 when the Republic had a federal constitution, Indonesia has always been a strongly centralised state. After military rule was established in 1965, centralisation became even more oppressive and Aceh's special status became totally meaningless. But a new kind of special status was to emerge in 1989 when the GAM rebellion erupted for a second time after a period of inactivity.

## Low-intensity conflict

With GAM enjoying widespread support in the countryside in north and east Aceh and in Pidie district, the Indonesian army resorted to a campaign of unparalleled brutality that continued relentlessly for the next decade. In desperation at the failure of the regular troops to suppress GAM, the army designated Aceh a military operational region or DOM (*daerah operasi militer*) under which combat troops with special intelligence capabilities were brought in to deal with the insurgency. Aceh became a classic example of low-intensity conflict as the way to quell real or perceived support for the rebels. The troops were mostly from Kopassus, the elite corps, who waged a campaign of terror against the Acehnese.

Although DOM was never mentioned at the time outside Aceh, it became the dominant feature of life for the people. It can be compared to the special military status of East Timor, where a special military command called Kolakops was put in charge. Even after Kolakops was disbanded, East Timor has continued to be a military project.

As in East Timor, the DOM forces in Aceh, primarily Kopassus, were a law unto themselves. They established their own local command posts known as SATIS, for *satuan tugas strategis dan taktis* (strategic and tactical task force) where thousands of people were taken into custody, beaten, tortured and in many cases put to death

and buried in unmarked graves. Under DOM, the army launched a series of military campaigns known as 'Red-Net Operations' which continued until earlier this year. The primary targets were villagers accused of being GAM supporters. Civil servants were also caught in the 'net', as were academics. Dozens of people were put on trial but they represent a tiny fraction of the victims of DOM.

## The West's silence

At the time, little was known about the terrible happenings in Aceh apart from reports issued in 1992 and 1993 by Asia Watch in the United States and Amnesty International. TAPOL reported extensively in its *Bulletin* about events in Aceh over a three-year period and assisted Acehnese representatives abroad to make representations to the UN human rights commission and sub-commission in Geneva. But the western powers were too busy exploiting Indonesia's natural resources to bother about the atrocities, of which they must have been well aware.

The ousting of Suharto lifted the lid off years of sufferings in Aceh. The first to speak out were women whose husbands had disappeared, and who testified that they had been raped by the

troops as a form of intimidation or in an attempt to force them to disclose the whereabouts of men the military were hunting.

## Mass graves

In the past few weeks, the locations of at least a dozen mass graves have been disclosed. Two fact-finding missions, one from the Indonesian Parliament and one from the National Human Rights Commission, have visited Aceh. They have been inundated by hundreds of people eager to testify about their own sufferings or about the shootings they saw or the torture centres in their neighbourhoods where the screams of victims were heard day and night. Thousands of disappearances and deaths have now been confirmed. The toll may eventually be in the tens of thousands.

The true meaning of Aceh's special status is now coming to light. It has nothing to do with letting local people run their own affairs, but everything to do with incessant military operations aimed at bringing a reluctant region to heel.

*Carmel Budiardjo is the director of TAPOL, the Indonesia Human Rights Campaign.*

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# Autonomy and the law on self-determination

**With its offer of special status for East Timor, the Indonesian government has at last conceded that the territory's status is not simply its internal affair. This article assesses the proposal in the light of UN law on self-determination.**

Indonesian President BJ Habibie's basic stance on the question of East Timor seems to justify the statement, by someone in an Internet newsgroup, that he is no more than a 'Suharto'. In his own words or through the mouth of his (and Suharto's) foreign minister, Ali Alatas, he keeps saying, as Suharto did, that East Timor is an integral part of Indonesia, and that its annexation is irreversible. So far, nothing new.

What is new is that Habibie and Alatas have, albeit unwillingly, raised the question of the territory's political status. They have been forced to do so by strengthening East Timorese resistance to the occupation, growing solidarity with the Timor cause among the Indonesian democratic opposition and signs that the United States and Western Europe are reviewing their position on the issue. For more than 20 years East Timor was, according to the dictatorship in Jakarta, an internal affair of Indonesia. They were at most prepared to discuss the human rights situation there, although this did not mean that they were willing to improve it. Whenever Suharto and Alatas mentioned East Timor, their emphasis was on the so-called development Indonesia was bringing to the 'province'.

Weeks ago, Habibie and Alatas suddenly came up with a new proposal: a special autonomous status for the territory and the liberation of resistance leader Xanana Gusmão and other Timorese prisoners if Portugal and the United Nations would accept the integration of East Timor into Indonesia. Pure blackmail, including an inadmissible use of prisoners of war as hostages. But the fact remains that with such a proposal Jakarta was recognising that East Timor is not an 'internal affair of Indonesia' but an international matter and that the status of the territory is not as 'irreversible' as it had previously affirmed. Portugal refused the proposal — and so it should have done. Xanana did the same. Stating that he would not accept his release on such conditions, he reinforced his image as the 'Timorese Mandela'.

On 4 and 5 August, during meetings in New York with Portuguese foreign minister Jaime Gama, Alatas gave up part of the blackmail. He agreed that the discussions on the proposed special status could be held without prejudice to basic positions of principle. But Habibie and Alatas kept their stance concerning Xanana. This must be strongly denounced. Would the international community have accepted that instead of an unconditional release of Mandela, de Klerk had made it subject to the world's acceptance of the apartheid system?

We may, therefore, be on the eve of a new situation: East Timor with 'a special status, based

on wide-ranging autonomy', as the UN communiqué on the foreign ministers' meetings says. The question is: autonomy as a definitive solution, as Habibie and Alatas view it, or autonomy as a first step on the way to a referendum, as the Timorese resistance and Portugal wish? Does autonomy for East Timor without prior consultation with the people of East Timor comply with the UN law on self-determination?

## The Espiell findings

In 1979, by mandate of the UN Commission on Human Rights, the Economic and Social Council and the Sub-Committee on Prevention of Discrimination and Protection of Minorities, Héctor Gros Espiell wrote a study on the right to self-determination which became one of the most important reference works on the subject. This is a suitable moment to recall some of the findings of Special Rapporteur Espiell on the scope and legal nature of the right of peoples under colonial and alien domination to self-determination and to apply them to the Timor situation. We should also bear in mind the 1976 UN Decolonisation Report on East Timor and the 10 UN Security Council and General Assembly resolutions on the question.

For the case of East Timor, the key findings of Espiell's report are the following:

The right of peoples [...] to self-determination is not contingent on any kind of condition or requirement. In particular, resolution 1514 (XV) precludes any opposition to the exercise of the right to self-determination on the pretext that a people has not reached a sufficient high level of development to lead an independent existence.

*p10, para 62*

There is no legal basis for denying the right to self-determination on the ground that the population of which a people is composed, or the territory which it inhabits, is small.

*p16, para 108*

These findings destroy the Indonesian arguments that the territory is too backward for independence and too small to be economically viable.

The exercise and implementation of the right of peoples to self-determination presupposes the free and genuine expression of their will. [...] [I]t means that the will of the people must be expressed through popular consultation accompanied by all the safeguards necessary to ensure freedom of expression for the people concerned. [...] A people under colonial and alien domination is unable to express its will freely in a consultation, plebiscite or referendum organised and controlled exclusively by the colonial and alien power.

*pp10-11, para 65*

This finding demolishes the worn-out Indonesian assertion that the Timorese have already exercised their right to self-determination through a 'decision on integration' by a so-called Representative Popular Assembly, an assembly which was convened by the occupier. It shows also that Habibie's new proposed solution of autonomy without popular consultation has absolutely no legal value. Only through a UN-supervised referendum will the Timorese exercise their right to self-determination.

The right to secession from an existing State Member of the United Nations does not exist as such [...] since to seek to invoke it in order to disrupt the national unity and the territorial integrity of a State would be a misapplication of the principle of self-determination contrary to the purposes of the United Nations Charter. However, [...] if the national unity claimed and the territorial integrity invoked are merely legal fictions which cloak real colonial and alien domination, resulting from actual disregard of the principle of self-determination, the subject people or peoples are entitled to exercise, with all the consequences thereof, their right to self-determination.

*p14, para 90*

Indonesia's attempt to portray the East Timorese resistance as a 'separatist movement' (wording then repeated by international media, often unintentionally) is therefore logical in Jakarta's strategy but incorrect according to international law.

[...] [T]he right of peoples to self-determination necessarily implies the right of peoples to struggle by every means available to them, when the possibilities of obtaining recognition of the right to self-determination by peaceful means have been exhausted, against colonialist Powers which suppress their aspirations to freedom and independence.

*p14, para 93*

The struggle of peoples for their self-determination in face of colonial and alien domination gives rise to an international armed conflict and does not create a situation of civil war.

*p14, para 96*

In the prosecution of this struggle, the individuals fighting for the self-determination of their people under colonial and alien occupation must be protected by the rules of humanitarian law [...].

*p15, para 98*

It is clear that the trial of Xanana Gusmão under Indonesian criminal law was one more unlawful act of East Timor's occupying power. Xanana and other members of the Timorese armed

*continued on page 6*

resistance are not criminals as Habibie and Alatas maintain, but prisoners of war, and thus protected by the Geneva Convention relative to the Treatment of Prisoners of War. Particularly at this stage, Nanana should be immediately and unconditionally released to enable him to participate in the UN-sponsored talks.

The international community and all States not only have a legal duty to refrain from opposing and impeding the exercise of the right to self-determination, but also are under a positive obligation to help in securing its realisation, by promoting its exercise and by co-operating in every possible way to ensure that peoples under colonial and alien domination achieve their independence.

*p10, para 61*

[T]hird States are not bound by the duty of non-intervention in the conflict, on the contrary there is a positive legal obligation to assist a people struggling against colonial domination.

*p15, para 97*

[H]elp, support and assistance must also be provided by the whole United Nations system of organizations.

*p15, para 103*

After 23 years of inertia on the part of the inter-

national community and even military, financial and political assistance to the occupier from several major states, the recent positions of the US Senate and of the European Union about the holding of a referendum in East Timor are encouraging; if real action follows, those states will finally comply with the obligation mentioned by Espiell.

[The] violation of the duty to refrain from establishing or maintaining colonial domination by force is an international crime, precisely characterised as such, which gives rise to an international responsibility governed by a specific regime.

*p16, para 106*

Certain particularly serious criminal acts of individuals committed in the course of an activity conducted in violation of the right of peoples to self-determination, for the purpose of establishing or maintaining colonial and alien domination by force, should be a matter for international penal law [...].

*p16, para 107*

This is not a matter of concern for later, but something we should already seriously consider. Those responsible for genocide, for crimes against humanity and for war crimes in East Timor have to answer for their deeds. The International Criminal Court, whose establishment

was recently decided in Rome, comes too late for the crimes committed in Timor, but gives a strong push to that demand.

The East Timorese can finally see light at the end of the tunnel. This is, however, a dangerous moment for all of us. Stunned by the rapidity of events in Indonesia, we may make mistakes, the first of which would be to equate the fall of Suharto's regime with a speedy liberation of East Timor. Suharto, his family and cronies may have lost most of their political power in Indonesia, but the military still rules the country and will not give up its prey easily. To quote Mairead Maguire at a conference on East Timor organised by the International Platform of Jurists (IPJET): 'Between us and genuine peace, there stretches still a long and rocky road'.

We must therefore intensify our efforts to secure the self-determination of East Timor, using the new opportunities offered by the economic and political crisis in Indonesia.

#### Notes

- 1 *The Right to Self-Determination. Implementation of United Nations Resolutions*, United Nations, New York, 1980.
- 2 *Decolonization, No. 7, August 1976, issue on East Timor*, United Nations, Department of Political Affairs, Trusteeship and Decolonization, New York, 1976.

## CIIR SEMINAR

19 November 1998

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# HAVE RECENT PEACE PROCESSES ENSURED RESPECT FOR HUMAN RIGHTS?

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For further details, contact:

Mari King, CIIR. Address on back page.

Tel. +44 (0)171 354 0883 Fax +44(0)171 359 0017 E-mail mari@ciir.org

# The Puerto Rican model

**Last year the Hostosiano National Congress, a Puerto Rican pro-independence organisation, wrote to the Timorese resistance to share their experience of the status of 'Free Associated State'. They were responding to a suggestion from the late Konis Santana that similar status might be acceptable to the East Timorese. (Santana, head of the Timorese resistance army Falintil, later withdrew this suggestion.)**

**Puerto Rico has been a 'Free Associated State', or commonwealth, of the United States since 1948. Under this arrangement, Puerto Ricans are US citizens and are subject to federal laws, but have no voting representatives in the US Congress.**

**We reprint below the message from the Hostosiano National Congress.**

**W**arning to the people of East Timor from the people of Puerto Rico.

Recently, it has come to our attention that a representative of the people of East Timor, presently carrying out armed struggle to attain independence from Indonesia, has expressed that a relationship with Indonesia akin to the 'Free Associated State' situation of Puerto Rico with the United States would be agreeable.

We perceive that such a response is due to lack of information regarding the political relationship between Puerto Rico and the United States. The title of 'Free Associated State' evidently lends itself to confusion as it may create the illusion that it is a compact of free association as defined by international law. The Hostosiano National Congress warns our brothers of East Timor to not let themselves be deceived by the appearance of self-determination that the title may convey to some members of the international community.

What is the Free Associated State or Commonwealth of Puerto Rico? It is the result of almost 50 years of United States military rule, succeeded by civilian presidential appointees as governors, that the Congress of the United States allowed the people of Puerto Rico to adopt a constitution and elect a governor. The Consti-

tution of the Commonwealth of Puerto Rico was passed only by approval of the United States Congress, which changed its original draft drastically, removing Section 20.

This section was almost a replica of the Human Rights Charter of the United Nations, and the United States Congress found it much too radical. All federal laws apply to Puerto Rico excepting those that the Congress chooses to exclude. The government of the United States can approve any legislation regarding Puerto Rico without consultation, although such legislation will be detrimental to us.

The government of the United States controls the following aspects of our daily lives: the airspace, through the FAA [Federal Aviation Administration]; banking, through FDIC [Federal Deposit Insurance Corporation]; communication, through FCC [Federal Communications Commission], immigration, through INS [Immigration and Naturalisation Service], our ports, through US Customs; sea mercantile [*sic*], defence, currency, postal [*sic*], through US Postal Services; interstate commerce, national parks, through National Park Forest Services; intelligence, through the FBI [Federal Bureau of Investigation], bankruptcy, intellectual properties, patents and trademarks, federal justice, international relations, citizenship and others.

Despite the opposition of the representatives of the people of Puerto Rico presented to the military colonial legislative body of Puerto Rico, the Jones Act of 1917 was imposed, bestowing US citizenship upon the Puerto Ricans. Today the case of attorney Juan Mari Bras is pending before the Supreme Court of Puerto Rico due to his resignation of United States citizenship and claim of his Puerto Rican citizenship with all the rights inherent to a free citizen, such as the vote and the exercise of his profession, without having to hold citizenship of the United States in order to do so, as it has been before.

Thousands of acres of Puerto Rican national land are under the control and dominion of the government of the US and its agencies, the majority of which are in the hands of different branches of the United States Armed Forces. This, despite the protest, denunciations and constant struggle of the people of Puerto Rico

against the presence of such military installations on our soil. Recently, [the US government] announced its plans to transfer the Southern Command, now at the Panama Canal, to the island.

The status of the Free Associated State of Puerto Rico is an unequal relationship, where the United States Congress has the last say regarding changes to the relationship. In summary the Congress holds the sovereignty of the people of Puerto Rico, as recognised by the House of Representatives [in] HR 856, commonly known as the Young Project.

The Constitution of the United States contains a clause that allows the Congress to manage territories, and under that clause Puerto Rico is administered. During the soon-to-pass 100 years of the political relationship between the United States and Puerto Rico (1898-1998), the representatives of the people of Puerto Rico have made innumerable attempts to gain some sovereignty. The great majority of our requests have been ignored, shelved and disregarded. We have also resorted to drastic measures, such as armed struggle, which brought repression, incarceration and political persecution to those who supported independence for Puerto Rico. All manner of repression has been employed against our movement, including murder.

The realities we describe herein persist in the so called 'Free Associated State' of Puerto Rico. What we have described above has been recognised as a colonial relationship by the members of the US Congress and by the international community represented in the United Nations. It is for this fact that the UN has passed 16 resolutions recognising the applicability to the people of Puerto Rico of UN Resolution 1514(XV) and its inalienable right to free determination and independence.

For sure the people of East Timor, who have sacrificed so many thousands of lives in its struggle for independence will not be willing to accept any lesser alternative than true sovereignty. This sovereignty cannot exist under a political system equal to the Free Associated State that exists between Puerto Rico and the United States.

September 1997

## Book Review

*Free East Timor, Australia's Culpability in East Timor's Genocide*

Jim Aubrey (ed), Vintage, NSW, 1998, 296 pages.

**T**his collection of key documents and writings exposes the Australian government's betrayal of East Timor. It includes an account of Ken Fry

MP's two visits to East Timor in 1975 and the presentation he made to the UN General Assembly. The book also reproduces correspondence from anonymous contacts, probably government officials, exposing the policy of Australia's foreign minister at the time, Andrew Peacock.

Also included is the last article written by Roger East, the Australian journalist who chose to remain in East Timor after all Australians had been advised to leave, just before the Indonesian invasion. East died in front of a firing squad on 7 December 1975.

The book documents the experience of East

Timor activists in Australia, as well as the actions of their government. Rob Wesley-Smith gives a graphic account of radio communications with the resistance in East Timor during the early years of the war. He describes the deliberate sabotage of these communications by the Australian authorities and the sabotage of a mission to take medicine by sea to the isolated fighters in East Timor.

Robert Domm's interview with Xanana Gusmão in September 1990 is reproduced in full, along with articles by John Pilger and Russell Anderson, an eye-witness of the Santa Cruz massacre in November 1991.

# Timorese political parties reject Indonesia's special status

**Five East Timorese political parties have rejected the Indonesian president's proposals for autonomy for East Timor within Indonesia. The five are parties established during the decolonisation period initiated by Portugal in 1974. Their representatives issued the following statement in Dili on 11 August 1998.**

## Considerations:

- That the representatives of the five undersigned political parties defend the fundamental principle of self-determination and independence of East Timor; and Indonesia is offering out of charity a form of autonomy within Indonesia which obviously could end up as the final solution for East Timor.
- The three ambassadors from the European Union visited East Timor recently and approved a joint declaration defending the right to the East Timorese people to be consulted about the future of their homeland and to have a self-determination referendum.
- Some points agreed between Portugal and Indonesia at the 4-5 August 1998, meeting with the United Nations in New York, contributed to a positive movement towards a negotiated solution to the problem of East Timor.
- That Portugal and Indonesia agreed to discuss autonomy of East Timor within Indonesia as proposed by Indonesia with the participation of East Timorese representatives.

## Statement:

We, the representatives of the UDT, Fretilin, Apodeti, Kota and Trabalhista (Labour) Parties, within East Timor, state the following:

1. We completely reject any discussion of East Timor being an autonomous province within Indonesia as proposed by Indonesia.
2. We demand Portugal send a committee of observers to East Timor to observe the situation on the spot before entering a dialogue and substantive discussion with Indonesia about the autonomy for East Timor proposed by Indonesia.
3. We wish to go ahead with dialogue under the proposal in our joint declaration by UDT, Fretilin, Apodeti, Kota and Trabalhista, dated 25 July 1998, which follows:

We completely reject the programme proposed by the Indonesian Government for East Timor to have autonomy within Indonesia, regardless of the form of that autonomy, as this would legalise the current integration of East Timor

within Indonesia, which is the result of the illegal annexation and military occupation (of East Timor by Indonesia). We demand a referendum for the East Timorese people as the only viable way to find a final solution. Therefore we propose the following conditions:

- (i) Free the President of National Council of Timorese Resistance (CNRT), Kay Rala Xanana Gusmão, and all the other East Timorese political prisoners. Xanana Gusmão's freedom is an essential condition, along with his participation in the dialogue, to finding a solution to the problem of East Timor.
- (ii) The presence of a high commissioner of the United Nations, with powers to participate in identifying and resolving problems, starting with controlling the withdrawal of troops, the extinction of the practice of physical oppression (of the East Timorese people) before the handover of powers to a transitional government and then to the government chosen by the East Timorese people.

Furthermore

- (iii) The end of Indonesian military operations against the civil population as follows:
  - (a) End military operations in the whole of East Timor.
  - (b) Disarm all the East Timorese who have been trained and armed as military, police, or auxiliaries, and dismantle the organisations in which they are involved.
  - (c) A ceasefire between Indonesian military and Falintil (East Timorese resistance army) and Falintil to be allowed to occupy a guaranteed neutral zone.
  - (d) Formation of a police body comprising Indonesian, Portugal [*sic*], and CNRT (National Council of East Timorese Resistance) forces.
  - (e) Total withdrawal of Indonesian military forces from East Timor. The period of execution of all these should be 18 months.
- (iv) Formation of a transitional government comprising all political groups in East Timor under two high commissioners, one from Portugal and the other from Indonesia, under the supervision of the United Nations, for a period of five years. During this period, the following should be completed:
  - (a) The rehabilitation of all aspects of East Timor life.
  - (b) Infrastructure development with the participation of Portugal and Indonesia.
  - (c) Formation of an East Timorese army to take the place of the transitional tripartite police force.

- (v) Self-determination referendum under the supervision of the United Nations, Portugal and Indonesia. Finally — to proceed with the transfer of powers from the transitional government to the government chosen by the East Timorese people.

## Signed by:

**Leandro Isaac**

*East Timor Regional President, UDT  
(Timorese Democratic Union)*

**David Dias Ximenes**

*Representative, Fretilin*

**Frederico Almeida Santos de Costa**

*Executive President, Apodeti  
(Democratic Popular Association of Timor)*

**Leao Petro dos Reis Amaral**

*President, KOTA  
(Traditional Monarchist Party)*

**Paulo Freitas de Silva**

*President, Trabalhista (Labour Party)*

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**Fax 44(0)171-359 0017.**