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Will Labour seize the moment?

The election in Britain of a Labour government committed to what it calls an 'ethical foreign policy' offers opportunities to change UK policy towards East Timor and Indonesia. STEPHEN BARANYI, CIIR's Policy Officer for Human Rights in Asia, examines the options for Labour.

Like many British non-governmental organisations and several of our partners in the South, CIIR welcomes the signals coming from the new UK government on foreign and development policy issues. We are heartened by Foreign Secretary Robin Cook's commitment to enhancing the ethical dimensions of British foreign policy and particularly by his promise to tighten the application of arms export control criteria so as to prevent the sale of weapons which 'might be used for internal repression or external aggression'. CIIR welcomes the statements by the Secretary of State for International Development, Clare Short, that her department will shift from using aid to promote UK trade with developing countries towards an emphasis on poverty reduction. We appreciate the new government's consultative style and its pledge to ensure transparency.

On the basis of these initial signals, what can we expect from a Labour government with regard to East Timor and Indonesia?

Promoting peace

In his meetings with Bishop Carlos Belo of Dili and José Ramos-Horta, Special Representative of the National Council of Maubere Resistance (CNRM), Robin Cook pledged to support UN efforts to forge a comprehensive settlement to the conflict in East Timor.

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This is an important commitment. After years without progress, the Tripartite Talks between the governments of Indonesia and Portugal, and the complementary All-inclusive Intra-East Timorese Dialogue (AIETD) — both under the auspices of the UN Secretary-General — are entering a new phase (see page 6). Her Majesty's Government and its EU partners have supported these talks in the past, through the 1996 EU Common Position on East Timor and by financing the AIETD.

Yet Britain could do much more by shifting from passive support to engagement. The UK has opportunities to press the parties, and particularly the government of Indonesia, to make significant concessions at the negotiating table. For example, Jakarta could be pressed to build the confidence required for the peace talks to move forward by accepting visits from UN human rights rapporteurs. Indonesia should be encouraged to take such steps when the UN General Assembly reconvenes in September, at the Asia-Europe Meeting in April 1998, and on several occasions in between. In concert with the United States, Japan and EU partners, the UK could also explore options for creating a support group for the Secretary-General's efforts, similar to the groups which provided critical diplomatic support for UN peacemaking in Central America and Southern Africa.

Protecting human rights

Despite progress at the international level, the human rights situation in East Timor is deteriorating. The resolution on East Timor adopted by the UN Commission on Human Rights (UNCHR) in April 1997 clearly expresses the international community's concerns over persistent human rights violations by the Indonesian authorities. Britain and its EU partners sponsored that resolution; now it is their responsibility to follow up on its implementation.

In this context, Cook's receptiveness to suggestions by British NGOs and the CNRM that the UK should promote on-site human rights monitoring is positive. The establishment of a UN human rights mission in East Timor, with a mandate to investigate allegations of human rights violations, could help change the culture of repression and impunity. This proposal should be distinguished from the idea of establishing a human rights office in Jakarta, with a vague mandate for visiting East Timor, as set out in the 1997 UNCHR resolution. Such a mechanism would be ineffective and could imply recognition of Indonesia's claim to sovereignty over East Timor. Yet the difficulty with on-site verification is that Jakarta has steadfastly opposed the establishment of any office, especially with a mandate for human rights monitoring, in Dili; indeed it seems unlikely to accept such intrusive

Summary

This issue of *Timor Link* examines some of the opportunities to promote peace, human rights and development in East Timor. On this page, CIIR's Stephen Baranyi outlines what Britain's new Labour government could do in this regard. Roger O'Keefe assesses the prospects of the International Court of Justice issuing an advisory opinion on the East Timorese people's exercise of the right to self-determination (pages 3-5). We also review a new publication assessing Northern voluntary organisations' efforts to create international pressure for peace in Angola and East Timor.

Also in this issue, Akihisa Matsuno analyses Japanese policy towards Indonesia and East Timor, and argues the need for change (page 7). And we report on Bishop Belo's visit to the UK, the UN Decolonisation Committee hearings on East Timor, and the latest round of UN-mediated talks between Indonesia and Portugal.

verification unless it were part of a larger package negotiated in the UN-mediated peace talks.

What the UK, its EU partners and other sponsors of the 1997 UNCHR resolution could press for in the short run is the implementation of the resolution's call for Jakarta to 'cooperate fully with this Commission and its thematic rapporteurs and working groups, and to invite these [...] to visit East Timor, in particular the Special Rapporteur on torture[...].' Given the increase in allegations of torture in recent months, a visit by rapporteur Nigel Rodley could make a difference on the ground. Pressing for steps to 'ensure that all East Timorese in custody are treated humanely' could also be of concrete assistance to the victims of grave human rights violations.

Fostering human development

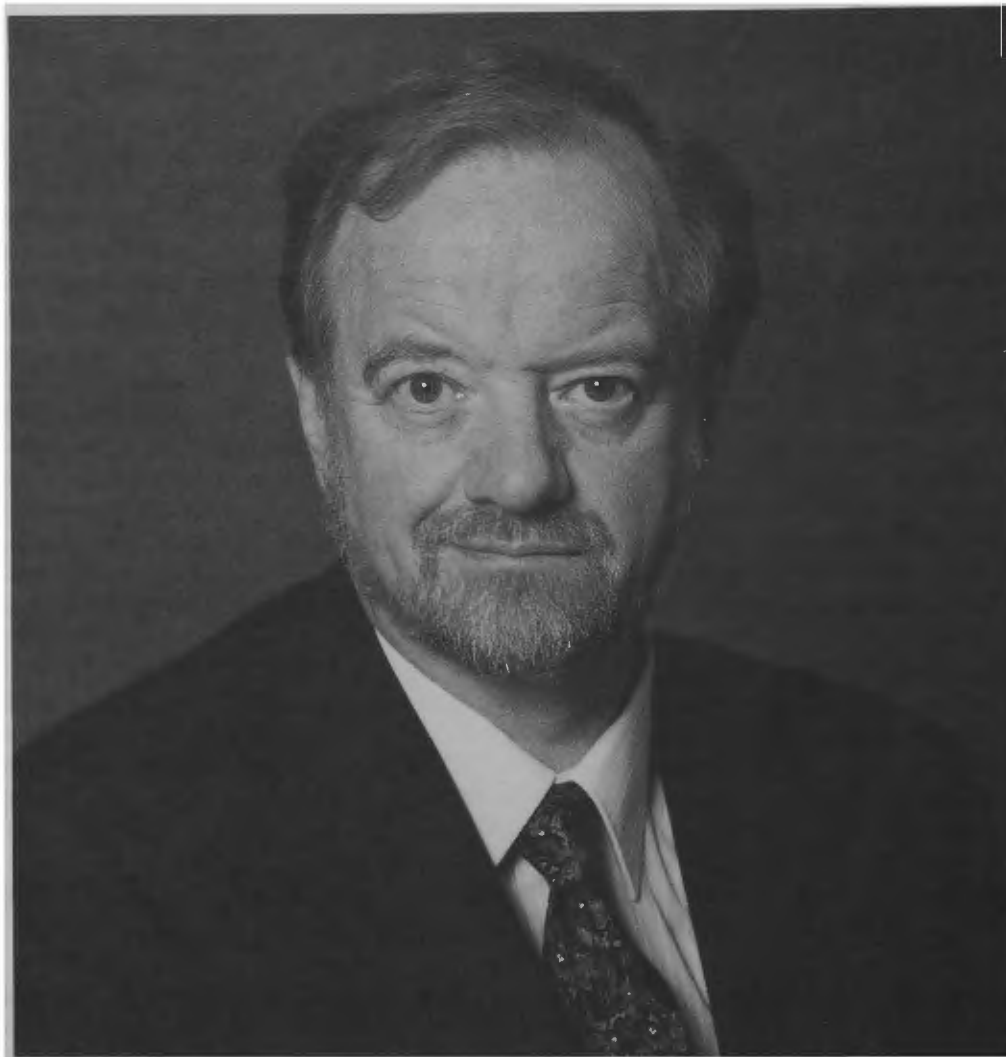
As noted in the November 1996 report by the National Audit Office, several UK bilateral aid projects in Indonesia are highly questionable from a developmental standpoint. The projects which have aroused the greatest concern from MPs, NGOs and the CNRM are UK management training for the Indonesian National Police, assistance for regional planning in the context of Indonesia's transmigration programme, and the use of the Aid-Trade Provision to smooth the way for commercial contracts.

We welcome the indications from the Secretary for International Development that these projects and programmes are under review. In July the British Coalition on East Timor (BCET) contributed a statement to the aid policy review currently under way. Among other things, BCET called on the government:

1. To end, and not to renew, all government to government assistance to Indonesia for projects which might include or might affect East Timor, in particular projects related to the Indonesian government's transmigration policies and the training of the Indonesian National Police, which is part of the armed forces.

2. To redirect its assistance to Indonesia, particularly any assistance which might affect East Timor, away from the Indonesian government to independent non-governmental organisations which are best placed to promote human development and contribute to the elimination of poverty.

These shifts would bring UK aid policy into line with the EU Common Position on East Timor. As an active member of the British Coalition, CIIR fully endorses this call for policy change.



The Right Honourable Robin Cook, UK Foreign Secretary

Preventing the transfer of arms used for internal repression

There is a sizeable body of opinion in the UK, including within the Catholic Church, against further weapons exports to Indonesia. Many believe that the sale of water cannons, armoured personnel carriers (APCs), small arms, surveillance equipment and Hawk jets to Indonesia constitutes a serious violation of the government's past policy of not selling arms that are likely to be used for internal repression. Some are calling for a total arms embargo. During his visit to the UK in June, Bishop Belo publicly called for further restriction of arms sales.

CIIR agrees that the government should

tighten the application of the criteria for granting arms export licenses so as to prevent the sale of any weapons which might be used for repression at home or aggression abroad. We welcome the government's commitment to transparency on licensing decisions: it is crucial for Parliament, and through it for society, to be fully informed about these matters. On that basis we add our voice to those of Amnesty International and Saferworld in calling for an end to the export of water cannons, APCs, small arms and surveillance equipment to Indonesia — and to other countries where UK arms

might be used for internal repression. We also support Saferworld's recommendation that the basis for the government's decision on Hawk jets be made public. If our conviction that Hawks have been used in East Timor in the past is correct, then no future sales should be allowed, given that these planes could be used to bomb or intimidate the people of East Timor once again.

CIIR urges the government to extend this approach by revoking past arms export licences which contradict the new policy. If it can be shown that this would not oblige the government to pay onerous compensation to firms affected by the change, that would remove the last argument against doing so. Lastly, the move towards tighter

UK arms controls should be complemented by concerted diplomacy to enhance multilateral controls at the EU level and beyond.

Coherence is the key

Indonesia and East Timor are a test case of the new government's ability effectively to manage tensions between immediate economic imperatives and Britain's long term interest in respect for human rights, human development and international peace. Labour should seize the opportunity afforded by the widespread dissatisfaction with the old approach to show that it can deliver on its new, more coherent, vision. ■

A challenge for the ICJ

The results of the eighth round of Ministerial Talks on East Timor in June 1996 were greeted with disappointment from many quarters. José Ramos-Horta, the Special Representative of the National Council of Maubere Resistance (CNRM), stated that instead of backing further talks the international community should persuade the UN General Assembly to adopt a resolution calling on the International Court of Justice (ICJ) to pass an advisory opinion on East Timor. ROGER O'KEEFE discusses whether the ICJ would accept such a challenge and what the substance of its opinion might be. Although the new momentum of the UN-mediated talks has led the CNRM to defer the option of a General Assembly resolution, the idea could be revived in 1998 if the talks do not yield concrete results.

Under article 65 (1) of the Statute of the International Court of Justice, it is within the jurisdiction of the Court to give an advisory opinion 'on any legal question'. The right to self-determination of the East Timorese people clearly satisfies this description, regardless of its political ramifications. Therefore, the success of a proposed request for an advisory opinion will rest, not on whether the Court has the *power* to deliver an opinion on East Timor, but on whether it would be *proper* to do so in the circumstances.

It can only be assumed that Indonesia will play no part in the General Assembly's referral to the Court of a question on East Timor and will take no part in any hearings. The main objection to the propriety of an advisory opinion on East Timor is therefore likely to be the same objection on which the *East Timor* case between Portugal and Australia foundered in 1995: namely, that the Court should decline to give an opinion where to do so would involve evaluating the legal rights or obligations of a state which is not party to the proceedings. This principle is known to international lawyers as the *Monetary Gold* principle, after the leading ICJ case. Its rationale is that to adjudicate on the legal position of a state not party to a case runs counter to the well-established doctrine, embodied in the Court's statute, that an international tribunal cannot decide a dispute between states without the consent of those states to its jurisdiction.

Of course, the failed *East Timor* case between Portugal and Australia was an example of contentious (that is, state versus state) litigation. In the specific context of an *advisory* opinion, there are no parties to the case. Rather than coming before the Court through one state suing another, an advisory opinion is requested from the Court by a political organ of the United Nations (in the proposed case, the General Assembly), for the resolution of a legal problem of interest to that organ. Given the *Monetary Gold* principle, the absence of formal parties appears to offer a good prospect for resorting to the

Court's advisory jurisdiction on the question of East Timor.

Nonetheless, and although advisory opinions are not in themselves legally binding on states, such opinions can effectively amount at times to a declaration of a particular state's international legal position. The resulting impact on a state's interests is more than merely theoretical. The Court's view of a particular state's rights or obligations may become the basis of political action by the UN organ which requested the opinion, action which can have serious practical consequences. In recognition of the fact that non-contentious opinions can compromise a state's legal position, the Court is sensitive to the principle of consent to its jurisdiction even when exercising its advisory function. As such, the Court's advisory jurisprudence has its own version of the *Monetary Gold* principle: the *Eastern Carelia* case.

In *Eastern Carelia*, the old Permanent Court of International Justice (PCIJ), which was set up under the League of Nations and of which the ICJ is declared to be a continuation, was asked to give an advisory opinion which required declaring the existence or otherwise of treaty obligations putatively owed to Finland by Russia. The case revolved around international agreements signed by Finland and Russia which, according to Finland, imposed on Russia a duty to allow its region of Eastern Carelia a certain degree of autonomy. Finland complained to the Council of the League of Nations that Russia was in breach of its duty. Russia, who was not a member of the League, declined an invitation to defend itself before the Council.

The Council then resolved to put to the Court the following question:

Do Articles 10 and 11 of the Treaty of Peace between Finland and Russia[...] and the annexed Declaration of the Russian Delegation regarding the autonomy of Eastern Carelia, constitute engagements of an international character which place Russia under an obligation to Finland as to the carrying out of the provisions contained therein?

Russia played no part in referring the question to the Court and refused to take part in the proceedings, as is open to potentially affected states to do. In declining to give an opinion, the Court reasoned that in the circumstances, an advisory opinion would have been substantially equivalent to deciding the dispute between the parties. As such, it would have run counter to the principle embodied in the Court's statute that the Court can only exercise jurisdiction over a state, in this case Russia, with its consent.

Along the lines of *Eastern Carelia*, opponents of a proposed East Timor advisory opinion will no doubt argue that any declaration from the Court on the right to self-determination of the people of East Timor would amount to the judicial settlement of the dispute between Indonesia and Portugal without Indonesia's consent. However,

a request for an advisory opinion on the self-determination of the East Timorese people need not fall foul of the *Eastern Carelia* principle, especially if the question posed does not explicitly impugn Indonesia's conduct. For example:

Have the people of East Timor yet exercised their right to self-determination?

If the question is phrased in this way, the salient distinctions between the facts in the *Eastern Carelia* case and those relating to East Timor can be used to support the proposal for the ICJ to issue an advisory opinion. The first clear difference between *Eastern Carelia* and a potential East Timor advisory opinion is, in the words of the ICJ's *Interpretation of Peace Treaties* opinion, that the question put to the Court in *Eastern Carelia* 'was directly related to the main point of a dispute actually pending between two States'. Given the wording of the request put to the Court, an opinion in that case could not possibly have been characterised as anything other than a judicial declaration of *bilateral* legal obligations said to exist between – and only between – Finland and Russia.

However, the question of whether or not the East Timorese people have yet exercised their right to self-determination does not represent the main point of the East Timor dispute *as between Portugal and Indonesia*. The main point of contention between the two states is their competing claims to entitlement to administer the territory. Legally, in any potential settlement of the controversy between the two, the rights of the people of East Timor would be no more than a sideline or secondary consideration. The legally salient assessment would be whether Portugal had abandoned the territory prior to Indonesian occupation (in a juridical act known as *derelictio*) or whether in law Indonesia can be said to have invaded (and to continue to occupy) what was at the time still Portuguese territory. The right of the East Timorese people to self-determination can be seen as a legal and factual issue in its own right, independent of the legal basis of the dispute between Portugal and Indonesia.

The difference between the *de facto* dispute settlement in which the Court was called on to engage in *Eastern Carelia* and the more abstract legal and factual question that would be posed by a request regarding East Timor is made starker by a comparison of the PCIJ statute with that of the ICJ. The former authorised the Court to deliver advisory opinions on 'disputes'. This placed the advisory function of the PCIJ squarely within the context of judicial dispute settlement, making the absence of an unwilling party to advisory proceedings a more telling matter of propriety. For its part, the statute of the ICJ allows the Court to give advisory opinions on 'any legal question', which puts its advisory jurisdiction within a much broader legal context.

Faced with a request for an advisory opinion on the right of the East Timorese people to self-determination, the Court would be well-placed to echo the view taken in the *Western Sahara* case:

The object of the General Assembly has not been to bring before the Court, by way of a request for an advisory opinion, a dispute or legal controversy, in order that it may later, on the basis of the Court's decision, exercise its powers and functions for the peaceful settlement of that dispute or controversy. The object of the request is an entirely different one: to obtain from the Court an opinion which the General Assembly deems of assistance to it for the proper exercise of its functions concerning the decolonisation of the territory.

In this respect, the Court in *Western Sahara* paid particular attention to the wording of the General Assembly's request – wording which a request in respect of East Timor would do well to reproduce. It referred to, among other things, the application of General Assembly resolution 1514 (XV), the famous declaration on the right of colonial peoples to self-determination. In the words of the Court, this located 'the legal questions of which the Court [was] seized[...] in a broader frame of reference than the settlement of a particular dispute.' Similar reliance was placed on the wording of the General Assembly's request in the *Namibia* advisory opinion, which bears important similarities to East Timor's situation.

The characterisation of the East Timor question as concerning the General Assembly's responsibility for self-determination rather than its role in the peaceful settlement of disputes is supported by the assembly's record. The right to self-determination of the people of East Timor has long engaged the Assembly's concern independently of Portugal's grievances against Indonesia. In 1960, General Assembly resolution 1542 (XV) placed 'Timor and dependencies' on the list of non-self-governing territories within the meaning of Chapter XI of the UN Charter. This meant that the General Assembly recognised as applicable to the territory resolution 1514 (XV), as complemented by resolution 1541 (XV), in accordance with which the people of East Timor were expressly entitled to make an 'act of self-determination', so as freely to decide their future political status.

After Indonesia occupied the territory in 1975, the General Assembly continued to speak of the controversy in terms of the self-determination of the East Timorese people, in resolutions 3485 (XXX) of December 1975, 31/53 of December 1976, 32/34 of November 1977 and subsequent resolutions passed annually until 1982. Similarly, Security Council resolutions 384 (1975) and 389 (1976), which called on Indonesia to withdraw from the territory, expressly reaffirmed the inalienable right of the East Timorese people to self-determination and called on all states to recognise this right. East Timor remains on the list of non-self-governing territories within the meaning of Chapter XI of the Charter, and the General Assembly's Special Committee on the Situation with Regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples ('the Decolonisation Committee') continues to deliberate on East Timor. It is clear, therefore, that the right to self-determination of the East

Timorese people has long been a topic of concern to the General Assembly in a manner quite distinct from its role in calling for a peaceful settlement of the dispute between Portugal and Indonesia. The Court should have little difficulty in holding to this view.

Opponents of an East Timor advisory opinion might counter that delivering an opinion on a question framed as addressing the rights held by the East Timorese people, while not 'substantially equivalent to deciding the dispute between [Indonesia and Portugal]', unavoidably involves a decision, in Indonesia's absence, on its substantive legal rights and obligations. In the words of the *Interpretation of Peace Treaties* and *Western Sahara* cases, 'the legal position of the State which has refused its consent to the proceedings' will be 'compromised by the answers that the Court may give to the question put to it.' It might well be argued, most drastically, that a finding that the people of East Timor have *not* made a genuine act of self-determination in favour of integration into Indonesia would be equivalent to a declaration of the Indonesian state's responsibility for denying since 1975 their inalienable right to do so. It might therefore be objected, as in the *East Timor* contentious proceedings between Portugal and Australia, that the Court cannot give an opinion that requires it to evaluate the lawfulness of the conduct of another state not party to the case, 'even if the right in question is a right *erga omnes*,' as it is here – that is, a right enforceable not just on Indonesia but on *all* states, including Portugal as the territory's recognised Administering Power.

Yet the fact that a state's rights will be affected by the Court's ruling does not necessarily make it improper for the Court to give an opinion. In the words of the *Monetary Gold* case, as affirmed in the *Nicaragua*, *Frontier Dispute* and *Nauru* cases, a concern for the principle of consent to the Court's jurisdiction will only prevent the Court from making a decision where the legal interests of the non-consenting state 'would not only be affected by a decision, but would form the very subject-matter of the decision.' For a state's legal interests to constitute 'the very subject-matter' of the Court's decision, it must be the case that the Court has to rule on these interests before it can determine the question put to it. That is, it is not enough that the Court's opinion would result in a *simultaneous* determination of the legal interests of a non-consenting state. For *Monetary Gold*/*Eastern Carelia* to be invoked, the Court's ruling must depend on a *prior* determination of those legal interests.

On these grounds it should be possible to circumvent the *Eastern Carelia* principle and, in doing so, to distinguish an advisory opinion on the East Timor situation from Portugal's failed case against Australia in respect of the territory. In that case, Portugal's submission centred on the unlawfulness of Australia's entry into the Timor Gap Treaty with Indonesia. The unlawfulness of Australia's action depended on whether or not Indonesia had the power to make treaties in respect of East Timor, which in turn depended on whether it was entitled to exercise sovereignty over the territory. In the final analysis, therefore,

an assessment of Indonesia's sovereign rights over East Timor was a prerequisite to determining the ultimate question of whether Australia's entry into the treaty was unlawful. As Indonesia was not a party to the proceedings, the Court ruled that it would be improper to answer the question.

In contrast, an advisory opinion on the right to self-determination of the East Timorese people need not depend on an assessment of Indonesia's legal rights and obligations, in the sense that such an assessment is a logical prerequisite to a decision. Borrowing the words of the *Nauru* case, 'a finding by the Court[...] might well have implications for the legal situation of [Indonesia], but no finding in respect of that legal situation will be needed as a basis for the Court's decision.' A decision as to whether or not the people of East Timor have yet exercised their right to self-determination need only focus factually on whether the act of self-determination alleged to have been made by their representatives on 31 May 1976 was genuine or, alternatively, whether any such subsequent act has been genuinely made. If the answer to both questions is no, the Court will simply be required to declare that the East Timorese have not yet exercised that right. Obviously, this will *simultaneously* amount to a declaration of Indonesia's legal position. Yet this would be a logical corollary of the Court's determination and not a basis for it.

A further and crucial point of distinction between *Eastern Carelia* and the proposed advisory opinion – and a seminal difference between the Court's contentious and advisory jurisdictions – was highlighted in the *Western Sahara* advisory opinion. Substituting 'Indonesia' for 'Spain', the pertinent passage reads:

In other respects, [Indonesia]'s position in relation to the present proceedings finds no parallel in the circumstances of the advisory proceedings concerning the *Status of Eastern Carelia* in 1923. In that case, one of the States concerned was [not], at the time, a Member of the League of Nations, and lack of competence of the League to deal with a dispute involving non-member States which refused its intervention was a decisive reason for the Court's declining to give an answer. In the present case, [Indonesia] is a Member of the United Nations and has accepted the provisions of the Charter and Statute; it has thereby in general given its consent to the exercise by the Court of its advisory jurisdiction. It[...] could not validly object to the General Assembly's exercise of its powers to deal with the decolonisation of a non-self-governing territory and to seek an opinion on questions relevant to the exercise of those powers.

The view that article 96 of the UN Charter constitutes a member state's *a priori* consent to the Court's advisory jurisdiction was also expressed in the *Namibia* opinion. It is perhaps the strongest ground on which to distinguish such cases from the *Eastern Carelia* case.

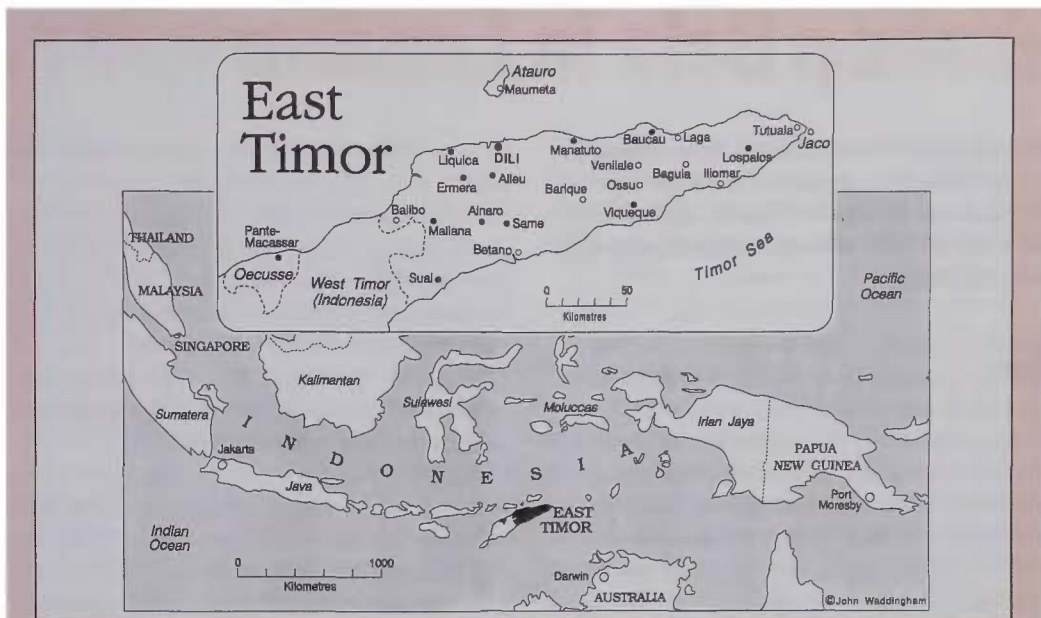
In the final analysis, as the Court made explicit in the *Western Sahara* case, there is a strong presumption in favour of the Court helping to solve a problem confronting the General Assembly. Furthermore, it is encouraging to bear in mind that, despite the tenacity of the principle it laid down, *Eastern Carelia* itself remains the only case in which the Court has declined to give an advisory opinion on the grounds that to do so would amount to deciding a dispute between states without the consent of one of them. It is also heartening to recall the outcome of one earlier and substantially similar legal struggle. In 1971, despite the obvious implications for South Africa's interests, the Court agreed to deliver its famous *Namibia* advisory opinion, on the basis of a request made by the General Assembly in the wake of bitterly disappointing contentious proceedings.

Yet what would be the practical use of a declaration by the Court that the people of East Timor have not yet exercised their right to self-determination? Have not the General Assembly, the Decolonisation Committee and the Security Council (in a non-Chapter VII resolution), already said as much? The simple answer to this is that, while assessment by such bodies constitutes a valid *political* determination of the question, there has never been a conclusive *legal* statement on the issue because these bodies are not competent to make one. In the recent *East Timor* litigation, the fact that the East Timorese were still entitled to exercise their right to self-determination was not in dispute between the parties and the ICJ stated that its finding was '[w]ithout prejudice to the question whether the resolutions under discussion could be binding in nature.' Furthermore, while East Timor remains on the agenda of the Decolonisation Committee, the legal validity of its presence there is hotly contested by Indonesia, as the Committee's most recent session illustrates (see page 6).

A statement by the Court would put the legal situation beyond doubt. A declaration of the legal position would in turn give renewed political momentum to the issue. Indeed, the moral weight of an opinion in favour of the East Timorese people would make it difficult for the General Assembly *not* to take action on the basis of the Court's finding.

As to the facts of the East Timor situation, it is a matter of conjecture what finding the ICJ might make, although everything seems to point to the conclusion that the people of the territory have not yet exercised their right to self-determination. If such a finding were to be made, there would be intense pressure on the General Assembly to call for a UN-supervised referendum in the territory, so as to enable the people of East Timor freely to determine their future political status. In the end, an advisory opinion on East Timor might indeed bear the same historical fruit as that borne in respect of Namibia. ■

• **Roger O'Keefe** is a PhD candidate in international law at Magdalene College, Cambridge, UK. Many thanks to the readers who commented on this paper anonymously.



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.

Bishop Belo in London

In June 1997 Bishop Carlos Belo visited the United Kingdom as part of a longer tour of Europe and the United States. IAN LINDEN, Director of CIIR, reflects on the bishop and his message.

Bishop Belo's visit to Britain was timely. By coincidence, *World in Action*, ITV's flagship documentary programme, was broadcasting an investigation of Britain's covert arms trade. It revealed the extent of British exports of military equipment to Indonesia designed for repression of the civilian population in Indonesia and East Timor.

In a speech for the CAFOD millennium campaign, Bishop Belo spoke with great passion about this trade. 'As pastor in East Timor, whose people have suffered terribly from the effects of armaments made in countries far from our shores, I appeal to the government of the United Kingdom, and to its allies – whose factories make a variety of weapons which are then sold for use on land, sea and in the air – to consider the dreadful consequences of this so-called defence industry. Please, I beg

you, restrict further the conditions under which such trade is permitted.

'Our small nation of East Timor has suffered much at the hands of military forces largely supplied with their armaments by Western countries such as the United States and the United Kingdom,' he said. 'Their provision has given both practical and moral support for abuses that have taken place.'

But the bishop's concern about the military might deployed against his people extends beyond the gross abuses of human rights and the death of over a third of the East Timorese population, to the prospect for negotiations. He told me he was convinced that 'for a proper and fruitful dialogue to proceed a prerequisite is the drastic reduction, even complete withdrawal, of the armed forces[...]. To propose a reconciliation which did not attend to the realities of the moral disorder which has been and continues to be perpetrated, would be a form of collusion with it.'

The pressure the Indonesian authorities exert on Bishop Belo extends from constant routine surveillance to angry letters of

denunciation when his interventions in the international arena do change hearts and minds. He is such an effective advocate of the East Timorese cause both because he seems to carry the burden of this pressure lightly, and because he is sensitive to the demands it makes on him. This is not merely careful diplomacy but also stems from a profound Christian conviction. 'We must never preclude the possibility of good will on the part of others, even those who have brought suffering upon us,' he told the CAFOD audience.

He is sanguine about the prospects for successful negotiations. He wants East Timor to take its 'proper place in the family of nations' and has called for a 'more adequate testing of public opinion' to determine what form this might take. But he has a sober realism about how much can be achieved in the short term.

Nonetheless, as the BBC taxi took him off through the South London traffic for yet another interview, it occurred to me that from a Christian perspective, the God in which the nation of East Timor seems to put its trust is a God of surprises. ■

INTERNATIONAL ROUND-UP

Same old hearings...

This year's hearings on East Timor by the UN Decolonisation Committee took place one month earlier but that was the only change in the usual proceedings. When the hearings opened on 16 June the Indonesian Ambassador objected to consideration of East Timor by the committee; the Chairman denied his petition. Later, the Ambassador reiterated his government's position that the Timorese had exercised their right to self-determination by choosing to integrate into the Republic of Indonesia in 1976, that Jakarta had invested in the development of the territory and that human rights were protected by laws applying to the entire country. Several Timorese living in the territory expressed support for this view.

The Portuguese Ambassador to the UN questioned these claims and called for a genuine act of self-determination. His position was supported by resistance leaders in exile, including José Ramos Horta, who urged the government of Indonesia to adopt confidence-building measures. These included reducing its military forces and allowing the UN High Commissioner for Human Rights to establish a presence on the island to create the conditions for a negotiated solution to the conflict. Several NGOs

condemned human rights violations, which appear to have increased since the Indonesian general elections on 29 May. Some petitioners called on the committee to take specific action, such as encouraging the government of Indonesia to establish an independent truth commission to investigate past human rights violations. Apparently they were oblivious to the fact that the committee has never taken any action on East Timor aside from its annual hearings. In keeping with this tradition, the committee concluded its hearings by deciding to include the question of East Timor on the provisional agenda of its next session in 1998.

... but new talks?

On 19 June, the foreign ministers of Indonesia and Portugal met for their ninth round of Tripartite Talks under UN auspices. The discussions, the first under the chairmanship of UN Secretary-General Kofi Annan, generated some procedural advances. First, the foreign ministers agreed that the talks would continue at the 'working level', beginning on 28 July. These talks were to involve senior officials from each country's foreign ministry, assisted by their permanent representatives to the United Nations, under the chairmanship of Jamsheed Marker, the Personal

Representative of the Secretary-General. The officials will cover a range of issues including economic development, human rights and migration. Their week-long sessions will take place in conditions of strict confidentiality, and any agreements reached will remain subject to approval by superiors. The foreign ministers will reconvene for direct talks as required.

Second, the ministers agreed that another round of the All-inclusive Intra-East Timorese Dialogue (AIETD) would be convened in August or in the autumn. Participation would be expanded by five persons to include representatives of youth and women, and a replacement would be selected for a participant who died since the last session. Marker will consult various Timorese organisations regarding candidates for these positions. It was emphasised that the AIETD would have to stick to its narrow terms of reference, meaning that it will not be allowed to touch on political issues such as self-determination.

Indeed, this last stipulation and the statements made at the Decolonisation Committee serve as reminders that despite procedural advances and the new peacemaking activism of the UN, the protagonists remain far apart on substantive matters. ■

Tokyo's cautious diplomacy

Despite a minor shift in 1995, when it began to support UN mediation efforts in East Timor, Japan's policy on the territory has prioritised good relations with Indonesia over human rights concerns. AKIHISA MATSUNO analyses Japan's diplomacy and recommends change.

Before 1995, Japan officially held that it was in no position to make judgements on sovereignty in East Timor. It did not recognise Indonesia's annexation of East Timor and supported the first Security Council resolution condemning the annexation in December 1975. But it voted against all subsequent UN Security Council and General Assembly resolutions on the grounds that criticising Indonesia does not by itself contribute to a solution.

In November 1995, at the Asia Pacific Economic Cooperation summit in Osaka, then Foreign Minister Yohei Kohno told his Indonesian counterpart, Ali Alatas, that Japan would henceforth support UN mediation efforts in East Timor. Japan put the new policy into effect by providing funds for the All-Inclusive Intra-East Timorese Dialogue.

The solidarity movement and parliamentarians who had worked to change government policy towards East Timor welcomed the shift and saw it as a result of their long and tenacious efforts to influence policy. Behind the change must lie feelings that silence and neglect have not solved the problem and that some action is required.

Bilateral relations, not human rights

The policy shift, however, has meant little in practice. Last April, at the 53rd session of the UN Commission on Human Rights (UNCHR), Japan abstained on the resolution on East Timor. Japan and South Korea were the only two Asian members to abstain. All other Asian states voted against the resolution, in solidarity with Indonesia.

Some would argue that Japan was simply trying, as it usually does, to maintain a balance between its relations with Asia and Western countries. But this is not always the case. Until last year, Japan co-sponsored the resolution on China together with Western countries. This year, Japan sided with the West in voting against the no-action motion on China. In 1993, Japan had voted for the no-action motion on East Timor. The motion was defeated.

Before this year's UNCHR session, Japanese foreign ministry officials explained that the difference in attitudes to China and East Timor arose from the difference in the nature of the two issues. East Timor is on the UN agenda while the human rights situation in China is not. Although the officials were unwilling to clarify their statements, the most likely interpretation is that they feel discussion of East Timor at the UNCHR

might harm the mediation process by embarrassing Indonesia.

Japanese foreign ministry officials have also tried to defend Indonesia by pointing to improvements in East Timor, citing the establishment in Dili of a branch of the Indonesian National Commission on Human Rights. But further examples of improvement are hard to find, and the officials neglect to mention that the commission's Dili office is not functioning because it is located in front of the military command.

Japan's decision to abstain on the UNCHR East Timor resolution seems to be largely determined by concern for bilateral relations with Indonesia, rather than by an assessment of the realities of human rights.

One problem is the lack of a policy on international human rights issues. Coordination on human rights diplomacy scarcely exists. The foreign ministry's Division on Human Rights and Refugees is supposed to deal with UNCHR and international human rights issues, but has insufficient power to coordinate the views of other departments. On country specific issues, the ministry's geographic divisions have more say. On human rights conventions, the main obstacle is the justice ministry, which regards any binding international procedure or protocol as a threat to Japan's judicial sovereignty. In all policy making processes, human rights concerns are too weak to make much impact and lack any institutional guarantee.

More than pragmatic complicity

It is economic and political ties with Jakarta that determine Japanese policy on East Timor. The importance the Japanese government attaches to Indonesia is reflected in aid policy: Indonesia is the top recipient of Japanese aid, receiving some 15-17 per cent of Japan's total overseas aid budget each year. Indonesia is an important oil and gas supplier and a promising market for Japanese products and capital. It also holds one side of the Malacca Straits, which are vital for a continuous supply of energy to Japan.

An official of the Japanese foreign ministry's Indonesia team once said that the independence of East Timor would not damage Japan's interest. The important thing is that Indonesia should not get angry. Perhaps this is what the ruling elites have demanded of diplomacy: to maintain stable relations with whatever regime rules Indonesia.

But foreign ministry officials have sometimes gone beyond such pragmatic complicity. They often defend Indonesia vigorously and are willing to help create an atmosphere favourable to its rulers.

Officials specialising in Indonesia tend to hold a deep affection towards the country,

and to share the feelings that prevail among Indonesians, and the elite in particular. They become sympathetic to Indonesian nation-building and its xenophobic discourse.

In 1994, a Japanese official from the embassy in Jakarta, acting as interpreter for a group of Japanese parliamentarians visiting East Timor, was found to have twisted what the parliamentarians, and Indonesian civilian and military officials, said during the visit. After a press conference in Bali at the end of the visit, Indonesian newspapers reported that all the Japanese parliamentarians were happy with the situation in East Timor. Later, the conference tapes were checked and a scandal broke. Foreign Minister Kohno, after personally checking the parliamentarians' report on the manipulations, had to make an official apology.

Another case of excessive sympathy is more recent. On 19 June this year, the Indonesian news agency Antara reported that a First Secretary at the Japanese embassy in Jakarta had condemned the shooting of Indonesian security forces' personnel by the Timorese resistance as a violation of human rights. 'Even a violation of international law,' he affirmed. 'Our report, written after the visit to Timtim, will be forwarded to the United Nations to contribute to efforts in finding a solution for the former Portuguese colony.' The Indonesian authorities used his statements to strengthen their position. These excesses might not be government policy, but part of the foreign ministry's practice.

Linkage is needed

While it supports the UN mediation efforts, it is still extremely difficult for the Japanese government to do anything that directly affects bilateral relations with Indonesia. The solidarity movement has always demanded that Japan's aid to Indonesia be linked to human rights in East Timor. This is in accordance with the so-called Official Development Assistance Charter, a set of loose guidelines which refers to human rights in recipient countries. But after 10 years of campaigning, the flow of aid to Indonesia continues unabated.

Indonesia's image has recently worsened because of the national car project, repression against opposition leader Megawati Sukarnoputri, violence during the general elections and, perhaps, East Timor. But these are not enough to make the Japanese government reconsider its aid policy to Indonesia. Japan supported President Ferdinand Marcos of the Philippines until the very last moment. It is to be hoped that Japanese politicians and bureaucrats will not repeat the same mistake. ■

• **Akihisa Matsuno** is a member of the Free East Timor Japan Coalition.

Measuring results

by Natasha Pearce

Making Solidarity Effective. Northern voluntary organisations, policy advocacy and the promotion of peace in Angola and East Timor

Stephen Baranyi, Steve Kibble, Arnold Kohen and Kathryn O'Neill. CIIR, 1997.

For anyone with an interest in policy advocacy, *Making Solidarity Effective* is a must. After stating its aims, which include clarification of terms such as 'policy advocacy' and advancing the debate on how to assess advocacy, the paper launches into a comprehensive review of the literature. The authors adopt the term Northern voluntary organisations (NVOs) to include all Northern NGOs, churches, labour organisations, solidarity groups and other voluntary organisations. The paper assesses the efforts of this diverse group.

The authors construct their own criteria for measuring impact. They distinguish between three types of impact in both North and South – impact on capacity-building, impact on declaratory policy and implementation impact – and allow for three levels of impact for each indicator: low, moderate and high.

The authors assess the impact of NVOs' advocacy work in two specific cases. The two case studies, on Angola (by Kathryn O'Neill) and on East Timor (Arnold Kohen and Stephen Baranyi) provide a brief history of each country's liberation struggle, drawing out other countries' involvement and position.

Kohen and Baranyi's case study of East Timor shows how NGO advocacy has evolved. In the 1970s, there was little church activity on the issue and although secular solidarity groups' advocacy had a moderate impact on certain governments and UN Security Council and General Assembly declarations, there was little implementation impact on the ground.

The 1980s was a period of much capacity building, particularly with regard to the Catholic church in East Timor and church-affiliated organisations in Australia, Europe and North America. Stronger links were also built between the churches and secular organisations. Implementation impact was still low, however, and declaratory impact was smaller than in the 1970s. Arms sales to Indonesia increased in many countries, including Britain.

The Santa Cruz massacre in 1991, caught on film by Max Stahl, shocked the world. The increased media coverage, along with NVO activity, achieved high impact on declarations by many countries, although this has led to only a moderate implementation impact.

Many of the case study's observations are disheartening for those involved in advocacy because the area of capacity building is the only category showing consistent progress towards high impact. However, there is room for optimism. NVOs have done much to keep the issue alive. Indeed, much of the media coverage would not have been achieved without NVO advocacy and awareness raising. With a new

Labour government, there is also renewed hope that a change in Britain's arms sales to Indonesia may be forthcoming.

The final aim of the authors is to identify strategic lessons which can be applied to these and other cases. O'Neill and Kohen and Baranyi conclude that public awareness and support is essential for NVOs to achieve any impact. They also conclude that NVOs should have achievable policy goals. As joint efforts are likely to have a greater impact than individual action, the authors recommend that there should be greater links between NVOs, Southern voluntary organisations and the people and organisations in the countries concerned.

Eminently readable and informative, this paper stresses that NVOs rarely undertake systematic evaluation of the results of their advocacy. Evaluation is difficult and complex, and the authors are admirably self-critical about their own efforts in this field. This is clearly an area for much improvement and NVOs would do well to take on board some of the recommendations here. ■

- *Making Solidarity Effective*, by Stephen Baranyi, Steve Kibble, Arnold Kohen and Kathryn O'Neill, can be ordered for £3.00 + 60p postage and packing from CIIR.

Arms sales: A global perspective

Arms Trade to a Military Regime: Indonesia

European Network Against Arms Trade (ENAAAT)

A product of collaboration between campaigners in a variety of Western countries, this second publication by the ENAAAT is a welcome addition to the documentation on security cooperation with Indonesia. Separate chapters on nine European countries, two North American countries and Australia provide a wide-ranging international perspective on this issue.

Three tendencies emerge. First, we see how the Suharto regime has used its market size and strategic location to play suppliers off against each other and thereby expand arms trade and military training relationships with a range of Western countries. Second, readers are shown how Western governments systematically evade multilateral arms export guidelines and their own arms control policies, where these exist, in order to secure arms sales and other lucrative contracts with Indonesia. Finally, and this is perhaps the most innovative part of the book, many of the authors document the emergence of campaigns against such weapons exports in different countries.

One limitation of this otherwise useful book is its failure rigorously to analyse the relationship between these campaigns and the policies they seek to change. In order to build the international campaign which the authors rightly call for, it is necessary to distinguish between strategies which have led to policy change, and those which have proven to be fruitless, in

different settings. Perhaps the study of advocacy effectiveness by CIIR, reviewed above, may help in this regard. ■

- *Arms Trade to a Military Regime: Indonesia* can be ordered from the European Network Against Arms Trade (ENAAAT), Pesthuislaan 39, 1054 RH Amsterdam, The Netherlands. Tel/fax: 3120-616-4684. E-mail: amokmar@antenna.nl.

Honouring the struggle for peace

East Timor Nobel Peace Prize: Lectures delivered at the 1996 Nobel Peace Prize awarding ceremony

Although the speeches by Bishop Carlos Belo and José Ramos-Horta have circulated widely since they were made in December last year, this compilation of the final texts is welcome for several reasons. First, it brings together all key documents from that historic ceremony, including the speech by Francis Sejersted, Chairman of the Norwegian Nobel Committee. Second, it contains the definitive *curricula vitae* of the laureates, which many agencies will find useful in responding to media inquiries. Third, since it contains these documents in English and Portuguese, the book will be of use to organisations worldwide and especially to the Timorese, who still have difficulty gaining access to these texts. ■

- *East Timor Nobel Peace Prize: Lectures delivered at the 1996 Nobel Peace Prize awarding ceremony* can be ordered from Edicioes Colibri, Faculdade de Letras, Alameda da Universidade, 1699 Lisboa Codex, Portugal. Tel/fax: 3511-796-4038.

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