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A False Sense of Security: Lessons Learned from the United Nations Organization and Conduct Mission in East Timor

Jennifer Toole

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A FALSE SENSE OF SECURITY: LESSONS LEARNED FROM THE UNITED NATIONS ORGANIZATION AND CONDUCT MISSION IN EAST TIMOR

JENNIFER TOOLE^{*}

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^{*} J.D. candidate, May 2002, American University, Washington College of Law; M.A. Candidate, American University School of International Service; B.A., English, 1994, University of California at Berkeley. My thanks first go to my parents, Kevin and Joyce Toole, who have always had faith in my abilities to achieve any goal. I would also like to thank the entire *American University International Law Review* staff for their diligent efforts throughout the publication of this Comment. My husband Jae deserves a lifetime of thanks for his constant love and support through this process. I dedicate this Comment to him.

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“The people have dreamed for 23 years about the UN coming to East Timor. To see them, at last, gives them a sense of security and hope that their struggle will have an end.”¹

1. *East Timor: Nervous Voters*, ECONOMIST, June 19, 1999, at 34 (statement

INTRODUCTION

At one time, a United Nations (UN) presence² in an area of conflict signified a restoration of peace and security.¹ UN-sponsored agreements to monitor elections have proven successful in a number of conflicts.⁴ However, just as there are successes in UN election monitoring, there are also “half-successes”⁵ and even failures.⁶ As

of a priest in East Timor).

2. United Nations “presence” has a number of meanings. Former Secretary-General of the United Nations, Boutros Boutros-Ghali, defines the categories of UN involvement as follows:

Preventative diplomacy is action to prevent disputes from arising between parties, to prevent existing disputes from escalating into conflicts and to limit the spread of the latter when they occur. *Peacemaking* is action to bring hostile parties to agreement, essentially through such peaceful means as those foreseen in Chapter VI of the Charter of the United Nations. *Peacekeeping* . . . is a technique that expands the possibilities for both the prevention of conflict and the making of peace. *Post conflict peace-building* [is] action to identify and support structures which will tend to strengthen and solidify peace in order to avoid a relapse into conflict.

An Agenda for Peace: Preventative Diplomacy, Peacemaking, and Peacekeeping, U.N. GAOR, 47th Sess., paras. 20-21 U.N. Doc. A/47/277 (1992) [hereinafter *An Agenda for Peace*]; see also STEVEN R. RATNER, *THE NEW UN PEACEKEEPING: BUILDING PEACE IN LANDS OF CONFLICT AFTER THE COLD WAR* (1995) (discussing a comprehensive study of UN efforts to restore peace).

3. The restoration of peace and security to an area of conflict is a fundamental tenet of the UN. See U.N. CHARTER art. 1, para. 1 (calling for “the suppression of acts of aggression” in order to “maintain international peace and security”); see also *Milestones in the United Nations History*, available at <gopher://gopher.undp.org/00/un50/MILESTON.DOC> [hereinafter *Milestones*] (providing examples of UN involvement in the resolution of a number of conflicts and listing awards the UN has received for its efforts at restoring peace and security).

4. See GEOFFREY C. GUNN, *EAST TIMOR AND THE UNITED NATIONS: A CASE FOR INTERVENTION* 88-102 (1997) (providing examples of successful elements found in UN election monitoring and peacekeeping efforts in Namibia, Cambodia, Western Sahara, El Salvador, Eritrea, and Mozambique; each providing lessons for possible UN involvement in East Timor); YVES BEIGBEDER, *INTERNATIONAL MONITORING OF PLEBISCITES, REFERENDA AND NATIONAL ELECTIONS: SELF-DETERMINATION AND TRANSITION TO DEMOCRACY* 219 (1994) (pointing specifically to the Cambodian operation as a UN success, where peaceful solutions overrode the possibility of war).

5. See BEIGBEDER, *ibid* (defining “half-success” in the context of UN election monitoring as one where the UN certifies an election “free and fair,” but the disappointed parties respond violently, renewing political instability or perhaps civil

the need for impartial election monitoring grows,⁷ the UN must learn from its mistakes in order to fulfill its primary goal of fostering peace and security in the international community.⁸

In 1999, the United Nations had the opportunity to bring peace and security to East Timor, a territory with a history of conflict.⁹ On May 5, the Governments of Indonesia and Portugal signed the Agreement Between Indonesia and Portugal on the Question of East Timor ("General Agreement"), formally requesting UN electoral assistance for East Timor.¹⁰ That same day, the UN responded by signing the Agreement Between the United Nations and the Governments of Indonesia and Portugal Regarding the Modalities for the Popular Consultation Through a Direct Ballot ("Modalities Agree-

war). Beigbeder suggests the UN mission in Angola is such an example.

6. See *id.* at 176 (labeling the 1991 UN-sponsored Haitian election a failure, because the democratically-elected President Aristide was overthrown months later by a coup d'état). But see *id.* at 179 (noting that the international response to the Haitian coup led to President Aristide's restoration, which could be viewed as a democratic success).

7. See generally Susan Marks, *The Rule of Law in the Era of Globalization: Guarding the Gates with Two Faces: International Law and Political Reconstruction*, 6 Ind. J. Global Legal Stud. 457, 488-90 (1999) (observing the early 1990's increase in UN election monitoring invitations, which evolved from decolonization efforts following World War II); Margaret Satterthwaite, Comment, *Human Rights Monitoring, Elections Monitoring, and Electoral Assistance as Preventive Measures*, 30 N.Y.U. J. Int'l L. & Pol. 709, 710-11 (1998) (pointing to the expansion of UN election monitoring over the past ten years as an example of conflict prevention); Thomas M. Frank, *The Emerging Right to Democratic Governance*, 86 Am. J. Int'l L. 46, 55 (1992) (observing the expansion of UN election monitoring from traditional decolonization efforts to internal matters); Melida N. Hodgson, *When to Accept, When to Abstain: A Framework for U.N. Election Monitoring*, 25 N.Y.U. J. Int'l L. & Pol. 137, 143-45 (1992) (citing the goal of maintaining international peace and security as the UN's justification for monitoring elections within independent states).

8. See U.N. CHARTER, art. 1, para. 1 (noting that the first purpose of the UN is "maintain[ing] international peace and security").

9. See discussion *infra* Part I (summarizing East Timor's conflict-riddled history).

10. *Agreement Between Indonesia and Portugal on the Question of East Timor*, U.N. SCOR, 53d Sess., Annex I, at 4, U.N. Doc. S/1999/513 (1999) [hereinafter *General Agreement*] (requesting UN monitoring of a popular consultation in East Timor, in which (1) Indonesia would present a proposal for autonomy; and (2) the East Timorese would vote either to accept the proposal or pursue independence).

ment")¹¹ and the Agreement Between the United Nations and the Governments of Indonesia and Portugal Regarding Security Arrangements ("Security Agreement"),¹² in which the UN promised to organize and conduct a popular consultation in the territory.¹³ The subsequent arrival of the United Nations Mission to East Timor ("UNAMET")¹⁴ might have given the East Timorese people a "sense of security,"¹⁵ but UNAMET's mandate did not allow the mission to provide actual security.¹⁶ Even after an overwhelming vote¹⁷ to end

11. *Agreement Between the United Nations and the Governments of Indonesia and Portugal Regarding the Modalities for the Popular Consultation Through a Direct Ballot*, U.N. SCOR 53d Sess., Annex II, at 24 U.N. Doc. S/1999/513 (1999) [hereinafter *Modalities Agreement*]

12. *Agreement Between the United Nations and the Governments of Indonesia and Portugal Regarding Security Arrangements*, U.N. SCOR, 53d Sess., Annex III at 29, U.N. Doc. S/1999/513 (1999) [hereinafter *Security Agreement*]

13. See Secretary-General Kofi Annan, *Remarks at U.N. Headquarters on the Announcement of the May 5th Agreements* (May 6, 1999) available at <<http://www.un.org/News/Press/docs/1999>> [hereinafter *May 5 Agreements Press Conference*] (announcing the signing of the May 5 Agreements).

14. See S.C. Res. 1246, U.N. SCOR, 54th Sess., 4013th mtg., para. 1, U.N. Doc. S/RES/1246 (1999) (establishing UNAMET to: (1) certify the outcome of the popular consultation; and (2) aid the Secretary-General in carrying out his responsibilities under paragraph 3 of the Security Agreement). In order to assist the Secretary-General under paragraph 3 of the Security Agreement, UNAMET was charged with providing an "objective assessment" of the security situation. See *Security Agreement*, *supra* note 12, para. 3 (requiring the Secretary-General to ensure adequate security existed before proceeding with the implementation of the popular consultation).

15. See *East Timor: Nervous Voters*, *supra* note 1, at 34 (reporting the hopes of young and old East Timorese that a UN presence would lead to the peaceful liberation of their homeland).

16. See S.C. Res. 1246, *supra* note 14, para. 9 (stressing Indonesia's responsibility to provide security during the consultation process). The UN Security Council declined to add a security component to UNAMET's mandate because Portugal and the UN entrusted Indonesia with primary responsibility for security. See *General Agreement*, *supra* note 10, art. 3 (assigning Indonesia the responsibility to guarantee a fair and peaceful vote); *Modalities Agreement*, *supra* note 11, at § G (assigning Indonesia the responsibility for ensuring the safety of UN personnel sent to monitor the vote); *Security Agreement*, *supra* note 12, at art. 4 (assigning security responsibility to Indonesian police during the consultation process).

17. See Secretary-General Kofi Annan, *Remarks to the Security Council about the People of East Timor Reject Proposed Special Anatomy, Express Wish to Begin the Transition to Independence* (Sept. 3, 1999) available at <<http://www.un.org/News/Press/docs/1999>> [hereinafter *East Timorese Reject*]

Indonesia's twenty-three year occupation and begin the process of self-determination,¹⁸ the East Timorese struggle did not end.¹⁹ Following the vote, militias supporting integration with Indonesia launched a massive campaign of violence, including widespread looting, arson, displacement, torture, and murder.²⁰ Instead of providing security to the East Timorese, a commitment made under the May 5 Agreements,²¹ the Indonesian security forces not only allowed gross violations of human rights to take place,²² but often engaged in acts of violence against the East Timorese.²³

Autonomy] (announcing the result of the August 30, 1999 popular consultation in East Timor). The results of the consultation were 25.1% in favor and 78.5% against Indonesia's autonomy proposal. *Id.*

18. While failing to explicitly define "self-determination" in the UN Charter, the UN considers this right as one of the organization's founding principles. See U.N. CHARTER art. 1, para. 2 (believing the respect for equal rights and self-determination are the basis for developing friendly relations among nations). The right to self-determination, once restricted to the decolonization process, has expanded to a democratic right within independent states. See discussion *infra* Part II.A (considering different definitions of self-determination as a legal right).

19. See *Report of the High Commissioner for Human Rights on the Human Rights Situation in East Timor*, U.N. ESCOR, 4th Special Sess., paras. 14-46, U.N. Doc. E/CN.4/S-4/CRP.1 (1999) [hereinafter *Human Rights Report*] (reporting on the "breakdown of law and order," "wanton killings," "forcible expulsions," "[inhumane] treatment of women," "enforced and involuntary disappearances," "displace[ment] [of] persons," "destruction of property," and "[interference with] the media" following the August 30 vote).

20. See *Report of the International Commission of Inquiry on East Timor to the Secretary General*, U.N. High Commissioner for Human Rights, 54th Sess., Agenda Item 96, paras. 120-142, U.N. Doc. S/2000/59 (2000) [hereinafter *Commission Report*] (providing conclusions from the International Commission of Inquiry on the human rights situation following the vote and finding that gross humanitarian violations took place); *Situation of Human Rights in East Timor, Report by the Secretary General*, U.N. GAOR 54th Sess., Agenda Item 166 (c) at 28-40, U.N. Doc. A/54/660 (1999) [hereinafter *Human Rights Situation*] (providing detailed accounts of the militias' violent acts following the August 30 vote, based on reports to the Special Rapporteur of the Commission on Human Rights).

21. See *General Agreement*, *supra* note 10, art. 3 (binding Indonesia to guarantee a peaceful vote); *Security Agreement*, *supra* note 12, art. 4 (creating a legal duty for Indonesia to provide security through the entire consultation process).

22. See *Human Rights Report*, *supra* note 19, para. 16 (recording UN eyewitness reports that Indonesian forces willfully failed to restore the peace).

23. See *id.* (including additional UN eyewitness reports that the Indonesian security forces were actual participants in the violent campaign against East Timorese).

The East Timor model provides considerable insight on what the UN should avoid in future election monitoring missions. This Comment submits that the UN failed to negotiate the most basic requirements for a peaceful vote in East Timor. While the organization of the UN mission may be commended,²⁴ inherent flaws in the May 5 Agreements enabled a climate rife with violence.²⁵

Part I traces East Timor's history, touching on the centuries of foreign occupation as well as the specific events that led up to the negotiation and signing of the May 5 Agreements. Part II provides definitions essential to understanding why the East Timorese had a legal right to pursue independence (self-determination) and how the UN attempted to ensure that right (electoral assistance) through a binding legal agreement (consent). Part III explores the legal and political constraints on enforcing self-determination through electoral assistance. This section also explains why East Timor saw no international enforcement of its right to self-determination until the UN, Portugal, and Indonesia signed the May 5 Agreements. Part IV analyzes the provisions and purposes of the May 5 Agreements, and points out major flaws in their development and execution. Part V gives recommendations for ensuring success in future UN election monitoring efforts, should the UN choose to be so involved. This Comment concludes with a plea to the UN to learn from its mistakes in East Timor and take the necessary steps to secure peace when providing electoral assistance to territories in conflict.

I. HISTORICAL BACKGROUND

The people of East Timor have not known independence for nearly three centuries.²⁶ While the UN has long recognized the East

24. UNAMET managed to register over four-hundred and fifty thousand voters in a little under two months. See *East Timorese Reject Autonomy*, *supra* note 17.

25. See discussion *infra* notes 97-103 and accompanying text (describing the breakdown of law and order in East Timor following the vote).

26. See 10 CAMBRIDGE INTERNATIONAL DOCUMENTS SERIES: EAST TIMOR AND THE INTERNATIONAL COMMUNITY: BASIC DOCUMENTS XIX (Heike Krieger ed. 1997) [hereinafter CAMBRIDGE DOCUMENTS] (discussing Portugal's colonization of the territory, which began in 1701, and Indonesia's illegal occupation of East Timor, which began with an invasion of the territory in 1975); see also, John G. Taylor, *The Emergence of a Nationalist Movement in East Timor*, in EAST TIMOR AT THE CROSSROADS: THE FORGING OF A NATION 23-25, 36-39 (Peter Carey & G.

Timorese right to pursue independence, political factors and legal questions have hindered UN efforts to assist the East Timorese in achieving this goal. In order to understand the difficulties the UN faced when negotiating the May 5 Agreements, it is important to consider East Timor's history of foreign occupation and the international response.

A. FOREIGN OCCUPATION: PORTUGUESE COLONIZATION AND INDONESIAN INVASION

Portugal controlled the region²⁷ that is now East Timor for the greater part of the 18th, 19th, and 20th Centuries.²⁸ Even when the UN General Assembly called for an end to colonization in 1960,²⁹ Portugal maintained colonial control of the territory.³⁰ At that time, the General Assembly condemned Portugal's behavior and recog-

Carter Bentley eds. 1995) [hereinafter *Nationalist Movement*] (chronicling Portuguese interaction and subsequent invasion of East Timor, and discussing the political implications of Indonesia's invasion of East Timor more than two centuries later).

27. The "region" referred to in the text covers 146,000 square kilometers on the eastern half of Timor island. See CAMBRIDGE DOCUMENTS, *supra* note 26, at xix.

28. See *id.* (stating that Portugal claimed East Timor as its own and treated the region as "part of its metropolitan territory" up until 1974).

29. See *Declaration on the Granting of Independence to Colonial Countries and Peoples*, G.A. Res. 1514, U.N. GAOR, 15th Sess., 947 plen. Mtg., Supp. No. 16, at 67, para. 5, U.N. Doc. A/4684 (1961) [hereinafter *Decolonization Declaration*] (requiring the transfer of colonial powers back to indigenous peoples according to the peoples' will). General Assembly Resolution 1514 deemed colonization a "denial of fundamental human rights" and "contrary" to the UN Charter. *Id.* at 1.

30. See *Territories Under Portuguese Administration*, G.A. Res. 1699 1807, U.N. GAOR, 17th Sess., Agenda item 54, 1194th plen. Mtg. at 1, U.N. Doc. A/RES/1807 (1962) (deploring Portugal's lack of regard for the will of the territories under its administration to exercise self-determination and pursue independence). Portugal's colonies in 1962 included: the Cape Verde Archipelago, Guinea (called Portuguese Guinea), Sao Tome and Principe, Sao Joao Batista de Ajuda, Angola, Mozambique, Goa (called the state of India), Macau, and Timor (East Timor). See *Transmission of Information Under Article 73e of the Charter*, G.A. Res. 1542, U.N. GAOR, 15th Sess., paras. 1-2 U.N. Doc. A/RES/1542 (1960) (listing the colonies under Portuguese administration and requiring Portugal to submit reports to the UN about the political and social development of these territories).

nized East Timor as a “non-self-governing” territory³¹ with the right to self-determination³² under Chapter XI of the UN Charter.” Portugal held its colonial grasp on East Timor until July 1974, when the Portuguese government amended the national constitution to recognize the right of self-determination in all Portuguese colonies.³⁴

With Portugal loosening its grip over East Timor, three core political groups emerged: the Democratic Union of East Timor (“UDT”),³⁵ the Revolutionary Front for an Independent East Timor (“FRETILIN”),³⁶ and the Timorese Democratic People’s Union (“APODETI”).³⁷ UDT and FRETILIN supported full East Timorese independence.³⁸ UDT favored a transitional period, keeping Portugal involved with East Timorese governance for a limited period, while FRETILIN called for immediate expulsion of the former colonizer.³⁹

31. The UN defines “non-self-governing” territories as those “whose peoples have not yet attained a full measure of self-government.” U.N. CHARTER, art. 73

32. See discussion *infra* Part II.A (providing the legal definition and evolution of the right to self-determination).

33. G.A. Res. 1542, *supra* note 30, para. 1.

34. See PORT. CONST. (Port. Council of State, Constitutional Law 7-74, July 1974) art. 2, reprinted in CAMBRIDGE DOCUMENTS, *supra* note 26, at 34 (waiving provisions in Portugal’s 1933 constitution, which denied the right to self-determination and independence to Portugal’s overseas territories).

35. See *Nationalist Movement*, *supra* note 26, at 33 (writing that independence supporters created UDT on May 11, 1974).

36. See *id.* (stating that FRETILIN grew out of the Association of East Timorese Democrats (ASDT) in 1974).

37. See *id.* at 34 (remarking that APODETI, a fringe group supporting integration with Indonesia, grew over time).

38. See *id.* at 33 (defining the UDT and FRETILIN as pro-independence factions). A UN report identified the UDT as a party that favored maintaining a relationship with Portugal until East Timor could become self-sufficient. See *Special Committee on the Situation with Regard to Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples, Working Paper on Timor Prepared by the Secretariat*, U.N. GAOR, 30th Sess., Annex, para. 11, U.N. Doc. A/AC.109/L.1015/Annexes (1975) reprinted in CAMBRIDGE DOCUMENTS, *supra* note 26, at 19 [hereinafter *Working Paper on Timor*] (noting that most of the leaders of UDT were Portuguese government officials). The same report identified FRETILIN as the largest political party in East Timor at that time. See *id.* at 19, para. 12 (noting in addition that FRETILIN was composed largely of intellectuals).

39. See *Working Paper on Timor*, *supra* note 38, paras. 11-12 (stating that

The third group, APODETI, advocated integration with Indonesia.⁴⁰ Portugal agreed to remain in the region until 1978 and oversee a vote between the three factions, with the intention of administering a peaceful transition to the newly-elected government.⁴¹ The UN supported the Portuguese plan.⁴²

Unfortunately, the UN-praised Portuguese plan for East Timor never took place. The outbreak of civil war in 1975 interfered with the Portuguese-sponsored vote.⁴³ On November 28 of that year, FRETILIN declared unilateral independence over East Timor.⁴⁴ APODETI, UDT and other political groups urged Indonesia to intervene in the conflict.⁴⁵ Indonesia invaded East Timor on December 7, 1975,⁴⁶ justifying this action based on its shared ethnic history with the territory.⁴⁷ On December 17 of that year, Indonesia set up a pro-

UDT favored Portuguese assistance with transitional independence, while FRETILIN favored complete independence from Portugal and a close relationship with Indonesia).

40. See *Nationalist Movement*, *supra* note 26, at 33 (defining APODETI as the pro-integration faction). The *Working Paper on Timor* identified APODETI as the smallest of the three main factions. See *Working Paper on Timor*, *supra* note 38, para. 13 (noting that APODETI favored integration with Indonesia based on "cultural links").

41. See *Nationalist Movement*, *supra* note 26, at 33 (explaining Portugal's attempt to assist or control East Timor's shift towards self-determination).

42. See G.A. Res. 3113, U.N. GAOR, 28th Sess., para. 1, U.N. Doc. A/RES/3113 (1973) (welcoming Portugal's new policy regarding East Timor).

43. See *Nationalist Movement*, *supra* note 26, at 34-37 (chronicling the chaotic events in East Timor between 1974-76, when UDT, FRETILIN, and APODETI engaged in civil war).

44. See *id.* at 35, 36 (claiming that FRETILIN gained popular support through an independent vote).

45. See *Joint Proclamation by APODETI, UDT, KOTA and the Partido Trabalhista*, *encl.*, Letter dated 4 December 1975 from the Permanent Representative of Indonesia addressed to the Secretary-General, U.N. GAOR 4th Comm., 30th Sess., Agenda Item 23, 88, at 1-3, U.N. Doc. A/C.4/808 (1975), reprinted in CAMBRIDGE DOCUMENTS, *supra* note 26, at 44 [hereinafter *Integration Proclamation*] (supporting full integration with Indonesia and urging the Indonesian government to protect the lives of pro-integrationist East Timorese).

46. See John G. Taylor, *East Timor: Contemporary History: A Chronology of the Main Events*, in EAST TIMOR AT THE CROSSROADS: THE FORGING OF A NATION, *supra* note 26, at 238 (Peter Carey and G. Carter Bentley, eds. 1995) [hereinafter *Chronology*].

47. See *Nationalist Movement*, *supra* note 26, at 34 (implying skepticism at In-

visional government in East Timor⁴⁸ and continued to occupy the region for nearly twenty-five years.⁴⁹ Estimates of the East Timorese death toll from the first four years of Indonesia's invasion and annexation are between ten percent and thirty percent of the East Timorese population.⁵⁰

B. INTERNATIONAL RESPONSE

The UN condemned the Indonesian invasion of 1975 and rejected Indonesia's subsequent claims that the people of East Timor freely chose integration.⁵¹ UN Security Council Resolutions 384 and 389, passed in December 1975 and April 1996, respectively, reaffirmed the UN's support of East Timor's right to self-determination and called upon the government of Indonesia to "withdraw without further delay all its forces from the Territory."⁵² From 1975 to 1982, the

donesia's justification for the invasion, based on a cultural connection and shared history with East Timor).

48. See *Declaration on the Establishment of a Provisional Government of the Territory of East Timor*, encl. Letter dated 22 December 1975 from the Permanent Representative of Indonesia addressed to the Secretary-General, A/31/42 (1974), reprinted in CAMBRIDGE DOCUMENTS, *supra* note 26, at 46 (claiming the Indonesian-controlled provisional government reflected the determination of the East Timorese).

49. See *Nationalist Movement*, *supra* note 26, at 34-37 (discussing Indonesia's occupation of East Timor generally). Indonesian control over East Timor ended in October of 1999, when the Indonesian government formally recognized the will of East Timorese to pursue independence and transferred administrative power to the UN. See S.C. Res. 1272 U.N. SCOR, 54th Sess., U.N. Doc. S/RES/1272 (1999) (welcoming Indonesia's decision to honor the August 30 vote for East Timorese independence, and setting up the United Nations Transitional Administration in East Timor (UNTAET) to administer the territory until the people achieve full independence).

50. See James Dunn, *The Timor Affair in International Perspective*, in EAST TIMOR AT THE CROSSROADS: THE FORGING OF A NATION, *supra* note 26, at 67 [hereinafter *Timor Affair*] (citing a report of aid workers, who were allowed entry into East Timor four years after the invasion).

51. See S.C. Res. 389, U.N. SCOR, 31st Sess., para. 2, U.N. Doc. S/RES/389 (1976), and S.C. Res. 384, U.N. SCOR, 30th Sess., paras. 1-2 U.N. Doc. S/RES/389 (1976) (calling on Indonesia to withdraw its troops from East Timor and recognize the East Timorese right to self-determination).

52. See *id.* (calling on all member states to respect East Timor's right to self-determination and help further the decolonization of the territory).

General Assembly passed a series of resolutions,⁵³ including Resolution 37/30, which ordered the Special Committee on the Situation with Regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples to keep the situation in East Timor under active consideration as a problem of decolonization.⁵⁴ In addition, Resolution 37/30 called on the U.N. Secretary General to consult with Indonesia and Portugal regarding the East Timor crisis.⁵⁵ Beginning in 1982, Indonesia and Portugal participated in annual meetings through the Secretary General's office to resolve the question of East Timor.⁵⁶

53. The following UN General Assembly Resolutions condemned Indonesia's occupation of East Timor and reaffirmed the territory's right to self-determination: G.A. Res. 37/30, U.N. GAOR 37th Sess. U.N. Doc., para. 1, A/RES/37/30 (1992) (requesting the Secretary-General to work with interested parties and assist East Timor in exercising its right to self-determination through peaceful means); G.A. Res. 36/50, U.N. GAOR, 36th Sess., paras. 3, 5, U.N. Doc. A/RES/36/50 (1981) (expressing concern about famine in East Timor and encouraging Portugal as well as the international community to join together in support of East Timor's right to self-determination); G.A. Res. 35/27, U.N. GAOR, 35th Sess., para. 1, U.N. Doc. A/RES/35/27 (1980) (reaffirming East Timor's right to self-determination and noting the twenty year anniversary of the original declaration granting East Timorese that right); G.A. Res. 34/30, U.N. GAOR, 34th Sess. paras. 1-2, U.N. Doc. A/RES/34/30 (1979) (reaffirming East Timor's right to self-determination and declaring that "the people of East Timor must be enabled freely to determine their own future, under the auspices of the United Nations"); G.A. Res. 33/39, U.N. GAOR, 33d Sess., para. 1, U.N. Doc. A/RES/33/39 (1978) (recognizing the legitimacy of East Timor's struggle for independence); G.A. Res. 32/34, U.N. GAOR, 32d Sess., paras. 3, 7 U.N. Doc. A/RES/32/34 (1977) (reaffirming East Timor's right to self-determination and requesting entry for the Red Cross); G.A. Res. 31/53, U.N. GAOR, 31st Sess., paras. 5, 6 U.N. Doc. A/RES/31/53 (1976) (rejecting Indonesia's claim of voluntary East Timorese integration and calling on Indonesia to withdraw from the territory); G.A. Res. 3485, U.N. GAOR, 30th Sess., paras. 5, 6 U.N. Doc. A/RES/3485 (1975) (calling the Indonesian invasion a "violation of the territorial integrity of Portuguese Timor").

54. See G.A. Res. 37/30, *supra* note 53, para. 2 (requesting the Committee on Decolonization to assist the Secretary-General to facilitate the implementation of the relevant resolution).

55. See S.C. Res. 389, *supra* note 51, para. 3 (asking the Secretary-General to consult with Indonesia and Portugal in the hopes of reaching a settlement to the question of East Timor).

56. See S.C. Res. 1236, U.N. SCOR, 54th Sess., U.N. Doc. S/RES/1236 (1999) (mentioning that the governments of Indonesia and Portugal have worked for a solution to the question of East Timor's right to self-determination through the good offices of the Secretary-General since 1983).

Between 1982 and 1999, the UN organs did not pass any resolutions to address Indonesia's violent occupation of East Timor.⁵⁷ On November 12, 1991, the violence in the region escalated when Indonesian troops opened fire on unarmed pro-independence marchers.⁵⁸ The UN viewed the incident as a human rights tragedy, but passed no resolutions.⁵⁹

The UN remained passive in enforcing East Timor's right to self-determination. This was in part because its member states had differing views as to whether or not the U.N. should recognize Indonesia's claim to the territory should be recognized.⁶⁰ For example, Australia recognized Indonesian sovereignty over East Timor *de jure*⁶¹ and entered into a treaty with Indonesia affecting East

57. S.C. Res. 1236 was the first Security Council resolution passed regarding East Timor's status since 1982.

58. See Pat Walsh, *Towards a Just Peace, in EAST TIMOR AT THE CROSSROADS: THE FORGING OF A NATION*, *supra* note 26, at 148, 149 (calling the Dili Massacre a possible turning point in East Timor's history).

59. See Gunn, *supra* note 4, at 85 (interpreting the UN response to the Dili Massacre was a "shift" in UN priorities for East Timor "from self-determination to humanitarian issues").

60. See generally ANTONIO CASSESE, *SELF-DETERMINATION OF PEOPLES* 223-30 (1995) (evaluating the differing views in the international community with regards to East Timor's status and considering the case of East Timor a "test" of international law); see also discussion *infra* notes 61-75 and accompanying text (explaining the different positions held by member states); discussion *infra* Part III.B (arguing that the UN's inaction in regards to the question of East Timor was politically motivated).

61. See Comm. Rec. 25-26, as summarized in Australian Foreign Affairs Record 49 (1978), reprinted in CAMBRIDGE DOCUMENTS, *supra* note 26, at 333 (statement of Mr. A. S. Peacock, Minister for Foreign Affairs, Australia) (recognizing Australia's willingness to accept East Timor as Indonesian territory). *De jure* recognition of a state is recognition with implied approval of the government. See STATE PRACTICE REGARDING STATE SUCCESSION AND ISSUES OF RECOGNITION 38 (Jan Klabbbers et al. eds., 1999) [hereinafter STATE PRACTICE] (defining the forms of recognition States lend to new governments, ranging from recognition of a government's control over territory to actual approval (*de jure*) of that new government). But see RESTATEMENT (THIRD) OF FOREIGN RELATIONS LAW OF THE UNITED STATES § 201 (1999) (noting that the term "*de jure*," as applied to state recognition, has been used with "varying and uncertain meaning"). The drafters of the Restatement chose not to include this term when discussing the international practice of state recognition. *Id.*

Timorese territorial waters.⁶² In the ensuing suit by Portugal against Australia, the International Court of Justice ("ICJ") reaffirmed East Timor's right to self-determination.⁶³ However, the ICJ did not find that all necessary parties were before the Court and dismissed the case for lack of jurisdiction.⁶⁴ Without a ruling invalidating the agreement, the treaty with Australia remained valid.⁶⁵

Australia was not the only state that recognized the de jure sovereignty of Indonesia over East Timor. A handful of other UN member states accepted Indonesia's integration claims as well.⁶⁶ Australia and other U.N. member states have entered into bilateral treaties with Indonesia,⁶⁷ demonstrating at least de facto recognition of Indonesian sovereignty.⁶⁸ For example, between 1976 and 1992 twenty-eight states, including France, Great Britain, and the United States, entered

62. See Treaty between Australia and the Republic of Indonesia on the Zone of Cooperation in an Area Between the Indonesian Province of East Timor and Northern Australia, Dec. 11, 1989, Indon.-Austl., art. 2.1, art. 2.2, 29 I.L.M. 475-537 (1990) (recognizing East Timor as an Indonesian province when setting up a "zone of cooperation" for the purposes of drilling oil).

63. See Case Concerning East Timor (Port. v. Austrl.), 1995 I.C.J. 90, para. 37 (June 30) ("[T]he Territory of East Timor remains a non-self-governing territory and its people has the right to self-determination.").

64. See *id.* paras. 35-38 (holding that the court did not have jurisdiction over Indonesia, and thus could not have jurisdiction over the validity of the treaty).

65. See Lian A. Mito, *The Timor Gap Treaty as a Model for Joint Development in the Spratly Islands*, 13 AM. U. INT'L L. REV. 727, 758 (1998) (noting that the terms of the Timor Gap Treaty have been carried out, including the conclusion of production sharing contracts, oil drilling, and seismic surveys).

66. See CAMBRIDGE DOCUMENTS, *supra* note 26, at xxiv-xxv (listing Bangladesh, India, Iran, Iraq, Jordan, Malaysia, Morocco, Oman, the Philippines, Saudi Arabia, Singapore, Suriname, and Thailand as states which recognize Indonesia's de jure sovereignty over East Timor).

67. See Counter-Memorial of the Government of Australia (Port. v. Austrl.) 1995 I.C.J. 90, app. C (June 1, 1992), reprinted in CAMBRIDGE DOCUMENTS, *supra* note 26, at 291 (listing double taxation agreements with territorial clauses between Indonesia and various states).

68. De facto recognition of a state does not require approval of the government's activities, merely an acceptance of that government's control over the territory in question. See STATE PRACTICE, *supra* note 61, at 38 (explaining that de facto recognition can include disapproval over the way a government has taken over a state, but recognizes it nonetheless).

into bilateral double taxation treaties with Indonesia.⁶⁹ Many of these treaties include clauses, which read: "the term 'Indonesia' comprises the territory of the Republic of Indonesia as defined in its laws."⁷⁰ Indonesian law deemed East Timor to be an Indonesian territory.⁷¹

While numerous member states recognized de jure or de facto Indonesian sovereignty over East Timor, the UN and other member states recognized East Timor as a non-self-governing territory, with Portugal as the administering power.⁷² Notably, many of the states that recognized de facto Indonesian sovereignty did not deny East Timor's right to self-determination under the UN Charter.⁷³ The debate in the international community surrounded the question of whether Portugal or Indonesia was truly responsible for East Timor's future.⁷⁴

C. NEGOTIATING A SOLUTION

The international community never reached consensus on the question of East Timor.⁷⁵ Instead, Portugal and Indonesia came to a compromise for determining East Timor's future.⁷⁶ In 1998, a change

69. See Case Concerning East Timor (Port. v. Austrl.), 1995 I.C.J., Counter-Memorial of the Government of Australia, 1 June 1992, Appendix C reprinted in CAMBRIDGE DOCUMENTS, *supra* note 26, at 291 (providing a sampling of double-taxation agreements with territorial clauses).

70. *Id.*

71. *Id.*

72. See CAMBRIDGE DOCUMENTS, *supra* note 26, at xxv (remarking that member states of the European Union do not accept Indonesia's de jure or de facto sovereignty over East Timor).

73. See *id.* (writing that states including Canada, Japan, Mauritania, New Zealand, Papua New Guinea, Sweden, and the United States recognized the East Timorese right to self-determination).

74. See *id.* (presenting the different views in the international community surrounding East Timor's status).

75. See generally CAMBRIDGE DOCUMENTS, *supra* note 26, at xxiii-xxv (relating conflicting views in the international community as to whether the Indonesian invasion of East Timor was legal, and disagreement among states regarding whether East Timor was legally integrated into Indonesia); see also discussion *infra* Part III.B (providing the political debate over East Timor's status).

76. See May 5 Agreements Press Conference, *supra* note 13 (statement of Kofi Annan, Secretary-General, United Nations) (commending the efforts of Portugal and Indonesia in the negotiations that led to the signing of the May 5 Agreements).

in Indonesian leadership⁷⁷ fostered an expansion of the Portuguese-Indonesian talks through the Secretary General's good offices.⁷⁸ One year later, Indonesia presented a special autonomy for the people of East Timor,⁷⁹ in which the Indonesian Central Government and military forces would maintain control over East Timor, but the Special Autonomous Region of East Timor ("SARET") would be able to form its own government with special legislative, executive, and judicial powers. Under Indonesia's autonomy proposal, some of SARET's privileges would include: conducting its own elections,⁸⁰ creating and enforcing its own laws,⁸¹ and entering into international agreements,⁸² so long as it acts in compliance with Indonesian law.⁸³

On May 5, 1999, the UN, Portugal, and Indonesia concluded talks on Indonesia's autonomy proposal.⁸⁴ Portugal agreed to accept the proposal so long as the people of East Timor could be consulted, by secret ballot, as to whether they wished to accept Indonesian auton-

77. See David Lamb & Rone Tempest, *Suharto Resigns in Indonesia, Hands Power to Vice President; Asia: After Massive Protests, Deadly Riots and International Pressure, Leader of 32 Years Steps Aside, Army Pledges Loyalty to Habibie, but it is unclear Whether He will Complete President's Term*, L.A. TIMES, May 21, 1998, at A1 (reporting on the transfer of power from Indonesian President Suharto to B.J. Habibie, based on pressure from Suharto's own party and military support for Habibie). The full text of Suharto's resignation speech can be found in THE JAKARTA POST, May 22, 1998, at News.

78. The Security Council referred to the talks in S.C. Res. 1246, *supra* note 14, at preamble.

79. *General Agreement*, *supra* note 10, appendix. The constitutional framework for a special autonomy was originally drafted by the UN and later amended by Indonesia. See *id.* preamble, para. 4.

80. See *id.* art. 46(g) (providing for the right of governmental participation through free elections as a tenet of human rights norms).

81. See *id.* arts. 22-45 (listing the powers of the SARET, including legislative, executive, and judicial powers and institutions).

82. See *id.* art. 55 (allowing the SARET to enter into agreements and participate other activities with foreign nations, to benefit from international development assistance, and to offer foreign governments the opportunity to open representative offices in East Timor).

83. See *id.* arts. 1-11 (cataloging the Indonesian powers over the SARET in the areas of foreign relations, defense, economic and fiscal policies).

84. See *May 5 Agreements Press Conference*, *supra* note 13 (welcoming the conclusion of talks on the question of East Timor and praising the completion of the signing of three agreements between the UN, Indonesia, and Portugal).

omy or pursue independence.⁸⁵ Portugal and Indonesia decided that an independent body, namely the UN, should supervise the consultation.⁸⁶ In the General Agreement, Portugal and Indonesia formally requested UN assistance in presenting the autonomy plan to the East Timorese people.⁸⁷ The Secretary General immediately signed the Modalities and Security Agreements, expressing the UN's commitment to organize and conduct the consultation.⁸⁸

On June 11, 1999, the United Nations Security Council established UNAMET to monitor the popular consultation in East Timor.⁸⁹ Despite interference from pro-Indonesian militias,⁹⁰ UNAMET managed to register 451,792 voters⁹¹ in two short months. Defying the militia's campaign of intimidation, 438,968 voters visited the polls.⁹²

85. See *General Agreement*, *supra* note 10, art. 1 (requesting the Secretary-General to consult the East Timorese, through secret ballot, as to whether they wish to accept or reject the proposed constitutional framework for special autonomy).

86. See *id.* preamble, para. 7 (maintaining separate positions on the status of East Timor, but agreeing that the UN Secretary-General should consult the East Timorese on the Autonomy Proposal).

87. See *id.* arts. 1-2 (asking the Secretary-General to present the special autonomy proposal to the people of East Timor through a popular consultation and to establish a UN mission to help carry out the consultation).

88. See *Modalities Agreement*, *supra* note 11, preamble (agreeing to make preparations for the popular consultation by appointing persons to facilitate the consultation); *Security Agreement*, *supra* note 12, art. 3 (committing a minimum level of security to ensure peaceful implementation).

89. See S.C. Res. 1246, *supra* note 14, (establishing UNAMET to organize the popular consultation through a secret ballot to determine whether the people of East Timor accept or reject the proposed constitutional framework). The Security Council established UNAMET "in accordance with the General Agreement and to enable the Secretary-General to discharge his responsibility under paragraph 3 of the Security Agreement." *Id.*

90. See *Security Council, Through Presidential Statement, Expresses Grave Concern at 29 June Attack on UNAMET Office in Maliana, East Timor*, available at <<http://www.un.org/News/Press/docs/1999>> [hereinafter *Maliana Attack*] (reporting that acts of violence committed by militias in East Timor were endangering the consultation process).

91. See *East Timorese Reject Autonomy*, *supra* note 17 (statement of Kofi Annan, Secretary-General, United Nations) (praising UNAMET's successful registration of voters).

92. See *id.* (praising the high voter turnout, despite the violence).

About seventy-nine percent of them chose to pursue independence.”

In response to the vote, the pro-Indonesian militias, aided by General Wiranto⁹⁴ and the Indonesian military forces (TNI),⁹⁵ expanded their campaign of intimidation to a campaign of vengeance.⁹⁶ Militia members began an armed assault, torturing and killing unarmed citizens and burning East Timorese property to the ground.⁹⁷ While all East Timorese were subject to the violence,⁹⁸ the militias specifically targeted independence supporters and members of the clergy for execution.⁹⁹ A report of the High Commissioner for Human rights

93. See *id.* (announcing that 25.1% of the voters were in favor and 78.5% voted against Indonesia's autonomy proposal).

94. General Wiranto, former Indonesian military commander, faces possible arrest for his connection to the widespread human rights abuses in East Timor. See, e.g., Seth Mydans, *East Timor, Stuck at 'Ground Zero,' Lacks Law, Order and Much More*, N.Y. TIMES, Feb. 16, 2000, at A11 [hereinafter *Ground Zero*] (noting that Wiranto, along with other senior Indonesian officials, faces possible indictment); Richard Lloyd Parry, *East Timor Issues First War-Crimes Warrants on Militia; Indonesia Atrocities as UN Ready to Publish Reports on Last Year's Massacres, Prosecutors Pursue Notorious Militia Leader*, INDEP., Jan. 31, 2000, at Foreign News, 10 (reporting that in addition to East Timor's efforts to indict militia leaders, an Indonesian commission recommended that 200 people, including Wiranto, should be prosecuted).

95. See *Commission Report*, *supra* note 20, paras. 135-141 (reporting on evidence linking the TNI to the militias); see also *id.* paras. 120-142 reporting evidence that the TNI's policy was to recruit, provide funding and weaponry, and train the militia; meanwhile creating the impression that the violence stemmed from infighting among the East Timorese); *id.* paras. 136-37 (referring to the TNI's policy of militia engagement).

96. See *infra* notes 98-103 and accompanying text (describing the militia-led rampage following the August 30 vote).

97. See Keith B. Richburg, *East Timor Spirals Toward Anarchy*, WASH. POST, Sept. 5, 1999, at A1 [hereinafter Richburg, *East Timor Spirals*] (reporting that thousands of East Timorese fled as pro-Indonesian militias ravaged the territory, shooting indiscriminately and burning property to the ground).

98. See *Human Rights Situation*, *supra* note 19, para. 28 (reporting that in addition to selective attacks, the militias also engaged in indiscriminate acts of terror).

99. See *Human Rights Report*, *supra* note 19, para. 19, 25 (reporting that the militias were clearly targeting independence supporters and members of the clergy, entering the camps with lists of supporters' names, and sometimes carrying out on-the-spot executions); see also Seth Mydans, *The Fate of East Timor: The Rampage; Priests and Nuns Become Targets of Terror*, N.Y. TIMES, Sept. 10, 1999, at A12 [hereinafter *The Rampage*] (reporting on the murders of nuns, priests, and the

estimates that 200,000 to 250,000 East Timorese were driven from their homes,¹⁰⁰ including the entire population of East Timor's capitol city, Dili.¹⁰¹ According to official UNAMET eyewitness testimony, the Indonesian security forces supported the attacks by either failing to quell the violence or taking part in the militias' campaign.¹⁰²

II. DEFINITIONS: SELF-DETERMINATION AND UN ELECTORAL ASSISTANCE

The militias and Indonesian police engaged in the acts described above as part of Indonesia's historic attempt to deprive the East Timorese of their right to self-determination.¹⁰³ Although the nuances surrounding the right to self-determination are beyond the scope of this paper,¹⁰⁴ a brief definition of the right is included below, along

father of Jose Alexhandre Gusmao, the leader of the East Timorese independence movement).

100. See *Human Rights Report*, *supra* note 19, para. 30. But see *Human Rights Situation*, *supra* note 19, para. 20 (reporting that 400,000 East Timorese were displaced); *Ground Zero*, *supra* note 95 (estimating that 120,000 to 200,000 of East Timor's 880,000 people were driven from their homes by the militias).

101. See *Human Rights Report*, *supra* note 19, para. 30 (reporting that all the people of Dili were either forcibly displaced or fled their homes into the hills surrounding the capital).

102. See *id.* para. 16 (reporting that UN staff witnessed armed police allow violent acts to take place, or even engage in acts of violence against East Timorese). According to UNAMET staff, militia passed through police checkpoints and past TNI soldiers, and TNI soldiers helped the militia loot UNAMET vehicles. See *id.* para. 15.

103. See *Timor Affair*, *supra* note 50, at 61 (writing that as early as 1974, Indonesia began producing propaganda aimed at depriving the East Timorese right to self-determination).

104. For more on this topic, see, e.g., HURST HANNUM, *AUTONOMY, SOVEREIGNTY AND SELF-DETERMINATION: THE ACCOMMODATION OF CONFLICTING RIGHTS* (1996); CASSESE, *SELF-DETERMINATION OF PEOPLES*, *supra* note 60; Antonio Cassese, *Political Self-Determination-Old Concepts and New Developments*, in *UN LAW/FUNDAMENTAL RIGHTS: TWO TOPICS IN INTERNATIONAL LAW* 137 (Antonio Cassese ed., 1979); Michael J. Kelly, *Political Downsizing: The Re-Emergence of Self-Determination, and the Movement Toward Smaller, Ethnically Homogenous States*, 47 *DRAKE L. REV.* 209 (1999); Mechelle Evans & Darilyn T. Olidge, *What Can the Past Teach the Future? Lessons from Internationally Supervised Self-Determination Elections 1920-1990*, 24 *N.Y.U. J. INT'L L. & POL.* 1711 (1992).

with a longer explanation electoral assistance, the main method of self-determination enforcement. An understanding of both definitions and an appreciation of the legal and political factors surrounding East Timor's right to self-determination provide the context in which the May 5 Agreements were signed.

A. SELF-DETERMINATION: A LEGAL RIGHT

As one of the founding principles of the UN Charter, "self-determination"¹⁰⁵ is well recognized as a legal right under international law.¹⁰⁶ Curiously, the Charter refrains from defining the right explicitly, but subsequent documents consider self-determination the right of peoples to "freely determine their political status and freely pursue their economic, social and cultural development."¹⁰⁷ While the international community accepts this definition, legal scholars debate the right's scope.¹⁰⁸ At issue among scholars is whether the right applies externally or internally.¹⁰⁹ External self-determination,

105. See U.N. CHARTER, art. 1, para. 2 (citing respect for the self determination as the basis for strengthening relations among nations). Self-determination is mentioned again a second time in the Charter with respect to economic and social co-operation. See *id.* art. 55 (emphasizing the need to create stable conditions to foster equal rights and self-determination and promote human rights).

106. In addition to references in the UN Charter, self-determination is affirmed as an international right in ICJ decisions and multilateral treaties. See e.g., *Port. v. Austrl.*, 1995 I.C.J. 90, *supra* note 69, para. 36; *Western Sahara*, 1975 I.C.J. 12, 13 (Oct. 16) (Advisory Opinion of Oct. 16); *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) Notwithstanding Security Council Resolution 276*, 1971 I.C.J. 16, 31 (June 21); *International Covenant on Civil and Political Rights*, Dec. 19, 1966, art. 1, para. 1, 999 U.N.T.S. 171 [hereinafter ICCPR]; *International Covenant on Economic, Social and Cultural Rights*, Dec. 16, 1966, art. 1, para. 1, 999 U.N.T.S. 3, 5; *Declaration on the Granting of Independence to Colonial Countries and Peoples*, *supra* note 30; *Declaration on the Principles of International Law Concerning Friendly Relations and Cooperation Among States in Accordance with the Charter of the United Nations*, G.A. Res. 2625 (XXV), Annex, U.N. GAOR, 26th Sess., Supp. No. 28, at 121, U.N. Doc. A/5217 (1970).

107. ICCPR, *ibid*; *Decolonization Declaration*, *supra* note 29, at para. 2.

108. See Brandi J. Pummell, *The Timor Gap: Who Decides Who is in Control?*, 26 DENV. J. INT'L L. & POL'Y 655, 666-67 (1998) (setting out the arguments among scholars regarding the scope and character of self-determination and noting that some scholars believe the right to self-determination should be limited to former colonies, while others believe it should extend to all people).

109. See *id.* (arguing that East Timor falls in the external category).

normally applied to former colonies or illegally occupied regions, is the right to choose integration with an existing state or pursue independence.¹¹⁰ Internal self-determination is the right of peoples within an existing state to choose their own government.¹¹¹

In the view of the UN, Portugal, and a majority of member states, East Timor would fall in the first category: a non-self-governing territory, seeking external self-determination. East Timor remained on the United Nation's list of non-self-governing territories throughout Indonesia's occupation.¹¹² Portugal, technically East Timor's administrator,¹¹³ took the position that Indonesia interfered with East Timor's right to make a free choice.¹¹⁴ The European Union, the United States, Canada, and Japan, among others, have stated that East Timor's right to self-determination as a former colony was not realized through incorporation with Indonesia.¹¹⁵

In the view of Indonesia and a minority of states, East Timor would fall in the second category: a territory of Indonesia seeking self-government, or internal self-determination. According to Indonesia, the East Timorese exercised their right to self-determination in 1976, when the government of Indonesia sponsored a "Regional Popular Assembly."¹¹⁶ From that date, Australia and a few other states considered the question of East Timor to be an internal Indo-

110. See BEIGBEDER, *supra* note 4, at 18 (defining external self-determination as enabling the population of a territory to decide freely whether to join an existing state or become an independent and sovereign state).

111. See *id.* (arguing that internal self-determination enables the people of a country to choose their political, social, and economic institutions or to make important constitutional or political decisions.).

112. See CASSESE, *supra* note 60, at 230 (arguing that the fact East Timor remained on the UN's non-self-governing territory list was evidence that the UN did not recognize Indonesia's occupation of East Timor).

113. See *id.* at 225 (noting Portugal's consistent claim under the UN Charter to be able to speak on East Timor's behalf as the non-self-governing territory's administering power).

114. See *id.* (providing the view of Portugal that Indonesia's integration of East Timor denied the "free and genuine will" of the East Timorese).

115. See CAMBRIDGE DOCUMENTS, *supra* note 26, at xxv (listing the states that recognized East Timor's right to self-determination after Indonesia's occupation of the territory).

116. See CASSESE, *supra* note 60, at 225-26 (providing Indonesia's view that East Timor's opportunity to exercise external self-determination had passed).

nesian matter.¹¹⁷

B. ENFORCING SELF-DETERMINATION: ELECTORAL ASSISTANCE

Whether external or internal, self-determination is normally exercised through democratic means.¹¹⁸ Inter-governmental organizations ("IGOs"), non-governmental organizations ("NGOs"), and/or the UN have each played a role in ensuring such elections are free and fair.¹¹⁹ The level of involvement an IGO, NGO, or the UN employs in providing assistance depends on the specific circumstances surrounding a particular election.¹²⁰

The UN's procedure for determining the achievement of external self-determination requires that a non-self-governing territory freely choose: 1) independence; 2) association with an independent state; or 3) integration with an independent state.¹²¹ In the case of association or integration, the choice must be expressed through "informed and democratic processes."¹²² Under General Assembly Resolution 1541, the UN reserves the right to supervise elections in non-self-governing territories as it deems necessary to ensure such elections are conducted freely and fairly.¹²³

Once reserved for external self-determination elections, the UN

117. *See id.* at 229-30 (explaining that Australia and others accepted the "realities" in East Timor, concluding Indonesia's actual control rendered the situation to be internal).

118. *See* BEIGBEDER, *supra* note 4, at 18 (stating that both forms of self-determination require some form of democracy).

119. *See id.* at 34-36 (noting the different roles of IGOs, NGOs, and the UN in various missions).

120. *See id.* at 39-41 (describing the different sizes of observer missions, which are based on varied criteria and providing examples of such criteria).

121. *See Principles Which Should Guide Members in Determining Whether or Not an Obligation Exists to Transmit the Information Called for Under Article 73e of the Charter*, G.A. Res. 1467, U.N. GAOR 4th Comm., 15th Sess., Annex., Agenda Item 38, Prin. VI at 12, U.N. Doc. A/4651 (1960) (setting out the requirements for a non-self-governing territory to reach a full measure of self-government, guaranteed by Article 73e of the UN Charter).

122. *Id.* Prin. VII(a) at 12, IX(b) at 13.

123. *See id.* Prin. IX(b) at 13 (requiring that integration with a state may only be recognized through "suffrage," and that the UN may choose to supervise such elections).

has expanded its electoral assistance to independent states.¹²⁴ However, out of respect for state sovereignty,¹²⁵ the UN will not monitor elections without the consent of a country's existing government.¹²⁶ Such consent must be demonstrated through written request by the government requiring UN electoral assistance.¹²⁷

The UN's treatment of East Timor is a hybrid of the external and internal self-determination electoral assistance models. On the one hand, the UN repeatedly affirmed East Timor's right to external self-determination as a non-self-governing territory.¹²⁸ Yet, when Indonesia invaded the territory and declared integration,¹²⁹ the UN failed to supervise an election¹³⁰ as allowed by General Assembly Resolution

124. See *id.* at 717-18 (noting the shift from UN election monitoring in the decolonization period to UN electoral assistance with internal self-determination elections). The UN has lent electoral assistance to over 50 independent states in the last decade. See *Member States' Requests for Electoral Assistance to the United Nations System*, available at <<http://www.un.org/Depts/dpa-ead/website10.htm>> [hereinafter *Requests*] providing an alphabetical list of countries that have requested UN electoral assistance, and noting the UN response to each request).

125. The UN is careful not to involve itself in the internal matters of states. See U.N. CHARTER, art. 2, para. 1, 7 (respecting the sovereignty of member states and curtailing UN intervention into matters "essentially within the domestic jurisdiction of any state").

126. See *Guidelines for Member States Considering the Formulation of Requests for Electoral Assistance*, U.N. GAOR, 49th Sess., Annex 3, Agenda Item 100(b), paras. 3-4, U.N. Doc. A/49/675 (1994) [hereinafter *UN Election Monitoring Guidelines*] (noting "national sovereignty" as a primary concern of the UN in conducting elections).

127. See *id.* Annex III, para. 3 (requiring a formal, written request from the independent state's government as one of the preconditions for UN electoral assistance). The other precondition for UN electoral assistance is the determination of a requesting government's needs through a UN-sponsored needs assessment mission. See *id.* at Annex III, para. 4 (explaining that a needs assessment mission is necessary to determine whether conditions for a free and fair election are present in the requesting country). For an in depth explanation of each type of electoral assistance the UN may provide, see Satterthwaite, *supra* note 7, at 741-51 (analyzing the seven types of UN electoral assistance: organization and conduct, supervision, verification, coordination for international observers, support for national observers, observation, and technical assistance).

128. See discussion *supra* Part I.B (chronicling the UN's unchanging view that East Timor was a non-self-governing territory with the right to self-determination).

129. See CASSESE, *supra* note 60, at 225 (noting July 17, 1976 as the date Indonesia established East Timor as its twenty-seventh province).

130. See *id.* (arguing that the UN rejected Indonesia's invitation to supervise the

1541.¹³¹ Instead, the UN chose to enforce East Timor's right to self-determination twenty five years later through the internal model of formal written request.¹³²

1. Types of UN Electoral Assistance: Standard vs. Major

While the circumstances surrounding each electoral assistance request are different, the Electoral Assistance Division¹³³ has identified and developed a set of UN electoral assistance models.¹³⁴ Depending on the nature of the request for electoral assistance, the UN has the option to decline.¹³⁵ Otherwise, the UN may provide standard electoral assistance or commit to a major electoral mission.¹³⁶ Standard

1976 election in East Timor because doing so would have endorsed Indonesia's invasion of the territory).

131. See *Principles which Should Guide Members in Determining whether or not an Obligation Exists to Transmit the Information Called for under Article 73e of the Charter, 16 December 1960*, G.A. Res. 1541, U.N. GAOR, 948th plen. mtg., Prin. IX(b) (1960) (reserving the right of the UN to ensure that non-self-governing territories make a free and informed choice when considering integration with an independent state).

132. See discussion *supra* notes 110-119 and accompanying text (distinguishing the internal self-determination electoral model from the external model, in that the internal model requires a written request, while the external model does not).

133. The UN Electoral Assistance Division was established following a General Assembly Resolution that encouraged the need for a UN body to oversee the consideration of requests for UN electoral assistance. See *Enhancing the Effectiveness of the Principal of Periodic and Genuine Elections*, G.A. Res. 46/137, U.N. GAOR, 47th Sess., 75th mtg., paras. 9, 11 (1992) (endorsing the Secretary-General's plan to appoint an official to streamline the electoral assistance process and requesting the Secretary-General to provide a small staff to assist the official in considering and implementing electoral assistance requests).

134. See generally *UN Election Monitoring Guidelines*, *supra* note 126, at Annex III, paras. 1-2 (explaining that the guidelines for electoral assistance were created to "assist Member States in formulating requests" for electoral assistance, to "outline the various types of assistance that might be provided," and to determine "the conditions necessary for the United Nations to undertake such involvement").

135. See *id.* annex III, paras. 3-5 (setting out the preconditions for electoral assistance; if these are not met, the UN may decline a request).

136. See Satherthwaite, *supra* note 7, at 741 (identifying two categories for the seven UN electoral assistance models: "standard set of low lower-level assistance" and "less widely used major missions"). The United Nations Department of Political Affairs provides a concise definition of each model on the UN website. See *Main Types of Assistance Activities*, available at <<http://www.un.org/Depts/dpa/ead/website3.htm>> [hereinafter *Main Types*] (di-

missions, which are normally small in scale, include the coordination and support of international observers, support for national observers, limited observation and technical assistance.¹³⁷ Major UN electoral assistance missions are generally larger than standard missions.¹³⁸ Usually part of a peacekeeping mandate,¹³⁹ major missions require authorization from either the General Assembly or the Security Council.¹⁴⁰ Major electoral missions include the verification, supervision, or organization and conduct of an electoral process.¹⁴¹

a. Standard Missions

Standard UN electoral missions are often employed in conjunction with the efforts of IGOs, NGOs, and/or a requesting state's electoral authorities. After considering a request for electoral assistance, the UN may choose to coordinate other international organizations to monitor an electoral process,¹⁴² support election observers within an

viding UN electoral assistance into the two categories of standard and major electoral assistance, and defining each model: coordination and support of international observers, technical assistance, support for national election monitors, limited observation, organization and conduct, supervision, and verification).

137. See discussion *infra* notes 144-147 and accompanying text (defining the four types of standard UN electoral assistance missions).

138. See *Main Types*, *supra* note 136 (determining standard missions to be small in scale when compared with major missions).

139. See *id.* ("[S]uch missions are normally a central element of comprehensive peacekeeping operations that include an electoral component."). For a definition of peacekeeping, see *supra* note 2.

140. See *Main Types*, *supra* note 136 ("Major electoral missions require a mandate from the General Assembly or Security Council and are considered exceptional activities of the Organization).

141. See discussion *infra* notes 160-162 and accompanying text (defining the three types of major UN electoral assistance missions).

142. See *UN Election Monitoring Guidelines*, *supra* note 126, paras. 11-12 (defining "coordination of international observers").

At the request of the Government, the United Nations may establish a small coordinating secretariat to support all international observers invited by the Government. This secretariat . . . provides an umbrella framework within which international observers receive protocol, logistical and observation support. . . . In this case the United Nations maintains a somewhat lower political profile . . . while providing effective support for an important political process.

Id. The UN has provided coordination and support for international observers in

existing state,¹⁴³ send UN observers to monitor the end of an electoral process,¹⁴⁴ or provide technical assistance.¹⁴⁵ The coordination of international observers involves bringing a diverse group of international observers from IGOs and NGOs together in order to streamline the election monitoring process.¹⁴⁶ The UN provides these groups with training and a forum to report their observations.¹⁴⁷ If needed, the UN provides similar support to national election observ-

Ethiopia, Kenya, Niger, Lesotho, Malawi, Tanzania, Armenia, Azerbaijan, Sierra Leone, Mali, Algeria, and other requesting states. *See Support by the United Nations System of the Efforts of Governments to Promote and Consolidate New or Restored Democracies: Report of the Secretary-General*, U.N. GAOR, 50th Sess., Provisional Agenda Item 41, at Sec. III U.N. Doc. A/50/322 (1995) [hereinafter *Support Efforts*] (providing the states where the UN has offered coordination and support for international observers).

143. *See UN Election Monitoring Guidelines*, *supra* note 126, para. 13 (defining "support for national observers"). "This approach, . . . emphasizes the importance of long-term national capacity-building and the strengthening of national institutions." *Id.* The UN provided support for national observers in Mexico and Mozambique. *See id.* para. 14 (comparing assistance in Mexico and Mozambique under this model).

144. *See id.* para. 16 (defining "observation"). "In special cases, a United Nations observer or a small team may be sent to follow an electoral process and provide an internal report to the Secretary-General on the general conduct of the election." *Id.*

145. *See id.* para. 17 (defining "technical assistance").

Technical assistance is the most frequently requested form of United Nations electoral assistance. Such assistance can be classified into three general categories: those which contribute to national capacity-building through the establishment of new electoral institutions or strengthening of existing capabilities; those which relate to the human rights aspects of the electoral process; and those which provide specific legal, constitutional, logistic or technical advice as well as various types of electoral equipment and supplies.

Id.

146. *See id.* para. 11 (explaining that the coordination of multiple organizations under the UN umbrella allows the individuals and groups the opportunity to "benefit from a more comprehensive view of the electoral process and prepare assessments based on a larger data basis than individual observations would allow"). For a list of the different organizations that have developed to address electoral assistance needs, *see Satterthwaite*, *supra* note 7, at n.142 (noting the work of these organizations is similar to that of the UN's Electoral Assistance Division).

147. *See id.* (noting that the different observer groups are briefed together before the mission and are allowed to share their observations at a post-election debriefing).

ers¹⁴⁸ or, in rare cases, send UN election observers.¹⁴⁹

The most common type of UN electoral assistance, and the least intrusive, is technical assistance.¹⁵⁰ It is often used in conjunction with other types of UN electoral assistance missions, and assistance ranges from providing electoral advice to providing actual electoral materials.¹⁵¹ Electoral advice includes instruction on designing an electoral system, drafting electoral law, training poll workers, and ensuring electoral security.¹⁵² Materials the UN may lend through technical assistance include ballots, ballot boxes, and permanent ink for the ballots.¹⁵³

b. Major Missions

While standard electoral missions involve international organizations and requesting states with minimal UN involvement, major missions require the opposite.¹⁵⁴ In a major mission, the UN trades its peripheral advisory role for a more active one.¹⁵⁵ As a result, major missions are more intrusive than standard missions and require either General Assembly or Security Council authorization.¹⁵⁶ Unlike stan-

148. See *UN Election Monitoring Guidelines*, *supra* note 126, paras. 13-15 (explaining that support for national election observers involves strengthening pre-existing election structures and can be adjusted to meet the needs of the requesting state).

149. See *id.* para. 16 (claiming that this type of mission is minimally effective and, therefore, is rarely authorized).

150. See *supra* note 145 (defining technical assistance).

151. See *UN Election Monitoring Guidelines*, *supra* note 126, para. 18 (enumerating examples of the different types of technical assistance that the UN has provided to the electoral authorities of requesting states).

152. *Id.*

153. See *id.*

154. See *Main Types*, *supra* note 136 (arguing that unlike standard missions, major electoral missions are exceptional and require a mandate from the General Assembly of the Security Council).

155. See Satterthwaite, *supra* note 7, at 742-47 (defining, supervision, organization and conduct, and verification missions, and arguing that these mission are invasive of state sovereignty).

156. See *UN Election Monitoring Guidelines*, *supra* note 126, para. 7 (requiring that major operations obtain a "formal mandate" from either the Security Council or the General Assembly).

dard missions, major missions involve large numbers of UN personnel and often last for long periods of time.¹⁵⁷ Major missions include supervision,¹⁵⁸ verification,¹⁵⁹ or the organization and conduct of an electoral process.¹⁶⁰

Supervision involves UN certification of an external self-determination election.¹⁶¹ In a supervision mission, the UN oversees each stage of the election process and guarantees that the elections take place in an environment free of fear and intimidation.¹⁶² If

157. *See id.* paras. 8-10 (requiring a minimum of eighteen months lead time for organization and conduct missions, calling supervision missions "long-term," and requiring "extensive chronological coverage" for verification missions).

158. *See id.* para. 9 (defining "supervision of an electoral process").

Supervisory operations, generally undertaken in the context of decolonization, require the United Nations to certify all stages of an electoral process in order to assure its ultimate legitimacy. Such operations are therefore long-term and require substantial personnel and material resources. They are often undertaken in the context of larger peace-keeping operations. Such assistance is not normally provided to Member States, as such activity infringes on the sovereignty of the State.

Id.

159. *See id.* para. 10 (defining "verification of an electoral process"). These guidelines state:

[i]n the case of verification operations, the United Nations is requested to verify the freedom and fairness of specific aspects of the electoral process conducted by the national election authority. Because the United Nations is expected to make a final statement on the conduct of the elections, verification must cover all relevant aspects of the electoral process, thus requiring extensive chronological and geographical coverage. Similar to supervision, verification missions must be mandated by the Security Council or General Assembly and may be one element in a broader peace-keeping mission.

Id.

160. *See id.* para. 8 (defining "organization and conduct of an electoral process").

This type of assistance is most complex[.] . . . Owing to the significant lead time required (a minimum of 18 months), as well as the substantial financial, personnel and material resources needed for such an operation, this type of assistance will rarely be mandated.

Id.

161. *See Satterthwaite, supra* note 7, at 742 (explaining that supervision missions are limited to non-self-governing territories undergoing decolonization).

162. *See id.* (discussing the UN's use of a Status of Mission Agreement).

abuses occur, UN personnel are authorized to request corrective measures.¹⁶³ In order to carry out such a mission, the UN requires a large staff and ample time to prepare.¹⁶⁴ For example, the United Nations Transition Assistance Group (UNTAG) in Namibia was comprised of nearly 8,000 people.¹⁶⁵ Over ten years passed before the UN allowed the elections to take place.¹⁶⁶

Verification is the supervision equivalent for internal self-determination elections.¹⁶⁷ The UN conducts verification missions at the request of an independent state's government.¹⁶⁸ Like supervision, verification missions involve UN certification of the entire election process.¹⁶⁹ For example, in 1992, Mozambique requested UN

These agreements are used to certify the impartiality of electoral authorities the impartiality of electoral authorities; the freedom of organization, movement, assembly, and expression of political parties and alliances; the possibility of parties to be present at all stages of the process; the fairness of access to state-owned media; and insurance that election rolls are properly drawn and qualified voters are not denied access to voting cards.

Id.

163. See *id.* at 743 (explaining that UN personnel must report abuses under a Status of Mission Agreement and the authorities are obligated to respond).

164. See *UN Election Monitoring Guidelines*, *supra* note 126, para. 9 (stating that "[s]uch operations are . . . long-term and require substantial personnel[.]"); see also Satterthwaite, *supra* note 7, at 743 (emphasizing that these types of missions require at least four months for preparation)

165. See Satterthwaite, *supra* note 7, at 743 (noting UNTAG's composition of nearly 2,000 civilians, 1,500 civilian police, and almost 4,500 military personnel).

166. See RATNER, *supra* note 2, at 118-19 (noting that the 10 year delay in UNTAG's deployment allowed the UN substantial lead time to prepare the mission and lay a political foundation).

167. See *UN Election Monitoring Guidelines*, *supra* note 126, para. 10 (noting that verification missions are similar to supervision missions because they both require Security Council or General Assembly mandates, and are usually part of a larger peacekeeping operation).

168. See *id.* para. 3 (explaining that verification missions depend on the request from a sovereign state for the UN to verify the "freedom and fairness" of the state's electoral authority's practices).

169. See Satterthwaite, *supra* note 7, at 745-46 (noting that verification missions, like supervision missions, require a Status of Mission agreement.) These Mission agreements are designed to create:

impartiality of the electoral authorities; the freedom of organization, movement, assembly, and expression of political parties and alliances; the possibility of parties to be present at all stages of the process; the fairness of access

electoral assistance to help resolve an entrenched civil war.¹⁷⁰ In response, the Security Council established the United Nations Operation in Mozambique ("ONUMOZ"),¹⁷¹ a large peacekeeping force with an electoral assistance mandate.¹⁷² ONUMOZ oversaw the entire election process in Mozambique and verified the results.¹⁷³

The final and most complex major UN electoral mission is organization and conduct.¹⁷⁴ In supervision and verification missions the UN oversees the electoral process as local authorities carry it out,¹⁷⁵ but in organization and conduct missions, the UN becomes the election administrator.¹⁷⁶ In this role, the UN normally establishes the polling procedures, informs the public, carries out the election, and ensures security.¹⁷⁷ Organization and conduct missions require more

to state-owned media; and insurance that election rolls are properly drawn, [and] qualified voters are not denied access to voting cards.

Id.

170. See General Peace Agreement for Mozambique, U.N. SCOR, 47th Sess., at 3, U.N. Doc. S/24635/Annex (1992) [hereinafter General Peace Agreement] (requesting UN involvement in resolving a civil war in Mozambique).

171. See S.C. Res. 797, U.N. SCOR, 37th Sess., U.N. Doc. S/RES/797, para. 2 (1992) (establishing ONUMOZ).

172. See *id.* para. 6 (discussing the electoral aspects of the mission, based on the Secretary-General's report, dated December 2, 1992).

173. See S.C. Res. 960, U.N. SCOR, 39th Sess., U.N. Doc. S/RES/960 (1994) (endorsing the results of the October 1994 Mozambican elections, and determining that the elections were free and fair).

174. See *UN Election Monitoring Guidelines*, *supra* note 126, para. 8 (calling organization and conduct assistance the "most complex"). To date, the UN has only completed missions under this model in Cambodia and Croatia, with a mission in the Western Sahara in abeyance. See *Requests*, *supra* note 124 (listing the UN responses to all state requests for electoral assistance, and showing that the UN only responded with organization and conduct missions to Cambodia, Eastern Slavonia (Croatia), East Timor, and Western Sahara, now in abeyance).

175. See *UN Election Monitoring Guidelines*, *supra* note 126, paras. 9-10 (noting the role of the UN in these missions is to assure the legitimacy of elections controlled by local electoral authorities).

176. See Satterthwaite, *supra* note 7, at 743 (explaining that in organization and conduct missions, the UN undertakes the responsibilities normally carried out by local election authorities).

177. See *id.* (noting that the mission's mandate is to oversee the entire election process, including the "establishment of a system of laws, procedures, and administrative mechanisms for the elections, followed by the actual administration of the elections by U.N. personnel.").

time to prepare and a significantly larger staff than any other electoral assistance mission.¹⁷⁸ The Secretary General suggests that organization and conduct missions have a lead-time of at least eighteen months.¹⁷⁹ The UN's organization and conduct mission in Cambodia (UNTAC) employed over 20,000 UN personnel and lasted the required eighteen months.¹⁸⁰

2. UNAMET: An Organization and Conduct Mission?

Curiously, the UN Electoral Assistance Division labels UNAMET an organization and conduct mission.¹⁸¹ In some respects, UNAMET would qualify. As with other organization and conduct missions, the Security Council created UNAMET to monitor the fairness of the election, establish voting procedures, and educate voters.¹⁸² In this capacity, the mission was successful.¹⁸³

In the areas of size, time, and security, however, UNAMET differs from its organization and conduct mission predecessors. To date the Security Council has only authorized organization and conduct missions in Cambodia (UNTAC), Croatia (UNTAES), and Western Sahara (MINURSO) now in abeyance.¹⁸⁴ These missions were larger,¹⁸⁵

178. See *UN Election Monitoring Guidelines*, *supra* note 126, paras. 4, 8 (explaining that due to the substantial time, cost, and personnel associated with organization and conduct missions, the UN rarely undertakes them).

179. See *id.*

180. See Nhan T. Vu, *The Holding of Free and Fair Elections in Cambodia: The Achievement of the United Nations' Impossible Mission*, 16 MICH. J. INT'L L. 1177, 1187 (1995) (summarizing UNTAC's performance in Cambodia and noting that the mission began arriving late in 1991 and the elections were declared successful approximately eighteen months later).

181. See *Requests*, *supra* note 124 (identifying the UN response to East Timor request for electoral assistance an "organization and conduct of popular consultation"). See also S.C. Res. 1246, *supra* note 14, para. 1 (deciding to establish UNAMET to "organize and conduct a popular consultation").

182. See S.C. Res. 1246, *supra* note 14, para. 4 (agreeing that UNAMET should incorporate a political component to monitor fairness, an electoral component for voting procedures, and an information component to explain the procedures to the voting public).

183. See *East Timorese Reject Autonomy*, *supra* note 17 (statement of Kofi Annan, Secretary-General, United Nations) (recognizing the August 30 election outcome to be free and fair).

184. See *Requests*, *supra* note 124 (listing the UN responses to all state requests

took more time to establish,¹⁸⁶ and involved UN control over security.¹⁸⁷ For example, UNTAC required the efforts of over 20,000 UN

for electoral assistance, and showing that the UN only responded with organization and conduct missions to Cambodia, Eastern Slavonia (Croatia), East Timor, and Western Sahara, now in abeyance).

185. See UNITED NATIONS, THE UNITED NATIONS AND CAMBODIA: 1991-1995 23 (United Nations, Department of Public Information) (1995) (discussing the size of UNTAC, which included 15,991 military personnel and 3,359 civilian police at its peak); United Nations Department of Public Information, *Cambodia-UNTAC: United Nations Transitional Authority in Cambodia* (updated Aug. 31, 1996) <http://www.un.org/Depts/DPKO/Missions/untac_e.htm> [hereinafter *Cambodia-UNTAC*] (listing the strength of the mission as "approximately 22,000 military and civilian personnel"). Considering Cambodia's population, there was roughly one UNTAC staff member for every 600 Cambodian citizens. See CIA, *World Factbook 1999* (last modified July, 1999) <<http://www.cia.gov/cia/publications/factbook/hr.html#people>> (reporting Cambodia's population to be 11,626,520 as of July 1999). But see United Nations Department of Public Information, *Croatia-UNTAES: United Nations Transitional Administration for Eastern Slavonia, Baranja and Western Sirmium* (last modified Jan. 15, 1988) <http://www.un.org/Depts/DPKO/Missions/untaes_e.htm> [hereinafter *Croatia-UNTAES*] (discussing the size of UNTAES at its full deployment, which included over 5,000 uniformed personnel). The rough ratio for UNTAES personnel to Croatia's population would be approximately 1:935, which is proportionally smaller than the UNAMET mandate. See CIA, *The World Factbook 1999* (last modified July 1999) <<http://www.cia.gov/cia/publications/factbook/cb.html#people>> (reporting Croatia's population to be 4,676,864 as of July 1999); CAMBRIDGE DOCUMENTS, *supra* note 26, at xix (reporting the East Timorese population to be 700,000 in 1997). Since UNAMET's mandate was approximately 900, the UN personnel-population ratio for the mission was approximately 1:775. See S.C. Res. 1246, *supra* note 14, paras. 2,3 (authorizing the deployment of the 280 civilian police advisors and 50 military liaisons); *Question of East Timor: Report of the Secretary General*, U.N. Doc. S/1999/705, para. 3 (1999) (planning to send 400 field electoral officers East Timor). The discrepancy in size between UNTAES and UNTAC does not undermine the fact that UNTAES was better able to carry out its mission due to a longer mandate and a security component. See discussion *infra* notes 192-193 and accompanying text (considering the time allotment and security components of other organization and conduct missions).

186. See *supra* note 185 (explaining that UNTAC lasted eighteen months); *Croatia-UNTAES*, *supra* note 185 (providing a chronology of UNTAES, which shows that the electoral portion of the peacekeeping mission took approximately 15 months to carry out).

187. See THE UNITED NATIONS AND CAMBODIA: 1991-1995, *supra* note 185, at 12-14, 23 (discussing UNTAC's security component, along with the peacekeeping mandate); *Croatia-UNTAES*, *supra* note 185 (discussing UNTAES' security duties).

personnel,¹⁸⁸ while UNAMET unsuccessfully relied on only about 900.¹⁸⁹ In regards to time, the Secretary General advises an eighteen month lead time to prepare for an organization and conduct mission,¹⁹⁰ but only allotted a little more than two months to UNAMET.¹⁹¹

The most glaring difference between UNAMET and other organization and conduct missions lies in the security provisions. UNTAC and UNTAES called on UN security forces to enforce the peace,¹⁹² but the UNAMET police contingent was restricted to providing advice to Indonesian security forces and reporting security breaches to the Secretary General.¹⁹³ UNAMET's restricted security function more closely resembled what would occur in a supervision or verification mission.¹⁹⁴

188. See THE UNITED NATIONS AND CAMBODIA: 1991-1995, *supra* note 185, at 23 (noting the size of UNTAC).

189. UNAMET's deployment included 280 civilian police advisors, 50 military liaison officers, and 400 field electoral officers. See S.C. Res. 1246, *supra* note 14, paras. 2, 3 (authorizing the deployment of the advisors and liaisons); U.N. Doc. S/1999/705, *supra* note 185, para. 3 (providing a plan for UNAMET to the Security Council, which included sending the 400 field electoral officers to 200 registration centers located throughout East Timor).

190. See *UN Election Monitoring Guidelines*, *supra* note 126 (noting the eighteen-month lead time for organization and conduct missions) See also *supra* note 185 (showing that the other UN organization and conduct missions fell within this requirement).

191. See S.C. Res. 1246, *supra* note 14, para. 1 (establishing UNAMET on June 11, 1999 to "organize and conduct the popular consultation" and remain in East Timor until August 31, 1999).

192. See *Letter Dated 30 October 1991 from the Permanent Representatives of France and Indonesia to the United Nations addressed to the Secretary-General*, U.N. GAOR, 46th Sess. Annex I, § C, U.N. Doc. A 46/608, S/21377 (1991) [hereinafter *Cambodian Settlement Agreement*] (outlining the military responsibilities of UNTAC, which included enforcing a cease-fire, banning military aid, demobilizing the armed forces of Cambodia's four factions, and consolidating these into one Cambodian force); S.C. Res. 1037, U.N. SCOR, 51st Sess., para. 1, U.N. Doc. S/RES/1037 (1996) (creating UNTAES with a military and civilian component).

193. See discussion *infra* Part IV.A (setting forth the provisions of the May 5 Agreements).

194. See *UN Election Monitoring Guidelines*, *supra* note 126, paras. 9-10 (requiring the UN to "certify" all stages of an electoral process and "make a final statement on the conduct" of a particular election).

III. LEGAL AND POLITICAL CONSTRAINTS OF ENFORCING SELF-DETERMINATION THROUGH ELECTORAL ASSISTANCE

While the seven types of UN electoral assistance listed above are structured to provide the enforcement of self-determination, legal and political factors limit the UN's ability to achieve success in every case. Without the consent of the parties, the UN is legally bound to refrain from intervention,¹⁹⁵ with the exception of peace enforcement.¹⁹⁶ Without the political support of member states, the UN is unable to act on behalf of people seeking the right of self-determination.¹⁹⁷

A. LEGAL CONSTRAINTS – CONSENT

Article 2, paragraph 7 of the UN Charter prohibits the Organization from "intervening in matters which are basically within the domestic jurisdiction of any state."¹⁹⁸ The General Assembly articulated the UN's duty to respect Article 2(7) of the Charter in its 1996 resolution, *Respect for the Principles of National Sovereignty and Non-interference in the Internal Affairs of States in their Electoral Processes*:

[E]lectoral assistance to Member States should be provided by the United Nations only at the *request* and with the *consent* of specific sovereign States, by virtue of resolutions adopted by the Security Council or the General Assembly in each case, in strict conformity with the principles of *sovereignty* and *non-interference in the internal affairs of States*[.]¹⁹⁹ (emphasis added)

195. See U.N. CHARTER art. 2 para 7. ("[B]ut this principle [of non-intervention] shall not prejudice the application of enforcement measures under Chapter VII.").

196. See *id.* ("[B]ut this principle [of non-intervention] shall not prejudice the application of enforcement measures under Chapter VII.")

197. See discussion *infra* Part III.B. (noting the importance of political support by member states in enforcing self-determination, especially in the case of East Timor).

198. U.N. CHARTER, art. 2, para 7.

199. GA Res. 50/172, UN GAOR, 40th Sess., para. 4, U.N. Doc. A/50/172 (1996).

Thus, the UN requires a formal written request for all forms of electoral assistance.²⁰⁰

The May 5 Agreements constituted Portugal and Indonesia's written request for electoral assistance and consent to a UN presence.²⁰¹ The parties requested the UN to organize and conduct the popular consultation in East Timor, but, unlike any predecessor organization and conduct request, limited consent to the logistical aspects of carrying out the election.²⁰² Despite the Secretary General's attempts to negotiate complete UN control of the process, Indonesia refused to consent to UN-controlled security.²⁰³ Under the internal model of required consent, the UN had to respect this limitation.²⁰⁴

There are two exceptions to the consent requirement for UN electoral assistance. The UN may choose to intervene without consent for external self-determination elections²⁰⁵ or as part of a peace enforcement mission.²⁰⁶ As the UN has regarded East Timor a non-self-governing territory with the right to external self-determination,²⁰⁷ the

200. See *UN Election Monitoring Guidelines*, *supra* note 126, para. 3 (requiring written consent as a precondition for any type of UN electoral assistance).

201. See *General Agreement*, *supra* note 10, arts. 1-2, 4 (requesting the Secretary-General to consult the East Timorese regarding the autonomy proposal, establish UNAMET to carry out the mission, and report the popular consultation's results).

202. See *id.* art. 3 (determining that Indonesia would be responsible for providing security during the consultation, thus limiting UNAMET's responsibilities to the provisions of the Modalities Agreement); *Modalities Agreement*, *supra* note 11, §11§ E-G (enumerating UNAMET's responsibilities and leaving out any substantive security duties); *Security Agreement*, *supra* note 12, para. 4 (assigning security responsibility singly to the Indonesian police).

203. Steven Mufson & Colum Lynch, *E. Timor Failure Puts U.N. on the Spot; Interventionist Ability in Doubt*, WASH. POST, Sept. 26, 1999, at A1 (discussing the negotiations proceeding the May 5 Agreements, where the Indonesian government scratched out the sections of an original UN draft that restricted Indonesian security forces).

204. See discussion *supra* notes 198-200 (explaining the reasoning behind the required consent policy of UN election monitoring).

205. See G.A. Res. 1541, *supra* note 131, Prin IX(b) (allowing the UN to supervise elections for self-determination in non-self-governing territories).

206. See discussion *infra* note 259 and accompanying text (explaining that illegal occupation justifies UN peace enforcement under UN law).

207. See discussion *supra* notes 32-34, 52-57 and accompanying text (noting the UN's declarations that East Timor is a non-self-governing territory with the right

Organization faced no legal bar to enforcing East Timor's right.²⁰⁸ Likewise, Indonesia's illegal use of force in occupying East Timor was legally sufficient to authorize peace enforcement under the Charter.²⁰⁹

B. POLITICS OF SELF-DETERMINATION AND UN ELECTION MONITORING

While legal factors did not effectively preclude the UN from enforcing East Timor's right to self-determination, political factors left the UN unable to act without Indonesia's consent. In order to undertake any sort of mission, the UN relies upon support from key member states.²¹⁰ Prior to Indonesia's consent, no one in the international community, with the exception of Portugal,²¹¹ took affirmative steps to enforce East Timor's right to self-determination.²¹² As with other matters of international law, the international community declined to enforce East Timor's right to self-determination because doing so would not have served the political interests of member states.²¹³

to self-determination).

208. See G.A. Res. 1541 *supra* note 131 (containing no provisions requiring consent of an administrator or occupying state).

209. See U.N. CHARTER, art. 39.

The Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 4 and 42, to maintain or restore international peace and security.

Id.

210. See RATNER, *supra* note 2, at 36 (explaining, in the context of peacekeeping, that even when the UN has the consent of the parties, key member states must give concur before the Organization can undertake a mission of any type). For example, in order for the UN Security Council to authorize a peace enforcement mission, at least 9 members must agree and all the permanent members must concur. See U.N. CHARTER art. 27(3) (explaining that, aside from procedural matters, such a voting requirement is mandatory before the Security Council can act on any matter).

211. See CASSESE, *supra* note 60, at 223 (noting Portugal's effort to support East Timor's right to self-determination by bringing the case before the ICJ); see also Case Concerning East Timor (Port. v. Austrl.), 1995 I.C.J. 90 (June 30).

212. See CASSESE, *supra* note 60, at 223 (listing the reasons why the international community, including the UN, did not assist East Timor).

213. See *id.* at 227 (arguing that the UN failed to enforce East Timor's right to

Antonio Cassese²¹⁴ cites international political concerns as responsible for enabling Indonesia's continued occupation of East Timor.²¹⁵ He argues that Indonesia was of great strategic importance to the West.²¹⁶ The United States admitted as much, stating that enforcing self-determination in East Timor "would not serve [the United States'] best interests in light of the importance of [United States] relations with Indonesia."²¹⁷ Similarly, the European Union never took an affirmative stance on enforcing East Timor's right to self-determination, avoiding the question of East Timor altogether.²¹⁸ Cassese believes that without strong support in the West the UN could not answer the question.²¹⁹ Thus, technically available interna-

self-determination based on political considerations).

214. Cassese, a well-respected international legal scholar and President of the Yugoslavia War Crimes Tribunal, has written extensively on the subject of self-determination and its evolving applications. These works include: ANTONIO CASSESE, *Political Self-Determination-Old Concepts and New Developments*, in UN LAW/FUNDAMENTAL RIGHTS: TWO TOPICS IN INTERNATIONAL LAW 137 (Antonio Cassese ed., 1979); *see also* CASSESE, *supra* note 60.

215. *See* CASSESE, *supra* note 60, at 227 (arguing that political considerations prompted the UN Security Council to avoid labeling the 1975 Indonesian invasion of East Timor a breach of international peace and security).

216. *See id.* at 227 (arguing that Western member states refused to lend support because they derived no direct benefit from assisting East Timor and intervention could potentially harm relations with Indonesia). For example, the importance of Indonesia to the United States may be summarized by the following statement:

Indonesia is the largest country in the Association of South East Asian Nations (ASEAN), support for which is the cornerstone of U.S. policy in South-east Asia. It is a moderate voice in the developing world, an important oil producer and a major arena for U.S. trade and investment, and it occupies a strategic position astride vital sea lanes connecting the Indian and Pacific Oceans.

Situation in East Timor, 82 DEP'T ST. BULL. 29, Nov. 1982, *reprinted in* CAMBRIDGE DOCUMENTS, *supra* note 26, at 313 (statement of John H. Holdridge, Assistant Secretary for East Asian and Pacific Affairs).

217. *See* CASSESE, *supra* note 60, at 227 (quoting the testimony of United States Deputy Legal Adviser, George H. Aldrich, before the House of Representatives' Subcommittee on International Organizations).

218. *See id.* at 228 (arguing that most member states of the European Union view the question of East Timor as a bilateral matter to be dealt with by Portugal and Indonesia). *But see generally* CAMBRIDGE DOCUMENTS, *supra* note 26, at 302-12 (providing Council of Europe and European Parliament documents (reprinted) that condemn Indonesia's occupation of East Timor and call for intervention).

219. *See* CASSESE, *supra* note 60, at 223 (arguing that without political support

tional legal remedies remained out of reach without Indonesia's consent.²²⁰

IV. THE MAY 5 AGREEMENTS

Progress toward finding a remedy for the people of East Timor came with the signing of the May 5 Agreements.²²¹ Given the history and politics surrounding the territory, the signing of the May 5 Agreements was an historic event.²²² The provisions of the May 5 Agreements seem to indicate the parties' sincere intent to provide a free and fair election and to respect human rights.²²³ However, inherent flaws in the May 5 Agreements, specifically the security provisions, made the protection of human rights in East Timor impossible.

A. THE PROVISIONS OF THE MAY 5 AGREEMENTS

1. *Indonesian Responsibility*

The plan for the East Timorese popular consultation, established by the May 5 Agreements, stressed the importance of maintaining security before, during, and after the vote.²²⁴ The drafters believed security was necessary to ensure a fair popular consultation "in an atmosphere free of intimidation, violence, or interference from any

from the US in particular, the UN could not assist East Timor).

220. See discussion *supra* Part III.

221. See *May 5 Agreements Press Conference*, *supra* note 13 (statement of Kofi Annan, Secretary-General, United Nations) (announcing that Portugal, Indonesia, and the UN had concluded talks on the question of East Timor, deciding on a solution through the popular consultation).

222. *Id.*

223. See *General Agreement*, *supra* note 10, art. 3 (expressing Indonesia's intent to ensure a "fair" and "peaceful" consultation); *Modalities Agreement*, *supra* note 11 (enumerating the procedures UNAMET would later undertake to provide a fair vote); *Security Agreement*, *supra* note 12, arts. 1-2 (recognizing the need for a secure environment, calling for the neutrality of the Indonesian police forces, and promising to abide by a code of conduct).

224. See *General Agreement*, *supra* note 10, art. 3 (assigning security responsibility to Indonesia in order to guarantee a fair and peaceful vote); *Modalities Agreement*, *supra* note 11, § G (outlining security provisions for each stage of the consultation process); *Security Agreement*, *supra* note 12 (emphasizing the necessity for security).

side.”²²⁵ The May 5 Agreements authorized Indonesia to maintain peace and security before, during, and after the consultation process.²²⁶ Article 3 of the General Agreement assigned security responsibility to Indonesia generally.²²⁷ Further, Section G of the Modalities Agreement required the duty of Indonesian authorities to “ensure a secure environment” for the consultation process and provide security for UN personnel conducting the consultation.²²⁸ Additionally, Articles 1 and 4 of the Security Agreement gave Indonesian police sole responsibility for the “maintenance of law and order.”²²⁹

2. UN Role

The May 5 Agreements also defined the UN’s role in carrying out the consultation, including the necessity for a UN mission in East Timor.²³⁰ In response, the Security Council passed Resolution 1246, establishing the United Nations Mission in East Timor (“UNAMET”).²³¹ UNAMET’s mandate satisfied Article 2 of the Agreement between Indonesia and Portugal, which requested the Secretary General to establish “an appropriate United Nations Mission in East Timor to enable him to collectively carry out the popular consultation.”²³² Under paragraph 4 of Security Council Resolution

225. See *General Agreement*, *supra* note 10, art. 3.

226. See *id.* (noting that “the Government of Indonesia will be responsible for maintaining peace and security in East Timor.”); *Modalities Agreement*, *supra* note 11, § G (discussing how “the Indonesian authorities will ensure a secure environment for a free and fair popular consultation process and will be responsible for the security of United Nations personnel.”); *Security Agreement*, *supra* note 12 (asserting that “responsibility to ensure [a secure] environment as well as for the general maintenance of law and order rests with the appropriate Indonesian security authorities.”).

227. See *General Agreement*, *supra* note 10, art. 3 (assigning the maintenance of peace and security to Indonesia).

228. See *Modalities Agreement*, *supra* note 11, § G.

229. See *Security Agreement*, *supra* note 12, arts. 1, 4.

230. See *General Agreement*, *supra* note 10, art. 2 (requesting the Secretary-General to establish a UN mission to help carry out the consultation process).

231. See S.C. Res. 1246, *supra* note 14 (establishing UNAMET “in accordance with the General Agreement and to enable the Secretary-General to discharge his responsibility under paragraph 3 of the Security Agreement”).

232. See *General Agreement*, *supra* note 10, para. 2.

1246, UNAMET's duties in East Timor fell into three components: (1) a political component; (2) an electoral component; and (3) an informational component.²³³ The political component existed to monitor fairness in the consultation process.²³⁴ Further, logistical tasks connected with the vote, such as registration and polling, were conducted through the electoral component.²³⁵ The informational component also allowed for an impartial explanation of the options available to the East Timorese people, under Resolution 1246.²³⁶ While the UNAMET deployment included 280 civilian police and 50 military liaison officers, UN personnel were not armed, nor were they instructed to enforce security.²³⁷ The UN civilian police and military officers served as advisors to Indonesian security officials under Resolution 1246.²³⁸

B. PURPOSES OF THE MAY 5 AGREEMENTS

The May 5 Agreements have repercussions in the international community as well as in East Timor.²³⁹ Had their provisions been implemented properly, they could have served as a model for future election monitoring efforts for non-self-governing territories²⁴⁰ and

233. See S.C. Res. 1246, *supra* note 14, para. 4 (endorsing a proposal by the Secretary-General that UNAMET's mandate should include a political, electoral, and informational component).

234. See *id.* para. 4(a) (stating the purpose of the political component was to ensure freedom for political and non-governmental organizations to act freely).

235. See *id.* para. 4(b) (establishing the electoral component to be responsible for registration and voting activities).

236. See *id.* para. 4(c) (providing for an information component, responsible for the "objective and impartial" distribution of information about the vote).

237. See *id.* paras. 2-3 (authorizing the civilian police and military liaisons to advise pollsters, supervise the ballot, and maintain contact with the Indonesian security forces). Resolution 1246 does not authorize any UNAMET officer to use force. *Id.*

238. See S.C. Res. 1246, *supra* note 14, paras. 2-3 (limiting UNAMET's authority).

239. See Kofi Annan, *Two Concepts of Sovereignty*, *ECONOMIST*, Sept. 18, 1999 (citing the tragedy of East Timor as an example of the need for international intervention).

240. See *Trusteeship and Decolonization*, 1996 U.N.Y.B. 516 (listing the former colonies under consideration for the implementation of self-determination). The Falkland Islands (Malvinas), Gibraltar, New Caledonia, Tokelau, Western Sahara,

within independent states.²⁴¹ First, the popular consultation envisioned in the May 5 Agreements created a legal duty in the occupying state to respect the non-self-governing territory's wishes.²⁴² Under the May 5 Agreements, if East Timor wished to pursue independence, Indonesia had a legal obligation to withdraw from the territory.²⁴³ Unlike past UN resolutions, which merely urged Indonesia to pull out of East Timor, the May 5 Agreements were binding.²⁴⁴ Indonesia helped draft the May 5 Agreements and became a signatory, thereby promising to respect the outcome of the vote.²⁴⁵

Secondly, the May 5 Agreements provided for UN control of the modalities for the popular consultation, with the exception of security enforcement.²⁴⁶ The UN's role was essential in creating a free-flow of information to the voters, which was intended to foster voter participation and provide fair election results.²⁴⁷ The Modalities Agreement, and later Security Council Resolution 1246, required UN staff to present impartial information to the East Timorese and make sure the polling was conducted fairly.²⁴⁸ This was designed to prevent

and a number of small island territories have yet to exercise their right to self-determination. *Id.*

241. See *Requests*, *supra* note 124 (providing a list of over 100 requests for electoral assistance by independent states in the past ten years, thirteen of which are either ongoing or under consideration).

242. See *General Agreement*, *supra* note 10, para. 6 (requiring Indonesia to restore East Timor's "non-self-governing" status under Indonesian law should the voters reject the autonomy proposal).

243. See *id.*

244. See Vienna Convention on the Law of Treaties, May 23, 1969, art. 2(1)(b) 1155 U.N.T.S. 331 [hereinafter Vienna Convention] (defining the consent to be bound to a treaty).

245. See *May 5 Agreements Press Conference*, *supra* note 13 (noting Indonesia's participation in drafting the May 5 Agreements).

246. See *Modalities Agreement*, *supra* note 11 (describing UN preparation for the popular consultation).

247. See S.C. Res. 1246, *supra* note 14, para. 4(c) (establishing an information component, responsible for the "objective and impartial" distribution of information about the vote).

248. See *Modalities Agreement*, *supra* note 11, § E(a) (describing the information distribution duties of UN personnel during the popular consultation); S.C. Res. 1246, *supra* note 14 (entrusting UNAMET with explaining the implications of votes for or against the Indonesian proposal for a special autonomy).

pro-independence or pro-integration factions from influencing the outcome of the vote.²⁴⁹

Third, as mentioned above, the May 5 Agreements imposed legally binding responsibilities on the government of Indonesia.²⁵⁰ Through taking on primary security duties in East Timor during the popular consultation process, Indonesia was legally obligated to refrain from its past practices of military intimidation and control of the East Timorese people.²⁵¹ Provisions in the May 5 Agreements called for the "absolute neutrality of the Indonesian Armed Forces and the Indonesian Police" thereby ensuring a peaceful environment for the East Timorese to express their will.²⁵²

Finally, the May 5 Agreements sought to foster a secure environment by allowing the UN to check the Indonesian security forces.²⁵³ The Security Agreement provided that the consultation would not take place unless "the necessary security situation exist[ed] for the peaceful implementation of the consultation process."²⁵⁴ Paragraph 4 of the Security Agreement allowed the Secretary General to determine whether or not such a situation existed.²⁵⁵

249. See *Modalities Agreement*, *supra* note 11, § E(c) (calling for the establishment of a Code of Conduct for campaigning). Indonesia and Portugal could not participate in the campaign process under the Modalities Agreement. *Id.*

250. See Vienna Convention, at Part II, sec. 1 (discussing the binding nature of treaties and other international agreements).

251. See *General Agreement*, *supra* note 10, para. 3 (stating that "the Government of Indonesia will be responsible for maintaining peace and security in East Timor."); *Modalities Agreement*, *supra* note 11, § G ("The Indonesian authorities will ensure a secure environment for a free and fair popular consultation process and will be responsible for the security of United Nations personnel."); *Security Agreement*, *supra* note 12, para. 1 ("Responsibility to ensure [a secure] environment as well as for the general maintenance of law and order rests with the appropriate Indonesian security authorities.").

252. *Security Agreement*, *supra* note 12, para. 1.

253. See *id.* para. 3 (establishing that "prior to the start of registration, the Secretary-General shall ascertain, based on the objective evaluation of the UN mission, that the necessary security situation exists for the peaceful implementation of the consultation process.").

254. *Id.*

255. See *id.* (entrusting the Secretary-General to determine the necessary security situation for a free and fair popular consultation in East Timor).

C. FATAL FLAWS IN THE MAY 5 AGREEMENTS

UN Secretary General Kofi Annan called the May 5 Agreements “historic” at the conclusion of their signing.²⁵⁶ As previously mentioned, had the May 5 Agreements’ provisions been properly implemented, the 1999 East Timor consultation could have served as a model for facilitating a peaceful process of self-determination in future election monitoring efforts. Instead, due to inherent flaws in the security provisions, an ambivalence toward lessons from past consultations, and the failure to implement crucial portions of the May 5 Agreements, the 1999 East Timorese Consultation is a gross humanitarian failure that calls into question the UN’s policies on humanitarian intervention.²⁵⁷

1. Inadequate Security Provisions

Under the May 5 Agreements, Indonesia was solely responsible for security during the popular consultation of East Timor.²⁵⁸ While the UN’s main purpose is to maintain international peace and security,²⁵⁹ the May 5 Agreements only allowed the international body to

256. See *May 5 Agreements Press Conference*, *supra* note 13 (expressing appreciation to Indonesia and Portugal for signing the May 5 Agreements).

257. See Annan, *supra* note 239 (citing the tragedy of East Timor as an example of the need for international intervention).

258. See *General Agreement*, *supra* note 10, para. 3 (“The Government of Indonesia will be responsible for maintaining peace and security in East Timor.”); *Modalities Agreement*, *supra* note 11, § G (“The Indonesian authorities will ensure a secure environment for a free and fair popular consultation process and will be responsible for the security of United Nations personnel.”); *Security Agreement*, *supra* note 12 (“Responsibility to ensure [a secure] environment as well as for the general maintenance of law and order rests with the appropriate Indonesian security authorities.”).

259. See U.N. CHARTER, art. 1 (establishing that the primary purpose of the UN is to “maintain international peace and security”); *id.* (stating that the Security Council can allow enforcement measures under Chapter VII if it finds a breach of international peace and security). Chapter VII of the Charter assigns authority to the Security Council to respond to potential or actual breaches of international peace and security. See *id.* art. 39 (“The Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression.”); see also *id.* art. 42 (allowing the Security Council to use force, should it determine force a necessary measure to restore international peace and security).

play a minimal security role.²⁶⁰ Many predicted that Indonesia would not be able to fulfill its security duties due to its long history of forceful occupation and threats of pro-integration militias.²⁶¹ However, aside from postponing the vote, the May 5 Agreements provided no alternative security measures in the event that Indonesia should fail in its duties.²⁶²

a. Indonesia's Responsibilities

The May 5 Agreements' provisions that entrusted security to Indonesian forces were inconsistent with the underlying purpose of the popular consultation: to provide a "free and fair ballot in East Timor" in a "secure environment devoid of violence or other forms of intimidation."²⁶³ During the talks that led up to the May 5 Agreements, the parties ignored evidence that members of the Indonesian security forces were at least unable, if not unwilling, to prevent acts of violent aggression by pro-integration militias.²⁶⁴ A number of humanitarian organizations brought this evidence to the UN's attention, urging the UN to provide security instead of Indonesia.²⁶⁵

260. See *supra* notes 224-229 and accompanying text (defining Indonesia's security responsibilities under the May 5 Agreements).

261. See *Decolonization Committee Continues Consideration of East Timor*, available at <<http://www.un.org/News/Press/docs/1999>> [hereinafter *Decolonization Committee Hearings*] (hearing arguments from human rights officials as to why Indonesia should not have been trusted with providing security during the consultation process).

262. See discussion *infra* Part IV.C.1.c (arguing that the security provisions failed to include a contingency plan should Indonesia fail in its duties).

263. See *General Agreement*, *supra* note 10, para. 3.

264. See *Decolonization Committee Hearings*, *supra* note 261 (testimony from Amnesty International representatives) (estimating that more than three hundred East Timorese had died at the hands of pro-Indonesian militias since January 1999); *id.* (statement of the representative of the Catholic Institute for International Relations) (arguing that the Indonesian army was supporting pro-Indonesian militia groups in a "proxy war" against pro-independence East Timorese).

265. See *id.* (statement of a representative of the Australian non-governmental organization, Campaign for an Independent East Timor) (calling on the UN to exclude Indonesia from the consultation process). Representatives from the Catholic Church presented the Decolonization Committee with recent reports of "people having their ears cut off and being forced to eat them." *Id.* But see *id.* (testimony of Augusto Mendoca, speaking in his own capacity) (admitting that the pro-Indonesian militias were hurting the peace process, but arguing that the Indonesian

Aside from the overwhelming evidence that Indonesian forces would be incapable of providing security, the assignment of security to a biased party instantly made the process unfair.²⁶⁶ Because of the influence their political positions might create, Indonesia and Portugal both agreed to stay uninvolved with the political, electoral, and informational components of the consultation.²⁶⁷ However, the Modalities Agreement's provision allowing Indonesian security forces could have led to undue influence.²⁶⁸

b. The Weakness of UNAMET

The May 5 Agreements contained provisions which implied the need for a peacekeeping force to ensure successful implementation of the popular consultation. In response, the Security Council established UNAMET.²⁶⁹ However, the provisions that called for a UN presence also clearly limited UNAMET's ability to prevent violence in the region.²⁷⁰ The small number of UNAMET personnel could only report the violence that unfolded.²⁷¹ Due to prohibitions of UN

government was taking positive steps toward a peaceful resolution).

266. See *General Agreement*, *supra* note 10, art. 3 (stressing the need for a "fair" and "peaceful" consultation); *Security Agreement*, *supra* note 12, para. 1 (requiring a "secure environment devoid of violence or other forms of intimidation" to be necessary for a free and fair ballot).

267. See *Modalities Agreement*, *supra* note 11, § E(c) (stating that the governments of Indonesia and Portugal would not participate in the campaigning portion of the popular consultation).

268. See *id.* § G (assigning the modalities to UNAMET, with the exception of security).

269. See S.C. Res. 1246, *supra* note 14 (expressing concern at the "tense and volatile" situation in East Timor).

270. See *Security Agreement*, *supra* note 12, paras. 3-4 (noting that the UN mission would evaluate the security climate during the consultation process, provide the Secretary-General with evaluations of the security climate, and advise Indonesian security forces).

271. See U.N. CHARTER, art. 2, para. 7 (stating that the UN has no authority to intervene in matters which are "essentially within the domestic jurisdiction of any state"). But see *id.* art. 2, para. 4 (allowing for enforcement measures should the Security Council find a breach of international peace and security under Chapter VII of the Charter). Chapter VII determines that when breaches to international peace and security occur, the Security Council may take necessary action to "maintain or restore international peace and security." See U.N. CHARTER art. 42 (authorizing the following actions to fall within Security Council authority: dem-

intervention through force, UNAMET could do nothing to stop it.²⁷²

c. Inadequate Contingency Plan

Even if the presence of Indonesian security forces would not have unduly influenced the popular consultation process, other problems in the May 5 Agreements existed as well. Despite evidence that Indonesian forces might not be able to secure peace in East Timor for the popular consultation, the May 5 Agreements provided no alternative security measures.²⁷³ Certain provisions of the May 5 Agreements allowed UN staff to monitor the elections,²⁷⁴ provide status reports,²⁷⁵ and advise the Indonesian government on security implementation,²⁷⁶ but none of the provisions allowed UNAMET to respond to the real potential for violence.²⁷⁷

Paragraph 3 of the Security Agreement did not serve as a sufficient check on the Indonesian security forces' ability to provide adequate safety during the consultation process.²⁷⁸ When the pro-

onstrations, blockades, "and other operations by air, sea, or land forces of Members of the United Nations."). Historical disagreement exists within the international community as to whether or not East Timor was "within the domestic jurisdiction" of Indonesia. See *supra* Part I.B. (discussing varying levels of recognition in the international community with regard to Indonesia's claimed sovereignty over East Timor).

272. See *Modalities Agreement*, *supra* note 11, § G (providing that "the Indonesian authorities will ensure a secure environment for a free and fair popular consultation process and will be responsible for the security of United Nations personnel."); *Security Agreement*, *supra* note 12, para. 1 (stating that "responsibility to ensure [a secure] environment as well as for the general maintenance of law and order rests with the appropriate Indonesian security authorities.").

273. See *General Agreement*, *supra* note 10, art. 3 (granting Indonesia full responsibility for providing security).

274. See *Security Agreement*, *supra* note 12, para. 3 (noting that the UN mission will evaluate the security climate during the consultation process).

275. See *id.* (discussing how the UN mission will provide the Secretary-General with evaluations of the security climate).

276. See *id.* para. 4 (mentioning the advisory duties of UNAMET civilian police officers).

277. See *Decolonization Committee Hearings*, *supra* note 261 (providing the testimony of witnesses who warned of the potential for violence through testifying to specific examples).

278. See *General Agreement*, *supra* note 10, para. 3 (establishing that "prior to the start of the registration, the Secretary-General shall ascertain . . . that the neces-

integration militias carried out their promise to spread violence across East Timor and the Indonesian military forces did not stop them; the only measure the Secretary General could take under the May 5 Agreements was to postpone the vote.²⁷⁹

Arguably, paragraph 3 might have even encouraged pro-integration militias to continue their violent campaign in East Timor.²⁸⁰ Representatives of these groups have stressed their opposition to the East Timorese popular consultation.²⁸¹ Given that the drafters agreed the popular consultation could only take place in a peaceful environment, pro-integration militias might be persuaded to create a violent environment in an effort to postpone the vote indefinitely.²⁸²

2. *A Lack of Implementation of the May 5 Agreements: the Consequences that Followed*

Neither Indonesia nor the UN were able to uphold their duties under the flawed May 5 Agreements. Indonesia did not provide adequate security, and the UN allowed the vote to take place in a hostile environment. While the result of the vote reflected the political will of the people, the events which followed the vote placed actual self-governance far out of reach.²⁸³ Hundreds of East Timorese were mur-

sary security situation exists for the peaceful implementation of the consultation process.”)

279. See S.C. Res. 1257, U.N. SCOR, 54th Sess., 4031st mtg., para. 1, U.N. Doc. S/RES/1257 (1999) (extending the mandate of UNAMET for one month following the Secretary-General’s decision to postpone the popular consultation).

280. See *General Agreement*, *supra* note 10, para. 3 (requiring security to be necessary for the vote to take place).

281. See Keith Richburg, *Militias Hit U.N. Office in E. Timor, Anti-Independence Violence Continues*, WASH. POST, June 30, 1999, at A1 (reporting that the pro-Indonesian militias have been intimidating the East Timorese to reject independence).

282. See *id.* (reporting that a June attack on a UN outpost could jeopardize the peace plan envisioned in the May 5 Agreements).

283. See U.N. Council Authorizes U.N. Troops For East Timor, N.Y. TIMES, Oct. 25, 1999, at A8 [hereinafter *U.N. Troops for East Timor*] (noting that East Timor will most likely be under UN control for at least two to three years while the UN helps the East Timorese rebuild).

dered²⁸⁴ and thousands were displaced.²⁸⁵ The UN will have to spend many years and millions of dollars to help rebuild the destroyed territory.²⁸⁶

a. Indonesian Implementation of Security Under the May 5 Agreements

The Indonesian government was either unwilling or unable to implement the security provisions of the May 5 Agreements.²⁸⁷ As predicted, the pro-integration militias began a violent campaign once the May 5 Agreements were signed, including an attack on UNAMET headquarters.²⁸⁸ Indonesian security forces did little to stop them.²⁸⁹ In fact, according to some UN reports, members of the Indonesian military supplied the pro-integration militias with weapons.²⁹⁰ The UN bodies, exercising responsibility in the fullest sense possible under the terms of the May 5 Agreements, repeatedly brought these reports to the attention of Indonesian officials.²⁹¹ In response to UN pressure, the Indonesian government issued orders to its security forces to abide by the May 5 Agreements' security provisions.²⁹² Evidence demonstrates, however, that the Indonesian police and

284. See *Human Rights Report*, *supra* note 19, paras. 19-28 (providing official reports of known killings since the popular consultation took place).

285. See *id.* paras. 29-34, 37-38, 39-44 (discussing "forcible expulsions, " "enforced and involuntary disappearances, " and "displaced persons").

286. See *U.N. Troops for East Timor*, *supra* note 283 (providing U.N. cost estimates for the rebuilding effort in East Timor, reaching up to \$1 billion per year).

287. See Richburg, *East Timor Spirals*, *supra* note 97, at A1 (noting the seeming helplessness of the Indonesian security forces to prevent the mass destruction that occurred in East Timor following the vote).

288. See *id.* (stating that over 100 pro-Indonesian militiamen attacked the UNAMET headquarters in Maliana, injuring a South African diplomat and at least a dozen East Timorese).

289. See *id.* (discussing how the Indonesian military supported armed attacks by the militias).

290. *Id.*

291. See *Security Agreement*, *supra* note 12, para. 3 (commenting on the role of UNAMET to provide the Secretary-General with "objective evaluations").

292. See Richburg, *East Timor Spirals*, *supra* note 97, at A1 (reporting that the Indonesian army intended to "calm down the situation" before allowing a peacekeeping force).

military forces disregarded those messages.²⁹³

b. The UN's Response to Security Breaches

The lack of security implementation in East Timor was successful in delaying the popular consultation from its originally scheduled date under the Modalities Agreement.²⁹⁴ Exercising his authority under paragraph 3 of the Security Agreement, the Secretary General determined that East Timor was not ready for an August 8 popular consultation. However, the pro-integration militias, aided by Indonesian security forces, were not able to get rid of the vote completely.²⁹⁵ Despite the clear lack of security in East Timor, Secretary General Kofi Annan allowed the vote to take place.²⁹⁶ On August 30, 1999, the East Timorese expressed their will to pursue independence.²⁹⁷

When the Secretary General allowed the vote in East Timor, he failed to implement his responsibilities under the May 5 Agreements.²⁹⁸ While Paragraph 3 of the Security agreement specifically required him to determine a safe environment before allowing the vote,²⁹⁹ the security situation between August 8 and August 30 did not improve.³⁰⁰ Despite the increasing violence, the East Timorese

293. See *Human Rights Report*, *supra* note 19 (detailing the breakdown of law and order in East Timor following the vote).

294. See S.C. Res. 1257, *supra* note 279 (expanding UNAMET's mandate and delaying the popular consultation).

295. See Keith Richburg, *Voters in E. Timor Flock to the Polls; Killing of U.N. Worker, Militia Terror Fail to Stop Balloting on Independence*, WASH. POST, Aug. 31, 1999, at A7 (reporting a 98.6% voter turnout on August 30, 1999).

296. The Secretary-General called for no further delays after Resolution 1257 was passed. See S.C. Res. 1257, *supra* note 279 (broadening UNAMET's mandate and staying the popular consultation to a later date).

297. See *East Timorese Reject Autonomy*, *supra* note 17 (announcing that 21.5 percent of the East Timorese voted in favor of, and 78.5 percent voted against Indonesia's autonomy proposal).

298. See *Security Agreement*, *supra* note 12, para. 3 (requiring the Secretary-General to determine whether the "necessary security situation exist[ed] for the peaceful implementation of the consultation process.").

299. See *id.* (providing that "prior to the start of the registration, the Secretary-General shall ascertain, based on the objective evaluation of the UN mission, that the necessary security situation exists for the peaceful implementation of the consultation process.").

300. See Seth Mydans, *Fearful of Militias, East Timor to Vote on its Future*,

supported Annan's decision to let the vote take place.³⁰¹ Had Annan properly exercised his responsibilities under the May 5 Agreements, he would have waited until the environment was more secure.³⁰²

c. Events in East Timor Following the August 30 Vote and the UN Response: Security Council Resolution 1246

On September 3, 1999, officials counted the votes for the East Timorese popular consultation.³⁰³ The UN reported that nearly eighty percent of the East Timorese voters rejected Indonesia's plan for autonomous integration.³⁰⁴ Immediately, pro-integration militias conducted a systematic "slash and burn" campaign,³⁰⁵ forced approximately two-hundred thousand East Timorese into the hills and another one-hundred-fifty thousand into West Timorese refugee camps,³⁰⁶ and targeted specific individuals for execution, including nuns, priests, and prominent pro-independence supporters.³⁰⁷ For

N.Y. TIMES, Aug. 29, 1999, at A3 [hereinafter Mydans, *Fearful Vote*] (reporting on escalating violence approaching the ballot, including kidnappings, threats, and displacement).

301. See *The United Nations and East Timor*, para. 8, available at <<http://www.un.org/peace/etimor/qna1oct.htm>> (explaining that the Secretary-General decided to proceed with the popular consultation in East Timor because "despite violence and intimidation . . . East Timorese leaders and people in communities indicated their support for continuing the process."). Not only did the people of East Timor express their support for continuing with the vote, but the UN Security Council, member states of the UN, Indonesia, and Portugal did not express opposition to the Secretary-General's decision at any time). See *id.* (providing justification for the UN's decision to allow the August 30th popular consultation of the East Timorese, despite mounting threats of violence in the region).

302. See *Security Agreement*, *supra* note 12, para. 3 (requiring the Secretary-General to determine whether the "necessary security situation exist[ed] for the peaceful implementation of the consultation process before allowing a vote.").

303. See *East Timorese Reject Autonomy*, *supra* note 17 (announcing the results of the August 30th vote, which rejected Indonesia's autonomy proposal).

304. See *id.* (announcing that 21.5% of the East Timorese voted in favor of, and 78.5% voted against Indonesia's autonomy proposal).

305. See Richburg, *East Timor Spirals*, *supra* note 97, at A1.

306. See *Human Rights Report*, *supra* note 19, para. 45 (detailing that hundreds of homes and the entire business district in Dili had been burned). Some suspected that displacement of the East Timorese might have been planned by Indonesian authorities. See *id.* para. 29.

307. See *id.* paras. 19-20 (reporting that pro-independence leaders and clergy

nearly two weeks, the Indonesian government insisted it could control the situation and uphold its responsibility under the May 5 Agreements.³⁰⁸ Instead, the violence continued to escalate.³⁰⁹ The UN continued to perform its duties under the May 5 Agreements,³¹⁰ issuing reports to the Security Council and pressuring the Indonesian government to either quell the violence or allow UN intervention.³¹¹

After two weeks of systematic violence,³¹² the UN determined that the situation was a breach to international peace and security.³¹³ At that time, the Indonesian government agreed to allow international intervention.³¹⁴ On September 15, 1999, the UN Security Council passed Resolution 1264, authorizing a multinational force to replace the Indonesian police force.³¹⁵ Shortly thereafter, one thousand Aus-

members were killed for their support of independence); *see also The Rampage*, *supra* note 99 (reporting on target killings of nuns, priests, and the leader of the East Timorese independence movement).

308. *See* Keith B. Richburg, *Violence Torn E. Timor Put Under Martial Law*, WASH. POST, Sept. 7, 1999, at A1 (reporting that the Indonesian government gave conflicting explanations for the violence, first blaming tensions between pro-Indonesian and pro-independence factions, and then downplaying the level of violence altogether).

309. *See id.* (reporting that the Indonesian police were deserting their units in large numbers and joining the pro-integration militias in terrorizing East Timorese citizens and foreigners alike).

310. *See Security Agreement*, *supra* note 12, para. 3 (discussing UNAMET's role to provide reports).

311. *See Kofi Annan Says Time Has Come for Indonesia to Seek International Community's Help to Bring Order and Security to East Timor*, available at <<http://www.un.org/News/Press/docs/1999>> [hereinafter *Time Has Come*] (statement of Kofi Annan, Secretary-General, United Nations) (urging the Indonesian government to relinquish its control over security in East Timor).

312. *See* Keith B. Richburg, *Jakarta Asks U.N. Force to End E. Timor Turmoil; Australian-Led Troops May Arrive Within Days*, WASH. POST, Sept. 13, 1999, at A1 [hereinafter Richburg, *Jakarta Asks Force to End*] (reporting on the two weeks of violence, including burning, looting, and murder, which followed the August 30th vote in East Timor).

313. *See* S.C. Res. 1264, U.N. SCOR, 54th Sess., 4045th mtg., U.N. Doc. S/RES/1264 (1999) (reporting that the UN "determin[ed] that the present situation in East Timor constitutes a threat to peace and security.").

314. *See* Richburg, *Jakarta Asks Force to End*, *supra* note 312 (stating that Indonesian President B.J. Habibie announced Indonesia would allow peacekeepers into East Timor).

315. *See* S.C. Res. 1264, *supra* note 313, para. 3 (establishing a multinational

tralian troops arrived in East Timor to restore order.³¹⁶ On October 25, 1999 the Security Council authorized eleven thousand troops to join the existing operation.³¹⁷ The cost of repairing East Timor might reach anywhere from seven-hundred million to one billion dollars.³¹⁸

The humanitarian and economic costs discussed above may have been prevented had the drafters of the May 5 Agreements realistically considered the implications of entrusting Indonesia with security. Even with the flawed security provisions, if the May 5 Agreements had been properly implemented, first by Indonesia and then by the UN, the consultation would not have taken place until a secure environment existed. As more movements for self-determination arise in the future, careful planning and implementation will ensure respect for human rights.

V. CRITERIA FOR NEGOTIATING AND IMPLEMENTING SUCCESSFUL UN ORGANIZATION AND CONDUCT AGREEMENTS

"I don't see how people around the world can trust the United Nations again."³¹⁹

force to restore peace and security in East Timor). Chapter VII of the UN Charter authorizes the UN to take such action when the Security Council determines a breach of international peace and security has taken place. *See* U.N. CHARTER, art. 42 (allowing the UN to intervene if "necessary to restore international peace and security."). Under Article 42, "such action may include demonstrations, blockade, and other operations by *air, sea or land forces of Members of the United Nations.*" *Id.* (emphasis added).

316. *See* Doug Struck, *In East Timor, Smiles Greet Peacekeepers; Armed Patrols Meet No Resistance*, WASH. POST, Sept. 21, 1999, at A1 (observing that the Australian led peacekeeping force met no armed resistance upon arrival).

317. *See* U.N. *Troops for East Timor*, *supra* note 283 (recognizing that the new mission will take two to three years to accomplish).

318. *See id.* (disclosing the possible cost of the mission according to UN Under-Secretary-General, Bernard Miyet).

319. Mufson & Lynch, *supra* note 203, at A1 (quoting Jose Ramos Horta, East Timor Independence Leader).

In order to regain the trust of the international community,³²⁰ the UN should take heed of the mistakes made in East Timor. Both the humanitarian and economic costs of such an operation are discouraging.³²¹ The political and economic barriers the UN must face when approached for electoral assistance beg the question, "should the UN respond to requests for organization and conduct missions?"

The UN is the best-suited organization to accommodate the needs of countries requesting the organization and conduct of an election, but political factors often hinder the Organization's efforts. Should the UN choose to respond to requests for the organization and conduct of an election in an area of conflict, the Organization must not sacrifice security for political expediency.³²² Security can be more likely assured so long as the UN incorporates the following elements into the negotiation process: (1) unqualified consent of *all* the parties; (2) international support; and (3) adequate security arrangements. This Part recommends that the UN should continue to organize and conduct elections, so long as the Organization modifies its procedures to explicitly require the elements above. If these elements are applied to future missions within legally binding agreements, the mistakes of East Timor may be avoided.

A. THE UN SHOULD CONTINUE TO ORGANIZE AND CONDUCT ELECTIONS

It would be tempting to argue that the best way for the UN to avoid mistakes like the ones made in East Timor is to avoid organization and conduct missions altogether. By restricting its assistance to supervision, verification, and standard electoral missions, the UN could certify elections without having to assume the risks associated with organization and conduct missions.³²³ However, without UN in-

320. See Annan, *supra* note 239 (admitting that humanitarian crises hurt the reputation of the UN).

321. See *supra* note 286 and accompanying text (predicting the expense of East Timor); see also *Cambodia-UNTAC*, *supra* note 185 (stating the cost of UNTAC and its counterpart UNAMIC to be \$1,620,963,300).

322. See Annan, *supra* note 239 (calling for a redefinition of sovereignty to better assist the UN in enforcing international peace and security).

323. In supervision, verification, and standard missions, national election authorities take responsibility for carrying out all electoral processes, while the UN

volvement, nations or territories in crisis seeking an international solution may be forced to endure intractable civil wars.³²⁴

Some argue that inter-governmental organizations ("IGOs") are better suited to provide electoral assistance than the UN.³²⁵ Regional IGOs have the advantage of cultural, political, or historical similarities that could lend to the election monitoring process.³²⁶ In the case of East Timor, the Association of Southeast Asian Nations (ASEAN) could have taken the UN's role of election monitor.³²⁷

However, the very aspects that allow a regional organization's ability to assist in election monitoring could also lead to bias in that organization.³²⁸ The East Timor case demonstrates how this could be problematic. While Indonesia is a member of ASEAN, Portugal and East Timor are not.³²⁹ If ASEAN had joined the May 5 Agreements

certifies the results with varying degrees. See discussion *supra* Part II.B (defining and comparing the different models of UN electoral assistance with varying degrees). In organization and conduct missions, the UN assumes the responsibility of the local election authorities. See *Main Types*, *supra* note 136 (explaining that the UN assumes the responsibility of national election authorities in organization and conduct missions).

324. See discussion *supra* Parts I, III.B (providing the history of civil unrest in East Timor left to ferment for nearly twenty-five years due to international inaction).

325. See Hodgson, *supra* note 7, at 159 (arguing that many IGOs have comprehensive democracy building programs already in place).

326. See *id.* (viewing these factors as favorable to an IGO-monitored election); see also BEIGBEDER, *supra* note 4, at 223 (mentioning that observers from regional organizations might have a better understanding of territories in their region than would UN observers).

327. See ASEAN Bangkok Declaration, Aug. 8, 1967, art. 2.2, 6 I.L.M. 1223 [hereinafter ASEAN Declaration] (stating ASEAN's founding principle for the promotion of "regional peace and stability"). Article 2 of the ASEAN Declaration provides that the regional organization's aim is to: "... promote regional peace and stability through abiding respect for justice and the rule of law in the relationship among countries of the region and adherence to the principles of the United Nations Charter." *Id.*

328. See BEIGBEDER, *supra* note 4, at 223 (arguing that countries requiring election monitoring may distrust a regional organization's attachment to local contingencies).

329. See Association of Southeast Asian Nations: Country Profiles: Member Countries, available at <<http://www.aseansec.org/>> (listing all current ASEAN members: Brunei Darussalam, Cambodia, Indonesia, Laos, Malaysia, Myanmar, the Philippines, Singapore, Thailand, and Vietnam)

instead of the UN, Indonesia may have had too much bargaining power.³³⁰

Just as the UN and IGOs have entered into agreements for the supervision of elections, non-governmental organizations (“NGOs”) have also taken up the cause.³³¹ NGOs are often small, grassroots organizations that can easily respond to changing circumstances, unrestrained from the bureaucracy often connected to the UN or IGOs.³³² Often NGOs can remain impartial as they are less vulnerable to political concerns.³³³

Even though NGOs are not tied to governments, they may have some government affiliation, and often have their own political agenda.³³⁴ According to one scholar, Yves Beigbeder, most international election observing has been organized by United States’ NGOs, creating a suspicion in the international community that these NGOs are agents of foreign policy.³³⁵ NGOs might also lack the fi-

330. Indonesia is one of ten members of ASEAN. *See id.* Indonesia is also one of 188 UN member states. *See* United Nations Member States, *available at* <<http://www.un.org/Overview/unmember.html>> (listing the names of all UN member states, as well as the date each state became a member). Considering the number of members in each organization, Indonesia’s greater influence in ASEAN could have led to bias. *See* BEIGBEDER, *supra* note 4, at 223 (arguing that countries requesting electoral assistance may feel that the UN would be less likely to bend to regional pressures).

331. *See* BEIGBEDER, *supra* note 4, at 270 (pointing to the increasing role of NGOs in election monitoring); Hodgson, *supra* note 7, at 160 (arguing NGOs can be better equipped to monitor an election than the UN in some cases).

332. *See* BEIGBEDER, *supra* note 4, at 271 (listing the “built-in” advantages of NGOs and comparing them to IGOs).

333. *See id.* (arguing that since NGOs are not subject to governmental or inter-governmental policies, they can avoid political pressure more easily than IGOs). *But see* Hodgson, *supra* note 7, at 160 n.120 (considering the actual independence of NGOs to be a questionable advantage).

334. *See* BEIGBEDER, *supra* note 4, at 272-73 (arguing that while, in theory, NGOs have no governmental affiliation, their activities in election monitoring are definitely political).

335. *See id.* at 273 (listing some of the United States’ NGOs involved in election monitoring). These NGOs include: AFL/CIO, Center for Strategic and International Studies, Freedom House, Washington Office on Latin America, American Conservative Union, American Security Council, America’s Watch, Lawyers Committee for International Human Rights, the International Human Rights Law Group, the National Endowment for Democracy, the National Democratic Institute for International Affairs, the International Republican Institute, the Council of

nancial resources necessary to fund a large election movement.³³⁶ In elections enmeshed in conflict, as was the case in East Timor, NGOs do not have the authority that the UN or a regional organization would have to restore peace and security.³³⁷

Few organizations can give the legitimacy to an election that the UN can.³³⁸ While the UN, IGOs, and NGOs are each susceptible to political pressure or economic barriers, the UN is the best equipped to remain impartial in monitoring an election process.³³⁹ The UN does not have regional bias and has access to the financial support of the entire international community. Most importantly, the UN is the only international organization legally allowed to determine the need for and implement enforcement.³⁴⁰ Should the UN decide to negotiate an agreement for a self-determination election in an area of conflict, it must follow the criteria outlined below.

B. UNQUALIFIED CONSENT OF ALL PARTIES

Before agreeing to organize and conduct an election, the UN must secure the unqualified consent of all parties having a stake in the election process. For any major mission, both state and non-state actors should participate in the negotiations. If the parties request an organization and conduct mission, each must accept complete UN control of the process, including security, so that the UN is able to

Freely-Elected Heads of Government, and the International Foundation for Electoral Systems.

336. *See id.* at 294.

337. Only the UN Security Council can authorize intervention to restore international peace and security, either through UN peacekeepers or through approving missions sponsored by regional organizations. *See* U.N. CHARTER, art. 42 (authorizing the Security Council to “take such action . . . as may be necessary to maintain or restore international peace and security”); *see id.* art. 53, para. 1 (authorizing the Security Council to “utilize such regional arrangements or agencies for enforcement action”).

338. *See* BEIGBEDER, *supra* note 4, at 223 (describing how many territories seeking UN electoral assistance believe UN involvement to have more significant international recognition than an IGO or NGO election); Hodgson, *supra* note 7, at 149-50 (noting the legitimacy attached to an elected government when the UN is involved).

339. *See* Vu, *supra* note 180, at 1222 (concluding that the UN’s capability to be impartial is superior to other organizations).

340. U.N. CHARTER, art. 42.

carry out the process with minimal interference. Such an approach to organization and conduct negotiations would ensure that subsequent missions achieve a fair result in an environment free of fear and intimidation.

1. Involving the Interested Parties

In organization and conduct missions, each detail must be considered by each of the parties involved, including representatives from the territory seeking self-determination.³⁴¹ This means that in cases of external self-determination, representatives of the administering state, occupying state, and non-self-governing territory should negotiate the terms of the consultation and come to an agreement, providing a detailed plan for every step of the consultation process and the responsibilities therein.³⁴² In cases of internal self-determination, the requesting state and opposing factions should each conclude an agreement.³⁴³

341. See, e.g., *General Peace Agreement*, *supra* note 170 (including the President of the Republic of Mozambique, Mr. Joaquim Alberto Chissano, and the President of resistance (RENAMO), Afonso Dhlakama, in the negotiation process for a popular consultation in Mozambique); *The Agreement on a Comprehensive Political Settlement of the Cambodia Conflict*, Oct. 23, 1991, art. 2 [hereinafter *Paris Accords*] (including representatives from 19 states in the negotiation process that led to the formation of UNTAC in Cambodia). The signatories to the Paris Accords included Australia, Brunei, Cambodia, Canada, China, France, India, Indonesia, Japan, Laos, Malaysia, the Philippines, Singapore, Thailand, the Soviet Union, the United Kingdom, the United States, Vietnam, and Cambodia. *Id.* Also, the warring factions in Cambodia expressed their support for UNTAC through becoming parties to the Paris Agreements on October 30, 1991. See *Cambodian Settlement Agreement*, *supra* note 192 (including representatives from the four factions in Cambodia). Unlike the agreements above, which included all relevant parties, East Timorese leaders were not signatories to the May 5 Agreements. See *May 5 Agreements Press Conference*, *supra* note 13 (discussing how only representatives from Indonesia, Portugal, and the UN concluded the May 5 Agreements).

342. See *General Peace Agreement*, *supra* note 170 (providing a detailed plan for Mozambique's popular consultation, decided upon by key parties).

343. See *Paris Accords*, *supra* note 341 (concluding an agreement between the Cambodian government and rebel factions.) *Paris Conference on Cambodia: Agreements Elaborating the Framework for a Comprehensive Political Settlement on the Cambodia Conflict*, U.N. Doc. A/46/608, S/23177, Oct. 30, 1991, art. 2, reprinted in, 31 I.L.M. 174 [hereinafter *Paris Conference Agreements*] (1992) (providing detailed plans for every aspect of the consultation process, including human rights provisions, modalities for administering the vote, military arrangements,

In the organization and conduct mission to Cambodia (UNTAC), the UN employed the approach recommended above.³⁴⁴ In fact, Indonesia was the interested state that proposed all factions, including state and non-state actors, negotiate a solution to the Cambodian conflict.³⁴⁵ In the subsequent Paris Agreement, over nineteen states consented to complete UN implementation of the electoral process, including security.³⁴⁶

2. Requiring Unqualified Consent

In East Timor, only two state actors gave consent to a UN presence, and Indonesia's consent was qualified.³⁴⁷ As a result, the UN could not implement the provisions of the May 5 Agreements in a safe environment.³⁴⁸ As a number of scholars have stressed, the impartial implementation of an election plan is essential to success.³⁴⁹ A state with a history of forceful occupation of a non-self-governing territory is a biased party, and thus should not take responsibility for any aspect of the consultation process. A sovereign state opposed to the succession of a sub-group within its borders may use its resources to thwart the process as well.³⁵⁰ If the potential for bias ex-

civil administration, law and order, resettlement of refugees, and reconstruction).

344. See generally *Cambodian Settlement Agreement*, *supra* note 192; *Paris Conference Agreements*, *supra* note 343; *Paris Accords*, *supra* note 341 (involving the consent of all interested parties in the Cambodian crisis).

345. See RATNER, *supra* note 2, at 143 (noting Indonesia's role in bringing together Vietnam, Laos, Thailand, the Philippines, Malaysia, Singapore, Brunei, and Cambodia's four factions to resolve questions of Cambodian self-determination and end the conflict).

346. See *supra* note 341 (listing the countries participating in the Cambodian organization and conduct negotiations, all agreeing to the presence of UN security forces).

347. See discussion *supra* Part III.A (explaining the UN consent requirement and discussing Indonesia's partial consent).

348. See discussion *infra* Part IV.A.2. (criticizing the UN implementation, or lack thereof, of its limited security duties).

349. See BEIGBEDER, *supra* note 4, at 299-300 (asserting that regardless of whether the observers are affiliated with the UN, NGOs, or IGOs, impartiality is the key to a successful election); Vu, *supra* note 180, at 1222-24 (noting how the UN's impartiality in Cambodia allowed the organization to gain the trust of the people and fostered a free and fair election).

350. See, e.g., Vu, *supra* note 180, at 1202 (discussing the State of Cambodia's

ists, the UN should control the implementation process and require unqualified consent.

a. Problems of Achieving Consent – Issues of Bias

Keeping biased parties out of the implementation process is a difficult task. By the very nature of bias, such parties have a stake in the election process and may resist UN efforts to control implementation.³⁵¹ In the negotiations leading to the May 5 Agreements, Indonesia insisted on implementing the security component.³⁵² Faced with a breakdown in talks³⁵³ the UN and Portugal conceded to Indonesia's wishes, securing Indonesia's promise to keep the security force "neutral."³⁵⁴ As the following events show, however, Indonesia broke that promise. If the UN is under pressure to provide a clearly biased party with implementation privileges, it should remember Indonesia's actions.

An insistence by the UN to keep biased parties out of the implementation process is essential for free and fair elections, but comes with many risks. If the UN insists upon controlling implementation during the pre-agreement stages of negotiation, a biased party may refuse to sign the agreement,³⁵⁵ just as Indonesia did.³⁵⁶ If a non-

efforts to interfere with the popular consultation in Cambodia).

351. For example, Indonesia refused to accept the UN's original draft for the mission, which included UN security provisions. *See* Mufson & Lynch, *supra* note 203, at A1 (reporting that Indonesian officials scratched out disarmament provisions of the original UN draft proposal).

352. The UN said as much when trying to justify its reasoning for the security arrangements under the May 5 Agreements. *See East Timor: United Nations Mission in East Timor (UNAMET): Questions and Answers: The United Nations and East Timor*, available at <www.un.org/peace/etimor99/Qna_frame.html> [hereinafter *East Timor Q&A*] (explaining that Indonesia clearly stated it would only continue with the negotiations if the parties agreed Indonesia would provide security).

353. *See* Mufson & Lynch, *supra* note 203, at A1 (quoting UN diplomats, who expressed the tight position the UN faced when Indonesia refused to accept UN security proposals).

354. *See East Timor Q&A*, *supra* note 352 (explaining that "the UN felt that, despite the risks, the historic opportunity had to be seized.").

355. *See* Vu, *supra* note 180, at 1234 (considering the necessity for "broad support within a state for UN involvement" in the context of the Cambodian election).

356. *See East Timor Q&A*, *supra* note 352 (bringing up Indonesia's threat as a justification for UN concessions over security issues).

cooperating party happens to be a state claiming sovereignty over the area in question, the UN Charter forbids interference.³⁵⁷

b. Responding to Qualified Consent

The UN should not concede to the unreasonable demands of a biased party, especially one with a history of illegal occupation over a given territory under any circumstances.³⁵⁸ When faced with such a situation the UN should choose one of the following three options: (1) end the negotiations; (2) offer an alternative model of assistance; or (3) appeal to the Security Council for a Chapter VII intervention.³⁵⁹

Outside of the decolonization model, the UN involves itself in all models of electoral assistance only when invited to do so.³⁶⁰ Although this procedure was not customary in decolonization elections, the UN responded to the East Timor election through such an invitation.³⁶¹ When considering such an invitation, the UN should set out clear preconditions for its involvement, including UN centralized implementation.³⁶² If the parties extending an invitation for an organization and conduct mission are unwilling to accept the UN's terms the UN could simply refuse the invitation, or offer an alternative mission.

Abandoning the negotiation process is not necessarily the answer.

357. See U.N. CHARTER, art. 2, paras. 4, 7 (forbidding member states and the UN itself from interfering with matters under the "domestic jurisdiction" of another member state).

358. See discussion *infra* notes 363-376 (providing alternative responses to qualified consent).

359. Chapter VII of the UN Charter provides that the "Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken . . . to maintain or restore international peace and security." U.N. CHARTER, art. 39.

360. See BEIGBEDER, *supra* note 4, at 149 (noting that the "second generation" of UN-sponsored elections emerged from states inviting the UN to take a role that is within the states' domestic jurisdiction).

361. See *General Agreement*, *supra* note 10 (inviting the UN to monitor the popular consultation in East Timor, but not to provide security).

362. See Vu, *supra* note 180, at 1232 (emphasizing the importance of UN involvement throughout the entire election process.).

A UN refusal to an organization and conduct invitation in an area of conflict could jeopardize the Organization's primary goal of ensuring international peace and security.³⁶³ Had the UN abandoned the negotiations leading to the May 5 Agreements, the East Timorese would remain subject to violent clashes between independence supporters and Indonesian police.³⁶⁴ With East Timor's right to self-determination unrealized, these acts of aggression could have constituted a breach to international peace and security.³⁶⁵

Instead of allowing a crisis to escalate by refusing organization and conduct assistance, the UN could offer a less involved mission to a requesting state. For example, if a party refused to cooperate in the area of security, the UN could offer a verification mission.³⁶⁶ In that case, the requesting state would conduct the elections, with the UN verifying the results.³⁶⁷ This scenario is problematic for territories in conflict, however, because it places the UN at a greater disadvantage in determining whether an election's results are free and fair.³⁶⁸ If the UN had opted for a verification or supervision mission in East Timor, either Indonesia or Portugal would have conducted the consultation.³⁶⁹ By allowing UNAMET to oversee the modalities in East

363. See U.N. CHARTER, art. 1, para. 1 (noting the maintenance of international peace and security as the UN's first purpose); see also Vu, *supra* note 180, at 1235 (arguing that had the UN withdrawn from Cambodia, the fighting would have intensified).

364. There was no reason to doubt Indonesia's oppression of the East Timorese would continue. See discussion *supra* notes 47-51 and accompanying text (discussing Indonesia's history of aggression against the East Timorese).

365. See U.N. CHARTER, art. 39 (defining acts of aggression as grounds for UN intervention).

366. See *UN Election Monitoring Guidelines*, *supra* note 126, para. 10 (explaining how local authorities organize and conduct verification missions).

367. See *id.*

368. Logically, if the UN organizes and conducts a mission, it is better able to determine if the mission was carried out fairly. See Satterthwaite, *supra* note 7, at 744 (discussing the all-encompassing role of the UN in organization and conduct missions generally, and pointing out the success of UNTAC in completing such tasks).

369. See *UN Election Monitoring Guidelines*, *supra* note 126, paras. 9-10 (explaining the UN's certification role in supervision and verification missions, as opposed to its administrative role in organization and conduct missions). This would create an additional problem because the parties would have to determine which

Timor, the UN could more accurately verify that the August 30 popular consultation results reflected the will of the East Timorese.¹⁷⁰

Abandoning the negotiation process thwarts the UN's mission of ensuring international peace and security, but partial involvement makes the Organization's efforts equally ineffective. If a biased party known for acts of aggression refuses to cooperate in the negotiations leading to a self-determination election, the UN Charter provides a remedy.³⁷¹ Chapter VII makes actionable any "threat to the peace, breach of the peace, or act of aggression."³⁷² Instead of conceding to a biased party, in circumstances where acts of aggression by that biased party are known, the Secretary General should halt the negotiations and defer the matter to the Security Council.³⁷³ Under Chapter VII, the Security Council may evaluate the facts and determine what course to take.³⁷⁴ If the aggression does not rise to the level of breach, then the UN should not involve itself further.³⁷⁵ However, if the Security Council concludes that the aggression is actionable, the UN can take appropriate matters to remedy the situation without the bi-

state, Portugal as an administering state or Indonesia as an occupying state, would organize and conduct the mission. *See id.* (explaining that the local election authorities assume responsibility for conducting an election in supervision or verification missions); discussion *supra* Part I.A-C, III.B (explaining the problems long associated with determining which nation was East Timor's legal sovereign). Even in the preamble to the General Agreement, Indonesia and Portugal could not agree upon East Timor's status. *See General Agreement, supra* note 10, preamble, paras. 5-6 (noting Indonesia's position that it should be considered sovereign over East Timor, and Portugal's position that such recognition should not be granted by the UN).

370. *See General Agreement, supra* note 10, preamble, para. 7 (agreeing that the UN was best equipped to consult the East Timorese in light of the differing views of Portugal and Indonesia regarding the territory's status).

371. *See* U.N. CHARTER, arts. 41-42 (providing peaceful and forceful measures the Security Council may employ to maintain or restore international peace and security, including: economic sanctions, interruptions in the flow of communication, severance of diplomatic relations, demonstrations, blockades, or other uses of force by land, sea, or air).

372. *Id.* art. 39.

373. *See id.* art. 99 (requiring the Secretary-General to report "any matter which in his opinion may threaten the maintenance of international peace and security.").

374. *See id.* art. 39 (giving sole authority to the Security Council to determine whether action is needed).

375. *See id.* art. 2, para. 7 (requiring the UN to respect a state's sovereignty).

ased party's consent.³⁷⁶

C. INTERNATIONAL SUPPORT

Driven by the consensus of its members, the UN cannot take any of the steps outlined above without the political or financial support of the international community. The UN cannot accept a request to organize and conduct an election without the agreement among key member states that such a mission is necessary.³⁷⁷ Nor can the UN authorize peace enforcement unless the Security Council member states determine such enforcement is an appropriate response.³⁷⁸ All UN undertakings require financial contributions from its members.³⁷⁹ Without these, the UN is powerless to act.

1. Political Support

As mentioned in Part III, political factors shape UN enforcement of the right to self-determination. The UN Security Council is composed of fifteen states that often have competing political interests.³⁸⁰ Unless this diverse group can come to an agreement, the UN Charter forbids any type of enforcement.³⁸¹

The Security Council often sanctions UN involvement in electoral assistance missions once the immediate parties demonstrate a desire for such assistance and consent to UN intervention. East Timor is a

376. See *id.* (allowing enforcement measures taken under Chapter VII to override prohibitions on the violation of sovereignty).

377. See RATNER, *supra* note 2, at 36 (noting in the greater context of peacekeeping missions, that UN member state support is required before the UN may intervene, despite the consent of the parties requesting assistance).

378. See U.N. CHARTER, art. 27(3) (requiring at least nine members of the Security Council to vote in favor of a mission, with the concurrence of all Permanent Security Council Members).

379. See BEIGBEDER, *supra* note 4, at 187 (stressing the importance of financial support in any UN electoral assistance mission).

380. See U.N. CHARTER, para. 1 (describing the composition of the Security Council).

381. See *id.* art. 27, para. 3 (restricting UN decisions on matters other than procedure to a consensus of nine Security Council members and the complete concurrence of the permanent members).

case in point.³⁸² Once Indonesia consented to a UN organization and conduct mission, the Security Council established UNAMET.³⁸³ However, if the immediate parties give limited or no consent, the Security Council may refuse mission requests. This was demonstrated in the twenty-five years that Portugal's petitions for UN intervention in East Timor went unanswered.³⁸⁴

With clear Security Council support, the Secretary General may approach negotiations from a stronger position.³⁸⁵ If a requesting party becomes uncooperative, the Secretary General can appeal for enforcement action.³⁸⁶

2. Financial Support

Even with the political support of its members, the UN cannot undertake an organization and conduct mission without substantial financial support. Organization and conduct missions are typically the most expensive type of UN electoral assistance.³⁸⁷ For example, UNTAC cost a total of about one point seven billion (USD).³⁸⁸ If the UN cannot afford to take on the responsibilities of an organization and conduct mission, it should decline the request.

382. See S.C. Res. 1246, *supra* note 14 (sanctioning UN involvement in East Timor through the establishment of UNAMET).

383. See *id.*

384. See discussion *supra* Part I (chronicling the history of Indonesia's illegal occupation of East Timor and the Security Council's inaction in enforcing peace).

385. For example, nineteen member states, including Security Council members, negotiated the agreements that led to the organization and conduct mission in Cambodia. See generally *Cambodian Settlement Agreement*, *supra* note 192; *Paris Conference Agreements*, *supra* note 343; *Paris Accords*, *supra* note 341 (involving the support of all interested parties in the Cambodian crisis, each agreeing to UN security forces).

386. See U.N. CHARTER, art. 99 (stating that "the Secretary-General may bring to the attention of the Security Council any matter which in his opinion may threaten the maintenance of international peace and security.").

387. See *UN Election Monitoring Guidelines*, *supra* note 126, para. 8 (noting the excessive cost of organization and conduct missions).

388. See *Support by the United Nations System of the Efforts of Governments to Promote and Consolidate New or Restored Democracies: Report of the Secretary-General*, U.N. GAOR, 50th Sess., Provisional Agenda Item 41, para. 23, U.N. Doc. A/50/332 (1995) (providing the cost of UNTAC).

D. ADEQUATE SECURITY PROVISIONS

Once the UN secures the consent of interested parties and the political and financial support of the international community, the Secretary General must negotiate an agreement that includes adequate security provisions without compromise. Adequate security does not mean UN-controlled security forces alone. In addition to insisting on such forces, the UN must also guarantee that the organization and conduct mission have sufficient time to assess the environment.

1. Security Forces

The central problem with the organization and conduct mission in East Timor was the lack of security. Had the East Timorese officials been involved in the negotiation process, the concerns of security might have been addressed more extensively.³⁸⁹ Given the history of Indonesia's illegal occupation of East Timor and its refusal to comply with the UN, assigning security responsibility to Indonesia was risky at best.³⁹⁰ It negated all possibility for a safe election.³⁹¹ Furthermore, providing an organization and conduct mission without UN security forces broke with UN precedent. In the words of Brian Urquhart, biographer of former UN Secretary General Dag Hammarskjöld: "Hammarskjöld's basic view of international peace and security was that a reliable and just world order could only be built pragmatically by making precedents and by case law."³⁹²

Allowing Indonesia to provide security during the popular consultation was an illogical break from precedent based on its missions in Cambodia and Croatia.³⁹³ As in East Timor, the threat of violence

389. See discussion *supra* Part V.B.1 and accompanying text (advocating for the involvement of all affected parties, including independence leaders in East Timor).

390. See Mufson & Lynch, *supra* note 203, at A1 (quoting a senior UN official, who feared violence from the Indonesian forces: "Apart from the moral opprobrium that would be heaped on the U.N. were we to follow such a course, the consequences for the long-term stability of East Timor would be disastrous.").

391. See *id.*

392. RATNER, *supra* note 2, at 237 (quoting Brian Urquhart, *International Peace and Security: Thoughts on the Twentieth Anniversary of Dag Hammarskjöld's Death*, 60 FOR. AFF. 1, 3 (1981)).

393. See discussion Part II.B.2 (comparing UNTAC and UNTAES to UNAMET, which demonstrated a broadened UN involvement).

served to be the greatest obstacle to a free and fair election in Cambodia.³⁹⁴ The one striking difference between the Cambodian case and that of East Timor, however, is that the Agreement on a Comprehensive Political Settlement of the Cambodian Conflict ("Paris Agreement"), allowed for UN security forces.³⁹⁵ Similarly, UNTAES's mandate in Croatia included UN security forces.³⁹⁶

Of course, not every future popular consultation will require the level of security that was necessary in East Timor.³⁹⁷ Nor will every future popular consultation arise from conflict.³⁹⁸ However, in the event that conflict is present, an adequate UN security presence is necessary to secure a free vote.³⁹⁹

2. Ensuring a Climate Free of Fear and Intimidation

Having UN security forces is not enough to ensure peace in an organization and conduct mission. The mission needs time to establish that the environment is conducive to a free and fair vote. As UNAMET's success in implementing modalities shows, the time used to implement logistical aspects of a consultation may not be enough to ensure a climate free of fear and intimidation.⁴⁰⁰ The lack of security in East Timor prompted the Secretary General to delay the consultation only briefly.⁴⁰¹ Even though security conditions

394. See Vu, *supra* note 180, at 1197-98 (analyzing the security situation in Cambodia during the popular consultation).

395. See *Paris Accords*, *supra* note 341 (employing UNAMET with security responsibility with the consent of the parties).

396. See *Croatia-UNTAES*, *supra* note 185.

397. For example, the 1956 UN-sponsored plebiscite in Togoland did not require elevated security. See 19 UNITED NATIONS PARTICIPATION IN POPULAR CONSULTATIONS AND ELECTIONS 15-16 (1983) (on file with the American University International Law Review).

398. See *id.* at 2 (stressing the varying applications of self-determination elections to meet the varying needs of different self-determination movements).

399. See *id.* at 6-7 (listing security as a necessary component, which should be administered by the organizing parties).

400. See *East Timorese Reject Autonomy*, *supra* note 17 (statement of Kofi Annan, Secretary-General, United Nations) (praising UNAMET for managing to educate and register over 450,000 voters in less than two months).

401. Upon request from the Secretary-General, the Security Council passed Resolution 1257, which delayed the consultation for 22 days. See S.C. Res. 1257,

worsened, he allowed the vote to take place.⁴⁰² Yves Beigbeder articulates the Secretary General's dilemma. According to Beigbeder, there is no "right time" to hold an election in an area of conflict. He believes that delays only support illegitimate regimes. Further, delays in elections prevent democracy from taking place.⁴⁰³

When faced with obstacles of aggression, the UN must carefully balance the need for an election to go forward and the Organization's ability to combat violence in the region.⁴⁰⁴ In East Timor, there was not a reliable security structure in place to curb this violence.⁴⁰⁵ Because two months was not enough time to ensure the safety of people subjected to years of intimidation, delays were necessary.⁴⁰⁶

CONCLUSION

If the UN seeks to restore peace and security through organization and conduct missions, the Organization must approach requests from states in conflict with caution. When the UN acquires the consent of the parties, has the support of the international community, and can determine the environment will be free of fear and intimidation, the Organization should proceed with negotiations for electoral assistance. Unfortunately, the UN compromised these standards when it signed the May 5 Agreements.⁴⁰⁷

supra note 279 (delaying the vote and expanding UNAMET's mandate).

402. See *supra* notes 297-300 and accompanying text. Yves Beigbeder articulates the Secretary-General's dilemma of delaying an election under threat of actual violence. See BEIGBEDER, *supra* note 4, at 298.

403. See Vu, *supra* note 180, at 1235 (hypothesizing that if the UN had delayed the vote in Cambodia, the Khmer Rouge would have seized the opportunity to "hold hostage the electoral process.").

404. See discussion *supra* Parts IV.A, B.2.b,c (considering whether the UN should undertake organization and conduct missions, discussing alternative options to qualified consent, and noting the importance of political and financial support).

405. See discussion *supra* Part IV.C.1 (arguing that providing Indonesia with security responsibility equaled a lack of inadequate security).

406. See *UN Election Monitoring Guidelines*, *supra* note 126, para. 8 (requiring, in most cases, 18 months as the minimum lead time for organization and conduct missions).

407. In the negotiations leading up to the May 5 Agreements, the UN conceded to Indonesia's unreasonable wishes, which did not allow for these necessary elements. See discussion *supra* Parts IV.B-D (stressing the importance of each element for future elections, given the failure in East Timor based on their absence).

As some scholars have argued, when the UN compromises, it can at best only facilitate a “half-success.”⁴⁰⁸ The UN’s act of signing the May 5 Agreements raised the hopes of the East Timorese, leading to high voter turnout and electoral success. However, the events that followed equaled a humanitarian failure.⁴⁰⁹ The UN’s “half-success” in East Timor damaged the international community’s faith in the Organization’s ability to facilitate democracy through peaceful means.⁴¹⁰ In order to regain the international community’s trust and fulfill its duty to foster international peace and security, the UN can no longer compromise its standards.

ADDENDUM

Since the submission and prior to the publication of this Comment, the people of East Timor have enjoyed some progress under UN administration.⁴¹¹ Yet, predictions are uncertain as to when the

408. See *supra* note 5 and accompanying text; see also Hodgson, *supra* note 7, at 173 (stressing that the UN should not compromise its standards when it agrees to monitor elections).

409. See discussion *supra* Part II.C.2.c. (detailing the violent pro-integration militia response to the vote).

410. See Annan, *supra* note 239 (citing the tragedy of East Timor as an example of the international community reacting too late). As Yves Beigbeder wrote: “In case of a ‘half success’ . . . the U.N. may either be complimented for its courageous decision to take on an uncertain challenge, or, which is more likely, it may be blamed for its unwieldy and costly intervention which raised and let down people’s expectations. . . .” BEIGBEDER, *supra* note 4, at 219.

411. As mentioned *supra* note 49, the UN Security Council passed S.C. Res. 1272, establishing the United Nations Transitional Administration in East Timor (UNTAET) to serve as a transitional government in East Timor until the East Timorese achieve independence. On July 26, 2000, the Secretary-General provided the most recent report to date on UNTAET’s progress. See generally *Transitional Administration in East Timor: Report of the Secretary-General, 26 July 2000*, U.N. Doc. S/2000/738 (2000) available at <<http://www.un.org/peace/etimor/docs/UntaetDr.htm>> (reporting to the Security Council gains made by the United Nations Transitional Administration in East Timor (UNTAET) for the period of January 27, 2000 to July 26, 2000). According to the Secretary General:

Today, although it has not yet reached its full designated capacity, UNTAET can look with satisfaction on what it has achieved so far. It has contributed to the alleviation of the emergency brought about by the violence and destruction that followed the popular consultation last year; it has maintained a secure environment; it has established the foundations of an effective administration; and, above all, it has established a relationship of mutual respect and trust with the East Timorese.

East Timorese will enjoy true independence.⁴¹² Thousands of East Timorese remain in West Timorese refugee camps, living under the threat of militia sponsored violence.⁴¹³ Calls for extended peace enforcement have yet to be answered.⁴¹⁴

Id. at para. 63.

412. UNTAET's initial mandate ends on January 1, 2001. See S.C. Res. 1272, *supra* note 49, at para. 17. According to East Timorese leader Jose Ramos Horta, East Timor "hop[es] to declare full independence after elections at the end of next year." *East Timorese Leader Encourages U.S. Role in Volatile Indonesia*, WASH POST, Sept. 22, 2000, at A20. Others predict the transition to independence will take longer. See James Traub, *Inventing East Timor*, FOR. AFF. Jul.-Aug. 2000 at 74, 86 (arguing that it will take several years for East Timor to generate the administrative workforce necessary to control the country, and that it will take even longer for East Timor to enjoy economic stability without international support).

413. See Seth Mydans, *Timorese Refugees Tell of Terror After Foreigners Left*, N.Y. TIMES, Oct. 5, 2000, at A1 (explaining that, following the UN withdrawal in West Timor, refugees in West Timor are being held hostage by the militias). The UN presence withdrew from West Timor following the death of three UN workers on September 6, 2000. See S.C. Res. 1319 at para. 5, U.N. SCOR, 4195th mtg., U.N. Doc. S/RES/1319 (2000) (refusing to allow UNHCR workers to return to aid the refugees until there is a "credible security guarantee").

414. See, e.g. Carlos Ximenes Belo, *Help E. Timor now before it is too late*, STRAITS TIMES (Singapore), Oct. 5, 2000, in 2000 WL 28084768 (expressing appreciation for U.N. efforts, but concern that the international community is "soft" on the Indonesian military). Belo writes:

[H]ad foreign troops not intervened at all, my people would have faced annihilation. We in East Timor are immensely grateful for this . . . but once the withdrawal [of Indonesian military forces] took place, international pressure on the Indonesian military seemed to soften.