

CHAPTER 7

AUSTRALIA'S POLICY: LATE 1975–99

Fraser government

7.1 The East Timor policy of the Fraser government was foreshadowed by Opposition foreign affairs spokesman, Mr Andrew Peacock, on 2 October 1975, when he stated in Parliament: 'We understand Indonesia's concern. The events of the civil war in Timor are taking place in an area at the end of the Indonesian island archipelago. Who can doubt the concern that Indonesia must feel.'¹ The Indonesian Government took the statement as an assurance that an incoming Fraser government would maintain continuity with the Timor policy of the Whitlam government.² It reinforced comments which Mr Peacock made to Mr Harry Tjan of the Jakarta Centre for Strategic and International Studies and Mr Lim Bian Kie of General Moerdani's Special Operations Group (OPSUS) in Denpasar, Bali, on 24 September 1975. The Indonesian record of the conversation, released in May 1977 stated: 'As has already been reported by Ambassador Her Tasning, Mr Peacock and his party would not protest against Indonesia if Indonesia was forced to do something about Portuguese Timor, for example to "go in" to restore peace there ... Basically he respects Whitlam's policy in this Portuguese Timor problem, and he personally is of the same opinion.'³

7.2 In December 1975, the Australian Embassy in Jakarta briefed the press that an independent East Timor 'could well have become a source of instability to Indonesia. If Australia had helped its formation, it could have become a constant source of reproach to Canberra. Conceivably, it could have affected the defence of northern Australia. It would probably have held out for a less generous seabed agreement than Indonesia had given off West Timor'.⁴

1 *House of Representatives Hansard*, 2 October 1975, p. 1660.

2 Hamish McDonald, 'Indonesia will take Timor ... in slow motion and by remote control', *The National Times*, 13-18 October 1975.

3 Paul Kelly, 'Intelligence leak against Minister', *The National Times*, 2-7 May 1977. Cf. Wendy Way, Damien Browne and Vivianne Johnson (eds.), *Australia and the Indonesian Incorporation of East Timor, 1974-76*, Melbourne University Press, 2000, p. 791n; James Dunn, *Timor: A People Betrayed*, Sydney, ABC Books, 1993, pp. 199-201.

4 Hamish McDonald, 'Australia supports Indonesia takeover of East Timor', *The National Times*, 15-20 December 1975. In preliminary talks between Australia and Portugal on a seabed boundary from 1971 to 1975; the Portuguese insisted that the seabed should be split midway between Timor and Northwest Australia, while the Australians wished for a simple straight line linking the two ends of the boundary negotiated with Indonesia in 1971, much closer to Timor than to Northwest Australia (*House of Representatives Hansard*, 26 October 1972, p. 3381, and 2 June 1973, p. 2589; *Senate Hansard*, 2 May 1973, p. 1740, and 23 May 1973, p. 1840; Ian Davis, 'Rich seabed at stake in Indon talks', *The Age*, 2 February 1984).

7.3 When Indonesian ‘volunteer’ forces captured Dili on 7 December, Mr Peacock, now Foreign Minister in the Fraser government, issued a statement in which the Government ‘deeply regretted’ the course which events in Portuguese Timor had taken, and while appreciating the difficulties faced by Indonesia, criticised both Portugal and Fretilin. Options available to Australia were limited, but Mr Peacock said he would press for a United Nations initiative, stand ready for a resumption of aid and consult with regional countries to explore other initiatives.⁵

7.4 Indonesian officials were reported as not taking seriously the protest made by Foreign Minister Peacock on 8 December 1975 about the attack on Dili.⁶ It was understood in Jakarta that both Mr Peacock and Mr Whitlam had communicated private assurances to the Indonesians at crucial points during the period of civil strife in Timor from August to December that no objections would be forthcoming to even direct intervention.⁷ Foreign Minister Adam Malik told the Canadian Secretary of State for External Affairs in Jakarta in August 1976 that the Labor Government had ‘unofficially’ understood Indonesia’s position in the decolonisation process in East Timor and that, after the change of government in Canberra, Indonesia had given the new government a full explanation of the situation.⁸ As recorded by Ambassador Woolcott, a message from Prime Minister Fraser, which he had delivered to President Soeharto on 25 November 1975, had been taken by the Indonesians as supportive of their actions in Timor. The message said delphically that the Prime Minister recognized ‘the need for Indonesia to have an appropriate solution for the problem of Portuguese Timor’.⁹

7.5 In December 1975, the Australian Government’s chief security advisers came to the conclusion that organised resistance to the Indonesian takeover would peter out after about six months. The Fraser Government developed a twofold policy. Wanting to differentiate the new government’s position from that of the Whitlam government, which was described as ‘acquiescent’, and on the grounds that Australia could not afford to condone Indonesia’s use of force in incorporating East Timor, Mr Peacock developed a policy which he stated in Parliament on 4 March 1976. Its main points were a call for a cessation of hostilities, withdrawal of Indonesian troops, implementation of a genuine act of self-determination and a resumption of humanitarian aid through the International Committee of the Red Cross (ICRC).¹⁰

5 ‘Fighting tragic, says Peacock’, *The Age*, 8 December 1975.

6 Hamish McDonald, ‘Australia supports Indonesia takeover of East Timor’, *The National Times*, 15-20 December 1975.

7 Hamish McDonald, ‘Australia supports Indonesia takeover of East Timor’, *The National Times*, 15-20 December 1975.

8 Arthur Gray, ‘Labor knew: Timor war’, *The Canberra Times*, 13 October 1976.

9 Wendy Way, Damien Browne and Vivianne Johnson (eds.), *Australia and the Indonesian Incorporation of East Timor, 1974-76*, Melbourne University Press, 2000, pp. 579-80.

10 *House of Representatives Hansard*, 4 March 1976, pp. 567-70.

7.6 The Fraser Government declined an invitation from Indonesia to send a diplomatic representative to attend the meeting in Dili on 31 May 1976 of the People's Representative Council, which petitioned the Indonesian President that East Timor be integrated into the Republic. The reasons for declining to attend were set out in a cable from the Department of Foreign Affairs to the Jakarta embassy dated 28 May 1976: 'The decision has been taken essentially because we know that the procedures being followed in Dili do not match up to the standards which would be generally acceptable in Australia'. It would not have been possible for an Australian representative to have reported favourably on the meeting, and the Government would have come under 'substantial pressure' to say publicly what it had thought of the proceedings.¹¹

7.7 Indonesian incorporation of East Timor as the twenty-seventh province of the Republic was formally completed on 18 July 1976, when President Soeharto signed the act of parliament which authorised it. On 20 July, Mr Peacock commented that, as an act of self-determination with the participation of the United Nations had not been carried out, in the view of the Australian Government, the 'broad requirements for a satisfactory process of decolonisation' had not been fulfilled.¹²

7.8 Although this statement of Australia's attitude to East Timor's integration caused irritation in Jakarta, Mr Peacock believed damage to Australia-Indonesia relations could be kept at a tolerable level if both sides respected each other's interests and agreed to differ over Timor by not letting the issue strain other strands in their relationship. But, by the time of Prime Minister Malcolm Fraser's state visit to Jakarta in October 1976 for talks with President Soeharto, the Indonesians had made it clear they would no longer accept the Peacock formula:¹³ continued Australian Government criticism of the integration process would be regarded as a display of hostility toward Indonesia.

7.9 It had also become evident that the resistance in East Timor was proving more effective than the Fraser Government's security advisers had thought. It was concluded that Australia's interests lay in hastening, not obstructing, the spread of Indonesian control.

7.10 Shortly before his visit to Jakarta, Prime Minister Fraser decided that Australian humanitarian aid would be channelled through the Indonesian Red Cross, not through the ICRC as Mr Peacock had up to then insisted.¹⁴ In addition, the Prime

11 Alison Stokes, the New Zealand diplomat who attended the meeting, commented: 'Who were these representatives taking this decision, how had they been elected, and did they indeed represent the wishes of the people of East Timor'. Wendy Way, Damien Browne and Vivianne Johnson (eds.), *Australia and the Indonesian incorporation of Portuguese Timor, 1974-1976*, Melbourne University Press, 2000, pp. 770, 772.

12 'Takeover of Timor rejected', *The Canberra Times*, 21 July 1976.

13 Hamish McDonald, 'Timor squabble appals Jakarta', *The Australian Financial Review*, 18 October 1976.

14 On 6 October 1976 Ambassador Richard Woolcott in Jakarta handed over \$83,000 to the Indonesian Red Cross for relief work in East Timor. This was the first instalment of a \$250,000 grant (Hamish McDonald, 'Indonesia will be seeking reassurance', *The Sydney Morning Herald*, 7 October 1976).

Minister ordered the seizure of a two-way radio link between East Timor and Australia being operated illegally by Fretilin supporters near Darwin. Following his return from Jakarta, Mr Fraser gave instructions that the Telecom outpost radio service near Darwin cease picking up and passing on Fretilin messages from East Timor, and denied Australian entry visas to Fretilin spokesmen claiming to represent the Democratic Republic of East Timor. At the United Nations, Australia's representatives were instructed to abstain instead of supporting, as they had hitherto, resolutions condemning Indonesian military intervention and calling for a genuine act of self-determination.¹⁵

7.11 During his visit to Indonesia, Mr Fraser refused to either repeat or withdraw the policy on East Timor as stated by Mr Peacock on 4 March 1976, saying only that it had been clearly stated several times by the Foreign Minister in Parliament. The Indonesians took this to mean that the policy no longer applied; State Secretary Lieutenant-General Sudharmono saying on Mr Fraser's departure that the policy 'had already passed'.¹⁶ This was repudiated by Mr Fraser on his return to Australia. When asked whether his statements in Jakarta implied tacit approval of the Indonesian takeover, he replied: 'I would not have thought so. No'.¹⁷ Neither Mr Fraser nor Mr Peacock ever re-stated the policy expressed in Mr Peacock's 4 March 1976 statement, although they were pressed to do so on many occasions. Mr Fraser said on 14 October, 'if we take the line of continuing to re-state the policy at this stage, when certain events have taken place we, I believe, put at risk the other side of the policy.' He explained the other side of the policy as the need for good relations with Indonesia in the interests of peace and stability in the region.¹⁸

7.12 In October 1976, Indonesian Justice Minister, Professor Mochtar Kusumaatmadja, confirmed that Indonesia was prepared to negotiate a settlement of the seabed boundary to close the Timor Gap on the same favourable terms as the 1972 Indonesia-Australia seabed treaty, in return for recognition of Indonesia sovereignty over East Timor. Professor Mochtar had been a senior member of the Indonesian team which had negotiated the Australia-Indonesia seabed boundaries in 1971 and 1972. General Ali Moertopo said that Australian petroleum and mineral exploration companies with leases in East Timor granted by the Portuguese Government, such as Timor Oil Ltd and Woodside-Burmah, were 'welcome' to resume operations, provided they re-negotiated their rights with Indonesian authorities.¹⁹ The question of

15 Michael Richardson, 'Timor: one year later', *The Age*, 7 December 1976.

16 Hamish McDonald and Mike Steketee, 'Not applicable', *The Sydney Morning Herald*, 12 October 1976.

17 Peter Bowers, 'Timor policy stands, says PM: Jakarta claim denied', *The Sydney Morning Herald*, 12 October 1976.

18 '“Risk” in restating now policy on Timor', *The Canberra Times*, 15 October 1976.

19 Michael Richardson, 'Indonesia's Timor carrot', *The Australian Financial Review*, 19 October 1976. Woodside-Burmah's Troubadour No.1 well, drilled in July 1974 in the Timor Sea, had produced hydrocarbon findings that had raised hopes of commercial deposits ('Hydrocarbon encounter by Woodside', *The Australian Financial Review*, 3 July 1974; Hamish McDonald, 'Indonesia cool on Timor oil search', *The Sydney Morning Herald*, 29 December 1975.

whether Indonesia had promised agreement on a seabed boundary closing the Timor Gap in return for Australian recognition of its incorporation of East Timor was reportedly discussed at a meeting of the Australia Indonesia Business Co-operation Committee on 15 October 1976.²⁰ Those in the business community, who felt their trade investments in Indonesia would be jeopardised by continuance of the policy enunciated by Mr Peacock on 4 March 1976, urged the Government to reverse its stance on Timor.²¹

7.13 Reports emanating from Jakarta during Mr Fraser's visit, which indicated that talks were held on completing a border in the Timor Gap, provoked Fretilin's information officer, Mr Chris Santos, to issue a statement in Canberra saying: 'If Australia does not recognise the Indonesian takeover of East Timor, then it follows that such talks are illegal and contrary to the wishes of the East Timorese people. Fretilin and the Government of the Democratic Republic of East Timor reject such talks'.²²

7.14 The Fraser Government did not consider it opportune to pursue negotiations on a seabed boundary at that time, when Australia's official position was still not to acknowledge Indonesian sovereignty over East Timor.²³

7.15 In a statement in Parliament on 20 October 1976, Mr Peacock said the Government had not recognised Indonesia's incorporation of East Timor, but had to accept 'certain realities'. Australia had to take into account 'Indonesia's view that East Timor is now part of Indonesia and that this situation is not likely to change'.²⁴

7.16 On 20 January 1978, Foreign Minister Peacock announced that the Australian Government had decided to 'recognise de facto' that East Timor was part of Indonesia, even though Australia remained 'critical of the means by which integration was brought about'. Mr Peacock asserted that it would be unrealistic not to recognise effective Indonesian control. Government spokespersons were reported as suggesting that the measure would speed up the processing of family reunion requests.²⁵ Senator Cyril Primmer commented that the decision to recognise integration was made in order to settle the seabed border between Australia and East Timor.²⁶

7.17 Mr Bill Hayden, in his first statement on Indonesia as Leader of the Opposition, called Indonesia's occupation of East Timor unjustifiable, illegal,

20 Russell Skelton, 'Recognise takeover—Companies in approach to Canberra', *The Age*, 23 October 1976; 'Timor Sold for Oil', *Tribune*, 27 October 1976.

21 Michael Richardson, 'Timor: one year later', *The Age*, 7 December 1976.

22 'PM accused of "illegal" talks on sea border', *The Canberra Times*, 18 October 1976.

23 Mike Steketee, 'Seabed border plan shelved', *The Sydney Morning Herald*, 19 October 1976.

24 *House of Representatives Hansard*, 20 October 1976, pp. 2015-6.

25 Stephen Nisbet, 'Timor is Indonesian now: takeover reality: Peacock', *The Age*, 21 January 1978.

26 *Senate Hansard*, 22 February 1978, p. 79; ' "Scramble for oil" led to Timor recognition', *The Canberra Times*, 23 February 1978.

immoral and inexcusable and recognition inconceivable. 'It is inconceivable,' he said, 'that the Australian people who have built their nation on a firm belief in the rights and freedoms of people would in the circumstances endorse the Government's action in recognising Indonesia's seizure of East Timor.'²⁷

7.18 In March 1978, it was announced that Australia and Indonesia had agreed to negotiate a permanent seabed boundary south of East Timor. The question of the seabed boundary had been discussed at the annual meeting of senior Australian and Indonesian foreign ministry officers on 7-8 February 1978. The Australian and Western Australian Governments had, by this time, granted a total of six petroleum exploration permits in the area of dispute, although no exploration work had been conducted in the area since 1975. Under the terms of its permit, at least one of the exploration consortia was obliged to begin drilling before September 1979. In granting or renewing permits, it had been assumed by the Australian authorities that, when a permanent boundary was determined, it would be drawn more or less as a straight line linking the eastern and western ends of the 1972 boundary.²⁸ Aquitaine-Elf was one of the permit-holders. That company's Australian exploration manager, Mr G. Dailly, expressed the common hope on 20 February 1978:

No one would want to find oil there without knowing who owns it. But we are not expecting any major problems over the border now because of the border lines already agreed to by Indonesia on either side of the disputed area. If these two lines are just joined together, there will be no trouble at all.²⁹

7.19 It was at this point that the lease granted in January 1974 by Portugal to the Oceanic Exploration Company of Denver, Colorado, became a complicating factor. Oceanic's lease extended to the median line between Timor and northern Australia, cutting across the leases which had been granted by Australian authorities. The President of Oceanic, Mr Wesley N. Farmer, declared in May 1977 that the company regarded East Timor as part of the Indonesian Republic. The company looked to the Indonesian Government to safeguard the integrity of its investment.³⁰

7.20 On 15 December 1978, Mr Peacock announced to a press conference after meeting Professor Mochtar Kusumaatmadja, now Indonesian Foreign Minister, that

27 Michelle Grattan, 'Timor: sense or just a sellout?', *The Age*, 23 January 1978, p. 8.

28 Michael Richardson, 'Drawing the seabed line', *Far Eastern Economic Review*, 10 March 1978, pp. 79, 81.

29 Peter Terry, 'Way opens for Timor oil hunt', *The Australian Financial Review*, 21 February 1978. Such a line would have left the highly prospective Kelp structure on the Australian side. The existence of the Kelp structure had been known from seismic surveys by Burnah Oil in 1969 and 1970 (Mark Westfield, 'Showdown at Timor Gap', *Australian Business*, 28 March 1984, pp. 44-5).

30 Michael Richardson, 'Tying up Timor's loose ends', *Far Eastern Economic Review*, 5 January 1979, and 'Aust-Indonesia talks on seabed boundaries', *The Australian Financial Review*, 6 March 1978; Peter Hastings, 'Rearranging the sea bed a task of diplomacy', *The Sydney Morning Herald*, 22 December 1978.

Australia would give *de jure* recognition of Indonesia's sovereignty over East Timor early in 1979 when talks on delineating the seabed boundary between the province and Australia began. He said: 'The negotiations when they start, will signify *de jure* recognition by Australia of the Indonesian incorporation of East Timor'. Australia had to 'face the realities' of international law in negotiating the seabed boundaries, but this did not mean the Australian Government accepted the way in which Indonesia had 'incorporated' East Timor.³¹

7.21 On 8 March 1979, Mr Peacock said, in an answer to a question on the seabed negotiations with Indonesia:

In accordance with the agreement I reached with the Indonesian Foreign Minister in December 1978, Australian and Indonesian officials met in Canberra from 14 to 16 February to commence negotiations on the delineation of the seabed between Australia and East Timor.³²

7.22 Talks on the maritime boundary were held on 14–16 February 1979 in Canberra, in May 1979 in Jakarta, in November 1980 and in October 1981, which resulted in a Provisional Fisheries Surveillance and Enforcement Agreement (that divided respective national responsibilities along a median line boundary).³³ A fifth round of negotiations was not convened until February 1984.³⁴

7.23 The Australian Government's position on East Timor after February 1979 was stated by Foreign Minister Tony Street (Mr Peacock's successor) in February 1982:

Australia has voted against resolutions on the East Timor question since the 1978 General Assembly because we consider them to be unrealistic and to serve no practical purpose. The Government considers that the incorporation of East Timor into Indonesia is now a reality and that the Indonesian Government is the authority in effective control.³⁵

7.24 A visit to East Timor by Defence Minister Ian Sinclair in January 1983 was seen as an expression of Australia's *de jure* recognition of Indonesia's incorporation of the territory as its twenty-seventh province.³⁶

31 *The Canberra Times*, 16 December 1978.

32 *Senate Hansard*, 8 March 1979, p.720; quoted in *The Australian Year Book of International Law*, vol. 8, p. 281.

33 P.G. Bassett, 'Australia's Maritime Boundaries', *Australian Foreign Affairs Record*, vol. 55, no. 3, March 1984, p. 188.

34 'Timor talks unresolved', *The Australian*, 6 February 1984.

35 *Senate Hansard*, 23 February 1982, p. 306; quoted in *The Australian Year Book of International Law*, vol. 10, p. 273.

36 William Pinwill, 'Timor takeover approval sealed by Sinclair visit', *The Australian*, 3 February 1983. Michael McKinley, 'Problems in Australian Foreign Policy, January-June 1983', *The Australian Journal of Politics and History*, vol. 29, no. 3, 1983, p. 419.

The Hawke government

7.25 On coming to power in March 1983, the Hawke Labor government was faced with the problem of whether to continue the policy on East Timor developed by the Fraser government, or of attempting to implement the policy the Labor Party had developed in Opposition, as expressed in a resolution passed at its 1982 National Conference. The resolution called for a Labor government to recognise ‘the inalienable right of the East Timorese to self-determination and independence, and to reject the Fraser Government’s recognition of Indonesian annexation’.³⁷ Mr Hawke gave an indication of his thinking when he was asked in an interview broadcast on Melbourne Radio 3AW whether he would press for self-determination for East Timor. He said:

It is quite unreal for Australia to believe it can ... in perpetuity ... go on having relations with a near neighbour like this which is of such significance in terms of population, strategic position and economic and commerce, in a way which treats them as an inferior government, because of something that has happened in the past. We have to restore full normal relations and try to do it in a way which involves a recognition on their part of our very real concern about the events of that time and the realities of the present.³⁸

7.26 Foreign Minister Bill Hayden visited Jakarta 6-8 April 1983. At a press conference at the conclusion of his visit, he said:

I noted on behalf of the Australian Government that Indonesia has incorporated East Timor into the Republic of Indonesia but I also expressed our deep concern that an internationally supervised act of self-determination has not taken place in East Timor.³⁹

7.27 Mr Hawke explained his understanding of the significance of his party’s formal foreign policy during a visit to Indonesia in June 1983: ‘Conferences deal with certain issues ... at a certain point of time. The responsibility of Government is, within the general framework of Labor Party policies, to make decisions in respect of the interests of Australia—decisions which are relevant to the circumstances of the times’. At the official banquet given by President Soeharto, Mr Hawke commended him for improving ‘the conditions of life for the people of East Timor after centuries of colonial misrule,’ and announced that Australia would donate \$1.5 million to the International Red Cross and UNICEF programs for the province.⁴⁰

7.28 In January 1983, the Governor of East Timor, Mario Carrascalão, and senior Indonesian military officers in the province, Colonel Paul Kalangi and Colonel Poerwanto, met Falintil commander, Xanana Gusmão, to arrange a cease-fire and

37 Wio Joustra, ‘Labor moves to reassure Jakarta’, *The Australian*, 8 March 1983.

38 Michael Richardson, ‘Timor seven to join families in Australia’, *The Age*, 14 March 1983.

39 Quoted in *The Australian Year Book of International Law*, vol. 10, p. 366.

40 Michelle Grattan, ‘Hawke turns foreign policy on its head’, *The Age*, 6 June 1983.

negotiations. The cease-fire and negotiations lasted until August and although not generally known about at the time, were believed to have influenced Mr Hawke and Mr Hayden in adopting a placatory approach to Indonesia over East Timor.⁴¹ In Bangkok on 28 June, Mr Hayden described the negotiations as an important step toward finally ending the guerrilla war that began with the Indonesian invasion in 1975.⁴² Armed Forces Commander, General Benny Moerdani, brought the cease-fire to an end in July, and shortly after the commencement of operations in August (*Operasi Persatuan*, followed by *Operasi Sapu Bersih*) there occurred the massacre of more than 200 people at Kraras.⁴³

7.29 In September 1983 the Senate Standing Committee on Foreign Affairs and Defence recommended that the Australian Government 'should make formal recognition of the incorporation of East Timor into the Republic of Indonesia conditional on the holding of an internationally recognised act of self-determination'.⁴⁴ In its response, made on 16 November 1983, the Government drew attention to the statement Mr Hayden had issued at the conclusion of his April visit to Indonesia, in which he had 'noted' that Indonesia had incorporated East Timor into the Republic, but 'expressed the Government's deep concern' that an internationally supervised act of self-determination had not taken place in East Timor.⁴⁵

7.30 The fifth round of talks between Indonesia and Australia on maritime boundaries in the Timor Sea took place in Canberra in the first week of February 1984, but ended without resolution. Added urgency was given to the talks by the success of a test well, Jabiru 1a, drilled in October 1983 by a consortium led by BHP, which struck an oil flow of 7,500 barrels a day.⁴⁶ In March 1984, Professor Mochtar commented: 'The Indonesian position is based squarely on the law existing at present. The Australian position is that we should just draw a line connecting the old lines. In effect it is saying, "Negotiate in 1984 on the basis of the 1958 convention, which has already been revised." It's an untenable position ... When the need for a solution

41 Ian Perkin and Peter Young, 'New perspective on Hawke's Timor stand', *The Australian*, 27 June 1983.

42 Peter Hastings, 'Indonesia, Fretilin in E Timor talks', *The Sydney Morning Herald*, 27 June 1983; Michael Richardson, 'Talks on Timor ceasefire confirmed', *The Age*, 29 June 1983.

43 Jill Jolliffe, 'Peace hopes dogged by military shootings', *The Age*, 14 November 1991; Geoffrey C. Gunn, *A Critical View of Western Journalism and Scholarship on East Timor*, Manila and Sydney, Journal of Contemporary Asia Publishers, 1994, p. 154. The Kraras killings took place as a reprisal for the killing by Falintil guerrillas of sixteen ABRI engineers engaged in road construction (Barbara Crosette, 'War goes on in Indonesia isle', *The New York Times*, 19 July 1985, p. A1).

44 Senate Standing Committee on Foreign Affairs and Defence, report, *The Human Rights and Conditions of the People of East Timor*, Parliamentary Paper 108/83, p. 86.

45 *Senate Hansard*, 16 November 1983; quoted in *The Australian Year Book of International Law*, vol. 10, p. 367.

46 'Timor talks unresolved', *The Australian*, 6 February 1984.

becomes really great, paramount, then a political decision can be made overriding the technical arguments'.⁴⁷

7.31 In April 1984, the importance of concluding an agreement with Indonesia to close the Timor Gap was given by Foreign Minister Hayden as a reason for recognizing Indonesian sovereignty over East Timor. In a speech to the Joint Services Staff College in Canberra, Mr Hayden referred to the 'extraordinarily complex and difficult and demanding' negotiations going on over the seabed boundary, and said:

There is, as you know, a large gap off East Timor in that boundary. In that gap is positioned the natural gas fields and probably oil fields. We would not be regarded with great public celebration if we were to make a mess of those negotiations, and yet the implication of the negotiations is that as the area open or undefined at this point is off East Timor, a certain recognition must be established to East Timor.⁴⁸

7.32 In the lead-up to the July 1984 ALP Federal Conference, Dr Mochtar Kusumaatmadja implied in an interview that an anti-Indonesian resolution on East Timor at the conference could lead to a major break between the two countries. In answer to a question on negotiations over the Timor Gap, Dr Mochtar said: 'We can only negotiate if Australia recognises Indonesian sovereignty over East Timor. If it doesn't then it should negotiate with Portugal or Fretilin, whichever it recognises'.⁴⁹

7.33 At the Federal Conference on 11 July 1984, a resolution moved by Minister for Science and Technology Barry Jones was passed, stating that the ALP expressed 'its continuing concern at the situation in East Timor, particularly its officially stated objection to the fact that the former Portuguese colony was incorporated without the East Timorese people being given an opportunity to express their own wishes through an internationally supervised act of self-determination.' This was somewhat more conciliatory toward Indonesia than the 1982 policy it replaced, which 'condemned and rejected the Fraser Government's recognition of the Indonesian annexation of East Timor', and opposed all defence aid to Indonesia 'until there is a complete withdrawal of occupation forces from East Timor'.⁵⁰ It represented a victory for Mr Hayden over those in the ALP who wanted a return to the wording of the resolution approved at the National Conference in Perth in 1977, which 'noted the establishment of the Democratic Republic of East Timor on 28 November 1975.' In arguing for a more conciliatory policy, Mr Hayden had been able to draw to the attention of Mr Jones and his supporters a recent change in policy by Fretilin, which had abandoned its claim to be 'the sole legitimate representative of the Timorese people' embodied in the 1975 constitution of the Democratic Republic of East Timor. Fretilin had declared the

47 Michael Richardson, 'Australian claims to oil area untenable, says Indonesia', *The Age*, 31 March 1984; Michael Richardson, 'Timor Gap rift remains', *Far Eastern Economic Review*, 19 April 1984, pp. 40, 42.

48 Teresa Mannix, 'Recognising East Timor "hard reality"', *The Canberra Times*, 18 April 1984.

49 Peter Hastings, '“Cool it”, Jakarta tells Australia', *The Sydney Morning Herald*, 29 June 1984.

50 Pat Walsh, 'ALP Conference: A requiem for Timor?', *Inside Indonesia*, no. 3, October 1984, pp. 18-22.

DRET and its constitution to be ‘suspended’, and was seeking a peace conference with the participation of Indonesia, Portugal, the Timorese Catholic Church, and Timorese parties which supported self-determination.⁵¹

7.34 Dr Mochtar Kusumaatmadja commented on the resolution on 17 July 1984, saying, ‘Considering the ALP resolution does not question the integration of East Timor, I take it ... this means that the former Fraser policy is being continued.’ During talks in Jakarta immediately following the Federal Conference, Mr Hayden and Dr Mochtar agreed to continue negotiations on the Timor Gap boundary. However, Dr Mochtar dismissed Australia’s argument that the boundary should follow the Timor Trough rather than the mid-line, as ‘untenable’.⁵²

7.35 Portugal reacted quite differently. Mr Hayden met the Portuguese Foreign Minister, Dr Jaime Gama, in Lisbon on 6 August 1984. Dr Gama said that Australia should respect Portugal as the administering power of East Timor, recognised as such by the United Nations.⁵³ He said that Portugal harboured ‘the greatest reservations’ over the Hawke Government’s attempts to legalise Australia’s territorial boundaries with East Timor in talks with Indonesia. He said the talks did ‘not respect the resolutions of the United Nations or international law.’⁵⁴

7.36 At the November 1984 maritime boundary talks in Jakarta, the Australian side raised the option of a joint development zone in the disputed area, with any commercial resources to be shared equally. In subsequent separate discussions with Foreign Minister Hayden and Minister for Resources and Energy Gareth Evans, the Indonesian Foreign Minister, Professor Mochtar, and the Mining and Energy Minister, Professor Subroto, responded favourably to the suggestion.⁵⁵

7.37 During a visit to Jakarta in June 1985, the Deputy Leader of the Opposition, Mr John Howard, said that East Timor should not be allowed to remain an ‘irritant’ in Indonesia’s relations with Australia.⁵⁶ Following his visit, he wrote: ‘The fact is that East Timor is now a province of Indonesia and is likely to remain so—irrespective of what one might have hoped for in 1974-75.’ Mr Howard observed that Australia needed a friendly Indonesia more than Indonesia needed a friendly Australia. He wrote that a secure, stable, prosperous and friendly Indonesia was ‘about the most

51 Jill Jolliffe, ‘Fretilin drops demand’, *The Age*, 7 November 1984.

52 ‘Talks likely on “Timor gap”’, *The Australian Financial Review*, 20 July 1984.

53 Nikki Savva, ‘Portugal unhappy with Hayden over Timor talks’, *The Australian*, 10 September 1984; On 7 July 1976, Opposition Leader Gough Whitlam had been told in Lisbon by Socialist Party Leader Mario Soares that Portugal would continue to look to the United Nations for a solution, and could not adopt a position contrary to the United Nations. Ambassador Frank Cooper commented in his report on the meeting: ‘As we have previously reported, there seems no disposition either in the Provisional Government or the Foreign Ministry to abandon the self-determination principle.’ (Cooper to DFA, 7 July 1976, CRS A6364/4 LB1975/12, included with Mr Whitlam’s submission, 23 November 1999).

54 Jill Jolliffe, ‘Hayden, Eanes gloss over differences’, *The Age*, 10 September 1984.

55 ‘Joint exploration plan for Timor oilfields’, *The Age*, 16 August 1985.

56 Leigh Mackay, ‘Timor annexation should not be irritant, says Howard’, *The Australian*, 13 June 1985.

important foreign affairs goal for Australia, after the alliance with the United States', and that the time had come for some positive gestures of friendship to be made.⁵⁷

7.38 Prime Minister Hawke gave an interview on Indonesian television broadcast on Indonesia's National Day, 17 August 1985, during which he unequivocally said, regarding East Timor, 'We recognise the sovereign authority of Indonesia.'⁵⁸

7.39 Foreign Minister Mochtar commented on Mr Hawke's statement, saying it 'was a welcome statement, of course, in fact expressing Australian Government policy as conducted for some time, although unstated'.⁵⁹

7.40 President Eanes of Portugal said that Mr Hawke had given an interview on Indonesian television about the international status of East Timor, a territory under Portuguese administration. He said that Australian-Portuguese relations were 'of such a nature to assume that no official attitude which might jeopardise national interests would be taken without the prior knowledge of the other party.'⁶⁰ The Portuguese Government claimed Mr Hawke's open statement of Australia's recognition of Timorese incorporation would jeopardise Portugal's attempt to reach an agreement under the United Nations between Indonesia and the people of East Timor for an act of self-determination. Portugal expressed its displeasure by recalling Ambassador Inacio Rebello de Andrade to Lisbon for consultations.⁶¹ Before he left Canberra, the Ambassador lodged a protest on behalf of his Government against the proposed Australian-Indonesian joint development zone in the Timor Gap. 'The Portuguese Government,' said the Ambassador, 'cannot but express to the Australian Government its vehement protest for the manifest lack of respect for international law'.⁶²

7.41 The sudden decision of Portugal to withdraw its Ambassador put the Australian Government in a position where it was compelled to confirm to Parliament the policy of recognition which Mr Hawke had stated in his interview on Indonesian television.⁶³ On 22 August 1985, Senator Gareth Evans, representing the Minister for Foreign Affairs in the Senate, stated, in an answer to a question, that the *de jure* recognition of Indonesian sovereignty over East Timor, which the Fraser government had given in 1979, had not been revoked by any subsequent government. He said:

57 John Howard, 'It's time we made it up with the Indonesians', *The Australian*, 6 July 1985.

58 'Sovereignty over Timor recognised, PM says', *The Canberra Times*, 19 August 1985.

59 'Mochtar says PM's view on Timor is policy', *The Age*, 22 August 1985.

60 Jill Jolliffe, 'Portuguese rebuke to Hawke on East Timor', *The Canberra Times*, 21 August 1985.

61 Hugh White, 'Hawke shrugs off Portugal's Timor protest', *The Sydney Morning Herald*, 23 August 1985.

62 Bill Goodall, 'Portugal protests at zone', *The Canberra Times*, 21 September 1985. The Portuguese perceived Australia to be motivated by 'crass opportunism in signing away Timorese human rights in exchange for expected access to the oil-rich seabed' (Jill Jolliffe, 'Why Portugal is so angry over Timor', *The Age*, 4 September 1985).

63 Deborah Snow, 'Hawke confirms recognition of East Timor takeover', *The Australian Financial Review*, 23 August 1985.

The negotiations between Australia and Indonesia over the unresolved seabed boundary adjacent to East Timor have continued with the Indonesian Government. These negotiations, whose successful conclusion is of importance to Australia, can in practice only be conducted with the Indonesian Government. Of course the Government has, however, expressed to Indonesia on a number of occasions its concern at the way East Timor was incorporated. It has raised and will continue to raise the question of human rights in East Timor. It has sought free access for the media, international organisations and aid workers to East Timor and it has ... supported international initiatives to settle the Timor problem, including extensive discussions with the United Nations Secretary-General, Indonesia and Portugal.⁶⁴

7.42 A statement in similar terms was also made by Prime Minister Hawke on that day in the House of Representatives.

7.43 Talks on the Timor Gap between Senator Evans and Professor Subroto took place on 19 September 1985, and concluded in a further session in October 1985 with agreement in principle being reached on the establishment of a joint development zone.⁶⁵ Further talks took place in December 1985, and March, May and June 1986. On 30 April 1986, Senator Evans stated: 'It is important for Australia's long term liquid fuels energy future that we be able to explore and hopefully then develop the oil fields which are reasonably thought to exist in the Timor Gap area.'⁶⁶

7.44 At its National Conference on 10 July 1986, the ALP formally recognised Indonesia's incorporation of East Timor. The new policy, formulated by Minister for Science Barry Jones, noted the Prime Minister's statement of 22 August 1985 that the Australian Government had given *de jure* recognition of the incorporation, 'regretted' that there was not an internationally supervised act of self-determination, and supported United Nations moves for a settlement. Mr Jones said 'We know that in 1979 the Fraser Government conferred *de jure* recognition on the incorporation of East Timor - I do not think in practice that this is now reversible.'⁶⁷

7.45 On 5 September 1988, Senator Evans, now Minister for Foreign Affairs and Trade, and his successor as Minister for Resources, Senator Peter Cook, announced that agreement in principle had been reached by Australian and Indonesian officials for a Zone of Co-operation in the Timor Gap. Their statement said: 'the proposal to establish a Zone of Co-operation in the area between Timor and Northern Australia was the best possible means to ensure that both countries shared in the potential petroleum resources of the region until it became possible for a permanent seabed

64 *Senate Hansard*, 22 August 1985, p.169; quoted in *The Australian Year Book of International Law*, vol. 11, pp. 239-40.

65 Michael Byrnes, 'Timor-gap talks show ice has melted', *The Australian Financial Review*, 29 October 1985.

66 *Senate Hansard*, 30 April 1986, p. 2078.

67 'Indonesian rule in East Timor formally recognised', *The Sydney Morning Herald*, 10 July 1986.

boundary to be delimited.’⁶⁸ It was reported from Australian Government sources that success in reaching the agreement had resulted from an Indonesian decision ‘at the highest level that this matter should be settled and as quickly as practicable’.⁶⁹

7.46 The Portuguese Ambassador to Australia, Mr José Luiz Gomez, described the agreement as a ‘blatant and serious breach of international law’. Mr Gomez recalled Portugal’s 1985 protest at Australian negotiations with Indonesia over a Timor Sea boundary, on the grounds that Portugal was the internationally recognised administrative power for East Timor and said, ‘So far, no qualitative change has occurred regarding the legal status of East Timor’.⁷⁰

7.47 Addressing the United Nations General Assembly on 5 October 1988, Portuguese Foreign Minister João de Deus Pinheiro again called for an act of self-determination by the people of East Timor. ‘East Timor’ he said, ‘is for us a moral, historical and legal responsibility’, as well as a collective responsibility for all United Nations members. ‘We cannot ignore the drama of East Timor unless we become the accomplices of an intolerable policy of *fait accompli* imposed by force’. He said Portugal would do its utmost to find a just and comprehensive solution acceptable to the international community. It was committed to work with United Nations Secretary-General Javier Perez de Cuellar in a mediation effort, and hoped that Indonesia would act in the same spirit.⁷¹

7.48 By August 1989, confirmed reserves of petroleum in the Timor Sea fields amounted to 214 million barrels, with production of 42,000 barrels per day from the Jabiru field.⁷²

7.49 Senator Evans and Senator Cook announced on 27 October 1989 that agreement had been reached with Indonesia on a treaty on a zone of co-operation in the Timor Gap. ‘The agreement embodies in a real and practical way the strong mutual political will that now exists between Australia and Indonesia to work together as friends, neighbours and economic partners,’ Senator Evans said. He said the treaty would be the most substantial bilateral agreement in the history of the relations between the two countries.⁷³

7.50 On 11 December 1989, Senator Evans and Indonesian Foreign Minister Ali Alatas (who had succeeded Professor Mochtar Kusumaatmadja) issued a joint statement informing that they had signed the Timor Gap Zone of Co-operation Treaty in a mid-air ceremony over the area of the Zone in the Timor Sea. They noted that

68 Quoted in *The Australian Year Book of International Law*, vol. 12, p. 380.

69 Paul Grigson, ‘Sea dispute settled: now hope for oil’, *The Sydney Morning Herald*, 6 September 1989.

70 Anna Grutzner, ‘Portugal challenges Timor Gap oil pact’, *The Australian*, 12 September 1988.

71 ‘Portugal calls for Timorese independence’, *The Age*, 5 October 1988.

72 Chris Milne, ‘Wildcatting for the big one’, *The Courier-Mail*, 5 August 1989.

73 ‘Australia and Indonesia settle Timor Gap Treaty’, *The Canberra Times*, 28 October 1989; ‘Australia, Indonesia plan Timor oil search’, *The Sydney Morning Herald*, 28 October 1989.

conclusion of the Treaty, 'while establishing a long-term stable environment for petroleum exploration and exploitation, would not prejudice the claims of either country to sovereign rights over the continental shelf, nor would it preclude continuing efforts to reach final agreement on permanent seabed boundary delimitation'.⁷⁴

7.51 Portugal registered an immediate protest against the Treaty, recalling its Ambassador from Canberra for consultations. Foreign Minister João de Deus Pinheiro issued a statement in Lisbon declaring the Treaty 'a clear and flagrant violation of international law and the United Nations Charter'. Not only was it a violation 'of the legitimate right of the Timorese people to self-determination and sovereignty over its own resources, but it also disrespects Portugal's status in the matter', the statement said. Dr Deus Pinheiro said that Portugal would be prepared to take the matter to the International Court of Justice.⁷⁵

7.52 In October 1989, Australia became the first country to give a direct government-to-government grant for development work in East Timor. During a visit to the province, Ambassador Philip Flood handed the Governor, Mario Carrascalão, a cheque for \$A100,000 to be used on pilot agricultural projects. While in East Timor, Mr Flood investigated allegations of human rights abuses by Indonesian security forces. 'I found no evidence of students being executed or tortured,' he said on his return to Jakarta after spending five days in the province.⁷⁶

7.53 Senator Evans said on 4 December 1989 that Australia still considered it important that human rights issues in East Timor not be 'swept under the carpet'. However, refusing to recognise Indonesian sovereignty over the province, or continuing to protest about its annexation, would not help. Australia, he said, had chosen the option of accepting the reality of the annexation being 'non-reversible', and, on that basis, was working through more readily achieved dialogue with Indonesia to help improve conditions for the East Timorese.⁷⁷

7.54 The Timor Gap Zone of Co-operation Treaty entered into effect in February 1991. On 9 February 1991, the inaugural meeting of the Ministerial Council established under the Treaty was held in Bali. Addressing the meeting, Senator Evans said the Treaty would lead to new areas of co-operation between Australia and Indonesia, mentioning in particular practical arrangements to co-operate in relation to security and terrorism, and for surveillance measures in the Zone of Co-operation.

7.55 A letter to Prime Minister Hawke from Mr Xanana Gusmão, the leader of the Timorese Resistance, was passed to an Australian parliamentary delegation, which was visiting East Timor in early February 1991. The letter condemned the Treaty as 'a

74 Quoted in *The Australian Year Book of International Law*, vol. 12, p. 3802.

75 'Ambassador recalled as Timor treaty protest', *The Canberra Times*, 14 December 1989.

76 'Australia first to give East Timor direct aid', *The Canberra Times*, 29 October 1989.

77 Keith Scott, 'Sovereignty is a reality', *The Canberra Times*, 5 December 1989.

total betrayal' by Australia of the Timorese people.⁷⁸ The letter reinforced the point Gusmão had made previously in an interview broadcast on ABC Radio National:

Australia has been an accomplice in the genocide perpetrated by the occupation forces, because the interests which Australia wanted to secure with the annexation of East Timor to Indonesia are so evident. The best proof is the Timor Gap Agreement.⁷⁹

7.56 Soon after the ratification of the Treaty, Portugal notified Australia that an action would be brought against it in the International Court of Justice (ICJ). The Portuguese Ambassador to Australia, Mr José Luiz Gomez, said on 25 February 1991 that the ICJ action was linked to Australia's recognition of Indonesia's sovereignty over East Timor, and aimed at forcing Australia to recognise East Timor as a non-self-governing territory under Portuguese administration.⁸⁰

7.57 The ICJ made its decision on the case brought by Portugal in June 1995, when it found that because 'the very subject matter' of the case related to the rights and obligations of a third State, namely Indonesia, which did not recognise the jurisdiction of the Court, it could not adjudicate on the dispute. Therefore, it could not rule on the merits of the case, 'whatever the importance of the questions raised by those claims and the rules of international law which they bring into play'.⁸¹

7.58 In putting Australia's case to the International Court at a hearing on 6 February 1995, Mr Michael Tate, Australia's Ambassador to The Hague, stated: 'It remains the firm policy of the Australian Government that the people of the territory should exercise freely and effectively their right to self-determination'.⁸² Foreign Minister Evans commented on the Court's decision on 30 June, saying:

It is difficult to see how Portugal's action could have assisted the East Timorese people. The Indonesian Government, which is in control of the territory, could not have been bound by it. For Australia's part, we will continue our substantial program of development assistance to the people of East Timor, and continue to make every diplomatic effort we can to improve the human rights situation there.⁸³

7.59 Portugal took comfort from the Court's observation that the right of peoples to self-determination was 'irreproachable' in international law and usage, and that consequently 'the Territory of East Timor remains a non-self-governing territory and

78 'Oil treaty to bring "era of cooperation"', *The Canberra Times*, 10 October 1991; *House of Representatives Hansard*, 10 October 1991, p. 1748.

79 Robert Domm, 'Report From The Mountains Of East Timor', *Background Briefing*, 28 October 1990.

80 David Lague, 'Portugal sues over Timor treaty', *The Australian Financial Review*, 26 February 1991.

81 Opinion of the International Court of Justice, *Case Concerning East Timor (Portugal v. Australia)*, 30 June 1995. General List No. 84, 30 June 1995.

82 Quoted in *The Australian Year Book of International Law*, vol. 17, p. 680.

83 Quoted in *The Australian Year Book of International Law*, vol. 17, p. 683.

its people has the right to self-determination'.⁸⁴ Portugal saw no reason in the Court's decision to change its view of the Treaty as an infringement of the rights of the people of East Timor and of Portugal's status as the territory's administering power recognised by the United Nations. On these grounds, Portugal lodged a protest on 28 August 1997 against the subsequent Australian agreement with Indonesia on demarcation of respective exclusive economic zones in the Timor Gap.⁸⁵

The Keating government

7.60 Mr Paul Keating, became Prime Minister in December 1991. His government maintained and developed the Hawke government's policies toward East Timor. On 28 April 1992, following a visit to Indonesia, Mr Keating made a statement in Parliament about his Government's policy. He said:

I deliberately chose Indonesia for my first overseas visit to demonstrate that it is at the forefront of our priorities ... On East Timor, I repeated our Government's concern about the 12 November killings, but said we thought the Indonesian Government's response had been credible. I emphasised three points: the need for the armed forces' role to be more sensitive; the need for long term reconciliation, taking account of the East Timorese people's economic aspirations; and concern in Australia about using the criminal code to deal with non-violent political protests.⁸⁶

7.61 The Keating government faced the task of responding to the consequences of the Dili massacre, which occurred on 12 November 1991, a month before Mr Keating succeeded Mr Hawke as Prime Minister. In his first reaction to the massacre, Mr Hawke had stated:

We deplore the loss of innocent life. While many details remain unclear, it is now evident that an appalling tragedy has occurred in which many people have been killed ... We have urged the Indonesian Government to conduct a thorough investigation and publish a full and factual account of what happened and why. We have said that we expect that those responsible for breaches of human rights should be appropriately dealt with ... We have recognised Indonesia's sovereignty over East Timor, but we have constantly expressed our concern about human rights abuses there.⁸⁷

84 Opinion of the International Court of Justice, *Case Concerning East Timor (Portugal v. Australia)*, 30 June 1995. General List No. 84, 30 June 1995.

85 'Australia's sea boundary challenged', *Australian Broadcasting Corporation News*, 2 September 1997; 'Portugal denounces new Australia-Indonesia agreement on exclusive economic zone in East Timor', *Lusa*, 11 September 1997.

86 *House of Representatives Hansard*, 28 April 1992, p. 1829; quoted in *The Australian Year Book of International Law*, vol. 14, p. 535.

87 *House of Representatives Hansard*, 13 November 1991, p. 2951.

7.62 Mr Hawke instructed Ambassador Philip Flood in Jakarta to visit Dili with a view to opening a consulate there.⁸⁸ On 5 December 1991, in response to a question in the Senate arising from a media interview with Mr Hawke, Senator Evans said that the Prime Minister had simply re-stated what had been clearly articulated Australian Government policy. He said that, despite the massacre, there had been no change 'at the moment' in the Government's policy of recognising Indonesian sovereignty over East Timor. However, sovereignty remained one of the issues the Government was prepared to look at if the Indonesian response proved to be unsatisfactory.⁸⁹

7.63 On 11 December 1991, Senator Evans said that the Government did not believe what had happened in Dili, 'deplorable as it was, was something that could be construed as an act of state: a calculated or deliberate act of the Government as such'. It was not an act of state but 'the product of aberrant behaviour by a subgroup within the country', and therefore did not justify a change in policy that would involve a refusal to sign an agreement with Indonesia to award Timor Gap production sharing contracts to oil exploration companies.⁹⁰

7.64 The agreement was signed by the Minister for Resources, Mr Alan Griffiths, and Indonesia's Minister for Mines, Mr Ginandjar Kartasasmita, at Cairns on 11 December.⁹¹ Mr Griffiths reiterated during the meeting at which the agreement was signed that the Australian Government 'was deeply concerned by the recent killings in Dili', and that it had condemned the killings in strong terms and had called on the Indonesian Government to conduct a credible inquiry and punish any wrongdoers.⁹²

7.65 The agreement brought forth a further protest from Portugal. A note delivered by the Portuguese Embassy in Canberra stated that the signing of the agreement aggravated Portugal's dispute with Australia over East Timor. It 'confirmed and worsened' the illicit nature of the facts denounced by Portugal in its application to the International Court of Justice. It occurred at a time of increased criticism and condemnation of Indonesia's 'brutal and repressive' policy toward East Timor.⁹³ Foreign Minister João de Deus Pinheiro said in Lisbon that Portugal would 'take action and ask for compensation'. He said Indonesia and Portugal must resolve the East Timor question through United Nations supervised negotiations: 'I hope the

88 Bernard Lagan, 'Aust may rethink Timor recognition', *The Sydney Morning Herald*, 6 December 1991. The Indonesian Government conveyed its rejection of Australia's request to open a consulate in Dili to Senator Evans during his visit to Jakarta 20-22 December 1991 (David Lague, 'Alatas wants "fair play" on massacre inquiry', *The Australian Financial Review*, 23 December 1991).

89 *Senate Hansard*, 5 December 1991, p. 4275.

90 *Senate Hansard*, 11 December 1991, p. 4618.

91 David Lague, 'Timor oil deal signed', *The Australian Financial Review*, 12 December 1991.

92 John Loizou, 'Secret talks herald oil boom', *Sunday Territorian*, 15 December 1991.

93 Robert Garran, 'Portugal slams Timor oil pact', *The Australian Financial Review*, 19 December 1991.

Indonesian Government will leave the military solution behind and be willing to negotiate'.⁹⁴

7.66 On 22 April 1992, during a visit to Jakarta, Mr Keating told President Soeharto that he regarded the shootings in Dili as a tragic event but he believed the Indonesian Government's follow-up had been credible.⁹⁵ He told the President it would be beneficial to relations if the Indonesian Government could bring about a long-term reconciliation with the people of East Timor which involved giving them greater economic prosperity and the prospect of jobs.⁹⁶ Mr Keating said at a press conference following his meetings with the President, with Minister for Defence Benny Moerdani and Foreign Minister Ali Alatas that Australia regarded President Soeharto's administration of Indonesia as 'one of the most significant and beneficial events in Australia's strategic history'. He said, 'I'm here to deepen the relationship and provide a greater basis of strength to it. The deepening has to come from cultural and commercial as well as political links so that the structure has more elements to it, and if one part of it comes under pressure, the others will keep the structure together'. He said the importance to Australia of Indonesia's contribution to regional security and its economic expansion needed to be more clearly acknowledged in Australia: 'It was very quickly understood and acknowledged immediately after 1965. But it has not been acknowledged in the years since that the importance of stability and growth in Indonesia and of holding together the archipelago has been quite profound'.⁹⁷

7.67 In December 1992, the Parliamentary Joint Committee on Foreign Affairs, Defence and Trade said that Australia's response to the Dili massacre and to the subsequent Indonesian investigation was 'counterproductive' to any future human rights responses Australia might make. The Committee concluded:

Given the situation in East Timor, its proximity to Australia, and its historic and emotional ties for many Australians and, in particular, the scale of the massacre on 12 November and the injustices done to the victims, it would seem the incident and its outcome deserved much stronger condemnation.⁹⁸

94 'Portugal to take issue on Timor oil', *The Canberra Times*, 17 December 1991. Soon after this, the Keating Government took the decision to close the Australian embassy in Lisbon, as a 'cost-cutting' measure. The embassy was re-opened by the Howard Government in April 2000 (Minister for Foreign Affairs - Alexander Downer, 'Diplomatic Appointment - Ambassador to Portugal', media release, 26 April 2000).

95 Ross Peake, 'Indons back summit offer', *The Canberra Times*, 23 April 1992.

96 To assist East Timor's economic development, the Keating Government increased the level of aid directed to the province. In 1992 AIDAB began an aid program for the five years following, for which \$30 million had been approved: \$3.1 million was spent in 1992-93; \$3.7 million in 1993-94; \$5 million in 1994-95; \$4 million in 1995-96; and \$5 million in 1996-97. Between 1980 and financial year 1996-97, Australia's assistance amounted to over \$38 million. In 1998/99, approximately \$7 million was approved by the Howard Government to fund activities in the province (Department of Foreign Affairs and Trade, *Annual Reports* for 1992-93, 1993-94, 1995-96; submission no. 52, p. 13).

97 Geoff Kitney, 'PM puts premium on political stability', *The Australian Financial Review*, 23 April 1992.

98 Joint Committee on Foreign Affairs, Defence and Trade, *A Review of Australia's Efforts to Promote and Protect Human Rights*, 1992, p. 76.

7.68 The Committee urged the Government to support actively a new United Nations initiative to begin consultations with all the parties in East Timor, with a view to negotiating a settlement. In its response to the report, the Government said:

as far as East Timor is concerned, there has been no UN Security Council action on the matter since Indonesia's incorporation of East Timor in 1976 and no General Assembly resolution on the subject since 1982. The failure by Portugal and its supporters to introduce a General Assembly resolution since that date then suggests that international opposition to Indonesia's integration of East Timor has fallen to the level where any such resolution today would fail. The Australian Government supports the efforts of the UN Secretary-General to assist Indonesia and Portugal to reconcile their differences over East Timor, through talks under his auspices. The Government believes it is for these parties to determine the terms of and parties to the talks.⁹⁹

7.69 The Australian Government's assessment that international opposition to Indonesia's incorporation of East Timor was on the decline, accompanied by a fall in support for an internationally supervised act of self-determination, was challenged over the years following the Dili massacre, as a steady stream of stories of misrule and human rights abuses continued to emerge to confront world opinion. In July 1995, it was reported that Admiral Richard Macke, United States Commander-in-Chief Pacific (CINCPAC) had privately told Congressional officials that 'the time has come for Indonesia to get out of East Timor'.¹⁰⁰ Commenting on this, Senator Evans said that Admiral Macke's reported views reflected the strong belief in the United States that the East Timor question was hurting Indonesia, a view which Australia shared.¹⁰¹ The capacity of the East Timor question to continue to damage Australia-Indonesian relations was illustrated by Indonesia's cancellation, in July 1995, of the appointment of Lieutenant-General Herman Mantiri as its Ambassador to Australia, in the face of public hostility in Australia to General Mantiri's remarks defending the conduct of the troops who carried out the Dili massacre as 'quite proper'.¹⁰² The appointment of General Mantiri, who had been the successor of Major-General Sintong Panjaitan following the 1991 massacre as military commander of the region which included Dili, had been welcomed by the Australian Government when first proposed.¹⁰³

7.70 The Government's response on 29 November 1995 to the November 1994 report of the Joint Standing Committee on Foreign Affairs, Defence and Trade, *A Review of Australia's Efforts to Promote and protect Human Rights*, indicated the

99 *Senate Hansard*, 27 May 1993, p. 1568.

100 'Leave Timor, says US chief', *The Sunday Herald Sun*, 2 July 1995.

101 *AM*, 1 July 1995.

102 David Jenkins, David Lague and Mark Skulley, 'Jakarta backs down', *The Sydney Morning Herald*, 7 July 1995.

103 John McBeth, 'Dili-Dallying: Australia and Indonesia fuss over Timor, again', *Far Eastern Economic Review*, 13 July 1995.

evolution of its policy regarding East Timor toward giving emphasis to the distinctive cultural identity of the East Timorese and the desirability for Indonesia to recognise this by granting some form of autonomy to the province:

The Prime Minister has raised the situation in East Timor with President Suharto on a number of occasions, most recently, in Bali on 17 September 1995. The Minister for Foreign Affairs, Senator Evans, also has been long urging on the Indonesian authorities the desirability of their talking frankly and directly to people of different opinions within East Timor, including the armed resistance, about longer term reconciliation strategies for the province. The Government believes such strategies should include a major reduction in the military presence, greater involvement of the East Timorese in the province's economy, further recognition of the distinctive cultural identity of the East Timorese and some measure of political autonomy. Senator Evans reiterated these points publicly after his meeting with the Indonesian Foreign Minister at the ASEAN Post-Ministerial Conference in early August this year. The Australian Government welcomed the holding in June this year of intra-East Timorese talks facilitated by the UN Secretary General and the continuation in July of the dialogue between Indonesia and Portugal on the issue of East Timor, also held under the UN Secretary-General's auspices.¹⁰⁴

7.71 In his submission, Mr Evans quoted a statement made by Dr Ramos-Horta on 11 December 1995, on the ABC radio program *PM* concerning the approach of the Australian Government toward East Timor:

I have learned in the last few weeks of more discreet démarches by Gareth Evans which are not of public knowledge ... how, for instance, in New York for a long time he was very firm, was very critical on the situation and urged Boutros-Ghali to be more active and firm on the question of East Timor. That came to me, that information, from some diplomats in the European Union ... they were all very commending of the Australian position. They told me, for instance, that the Australian Embassy in Jakarta is the most active on East Timor, always seeking out information, briefing Canberra on what happens, making representations to the Foreign Ministry. So to me, and I didn't expect that, that was a pleasant surprise and I was very happy.¹⁰⁵

7.72 In March 2000, Mr Keating wrote: 'I held few conversations with Indonesian leaders in which I did not raise Timor or Irian Jaya, but I was not prepared to place our complex relationship with 210 million people on hold over this one issue'.¹⁰⁶

104 *Senate Hansard*, 29 November 1995, p. 4217ff.

105 The Hon. Gareth Evans, QC, MP, submission no. 21, p. 6.

106 Paul Keating, *Engagement: Australia faces the Pacific*, Sydney Macmillan 2000, p. 130; excerpt published in 'The Keating Files', *The Australian*, 13 March 2000.

United Nations' negotiations

7.73 Talks under United Nations auspices between Indonesia and Portugal had been proceeding intermittently since July 1983, following an initiative by Secretary-General Javier Perez de Cuellar in accordance with General Assembly Resolution 37/30 of 1982 on East Timor, which requested:

the Secretary-General to initiate consultations with all parties directly concerned, with a view to exploring the avenues for achieving a comprehensive settlement of the problem and to report thereon to the General Assembly at its 38th session.¹⁰⁷

7.74 In April 1984, Portuguese Foreign Minister Jaime Gama had indicated he saw a place for Australia in the process. He said talks between Indonesia and Portugal alone were not enough to produce a solution: 'The contacts must be under the auspices of the United Nations and with the intervention of the other interested parties, Australia and Fretilin'.¹⁰⁸ Mr Gama made it clear during Foreign Minister Hayden's visit to Lisbon in September 1984 that Portugal would only accept a solution which took account of East Timor's right to self-determination. Australia did not respond to his suggestion that it seek to participate in the talks.¹⁰⁹

7.75 The talks proceeded on a regular basis until October 1991, when they were broken off following Indonesia's withdrawal of an invitation to a Portuguese parliamentary delegation to visit East Timor. The suspension of the visit and the Dili massacre on 12 November 1991 led to an atmosphere of open hostility between Jakarta and Lisbon. Nevertheless, Portuguese leaders saw continued talks as the only possible solution. When talks resumed in December 1992, following a meeting between Foreign Ministers João de Deus Pinheiro and Ali Alatas in September 1992 in the office of United Nations Secretary-General Boutros Boutros-Ghali, Indonesia was still refusing to include East Timorese representatives, whom Mr Deus Pinheiro insisted had 'a right to be consulted'.¹¹⁰ At the December talks, Dr Boutros-Ghali called on the Indonesians to respect the legal rights of East Timorese resistance leader

107 Australia voted against Resolution 37/30 (Department of Foreign Affairs, submission to the Senate Committee on Foreign Affairs and Defence, April 1982, p. 503). Secretary-General Javier Perez de Cuellar did not submit a report to the 38th session of the General Assembly, in view of the talks which had begun in July 1983 between the Indonesian and Portuguese ambassadors at the United Nations, and the Indonesian truce with Fretilin in Timor in mid-1983 (Ted Morello, 'Into a holding pattern' and 'On the shelf, again', *Far Eastern Economic Review*, 8 September 1983, pp. 40-41 and 9 August 1984, p. 16).

108 *Expresso*, 1 April 1984, quoted in 'Talks should be wider', *The Canberra Times*, 2 April 1984.

109 Jill Jolliffe, 'Hayden's Portugal visit holds little hope for East Timorese', *The Age*, 7 September 1984.

110 Jill Jolliffe, 'Talks to resume on Timor's future', *The Age*, 28 September 1992. The Australian Government also rejected the appeal from Xanana Gusmão in his letter to Mr Hawke of February 1991 to use his influence to promote peace talks under the United Nations which included the East Timorese. Foreign Minister Evans responded: 'We simply can't be party to trying to facilitate some kind of negotiation between some group that is still contesting effectively the incorporation of East Timor into Indonesia', and added that the conflict in East Timor would end if Fretilin surrendered (*House of Representatives Hansard*, 10 October 1991, p. 1748; Tom Hyland, 'Captured: a living symbol of resistance', *The Sunday Age*, 22 November 1992).

Mr Xanana Gusmão, who had been captured by Indonesian security forces in Dili the previous month.¹¹¹

7.76 A meeting of pro-integration and anti-integration East Timorese leaders took place under Indonesian sponsorship in Ware, England, in December 1993. The pro-Indonesian side was led by Francisco Xavier Lopes da Cruz, and the opposing side by Abilio Araujo. First President of the Democratic Republic of East Timor, Francisco Xavier do Amaral, who had been deposed and imprisoned by Fretilin leader Nicolau Lobato in 1977 and later captured by Indonesian forces, participated in the talks on the pro-Indonesian side. 'We are trying to be a bridge between the Portuguese and Indonesian Governments in their search, under UN auspices, for a lasting solution to the Timor problem,' Mr Araujo said, 'I will be reporting to the Portuguese Foreign Ministry on return to Lisbon and Lopes da Cruz will inform Indonesian Foreign Minister, Ali Alatas, and President Soeharto of the content of the meeting.'¹¹²

7.77 Dr Horta, Mr Gusmão and other anti-Indonesian East Timorese strongly disapproved of Mr Araujo's stance and he was condemned by and expelled from Fretilin. A second meeting of the groups led by Mr Araujo and Mr Lopes da Cruz in England in December 1994 was ended in an atmosphere of rancour. In January 1995, the Portuguese and Indonesian Foreign Ministers agreed to a proposal by Dr Boutros-Ghali that he facilitate a similar meeting. This took place in June 1995, at Burg Schlaining in Austria. Bishop Ximenes Belo was present as a 'neutral observer' and Dr Horta, having made up his differences with Mr Araujo, also participated. The meeting ended with confirmation that further meetings had been agreed, expressed support for United Nations General Assembly Resolution 37/30 of 1982, and asked for consultation before every meeting of the Indonesian and Portuguese Foreign Ministers with a view to eventual inclusion of Timorese representatives in direct talks.¹¹³

7.78 At the following Indonesia-Portugal meeting in July 1995, Foreign Minister Ali Alatas accepted Secretary-General Boutros-Ghali's proposal for a further meeting of Timorese, but said they must not discuss East Timor's political status, a condition that had been agreed to in January. He made it clear that Indonesia was opposed to the notion of all-Timorese talks running in parallel with the ministerial negotiations with Portugal.¹¹⁴ He also made it clear that Indonesia continued to reject Portugal's proposal for a referendum on self-determination.¹¹⁵ This remained the main sticking

111 Yaroslav Trofimov, 'Lisbon, Jakarta meet for talks on East Timor', *The Australian*, 19 December 1992.

112 Jill Jolliffe, 'Secret talks try to bridge differences on East Timor', *The Age*, 20 December 1992.

113 At this conference Guilherme Gonçalves, Liurai (Raja) of Atsabe, who in 1975 had been leader of Apodeti and subsequently second Governor of the '27th province', repudiated the so-called Declaration of Balibo of 1975, which called for incorporation of Portuguese Timor into Indonesia (Jill Jolliffe, 'East Timor factions reconciled', *The Canberra Times*, 12 June 1995; David Jenkins, 'Fear, Death, Despair: Daily Life in Dili's Paradise Lost', *The Sydney Morning Herald*, 19 August 1995).

114 John McBeth, 'Timor surprise: unexpected declaration shocks Jakarta', *Far Eastern Economic Review*, 20 July 1995.

115 'Timorese talks at a standstill', *The Canberra Times*, 10 July 1995.

point for progress in the talks for the next three years, until President Habibie instructed his negotiators to offer the Timorese autonomy for the province.¹¹⁶

7.79 The Keating Government's attitude toward the United Nations sponsored talks between Portugal and Indonesia was stated on 6 February 1995 by Mr Michael Tate, Australia's Ambassador to The Hague, in the course of his address to the International Court of Justice on the East Timor case:

Throughout the period that East Timor has been on the United Nations agenda, Australia has supported the Secretary-General in his efforts to find a solution to the situation. Australia has continued to encourage Portugal and Indonesia to consult one another, either directly or under the auspices of the Secretary-General, with a view to resolving the situation. Australia has been and remains ready to accept and act on any authoritative decision made by the competent organs of the United Nations in the matter, or on any internationally acceptable resolution of the issue arrived at by 'the parties directly concerned', of which Australia is not one.¹¹⁷

The Howard government

7.80 The Coalition Government led by Prime Minister John Howard, which came to power in March 1996, maintained continuity for most of its first term with the policies toward East Timor that had been followed by all Australian Governments since 1979. As Senator Robert Hill, Leader of the Government in the Senate, said on 16 October 1996:

Successive Australian Governments have recognised Indonesia's sovereignty over East Timor since 1979. There has been no change to the Government's policy on East Timor including the East Timorese right of self-determination. From the outset, in 1975/76, Australia made it clear that it did not approve of the way in which Indonesia incorporated East Timor into Indonesia, but we do acknowledge that any form of self-determination will need the cooperation of the Indonesian Government—how that may be exercised is a matter for the UN, working with the parties concerned.¹¹⁸

7.81 In Opposition, the ALP began to re-examine its policy on East Timor. A policy document, brought forward by Foreign Affairs spokesman, Mr Laurie Brereton, in August 1997, said that 'no lasting solution to the conflict in the East Timor is likely in the absence of negotiation through which the people of East Timor can exercise

116 Lindsay Murdoch, 'East Timor role: hope at last', *The Age*, 13 January 1999.

117 Quoted in *The Australian Year Book of International Law*, vol. 17, p. 681. Cf. Australia's vote against General Assembly Resolution 37/30 of 1982, and opposition in subsequent years to similar resolutions (Department of Foreign Affairs submission on East Timor to Senate Committee on Foreign Affairs and Defence, April 1982, p. 503).

118 *Senate Hansard*, 16 October 1996, pp. 4248-9; quoted in *The Australian Year Book of International Law*, vol. 18, pp. 286-7.

their right of self-determination'.¹¹⁹ Mr Brereton had noted the emergence of an indigenous democracy movement in Indonesia that was 'a critical development of potentially far-reaching significance'. One of the leaders in the democracy movement, Abdurrahman Wahid, had seen fit to travel to Oslo in October 1996 in company with Bishop Ximenes Belo of Dili to attend the award of the Nobel Peace Prize to him and José Ramos Horta.¹²⁰ The revised policy was adopted at the ALP National Conference on 22 January 1998, and by the ALP Federal Caucus in a resolution moved by Dr Andrew Theophanous on 26 May 1998.¹²¹

7.82 The Portuguese Foreign Minister, Dr Jaime Gama, while visiting Canberra in February 1998 said: 'On the Indonesian side, there is no strategy'. On the one hand, there was a military occupation of East Timor, a simple and at times brutal occupation by the army. On the other hand, there was Indonesia's extensive diplomacy, which had the sole aim of heading off any international damage from the situation: 'And there is not a link between the two things, not one', he said. While the regime of President Soeharto had given little ground publicly there was, insisted Dr Gama, a recognition in Jakarta that integration through military force had not been a solution: 'Any constructive effort to find a just, comprehensive and globally acceptable solution' had to be based on 'the self-determination principle'.¹²²

7.83 The fall of President Soeharto from power in May 1998 in the midst of economic turmoil and social unrest in Indonesia, and his replacement as President by Dr Habibie imparted added urgency to the need for a policy review. This was seen by the Howard Government as an opportunity to take up a role in the ongoing process of negotiation over East Timor's future being conducted by Indonesia and Portugal under the good offices of the United Nations Secretary-General.¹²³

7.84 On 3 June 1998, in his first television interview as President, Dr Habibie said, regarding East Timor, 'There is no need for a referendum—it is Indonesia'.¹²⁴ By 9 June he had developed his position to the stage where he was willing to consider a special status for the province, while insisting that it would remain an integral part of Indonesia. Foreign Minister Ali Alatas commented: 'There is now a new opportunity or big chance to seek a comprehensive and fair solution that can be accepted by all

119 Don Greenlees, 'Labor policy ups the ante for autonomy in East Timor', *The Weekend Australian*, 18 October 1997; Grahame Armstrong, 'Labor in Timor backflip', *The West Australian*, 25 October 1997.

120 Anthony Burke, 'Labor could be set for a backflip on East Timor', *The Canberra Times*, 22 December 1997. No official Australian representative attended the award ceremony in Oslo (José Ramos Horta, 'East Timor must take some blame', *The Australian*, 20 September 2000).

121 Ross Peake, 'Party adopts a get-tough policy on Timor abuses', *The Canberra Times*, 23 January 1998. Ross Peake, 'ALP toughens East Timor line', *The Canberra Times*, 27 May 1998.

122 Norman Abjorensen, 'Pursuing peace in East Timor', *The Canberra Times*, 21 February 1998.

123 Lindsay Murdoch, 'East Timor: hope at last', *The Age*, 13 January 1999.

124 Don Greenlees, 'Habibie rules out Timor referendum', *The Australian*, 4 June 1998.

parties on the East Timor problem.’¹²⁵ At the November 1998 round of United Nations sponsored talks with Portugal, the Indonesian budget for the province was discussed, with the suggestion from the Indonesians that Portugal might make a significant contribution or even take it over.¹²⁶

7.85 Australia’s Ambassador to Indonesia, Mr John McCarthy, met Mr Xanana Gusmão in his prison at Cipinang, Jakarta, and came away impressed with his leadership qualities and his realism. On 19 August 1998, Mr Downer called on the Indonesian Government to release Mr Gusmão so he could play a greater part in the peace process. Mr McCarthy also visited East Timor for the first time in June 1998.

7.86 Mr Dauth subsequently told the Committee that the Australian Government’s change in policy regarding East Timor was based, in part, on a survey conducted in 1998 by the Australian Embassy in Jakarta of the views of all East Timorese in positions of influence in the province.¹²⁷ This survey, which reportedly found overwhelming support for eventual independence while recognizing the dangers of a too rapid transition, was made available to the government of President Habibie, but the Committee’s request for a copy was refused by the Minister for Foreign Affairs.¹²⁸

7.87 Mr Howard wrote to President Habibie with this view on 19 December 1998. Referring to growing support for support for East Timorese self-determination, Mr Howard included the following passage:

It might be worth considering, therefore, a means of addressing the East Timorese desire for an act of self-determination in a manner which avoids an early and final decision on the future status of the province.¹²⁹

7.88 Referring to this letter, DFAT submitted:

The Australian Government made a major shift in its policy approach to East Timor when, in December 1998, the Prime Minister wrote to President Habibie. In his letter, the Prime Minister emphasised the importance of Indonesia talking directly with East Timorese about the province’s future status. The Prime Minister, suggested that long term prospects for a peaceful resolution of the East Timor issue would be best served by an act of self-

125 ‘Habibie to consider status of East Timor’, *The Canberra Times*, 10 June 1998.

126 ‘After all the publicity about how much Indonesia was investing in building roads, hospitals and infrastructures in East Timor, we were surprised to see how small the budget was’, said Portuguese Foreign Ministry spokesman Mr Horacio Cesar. The current budget was ‘approximately that of a largish Portuguese municipality’. Foreign Minister Gama had consulted with Prime Minister Antonio Guterres and Finance Minister Antonio Sousa Franco over funds available to take over the Indonesian-financed budget. It was agreed that Portugal would foot the entire yearly \$US100 million if necessary, but it was hoped other countries might contribute (Jill Jolliffe and Louise Williams, ‘Old colonist Portugal throws financial lifeline to E Timor’, *The Sydney Morning Herald*, 25 February 1999).

127 Mr Dauth, *Committee Hansard*, 6 December 1999, p. 1002.

128 Mr Dauth, *Committee Hansard*, 6 and 9 December 1999, pp. 1003, 1027.

129 Don Greenlees, ‘Row over Timor shift’, *The Australian*, 16 January 1999.

determination by the East Timorese at some future time, following a substantial period of autonomy. Mr Howard made clear Australia's view that the interests of Australia, Indonesia and East Timor were best served by East Timor remaining part of Indonesia. The Australian Government also made clear its support for the release of Xanana Gusmao in light of the important role he must play in the negotiations on East Timor's future.

The Australian Government's declared preference remains for a long transition period before a decision is taken on East Timor's final status. However, the Government has also made it clear that it is for the East Timorese themselves to decide: Australia will respect that decision and assist the East Timorese people, whatever course they may take—whether it be independence or autonomy, a quick or a prolonged transition. What Australia has consistently stressed is that, whether the eventual outcome is for autonomy or full independence, the transition must take place in a peaceful and orderly manner and the East Timorese people must be fully consulted. In the meantime, Australia maintains its recognition of Indonesian sovereignty over East Timor.¹³⁰

7.89 Mr Howard's letter to President Habibie referred to the growing support for the East Timorese to be given the right to choose whether they remained part of Indonesia, and said: 'It might be worth considering, therefore, a means of addressing the East Timorese desire for an act of self-determination in a manner which avoids an early and final decision on the future status of the province'. As a way of avoiding an 'early and final decision', Mr Howard drew attention to the example of New Caledonia: 'The [1988] Matignon Accords have enabled a compromise political solution to be implemented while deferring a referendum on the final status of New Caledonia for many years'.¹³¹

7.90 It was Australia's judgement that, if a satisfactory process of integration for East Timor into Indonesia was achievable, then that was in the interests of East Timor and Australia and Indonesia. It presupposed that repression would have ended, that over a period of time the East Timorese themselves would have come to the view that they wanted to stay with Indonesia. Better managed, better governed than East Timor had been for 25 years, the prospect existed of the East Timorese choosing differently from the way they chose. Referring to the Matignon Accord process in New Caledonia, Mr Dauth said:

I can tell you, Senator, from my own experience as Australian Consul-General in New Caledonia that in 1986 it did not look very likely that a large number of the New Caledonians would opt to remain a part of France, but they seem very much more content to do that now ten or twelve years further down the track.¹³²

130 DFAT, submission (March 1999), pp. 3-4.

131 Don Greenlees, 'Row over Timor shift', *The Australian*, 16 January 1999.

132 Mr Dauth, *Committee Hansard*, 6 December 1999, p. 1002.

7.91 Mr Howard's letter did not elicit the intended response from President Habibie. The President took exception to the analogy with France as a colonial power in New Caledonia; Indonesia's opposition to colonialism was written into its constitution, and the Indonesian Republic had come into being after a bitter struggle against Dutch colonialism.¹³³ At a meeting with his Ministers on 1 January 1999, it was agreed that Indonesia would allow East Timor to become independent if that was what its people wanted.¹³⁴ The new policy was announced by Foreign Minister Ali Alatas and Information Minister Junus Yosfiah on 27 January 1999. Mr Alatas referred to Prime Minister Howard's letter: 'There were some proposals from foreign governments including from John Howard and other important figures that after five years or so the East Timorese would be granted the right to choose'. Mr Yosfiah then announced that Jakarta would be granting East Timor a 'regional autonomy plus' package, to end the conflict in the province. Mr Alatas said the prospect of granting independence was 'not the policy of the Government, but it is the last alternative if the people of East Timor continue to reject our offer for special autonomy'.¹³⁵

7.92 Indonesia presented its proposal for autonomy at the 21–23 April 1999 talks with Portugal and the United Nations Secretary-General in New York. On the eve of the talks, President Habibie said: 'If the people of East Timor decide for separation we will do everything to make it happen in peace'.¹³⁶ An Indonesian Cabinet meeting on 19 April authorised Foreign Minister Ali Alatas to agree in New York to a 'consultative mechanism' which would allow the East Timorese to decide whether they wished to remain an 'autonomous' province of Indonesia or become independent.¹³⁷ This enabled him to overcome the obstacle which had stalled progress on the negotiations, Indonesia's refusal to accept Portugal's proposal for a referendum on self-determination.¹³⁸ On 24 April, Indonesian Foreign Minister Ali Alatas and

133 The preamble to the Indonesian constitution states: 'Independence being the right of every nation, colonialism in this world must be abolished as being inconsistent with humanity and justice [Bahwa sesungguhnya kemerdekaan itu ialah hak segala bangsa dan oleh sebab itu, maka penjajahan diatas dunia harus dihapuskan, karena tidak sesuai dengan peri kemanusiaan dan peri keadilan]'.

134 Don Greenlees, 'Offer of freedom doomed Habibie', *The Australian*, 27 January 2000. Adviser to President Habibie, Dewi Fortuna Anwar, has commented that Bishop Ximenes Belo's refusal of a request to come to Jakarta for further discussions after President Habibie had received Mr Howard's letter was a major factor influencing the President to propose to his cabinet that the people of East Timor be allowed to vote on their future (Karen Poleglaze, 'Indonesia downplays PM's Aussie influence on Timor', *AAP*, 8 June 2000). Ms Dewi Anwar had said previously 'the letter that provoked President Habibie's change of mind regarding East Timor's independence was the one that was sent by Howard'. (*Sunday*, 19 September 1999).

135 Louise Williams, 'Jakarta hints at freedom for East Timor', *The Sydney Morning Herald*, 28 January 1999. 'We were then very convinced we would win the referendum', Mr Alatas told the Jakarta magazine *Tempo* in September 2000 (Lindsay Murdoch, 'Whitlam "backed what we were doing in East Timor"', *The Sydney Morning Herald*, 26 September 2000).

136 Lindsay Murdoch, 'Australia to play key Timor role: Habibie', *The Age*, 21 April 1999. See also Prime Minister Howard's and President Habibie's Joint Press Conference, Bali Hilton International, 27 April 1999. [<http://www.pm.gov.au/news/interviews/1999/bali2704.htm>].

137 Tim Dodd, 'Indonesia's wounded pride over East Timor', *The Australian Financial Review*, 21 April 1999.

138 Malcolm Booker, 'East Timor should not get hopes high', *The Canberra Times*, 19 August 1997.

Portuguese Foreign Minister Jaime Gama agreed that a ‘popular consultation’ would be held in East Timor under United Nations sponsorship. The agreement was formally signed by the two Foreign Ministers and Secretary-General Kofi Annan at a subsequent meeting in New York on 5 May.

7.93 In between the agreement being reached on 24 April and the formal signing on 5 May, Indonesian prevarication on the exact terms of the agreement arising from opposition to it within the Government had threatened to deadlock the process. The impasse was broken on 26 April, when Ali Alatas and the President and key ministers, on the eve of a meeting with Prime Minister John Howard in Bali, agreed to accept the negotiated documents the Foreign Minister had brought back from New York without further delay.¹³⁹ President Habibie had agreed at short notice to Mr Howard’s suggestion for a meeting. Mr Howard’s approach had been spurred by the massacre of some 57 people in the East Timorese town of Liquiçà on 6 April. This event, and other killings in the province, notably in Dili on 17 April, had its effect on the Governments in Jakarta and Canberra. It was becoming clear to the Australians that Indonesia, beset by problems elsewhere in the archipelago, might simply walk out, leaving the East Timorese to a civil war. Or the local Indonesian military might, with or without Jakarta’s blessing, back the pro-integrationist militias it had set up in waging all-out war on the pro-independence guerrillas to ensure that the territory, or at least the part adjoining West Timor, remained part of Indonesia.¹⁴⁰ Former Prime Minister Bob Hawke commented on 20 April:

It is clear that acquisition of territory by force, as in the case of East Timor, cannot guarantee either the right or the capacity to retain that territory. No more than the Dutch could establish that right or that capacity to hold what they had acquired could the Indonesians legitimately expect to automatically retain a tenable sovereignty over East Timor. President Habibie seems to have accepted that fact.¹⁴¹

7.94 At the meeting on 27 April, President Habibie confirmed his Government’s acceptance of the United Nations sponsored agreement with Portugal. Mr Howard, accompanied at the meeting by Foreign Affairs Minister Downer and Defence Minister John Moore, promised that Australia would contribute \$10 million in cash and \$10 million in logistical support to the estimated \$48 million cost of conducting the ‘popular consultation’. He offered civilian and police personnel to ensure that the process was free and fair (although he was unable to persuade President Habibie to allow an international peacekeeping force into the province during the period).¹⁴² He

139 Peter Cole-Adams, ‘Summit puts halt to stalling ploy’, *The Sydney Morning Herald*, 29 April 1999.

140 Peter Cole-Adams, ‘The long goodbye’, *The Sydney Morning Herald*, 17 April 1999.

141 The Hon. R.J.L. Hawke, AC, *Sir Richard Kirby Lecture*, 20 April 1999, quoted in Bob Hawke, ‘Timor: a Kosovo on our doorstep’, *The Age*, 21 April 1999.

142 Geoffrey Barker, ‘PM returns on wing and promise’, *The Australian Financial Review*, 28 April 1999; Peter Hartcher, ‘Indonesian army retains upper hand’, *The Australian Financial Review*, 5 May 1999. See also Prime Minister Howard’s and President Habibie’s Joint Press Conference, Bali Hilton International, 27 April 1999. [<http://www.pm.gov.au/news/interviews/1999/bali2704.htm>].

secured the President's agreement to the establishment of an Australian consulate in Dili (for the first time since 1971), the presence of an Australian medical team, and greater access to international agencies, including the Red Cross.¹⁴³ After the Bali summit, although still formally committed to recognising Indonesian sovereignty, by supporting the 'popular consultation' in the knowledge that the great majority of East Timorese would vote against the autonomy option the Australian Government had made the policy transition from supporting incorporation to supporting East Timor's independence.¹⁴⁴

7.95 The Committee outlined the events leading up to the ballot on 30 August 1999 and the aftermath in its Interim Report of 30 September 1999. The Committee does not intend to go over the same ground in this report.

7.96 One of the questions raised by Mr Kevin was whether Australia had the right to push the political framework forward that made inevitable the situation in August 1999 where the East Timorese were forced to vote for independence knowing that a terrible revenge would be taken on them by the Indonesian army and militias: 'What right did we have, who are not Timorese, to risk these people's lives in this way?'¹⁴⁵

7.97 This was not a question raised before the Committee by any East Timorese witness. It has been reported that weeks after Interfet arrived in East Timor, when the East Timorese were mourning their dead and trying to rebuild their lives, it was still impossible to find a single person there who wished the ballot had never happened.¹⁴⁶ Mr Sérgio Viera de Mello, Mr Xanana Gusmão and Dr José Ramos-Horta all affirmed in Bangkok on 24 July 2000 their conviction that the 'window of opportunity' had to be seized in August 1999 and that it was not possible for the popular consultation to be postponed, even though they were aware of the retribution planned by the Indonesian military.¹⁴⁷

7.98 Professor Nancy Viviani presented the view that, given the political situation in Jakarta, with Habibie as a lame duck President, it appeared there was little or no chance that a new President would agree to a vote. If the vote had been delayed, as many recommended, it seemed very unlikely that a new President would have

143 Don Greenlees, 'A full and free choice', *The Australian*, 28 April 1999. See also Prime Minister Howard, press conference, 28 April 1999. [<http://www.pm.gov.au/news/interviews/1999/PresConf2804.htm>].

144 In Jakarta, former Foreign Affairs Department Deputy Secretary Geoffrey Forrester detected the change and commented, 'Australians are totally preoccupied with the East Timor situation and tend to see the fate of 202 million Indonesians through the prism of 800,000 East Timorese' (Lindsay Murdoch, 'Timor "timetable to disaster"', *The Sydney Morning Herald*, 29 April 1999).

145 Mr Kevin, *Committee Hansard*, 10 April 2000, p. 1040.

146 Sian Powell, 'Freedom was worth the heavy price', *The Australian*, 27 January 2000.

147 'ONU não tem visão neocolonialista, afirma Viera de Mello', *Lusa*, 24 July 2000.

permitted it to take place at all, because a new President would have had to rely on army support.¹⁴⁸

A well-conceived strategy?

7.99 On 10 April 2000, Mr Anthony Kevin contended that there was a consistency about everything the Government said and did from February to September 1999, which indicated it was holding to a well-conceived strategy.¹⁴⁹

7.100 The strategy comprised Plan A, the preferred plan, and Plan B, the fall-back. Plan A combined public support and private deterrence. Australia urged Indonesia, the United Nations, Portugal and the United States to stick to President Habibie's vote timetable. At the public level, Mr Howard and Mr Downer played down the many reports during the year, both public and intelligence-sourced, that senior elements in the TNI hostile to Habibie's policy were determined to subvert it by violent acts of intimidation and, if necessary, by a scorched earth campaign in East Timor after the vote. The deterrence element of Plan A was provided by confidential representations to Indonesian government and military leaders: 'We know about TNI's plans to intimidate and punish Timorese pro-independence voters. The international community, and especially the United States, won't allow human rights to be abused in this way. TNI must abandon these plans or there will be international sanctions against Indonesia.'¹⁵⁰

7.101 Mr Kevin said Plan A failed because TNI leaders assessed that Australia lacked international backing to deliver on its warnings. Even if the East Timorese were to vote for independence, TNI leaders still thought they could keep East Timor in Indonesia by force. They knew Australia would not go to war with Indonesia over East Timor. They were confident that their supporters in Washington would not allow the United States to become engaged in support of Australia on such a minor issue as East Timor against their strategic partner, Indonesia.¹⁵¹

7.102 According to Mr Kevin, Australia's Plan B rested on a harder logic. Even if the TNI, despite all the warnings, implemented the scorched earth policy after East Timor voted, it would not finally matter. Once the vote was cast for independence, any major TNI or militia violence would generate so much international human rights based outrage that this would compel the United States Government and the United Nations Security Council to exert the necessary pressures to force the TNI to accept the voters' decision as, in fact, happened.¹⁵²

148 Nancy Viviani, 'Australia Indonesia Relations—Past, Present, Future', presented at 'Indonesia Update' seminar, Australian National University, 25 September 1999.

149 Mr Kevin, *Committee Hansard*, 10 April 2000, p. 1031.

150 Mr Kevin, *Committee Hansard*, 10 April 2000, p. 1032.

151 Mr Kevin, *Committee Hansard*, 10 April 2000, p. 1032.

152 Mr Kevin, *Committee Hansard*, 10 April 2000, p. 1032.

7.103 Plan B was the fall-back plan for the worst-case scenario. The Government had prepared for this worst-case scenario long before the vote. Some of these preparations were also consistent with plan A. Examples were lobbying for a large UN presence in Timor to witness the vote, and to build a United Nations constituency for honouring its outcome; sensitising international media to the East Timor story, and building international media and NGO support for Timor as a human rights issue - the CNN factor. There was, finally, the readying of Australian Defence Force bases for rapid deployment of Australian soldiers to East Timor as soon as international diplomatic cover was in place.¹⁵³

7.104 Mr Kevin's Plans A and B, although containing some elements of truth, appear too Machiavellian for DFAT and the Government to have created and implemented them in the way that Mr Kevin put them to the Committee. It is not the only theoretical framework that could be constructed to fit the facts.

7.105 It was put to Mr Kevin that, as it was the United Nations, in conjunction with Portugal and Indonesia, which decided the poll would take place, and not a decision to which Australia was party, he was therefore attributing too much responsibility to the Australian Government and its advisers in the process. Mr Kevin responded that, in a technical sense, it was correct that the agreement was signed on 5 May 1999 by the United Nations, Indonesia and Portugal to a United Nations vote under Indonesian security. 'However', he said, 'in a real sense it is acknowledged by Mr Howard and Mr Downer that Australia was driving the process forward from February when our government decided to throw its weight behind Habibie's decision to go for a 1999 referendum ... We were recognised as having expertise on Timor, and the United States, the United Nations and Portugal were very much listening to Australia when they made their agreement with Indonesia during May'.¹⁵⁴

7.106 This view was at variance with that of Dr Harold Crouch, who said to the Committee, with regard to the question of whether Australia should have accepted the 5 May agreement, which gave authority over internal security in East Timor to the Indonesian army:

My reaction to that is: Australia was not a party to that agreement. It was an agreement between Portugal and Indonesia under the auspices of the UN. It was not our business to accept that or not. We could be critical or not. You get the feeling that Australia somehow accepted this fatally flawed agreement. We could not have stopped it.¹⁵⁵

153 Mr Kevin, *Committee Hansard*, 10 April 2000, p. 1032. From April 1999, Special Air Services Regiment and the RAN Clearance Diving Team cells were performing clandestine reconnaissance in East Timor in preparation for a large Australian Defence Force deployment (Ian Hunter, 'Elite forces scouted island from April', *The Sydney Morning Herald*, 11 October 1999; 'Navy divers return home from Timor', *AAP*, 5 December 1999; Max Blenken, 'Collins class submarines in action off East Timor—book', *AAP*, 29 June 2000).

154 Mr Kevin, *Committee Hansard*, 10 April 2000, p. 1034.

155 Dr Crouch, *Committee Hansard*, 20 September 1999, p. 572.

Australia's preparedness to prevent post-ballot violence

7.107 Mr Mark Plunkett, Paxiquest, commented on the post-ballot violence and destruction. He and his colleagues knew from United Nations police (UNCIVPOL) members, who had shot film from hides and seen the TNI and POLRI (Indonesian army and police) supplying weapons to the militia, that it was a well-organised and concerted plan, which had cost a lot of money.¹⁵⁶ They knew from their informants that the militias were being paid. The large amount of associated communications traffic could have been intercepted by signals intelligence services.¹⁵⁷ Mr Plunkett presumed that the pro-independence forces had their own people surreptitiously part of the militia groups, as they had been part of the autonomy campaigning groups.¹⁵⁸ He posed the question, 'how was it that our public sector information gathering services did not find out about it? If they did find out about it, what did they do?'¹⁵⁹

7.108 Mr Plunkett submitted that what took place after the ballot had been calculated and planned.¹⁶⁰ Documents had been published, purportedly leaked from Indonesian sources, which set out the post-ballot plan of violence, destruction and transportation. They had been rejected by Australian and United Nations officials as being 'hysterical and fake'. Events had shown those documents to be accurate. Mr Plunkett referred to the general human tendency to suffer from 'optimistic overconfidence and a failure to look for disconfirming information, to assertively listen', and believed there had been wishful thinking about the outcome of the electoral process, so that the documents, or the public statements of Indonesian Commanding Officer in Dili, Colonel Tono Suratman, to the effect that there would be a scorched earth result, had been overlooked:

I was reassured by UN people, to similar effect, that they were exaggerations. If one reads the statement of the United Nations special representative, Mr Marker, given just a few days before the poll, I was emboldened to believe that the suggestion of a scorched earth or massive retribution was absurd. After all, these people were just voting; it was not an armed insurrection. Who could imagine they deserved the retribution that was wrought upon them? Even now, I suffer from some disbelief, but it has happened.¹⁶¹

156 Mark Davis, *Dateline*, 16 February 2000, reported that at least \$A12 million earmarked for welfare and development in Indonesia was channelled from the World Bank directly to the militias.

157 Professor Desmond Ball has said that 'from the end of 1998, intelligence intercepts produced by the Defence Signals Directorate were providing a very accurate, precise and detailed picture, both of planning for the subsequent holocaust as well as details of the relationship between particular commanders of the Indonesian Army and militia groups and militia leaders in East Timor itself' (*Late Night Live*, 24 July 2000).

158 Mr Plunkett, *Committee Hansard*, 15 September 1999, p. 517.

159 Mr Plunkett, *Committee Hansard*, 15 September 1999, p. 517.

160 Mr Mark Plunkett of the Pax Group, submission no. 92, p. 5.

161 Mr Plunkett, *Committee Hansard*, 15 September 1999, p. 525. The reference to Colonel Suratman was to his statement reported on the Channel 9 *Sunday* program of 30 May 1999: 'There will be a civil war which I imagine will be much worse and more horrifying than what happened in 1975. If the pro-

7.109 Mr Robert Lowry was asked when he thought it would have been reasonable to conclude that, unless there was intervention to stop it, large-scale violence would occur? In his assessment, it was the aftermath of the Liquiça and Dili massacres on 6 and 17 April 1999, after which Prime Minister John Howard went to Denpasar in Bali to meet President B.J. Habibie on 27 April. It had become obvious by then that the Indonesian military was opposed to allowing East Timor to become independent.¹⁶² He thought that one of the great failures on Australia's part was not to mobilise support from the United States in April or May. What was needed was recognition of the fact that Australia had limited resources to persuade the Indonesian military. As the immediate neighbours of East Timor, and of Indonesia, Australia should have mobilised all the global resources that were available on a graduated basis to convince the Indonesian military that it was in their interests to change their policy, to join in and have some ownership of the process. There was a failure to recognise the scale of the problem and to mobilise the international resources that could have been mobilised:

We have only got to look at what has been done since the disaster [following] 30 August to realise what resources are out there and what could have been mobilised. If a quarter of that had been mobilised back in April or May—although nobody can be definite about this—the likelihood is that we would not be facing what we are facing now.¹⁶³

7.110 Mr Lowry was of the view that the Prime Minister's visit to Bali had been an appropriate response, but that high-level political leadership had not been carried through: the Prime Minister from that point appeared to leave the process to the Minister for Foreign Affairs and DFAT. Mr Lowry was also critical of DFAT:

My feeling is that the junior levels in the Department of Foreign Affairs and Trade understood the intelligence and understood what appropriate policies may be. I have a feeling that the middle and senior level leadership of DFAT were still locked in a mind-set of the past where the primary thing from their perspective was to ensure that there was a democratic transition in Indonesia. East Timor was a secondary consideration and they were not prepared to take the measures that were necessary to make sure that the process went smoothly.¹⁶⁴

independents do win, it won't just be the government of Indonesia that has to deal with what follows. The UN and Australia are also going to have to solve the problem. And well if this does happen then there'll be no winners, everything is going to be destroyed. East Timor won't exist as it does now. It'll be much worse than 23 years ago'. The reference to UN Secretary-General's Special Envoy for East Timor Jamsheed Marker was presumably to his statement in Dili on 18 August 1999 that the popular consultation could be conducted peacefully considering the improved security situation in the territory ('UN Envoy says E Timor Ballot can be conducted peacefully', *Antara*, 18 August 1999).

162 Mr Lowry, *Committee Hansard*, 20 September 1999, p. 554.

163 Mr Lowry, *Committee Hansard*, 20 September 1999, p. 556.

164 Mr Lowry, *Committee Hansard*, 20 September 1999, p. 555.

7.111 Mr Bruce Haigh agreed with Mr Lowry.¹⁶⁵ He had not expected the degree of violence which occurred following the 30 August ballot.¹⁶⁶ In an interview on the *Sunday* program, Mr Haigh referred to a blinkered mindset Australian policymakers had always had toward Indonesia, which prevented them from seeing the plan that was conceived by the Indonesian military to sabotage East Timorese independence: ‘It’s a mindset which seeks to sweep unpleasant facts under the carpet. That information that we get out of Jakarta, from a number of sources, not just from our people on the ground, but from other areas as well, we filter it. Or it is filtered in a way which puts the best possible spin to it’.¹⁶⁷

7.112 Professor Hugh Smith was asked on 24 September 1999 whether failure to predict the outbreak of violence following the ballot reflected on the performance of Australia’s intelligence. He responded:

looking at the public record and perhaps reading between the lines, it seems that the intelligence agencies were predicting a very adverse reaction by the militia and TNI before the referendum, so there was no intelligence failure as such. Where problems may have arisen is in the use or the lack of use of that intelligence at the political decision making level. There are suggestions too that the intelligence agencies were asked—pressured—to maybe tone down their warnings for higher political purposes.¹⁶⁸

7.113 Mr Alan Dupont, too, did not believe there had been an intelligence failure leading the Australian intelligence community to not forecast the violence. The intelligence on what was happening in East Timor, while not perfect, was good enough to see what was happening in its essential details. Violence and bloodshed after the ballot was expected. The difficulty was to predict how serious it would be:

Even if your intelligence is 100 per cent accurate, policy makers will use what intelligence they believe is valid, or perhaps supports their predispositions, or whatever. You sometimes get a dilution when the information moves from the intelligence side to the policy process and politicians get involved. It may well be that some of our politicians and policy makers did not quite focus on how serious the post-ballot period might be.¹⁶⁹

165 Mr Haigh, *Committee Hansard*, 3 November 1999, p. 663.

166 Mr Haigh, *Committee Hansard*, 3 November 1999, p. 664.

167 ‘East Timor Betrayed: The price of appeasement’, *Sunday*, 30 May 1999.

168 Professor Smith, *Committee Hansard*, 24 September 1999, p. 594.

169 Mr Dupont, *Committee Hansard*, 24 September 1999, pp. 623-4. Cf. Professor Desmond Ball, Strategic and Defence Studies Centre, Australian National University: ‘I think you had a situation where, back in about March, the intelligence community was alerting the government to the fact that there were very close relationships between the Indonesian military and the militia groups and leaderships in East Timor, and that in the event of an independence poll that was lost, from the Indonesian point of view, there would be widespread massacres, deaths and destruction. The government really didn’t want to hear that back in March/April. It was resisting any moves to set up any peacekeeping force; it was wanting to keep the Indonesian relationship along the sort of cosy lines that Canberra and Jakarta had been working for

7.114 Dr William Maley was critical of:

the failure of Australia and the international community to push with sufficient force for the deployment of a neutral security force before the conduct of the consultation. I think there was a gross underestimation of the importance of a neutral security force. Policy makers both in the UN Secretariat and Australia failed to learn the lesson of Angola in 1992, which was that, if you have a deeply divided society and you lack a neutral security force in a transition process, you run the risk of slaughter on a grand scale. I think we also underestimated our ability its ability as a nation to promote the option of a neutral security force. One frequently hears the statement that the Indonesians would never have agreed to that and that it would therefore have been pointless to promote the option. I think this view was defective on two grounds. Firstly, while our influence in Jakarta was fairly limited as a consequence of our policy settings over a quarter of century, we actually had a lot of leverage and power in terms of the Indonesians because of the economic situation and vulnerability of the Indonesian economy to various forms of pressure. I have no doubt that the reason Indonesia agreed on 12 September 1999 to the deployment of Interfet was that the government had been warned that the rupiah was likely to melt down in the foreign exchanges the following day because of the postponement of the visit by the International Monetary Fund delegation. I think this is a good illustration of the type of miscalculation of the extent to which one could rely on TNI and POLRI to provide security for the conduct of the consultation.¹⁷⁰

7.115 Policy settings were wrong not because of defective individuals so much as organisational culture. Dr Maley explained that a particular view of the world could take root within organisations, and those within an organisation who were not prepared to accept that way of working were marginalised:

I think elements of this were apparent, on the one hand, in a disposition to engage in best case scenario reasoning and, on the other hand—at the worst—to engage in wishful thinking of the dreamiest possible variety, allied with a degree of complacency about what was likely to happen.¹⁷¹

7.116 Dr Damien Kingsbury was of similar opinion on how policy advice became distorted. He said:

I know certainly that a lot of the information given to Foreign Affairs and Defence through their various sources has been reasonably honest and fairly frank in its assessments and that due regard is not always paid to the advice that comes from the people in touch on the ground ... there has been a culture, particularly within Foreign Affairs, for a number of years ... which

previous years, and hence didn't really want to know what the intelligence community was telling it.' (*The National Interest*, 31 October 1999).

170 Dr William Maley, *Committee Hansard*, 11 November 1999, pp. 859-60.

171 Dr Maley, *Committee Hansard*, 11 November 1999, p. 860.

has been very much a case of preserving the relationship with Indonesia at all costs, regardless of other sacrifices. Timor has been one of the things that we have sacrificed in the process of trying to maintain or build good relations with Indonesia ...¹⁷²

7.117 Dr Maley was of the opinion that there was reluctance by Australia to use the weight that it had both as a greater economic power than a number of the regional states and as a power which was capable of deploying a military force which, though small, was of considerable quality and capability. Australia had paid too much attention to not allowing its interlocutors to lose face, which created a situation where the opening gambit of a party bargaining in a negotiation was too readily treated as if it were the bottom line. Any force, government or bargaining partner which was capable of getting the other side to accept their opening gambit as the bottom line was in a very strong position. During the Bali summit, President Habibie had suggested that he would never agree to international neutral forces being deployed in East Timor. At that point, Australia moved back to what was a very defective second option, namely, to deploy civilian police. It was not an appropriate context for civilian police operations. At that time, Indonesia probably needed Australia more than Australia needed Indonesia. Australia had been a generous contributor to economic assistance to Indonesia following the financial crisis, and the Indonesian economy, particularly its floating currency, made Indonesian policy circles vulnerable to external pressure. Yet no serious attempt was made to orchestrate the kind of pressure that would have been needed to get the policy settings right in order to secure the situation on the ground for the East Timorese in the run-up to the ballot.¹⁷³ Dr Maley said:

My sense in the Timor case is that there was plenty of information coming into government suggesting that a disaster was quite likely to occur. In terms of detail about the involvement of TNI with the militias, there were specific statements by militia leaders about exactly what they intended to do if there were a vote for independence rather than autonomy. At some point, this was screened out. The failure was not so much a failure of intelligence gathering in terms of raw data and information but of coming to terms with the implications of the information that was coming in.¹⁷⁴

7.118 Mr Dauth told the Committee that, at the April 1999 meeting between Mr Howard and President Habibie in Denpasar, which was arranged following the killings in Liquiça and Dili, Australia urged that there should be the maximum degree of international participation in the East Timor process: 'But the notion that at that time we would have been able to achieve the sort of international intervention which

172 Dr Kingsbury, *Committee Hansard*, 18 November 1999, p. 947. Cf. Professor Desmond Ball: 'I think that there are some very major questions involved about the influence on intelligence by the policy-making process. In other words, the intelligence assessment process was distorted to make it more consonant with the views of the government here in Canberra. I think that's potentially disastrous in any intelligence collection or assessment process.' *The National Interest*, 31 October 1999.

173 Dr Maley, *Committee Hansard*, 11 November 1999, p. 863.

174 Dr Maley, *Committee Hansard*, 11 November 1999, p. 866.

subsequently occurred with Interfet was, of course, absurd.¹⁷⁵ Subsequently, Mr Dauth explained:

Sovereign governments use whatever opportunities they have to influence each other, but there are limits to that influence. As ministers have said, for example, in respect of the proposition that we should have insisted that a peacekeeping operation be deployed in East Timor earlier than it was, we no more than any other country in the world were prepared to go to war with Indonesia to do that.¹⁷⁶

7.119 At the hearing on 13 August 1999, Mr Dauth told the Committee that the Australian Government at various levels had made representations to the Indonesian Government on about 120 occasions regarding security and violence in East Timor.¹⁷⁷ On 9 December, he admitted that, in light of the Indonesian military's behaviour prior to the ballot on 30 August and the events following it, there was 'not a lot' that could be said in favour of the effectiveness of those representations.¹⁷⁸

7.120 Australia's disinclination toward having an international peacekeeping force in East Timor prior to the 30 August ballot was indicated as early as 25 February 1999 in discussions in Washington between Dr Ashton Calvert, Secretary, Department of Foreign Affairs and Trade, and Mr Stanley Roth, United States Assistant Secretary of State for East Asian and Pacific Affairs. The record of conversation of that meeting indicated that the major point of difference with the United States was on the issue of peacekeeping, with Dr Calvert stating that Australia's position was, 'to avert the need for recourse to peacekeeping' in East Timor.¹⁷⁹ Dr Calvert noted that Australia was planning for a possible military deployment, but he described this as 'a worse case scenario'. Despite Australia's diplomatic efforts during 1999, the 'worse case scenario' was the one which did eventuate, as Mr Dauth admitted at the hearing on 6 December.¹⁸⁰

7.121 Dr Maley characterised the events following the ballot in East Timor as constituting 'the greatest disaster in Australian foreign policy since at least the fall of Singapore in 1942', which required a fundamental reappraisal of the foreign policy process.¹⁸¹ Mr Plunkett said that those events and history required an independent inquiry into Australian public sector failings and shortcomings, and called for a 'full

175 Mr Dauth, *Committee Hansard*, 6 December 1999, p. 1004.

176 Mr Dauth, *Committee Hansard*, 9 December 1999, p. 1026.

177 Mr Dauth, *Committee Hansard*, 13 August 1999, p. 220.

178 Mr Dauth, *Committee Hansard*, 9 December 1999, p. 1026.

179 John Lyons, 'The Secret Timor Dossier', *The Bulletin*, 12 October 1999, p. 27.

180 Mr Dauth, *Committee Hansard*, 6 December 1999, p. 1004.

181 Dr Maley, submission no. 91, p. 1; Cf. the statement by Professor Desmond Ball, Strategic and Defence Studies Centre, Australian National University: 'I believe that we're now witness to the greatest failures in Australian defence policy since the 1960s.' *Four Corners*, 'The Ties that Bind: the story behind the East Timor crisis and how it plunged Australian-Indonesian relations to and all-time low', 14 February 2000.

scale Fitzgerald style inquiry'.¹⁸² Mr Lowry agreed that there should be an investigation of the part that was played by DFAT in the failures of the Australian response to events in East Timor as they unfolded. Apart from political responsibility, which was resolved in the parliamentary process, Mr Lowry thought that there was need for a review of the policy making process within government, not only DFAT but the broader departmental structure.¹⁸³ Dr Kenneth Chan told the Committee on 11 November 1999:

We may never know the total of East Timorese lives that have been lost in the most recent bouts of violence by the militia, but the policies of successive governments and policy advisers in Australia to foment relations with Indonesia has for too long caused us to overlook or brush aside the enormous injustices that were inflicted on the people of a territory whose only crime was to continue to struggle for independence after a forced occupation and absorption in 1975.¹⁸⁴

7.122 At the hearing on 6 December 1999, Mr Dauth declined the Committee's invitation to respond to these and other criticisms directed against the Department of Foreign Affairs and Trade during the inquiry.¹⁸⁵

7.123 At the same hearing, Mr Dauth was invited to comment on a statement by Dr Calvert in his discussions with Mr Roth that, 'one of the central themes to achieving a resolution was to convince Timorese that they had to sort themselves out and to dispel the idea that the UN was going to solve all the problems while they indulged in vendetta and blood-letting'.¹⁸⁶ Mr Dauth was asked why, given the fact that the Government was already well aware of the TNI's role in organising and arming the pro-integrationist militias, it put such an emphasis on the need to persuade the East Timorese to 'sort themselves out'? In response, Mr Dauth said:

I think that it is worth recalling in this context that the East Timorese have sorted themselves out and did so during the early part of this year in a very impressive sort of way. The CNRT represents a very recent coalition in body politic which has been traditionally very fractious and I think that the interests of the East Timorese people have been advanced very significantly by the way in which East Timorese leaders have been prepared to put differences aside.¹⁸⁷

7.124 At the next hearing on 9 December, it was drawn to Mr Dauth's attention that the CNRT had been formed on 27 April 1998, and had been operating for almost a

182 Mr Plunkett, submission no. 92, p. 5; *Committee Hansard*, 15 September 1999, p. 524.

183 Mr R. Lowry, *Committee Hansard*, 20 September 1999, p. 555.

184 Dr Chan, *Committee Hansard*, 11 November 1999, p. 832.

185 Mr Dauth, *Committee Hansard*, 6 December 1999, p. 1005. The Department also declined to respond to Mr Tony Kevin's submission at the hearing on 10 April 2000.

186 John Lyons, 'The Secret Timor Dossier', *The Bulletin*, 12 October 1999, p. 25.

187 Mr Dauth, *Committee Hansard*, 6 December 1999, p. 1004.

year by the time of the Calvert-Roth discussions. When he was asked again why the Government had put such emphasis on the need to persuade the East Timorese to sort themselves out, in view of its awareness of the TNI's role in organising and arming the pro-integrationist militias, Mr Dauth explained that it was important because, 'the greater measure of cooperation during the course of this year amongst East Timorese leaders has been of benefit to them'.¹⁸⁸

7.125 The Committee expressed dissatisfaction with the reluctance of the Department of Foreign Affairs and Trade to be more definitive with the information it had provided during the inquiry, especially with providing confirmation on matters that were common knowledge, such as the involvement of the TNI with the militias. In response, Mr Dauth said:

I will not give the Committee a definitive answer on the basis of inadequate information. At the time when I answered that question, the information was inadequate. The information was both inadequate as to clarity and more than adequate in terms of volume. We have had available to us all of this year an enormous amount of information on every day, and we have had to make careful judgments for ministers about the likelihood of various assessments about that information. One of the truly irritating things, both as a public servant and as a citizen, about this appalling increase in leaking recently is that it relates to documents that include assessments with which I might well not have agreed at the time. They are assessments made on the basis of inadequate information ... I gave the Committee an answer that day which was the best answer I could give on that day.¹⁸⁹

Australian policy in retrospect

7.126 Mr Dunn said that, after the Indonesian invasion in December 1975, although there were constant reports coming out of East Timor of killings, rape and destruction, there was never any protest coming from the Australian Government or even from the Opposition, particularly while it was led by Mr Whitlam:

It is important to understand that the army got away with murder, and it built up an expectation that it could carry out quite oppressive, brutal operations in East Timor without being exposed to the international community—as were other countries at the time. I believe that not only helped to develop an attitude of confidence that should not have developed, but also made the military become even more brutal because it could do things like that and get away with it. It was not until the 1991 massacre that it was exposed because some journalist happened to be there. Even though we did respond, it was not really strongly critical.¹⁹⁰

188 Mr Dauth, *Committee Hansard*, 9 December 1999, pp. 1028-9.

189 Mr Dauth, *Committee Hansard*, 9 December 1999, p. 1026.

190 Mr Dunn, *Committee Hansard*, 24 September 1999, p. 602.

7.127 Mr Lowry agreed that it had been bipartisan policy and the stance of senior bureaucrats in Australia for about forty years that eventually East Timor would be incorporated within a broader Indonesia. 'But', he said, 'the fact that they have buried their heads in the sand for the last 20-odd years will not change the fact that it was always going to be a problem for Indonesia, right from day one.' Mr Lowry pointed to Mr Pritchett's advice in 1975 that there had been established a sense of East Timorese identity which was going to be very difficult for the Indonesian army to overcome: 'Then, of course, right from day one the brutality of the Indonesian invasion ensured that that was just reinforced and there was going to be a continual problem. There was never any indication in all of that time that this problem would be overcome. They developed a sort of Baltic mentality right from day one, basically, and that was never able to be swept away in any sense'.¹⁹¹

7.128 Dr Kenneth Chan, who, as an officer of the Department of Foreign Affairs, had been closely involved in Australian policy toward Indonesia and East Timor, told the Committee:

For almost 25 years Australian policy towards Indonesia has chosen to accept the Suharto regime's version of the truth and to place the larger relationship with Indonesia ahead of any pursuit of a legitimate right of self-determination for the people of East Timor.¹⁹²

7.129 Mr Whitlam agreed at the hearing on 6 December 1999 that, as East Timor was now gaining its independence, in hindsight the decision not to oppose an Indonesian takeover of East Timor appeared to have been wrong. He also agreed that decisions were made in the context of the time. He said:

What I said in 1975 and what I said in 1982 was completely correct. I went all around East Timor in 1982 and there was no risk at all, but I do believe that from then on the position deteriorated. The turning point, of course, was the massacre in Dili. Thereafter, it was pretty clear that the Indonesian military had overplayed their hand. It was no surprise to me that, when the opportunity arose, the number of people who enrolled was about 98 per cent and that the number who turned up of those enrolled was 78.5 per cent in favour of independence. There was no doubt by that stage. That would not have been the position, I would think, in 1982, but things did change after that ... Massacres can make a change, in Ballarat or in Dili.¹⁹³

7.130 Mr Evans commented:

191 Mr Lowry, *Committee Hansard*, 20 September 1999, p. 555.

192 Dr Chan, *Committee Hansard*, 11 November 1999, p. 831. 'From my own observations, Dr Kenneth Chan, the Australian representative in the [UN] Fourth Committee, was deeply involved with the Indonesians in running the plan to endeavour to defeat the resolution on East Timor that was before the body', Professor Roger Clark, *Committee Hansard*, 24 September 1982, p. 1402.

193 Mr Whitlam, *Committee Hansard*, 6 December 1999, pp. 987-8.

In international relations, as in most other areas, you can do no more than play the cards you have been dealt. In the circumstances that prevailed up to the economic crisis of 1997, the Labor Government played every card it had as effectively as it could. The fact that Australia has now been dealt a greatly improved hand, and is now more able to help advance the self-determination and more general human rights agenda in East Timor, should not prevent us from recognising the many constraints that prevailed in the past.¹⁹⁴

7.131 Mr Don Willesee was interviewed following the publication of *Australia and the Indonesian Incorporation of East Timor, 1974-76*, and commented:

I wanted, you know, not to give any encouragement to Indonesia at all. I think it was a mistake [to emphasise our relationship with Indonesia at the expense of the independence or self-determination of the East Timorese]. I knew undoubtedly that our attitude of independence, of self-determination would offend the Indonesians. I knew that it would jar relationships but they would just have to be rehabilitated later on which they have to do now. You know you can't just go on sacrificing everything for good relations.¹⁹⁵

7.132 Because successive Australian Governments had placed great emphasis on building a strong relationship with the Indonesian regime, said Dr Chan, they treated lightly its repressive record on human rights, its financial corruption and the brutal record of its military forces. This meant that Australia was too light-handed when it came to responding to specific incidents of military violence in East Timor, whether it was the shooting of innocents, forced detention, torture or rape. Even when the world learnt with revulsion and horror of the Dili massacre in 1991, Australia officially excused the regime by saying that this was, 'the aberrant behaviour' of a 'subgroup', thereby conveniently overlooking the harsh record of a military regime that had policed East Timor through terror and intimidation for sixteen years.¹⁹⁶

7.133 In 1999, Dr Chan said, there was a similar tendency to give the Indonesian regime the benefit of the doubt in the way the Australian Government handled the mounting evidence that senior Indonesian military figures, including General Wiranto, were directly linked to the Indonesian army's support for the militia in East Timor. When asked about whether the militia were being armed, the Minister for Foreign Affairs, Mr Downer, had responded that it was not 'official Indonesian government policy', nor was it being 'condoned by General Wiranto'. Instead, he suggested that there might be 'rogue elements' in the military who were 'providing arms to pro-integrationists'. Mr Downer had said the Indonesian military 'weren't arming paramilitaries', and that it was not 'official Indonesian policy.'¹⁹⁷

194 The Hon. Gareth Evans, QC, MP, submission no. 21, p. 6.

195 'Australia's insistence on maintaining good relations', *AM*, 13 September 2000; 'Australia's stance on 1975 E. Timor invasion "a mistake"', *The Canberra Times*, 14 September 2000.

196 Dr Chan, *Committee Hansard*, 11 November 1999, p. 832.

197 Dr Chan, *Committee Hansard*, 11 November 1999, p. 832.

7.134 Dr Chan stated that the record of the Indonesian regime ever since Soeharto came to power in the brutal massacres of 1965 had been one of repression. Australia had been mistaken in giving too much emphasis to stability in the sense of control, without being too worried about that process. Australia had said that this was necessary in the interests of a stable Indonesia, but that was a mistaken approach to have taken.¹⁹⁸ He concluded that Australia had to get rid of the burden it had put on its own shoulders in policy terms in being too accommodating towards the Indonesian regime. Australia needed to look at specific situations in the country and ask honestly, if these were democratic processes that emanated from people feeling they had been hard done by, and if so then those processes had to be allowed to work themselves out.¹⁹⁹

7.135 Mr Haigh was of the opinion that Australia did not have to go to Jakarta and make up to the Indonesians: 'We have nothing to make up for. It was the TNI, and the Indonesian government which condoned it, that carried out the massacres in East Timor. Until they acknowledge what they have done I do not see that we can have a normal relationship with that country. It is not good for us and it is not good for them. If they are going to move down the track of becoming a fully mature member of the international community, they have to acknowledge what they did. What they did was horrific and they should not be allowed to get off the hook by anybody. It has harmed Australia to play up to this regime in this sort of way'.²⁰⁰ He said, 'you have to have a bad relationship with Indonesia before it can get any better. Otherwise, what you have is a relationship which is never going to get out of the hole that it is in'.²⁰¹

7.136 In Mr Haigh's view, the relationship over the previous 25 years had not been based on a sound footing: 'it was never going to be a soundly based relationship for as long as we kept backing off in the face of the sort of activities that the Indonesian military carried out and that the government of Indonesia condoned'.²⁰²

Conclusion

7.137 Ever since the mid-1970s, there has been a thread running through East Timor policies of Australian Governments of all political persuasions; that greater emphasis be placed on relations with Indonesia at the expense of East Timor. Until the latter part of 1999, all governments have publicly played down reports of human rights abuses in the territory. They were prepared to accept Indonesian Government assurances and explanations, and support them, even in the face of other contradictory evidence. Even in the early part of 1999, the Australian Government, at least publicly, did not associate the TNI, other than 'rogue elements' with the militias, despite considerable evidence to the contrary, including the Government's own intelligence

198 Dr Chan, *Committee Hansard*, 11 November 1999, p. 833.

199 Dr Chan, *Committee Hansard*, 11 November 1999, p. 834.

200 Mr Haigh, *Committee Hansard*, 3 November 1999, p. 665.

201 Mr Haigh, *Committee Hansard*, 3 November 1999, p. 667.

202 Mr Haigh, *Committee Hansard*, 3 November 1999, p. 665.

information. Despite the disingenuous approach taken by Australia towards East Timor over the period of the Indonesian occupation, it remained a thorn in the side of successive Australian Governments.

7.138 The East Timorese people, having been colonised by the Portuguese for four centuries, had a different heritage to the rest of the Indonesian people. Having had a taste of freedom in 1975, they were not prepared to accept Indonesian rule and, hence, their prolonged resistance. The brutal military regime that controlled East Timor over the next 25 years only served to reinforce their desire to throw off the Indonesian yoke.

7.139 Once almost 80 per cent of East Timorese cast their votes for independence, despite severe intimidation by pro-Indonesian militias, aided and abetted by the TNI, that act of self-determination rendered continued Indonesian control of East Timor as unsustainable. The subsequent horrendous violence and destruction wreaked on East Timor by the militias and the TNI made international military intervention an inevitable and pressing requirement. Despite initial Indonesian political resistance to Interfet's intervention, the Indonesian Government finally succumbed to international pressure to allow Interfet to enter East Timor to secure the territory for a United Nations transitional authority and eventual East Timorese independence.

7.140 The Interfet force, which conducted its operations in a very disciplined and restrained way, completed its difficult task with very few casualties on both sides. It was a very creditable and professional performance by all participating troops.

7.141 The denial of self-determination to the East Timorese people in 1975 has now been rectified, albeit at a huge cost for both the East Timorese people and Indonesia. Australia and other countries, including the United States, the members of ASEAN, the Permanent Members of the Security Council and Japan, that either countenanced Indonesian incorporation of East Timor or only paid lip service to East Timorese self-determination, came out of this long affair with little credit, although Australian leadership of Interfet did restore some of its credibility.

7.142 Ironically, when, ultimately, Australia was forced by circumstances to change its policy towards East Timor, it was blamed by Indonesia for its loss of East Timor, resulting in a downgrading of the bilateral relationship, which Australia's earlier disingenuous policy towards the territory had been aimed at propping up.