

The Parliament of the Commonwealth of Australia

EAST TIMOR

**FINAL REPORT OF THE
SENATE FOREIGN AFFAIRS, DEFENCE AND TRADE
REFERENCES COMMITTEE**

December 2000

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TERMS OF REFERENCE

That the following matters be referred to the Senate Foreign Affairs, Defence and Trade References Committee for inquiry and report by 21 October 1999:

- (a) economic, social and political conditions in East Timor including respect for human rights in the territory;
- (b) Indonesia's military presence in East Timor and reports of ongoing conflict in the territory;
- (c) the prospects for a just and lasting settlement of the East Timor conflict;
- (d) Australia's humanitarian and development assistance in East Timor;
- (e) the Timor Gap (Zone of Cooperation Treaty); and
- (f) past and present Australian Government policy toward East Timor including the issue of East Timorese self-determination.

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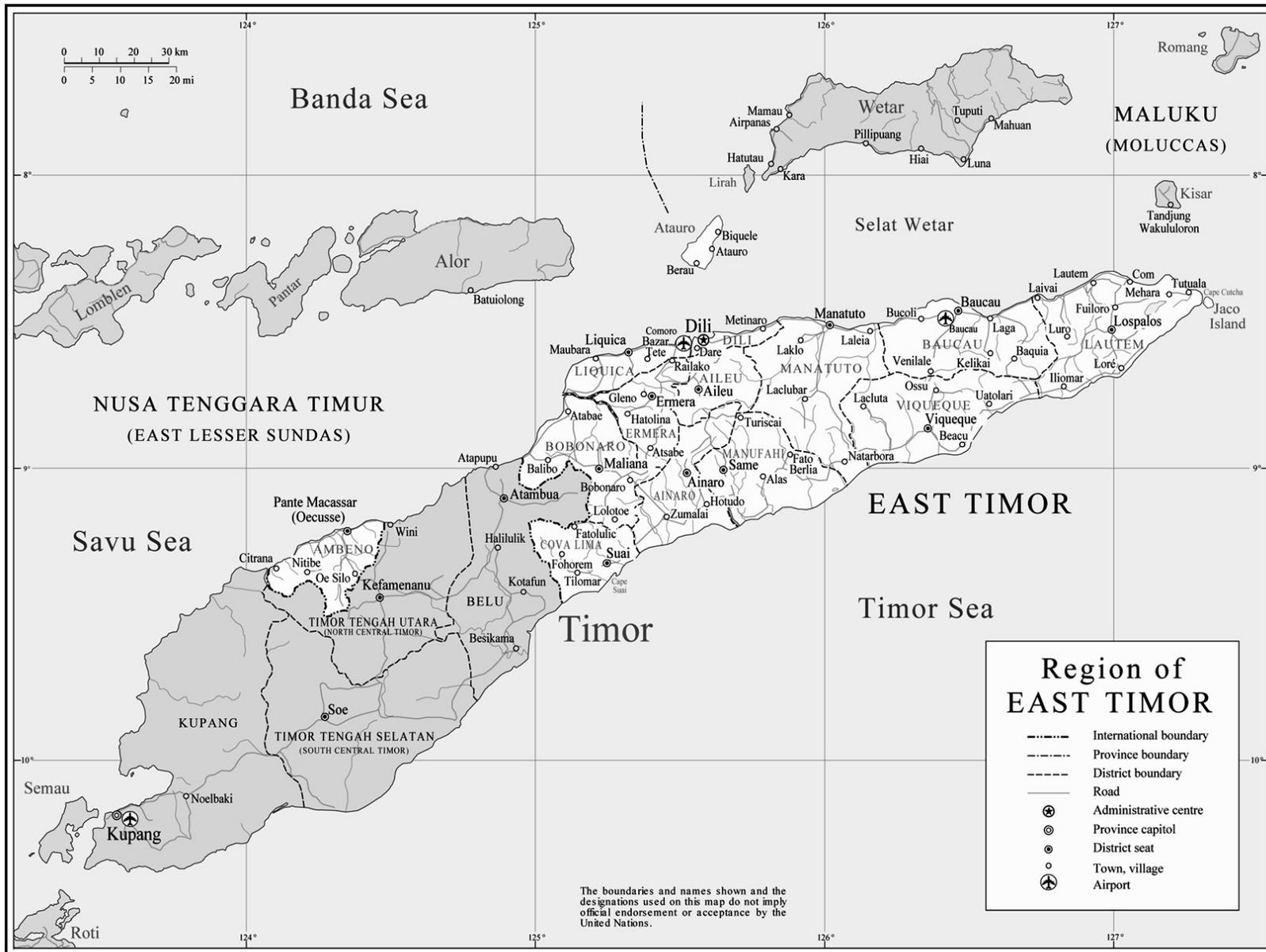
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CHAPTER 1

INTRODUCTION

1.1 The Senate referred the matter of East Timor to the Committee on 30 November 1998. As a first step, the Committee advertised the inquiry in the national press and called for written submissions to be lodged with the Committee. A total of 101 submissions was received, details of which are contained in Appendix 1. The Committee began conducting public hearings on 19 July 1999.

1.2 In view of the dynamic and dramatic events that took place in East Timor in September 1999 following the popular consultation, the Committee presented an interim report to the Senate on 30 September 1999. In that report, the Committee presented its conclusions and recommendations on matters that it believed should not be held over to the end of the inquiry.

1.3 Subsequently, the Committee continued its hearings, the final one being held on 10 April 2000. Details of the hearings are contained in Appendix 2. The Hansard transcripts of evidence taken at the hearings are available on the Internet (<http://www.aph.gov.au/hansard/>).

1.4 The Committee had wanted to visit East Timor to see for itself the destruction wrought after the popular consultation and to speak to Interfet and local authorities. However, the Committee's application to visit East Timor was rejected by the President of the Senate. One member of the Committee and one participating member, who contributed to the inquiry, visited East Timor on two occasions, once as an election monitor and the other time with another parliamentary committee.

1.5 The popular consultation, as stipulated by the 5 May 1999 tripartite agreement signed by Indonesia, Portugal and the United Nations, took place on 30 August 1999 and, in contrast to the militia violence which had preceded it, was marked by a remarkably peaceful atmosphere, high voter turnout and efficient organisation. The result of that ballot was announced on 4 September, with 78.5 per cent of East Timorese voting for separation (in effect, for independence) rather than for autonomy within Indonesia. The announcement of the ballot result was followed by the outbreak of a campaign of violence and destruction across East Timor.

1.6 In the days after the announcement of the result of the popular consultation, the Indonesian military put into operation plans to transport large numbers of East Timorese to West Timor and other parts of Indonesia. This was accompanied by an unrestrained rampage of killing, looting and burning throughout the territory by the militias, encouraged and assisted by the regular armed forces and police. An undetermined number of independence supporters, including their children, were

murdered.¹ The rest of the population, estimated to be 600,000 by the Red Cross, fled to the mountains, leaving the burnt out remains of Dili and other towns and villages deserted.² By 26 September, the East Nusatenggara refugee co-ordination centre in Kupang had registered 232,672 East Timorese in West Timor.³

1.7 This premeditated action by the militias and the TNI was in breach of the undertaking, given by the Indonesian Government in the agreement of 5 May 1999 with Portugal and the United Nations, to preserve peace and security in East Timor in the interim phase between the conclusion of the popular consultation and the start of the implementation of its result, regardless of the outcome, and to guarantee the security of the personnel and premises of UNAMET (United Nations Assistance Mission to East Timor).

1.8 The United Nations Security Council passed resolution 1264 on 15 September 1999, with the co-operation of the Indonesian Government. Resolution 1264 established Interfet (International Force for East Timor) with a mandate to restore peace and security in East Timor and to facilitate humanitarian assistance operations. Interfet, under the command of Major General Peter Cosgrove, deployed to Dili on 20 September and progressively expanded its territorial coverage, until by mid-October it had established a presence across all of East Timor, including the Oecusse enclave.

1.9 On 19 October 1999, the Indonesian People's Consultative Assembly (MPR - *Majelis Permusyawaratan Rakyat*) voted to formally renounce Indonesian sovereignty over East Timor, and on 20 October Kiai Haji Abdurrahman Wahid was elected President of Indonesia following the resignation of President Dr B.J. Habibie. The following day, Megawati Soekarnoputri was elected Vice-President.

1.10 On 25 October 1999, the United Nations Security Council passed resolution 1272 establishing UNTAET (United Nations Transitional Administration in East Timor). Interfet continued to maintain peace and security throughout East Timor while UNTAET began the task of establishing a civil administration and building the institutions of government. Mr Sérgio Vieira de Mello, the United Nations Transitional Administrator and the Secretary-General's Special Representative, took up duties in East Timor on 19 November. Responsibility for maintaining peace and security was transferred according to schedule from Interfet to UNTAET on 23 February 2000. Major General Cosgrove handed over responsibility for fulfilling the United Nations military mandate to UNTAET force commander, Philippines Lieutenant General Jaime de los Santos.

1 Mr Mark Plunkett, *Committee Hansard*, 15 September 1999, pp. 516-7.

2 Toni Pfanner, head of the International Committee of the Red Cross, Jakarta, 19 September 1999.

3 Mark Riley, Mark Dodd and agencies, 'They're free to go home, Alatas vows' *The Sydney Morning Herald*, 29 September 1999.

1.11 Interfet achieved its mandate in East Timor. There was very little loss of life. Interfet itself suffered no losses in action of force members' lives in spite of operating in a difficult and occasionally hostile environment. Its only casualties were a New Zealand soldier killed in a vehicle accident and an Australian soldier who died of illness. By the end of October 1999, peace and security had largely been restored to all of East Timor, including the Oecusse enclave. Humanitarian assistance agencies were able to move freely throughout the territory, and the work of reconstruction had begun. In this respect, Interfet had fulfilled its obligations as set out in Security Council Resolution 1264, 'to restore peace and security in East Timor, to protect and support UNAMET in carrying out its tasks and, within force capabilities, to facilitate humanitarian assistance operations'.⁴

1.12 This was a significant achievement in view of the situation in early September 1999. That this outcome was achieved with a minimum use of force was a tribute to the professionalism and dedication of the leadership and members of Interfet. They conducted themselves to the highest military standards and, in a short time, achieved outstanding results.

1.13 While Australia took a pivotal role in assembling and leading Interfet, it was a fully regional and international effort. Interfet had defence force contingents from 20 states deployed or committed, including key regional states such as Thailand and the Philippines, as well as others including Brazil, Kenya, Jordan, New Zealand, France, Fiji and the United Kingdom and the United States. Although Japan was not able to participate in Interfet owing to constitutional limitations, it greatly facilitated the participation of developing countries through its \$US100 million contribution to the Interfet trust fund.

1.14 The role played by Indonesia must be noted. The indefensible shortcomings of Indonesia's response to events in East Timor in the immediate post-ballot period have been well documented. But, after agreeing to the passing of Security Council Resolution 1264, Indonesia took some important steps to facilitate the establishment of an independent East Timor. As Interfet established its presence in East Timor, Indonesia withdrew its troops. The independence vote in the MPR was taken in a dignified manner without rancour or bitterness. Initial problems over management of the border region were resolved co-operatively, and Indonesia's own Human Rights Commission, Komnas-HAM, showed determination to investigate the events surrounding the ballot.

1.15 Australia's relationship with Indonesia suffered significantly as a result of developments in East Timor, although much working level contact of direct benefit to both sides proceeded relatively unaffected. Mr John Dauth, Deputy Secretary of the Department of Foreign Affairs and Trade (DFAT) told the Committee that:

4 Budget forecasts of the net cost of sending Australian troops to East Timor were: 1999-00 - \$897 million; 2000-01 - \$898 million; 2001-02 - \$721 million; 2002-03 - \$679 million; 2003-04 - \$686 million; United Nations total reimbursement - \$372 million. Total net cost to Australia \$2,984 million. *Budget papers*, 9 May 2000, reported by AAP.

We are confident that, over time, the relationship could be rebuilt. But the Government's view is very clearly that this will only be done on the basis of mutual effort and mutual benefit. In the future that relationship will be stronger, in our view, for the fact that it will not constantly be undermined by East Timor in the way in which it was for the past 25 years.⁵

1.16 The situation of the displaced East Timorese remaining in West Timor continued to be the most pressing humanitarian problem. The Government of Indonesia indicated that those wishing to return to East Timor should be able to do so, but there was clear evidence that militias were still intimidating refugees. The United Nations, Australia, the United States and many other countries have pressed Indonesia strongly to bring the militias under control and promote secure access to all refugee camps in West Timor.⁶

1.17 An agreement on the definition of the border signed on 12 January 2000 reduced the likelihood of unintended infringements. On 11 April, General Jaime de los Santos and the Indonesian Commanding Officer in West Timor, Major General Kiki Syahnakri, signed a memorandum of understanding on border issues regarding security, boundary crossing, passage of refugees, humanitarian assistance and related matters. General de los Santos said that this agreement was 'a continuation, a transfer, of the excellent relationship which TNI and Interfet enjoyed ... It will result in a far stronger understanding of each other's position and a much improved ability to work together in the border areas'.⁷

1.18 Although a significant number of East Timorese have returned to East Timor, about 120,000 remain in refugee camps in West Timor. Continued oppression, harassment, intimidation and a campaign of disinformation by East Timorese militias have restricted the flow of refugees back to East Timor. Despite many undertakings by the Indonesian Government to restrain militia activity, the Indonesian military and police in West Timor have done little to comply. In fact, militia violence increased during the year, culminating in September 2000 with the deaths of three United Nations humanitarian staff in Atambua, which resulted in the withdrawal of all United Nations humanitarian staff from West Timor. Although aid workers have not yet returned to West Timor, there is evidence of Indonesian authorities taking a firmer line with the militias.

1.19 The positive attitude of the East Timorese leader, Mr José Alexandre 'Xanana' Gusmão and the new Indonesian Government towards reconciliation has been encouraging. Geographic and economic realities dictate that Indonesia and the new state of East Timor become good neighbours.

5 Mr Dauth, *Committee Hansard*, 6 December 1999, p. 991.

6 Mr Dauth, *Committee Hansard*, 6 December 1999, p. 991.

7 UNTAET briefing, 11 April 2000.

1.20 The scale of damage to essential infrastructure in early September 1999 was massive. Between 60 and 80 per cent of public and private property throughout the country was destroyed.⁸ It is difficult enough for any 'less developed' country to begin its life as a newly independent state, let alone one that has been denuded of many of its essential facilities, services and housing. Therefore, capacity building has been a key challenge in East Timor. UNTAET has been undertaking a massive task in this respect and key aid donors, including Australia, have played their part.

1.21 The establishment of a civil administration in East Timor has been another challenge. Initially, much of the effort was devoted to security and the restoration of peace. With that goal largely achieved, the focus turned to developing the civilian administration and establishing the institutions of government. Australia welcomed Mr Vieira de Mello's intention to consult and work closely with Xanana Gusmão and other representatives of the East Timorese people in preparing East Timor for full independence.

1.22 The future of East Timor will be in East Timorese hands and, in the meantime, UNTAET, the United Nations assistance agencies, bilateral donors and non-government organisations must assist them to make the most effective use of humanitarian and reconstruction assistance, and to guide them in making the best possible decisions about East Timor's political and economic future. The resolution of the many complicated issues in building an East Timorese nation will take time, patience, goodwill and expertise. Australia has been participating in the overall development planning co-ordinated by the World Bank and the United Nations, and working closely with UNTAET and the East Timorese people.⁹

1.23 The burden of restoring peace and security to East Timor, and of building an independent state is one for the international community as a whole to share, especially those states which have a history of involvement with East Timor and its aspirations for independence.

1.24 As required by its terms of reference, the Committee also examined Australian policy towards East Timor, mainly from about 1974 onwards. The Committee noted the early release in September 2000 of selected documents relating to East Timor from the period 1974-76 from the files of the Department of Foreign Affairs and Trade and the Department of the Prime Minister and Cabinet. As mentioned at the outset of the inquiry, the Committee did not examine the matter of the deaths of five Australian and British journalists at Balibo, East Timor, in October 1975.

8 Barry Wain, 'Will Justice be served in East Timor?', *The Asian Wall Street Journal*, 17 April 2000.

9 Mr Dauth, *Committee Hansard*, 6 December 1999, p. 992.

CHAPTER 2

ECONOMIC AND SOCIAL DEVELOPMENT

The East Timor economy¹

2.1 The Indonesian withdrawal from East Timor in September 1999, accompanied by a campaign of violence, killings, massive looting and destruction of property and infrastructure, forced transportation of large numbers of people to West Timor and the flight of most of the rest of the population from their homes, left the East Timor economy in ruin. This section, therefore, largely describes the economy as it was prior to the Indonesian withdrawal, the remains of which must serve as the foundations for the economy of an independent East Timor.

2.2 DFAT submitted that East Timor has always been principally a subsistence economy. Much economic activity occurred through barter, which was not captured in GDP figures. Economic statistics for East Timor were scarce and unreliable, as was detailed information about economic activity. DFAT stated that:

Preliminary figures from the Indonesian Government Bureau of Statistics (BPS) indicate that East Timor's 1998 GDP was Rp1405 billion (\$US148 million) using an average annual exchange rate of for 1998 of Rp9514/\$US. GDP per capita was approximately \$US168 in 1998.

Largely reflecting conditions before the Indonesian economic crisis, East Timor's GDP (at current market prices) in 1997 was Rp996 billion (\$US343 million). East Timor's GDP accounts for a tiny 0.15% of Indonesia's national GDP.

According to the BPS, per capita GDP was Rp1.1 million (\$US379) compared with a national GDP per capita of Rp3.1 million (\$US1,068). According to the World Bank's *World Development Report (1997)*, only five African countries have a lower GDP per capita than East Timor's post-crisis \$US168 per capita. Pre-crisis figures would still place East Timor amongst the lowest 30 countries in the world.

In spite of the economic crisis, the Government reported positive GDP growth for East Timor in 1997 and 1998 (4% and 0.6% respectively). Indonesian Government statistics indicate that between 1987 and 1997, economic growth averaged 10%, compared to the national figure of 6.8%.²

1 This section, unless otherwise indicated, is drawn from the Department of Foreign Affairs and Trade and AusAID submission, no. 52, pp. 25-31. A similar presentation on the economy of East Timor was made by João Mariano Saldanha, Executive Director, and Helder da Costa, Director, Economy and Technology, East Timor Study Group, submission no. 70.

2 DFAT, submission no. 52, p. 25.

2.3 According to BPS, East Timor's GDP in 1997 was dominated by five production categories, as follows:

Agriculture	Rp335 billion	33.6 per cent
Public administration and defence	Rp198 billion	19.8 per cent
Construction	Rp180 billion	18.0 per cent
Wholesale/retail trade	Rp77 billion	7.8 per cent
Road transport	Rp72 billion	7.2 per cent

2.4 There was little government investment in agriculture and most farming was small-scale/subsistence. Other major sectors, particularly administration and defence, were dominated by government budget outlays, with roughly 50 per cent of the GDP being derived from government expenditure.

Budgetary assistance from Jakarta

2.5 Inadequate Indonesian Government statistics made it very difficult to establish the exact level of budgetary assistance East Timor received from Jakarta. According to then Foreign Minister Alatas, East Timor received \$US50-100 million per annum in budget allocations and the province only generated seven per cent of its own budget revenues. About a third of Government budget documents for 1999-2000 gave a breakdown by province and, from these, it was possible to verify approximately \$US59.8 million (Rp449 billion) in revenues for East Timor. Using a combination of that figure and best estimates for the remaining part of the budget, East Timor's allocation from the national budget was probably about \$US122 million (Rp917.5 billion). Establishing the actual, as opposed to budgeted, disbursement of funds to East Timor was even more difficult, although probably it was significantly less.³

2.6 The provincial government's budget, which did not have a direct correlation with line items of the national budget, indicated that the vast majority of East Timor's funding was centrally sourced. Local income accounted for only 8.6 per cent of the provincial budget.

2.7 In a newspaper article dated 25 February 1999, Mr Horacio Cesar, a spokesman for Portuguese Foreign Minister Jaime Gama, was quoted as saying that:

Mr Gama had been surprised to see that the current budget was 'approximately that of a largish Portuguese municipality'.

3 DFAT, submission no. 52, p. 26.

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.⁴

International aid

2.8 No figures were available on total foreign aid or NGO spending on East Timor. Australia was the largest bilateral aid donor to East Timor, with an aid budget of approximately \$7 million for 1998-99.

Investment

2.9 Private investment spending in East Timor since integration had been negligible: less than one per cent of total national domestic investment approvals and only around 0.02 per cent of total foreign investment approvals over that period. The actual investment level would have been substantially lower as, nationally, only an average of 30 per cent of approvals were implemented. One Indonesian Government report cited total realised investment in East Timor in the last 23 years had been no more than \$US102.2 million.⁵

2.10 The Indonesian Chamber of Commerce and Industry (Kadin) tried unsuccessfully to stimulate investor interest in East Timor, especially in mining. Credit expansion remained very low and was concentrated in small-scale (less than 10 workers) trading ventures and construction.

Employment

2.11 It was difficult to estimate unemployment or underemployment rates in East Timor. Indonesian Government statistics indicated an 'open' or visible unemployment rate of 3.5 per cent, though underemployment was likely to be much higher, and a labour force participation rate in 1997 of 61 per cent.⁶

2.12 Professor Hugo noted the relatively low levels of unemployment indicated by the statistics, and explained that unemployment in East Timor—as throughout Indonesia—was not really an indicator of poverty, 'because in Indonesia to be unemployed you have to be wealthy, because if you are not employed you have to undertake any sort of work, regardless of how low it is in productivity, how low it is in status, how many hours you have to put in'.⁷

2.13 DFAT submitted that:

4 Jill Joliffe and Louise Williams, 'Old colonist Portugal throws financial lifeline to E Timor', *Sydney Morning Herald*, <http://www.smh.com.au/news9902/25/text/pageone12.html> (18 June 1999)

5 DFAT, submission no. 52, p. 26.

6 DFAT, submission no. 52, p. 27.

7 Professor Hugo, *Committee Hansard*, 19 July 1999, p. 62.

Despite the low numbers of educated youth, unemployment amongst this group was an increasing problem due to limited employment opportunities. A 1992 survey of 15-29 year olds in East Timor concluded there was over 11% unemployment in this age group province wide, reaching 29% in Dili. According to Indonesian Government statistics, in 1996 76% of the 362,000 workers in East Timor were employed in the agricultural sector. Employment in services, including government, trade, hotels and restaurants accounted for a further 20%. Construction was the next largest sector of employment and manufacturing and mining accounted for less than 4%.⁸

2.14 The indigenous workforce in East Timor is largely unskilled, a factor which, with the departure of large numbers of skilled non-East Timorese professionals, such as teachers, pose enormous human resource problems, with negative effects on all areas of future development, including education, the economy and government administration.

Agriculture

2.15 Land use rates in East Timor were low, with agriculture limited by steep and rocky terrain, poor soil fertility and low rainfall through much of the province. Farming was also disrupted by ongoing security problems. Despite significant improvements over the previous decade, East Timor's rice yield was the lowest in Indonesia and crop yields for all other crops (maize, cassava, sweet potato, soybean and peanuts) were amongst the lowest in Indonesia.

2.16 Rural communities in East Timor were almost entirely subsistence oriented; 1980 figures indicate that 94 per cent of households outside the Dili district (and 87 per cent province wide) sourced their food from 'own production'.

Food security

2.17 East Timor, like the neighbouring province, Nusa Tenggara Timur, was a food deficit region. Food shortages were seasonal and the Indonesian Government's State Logistics Agency, Bulog, distributed rice in East Timor under its special market operations, as it did throughout Indonesia. In 1998, Bulog reportedly distributed 50,000 tonnes of rice.

2.18 Nevertheless, East Timor regularly experienced periods of food shortage. The poor security situation and lack of infrastructure meant that links between production areas and markets were easily disrupted, making Dili, in particular, susceptible to food shortages and high prices.

2.19 An AusAID fact-finding mission to East Timor in March 1999 found that while food supplies in East Timor were at that time adequate, ongoing localised shortages continued to occur as the result of distribution difficulties.

8 DFAT, submission no. 52, p. 27.

Coffee

2.20 Although the coffee industry declined significantly with the departure of the Portuguese, production of high grade organic arabica coffee (which attracted a premium of 40 per cent over international prices) was still East Timor's most successful cash crop. It was the major income source for between one-fifth and one-third of the population, with coffee production in 1999 estimated to reach 13,000 tons and earnings to reach around \$US12 million. Coffee was exported to the United States, Australia, New Zealand, Italy and the Netherlands. Coffee yields were relatively low and the industry significantly underdeveloped, hamstrung by a shortage of plantation workers and the effects of low prices commanded by the coffee monopoly PT Denok during much of the 1980s and 1990s. Industry experts thought there was a significant potential to expand the industry. It was estimated that with rehabilitation of existing plantations and the conversion of another 40,000 hectares to plantation (currently 55,000 hectares), production could triple within a decade and yield up to \$US50 million per annum in profits.

2.21 East Timor's coffee industry, its only source of foreign exchange, was seen by UNTAET as the key to rebuilding the devastated economy.⁹ The territory's coffee was produced almost entirely by some 17,500 small holder farmers.¹⁰ It was the territory's largest commercial industry. The 1999 coffee harvest largely survived intact, although about 600 tonnes worth about \$A1.8 million was looted from warehouses in Dili. Most of the harvest was stored and could be removed from storage and processed, although only by 'dry' processing, as the equipment for the more profitable 'wet' processing was destroyed. The industry is expected to recover quickly.

2.22 USAID had provided assistance to the coffee industry by establishing, in 1994, the non-profit National Co-operative Business Association (NCVA) to buy and process the coffee.¹¹ The estimated harvest for the year 2000 was 8,000 tonnes, worth around \$A30 million. The Norwegian Government made a grant for road works to enable the crop to be taken from the prime growing area around Ermera to Dili.¹² At the insistence of the IMF, from 14 March 2000, an export tax of five per cent was imposed on coffee as part of the initiation of a tax and financial system for the country.¹³ The impost was opposed by the World Bank and most of the National Consultative Council, on the ground that it was regressive and an added obstacle in the process of rebuilding East Timor's rural economy.¹⁴

9 Shawn Donnan, 'Coffee is the key', *The Financial Times*, 5 April 2000.

10 Wilson da Silva, 'Timor Ire at Coffee Tax', *Australian Financial Review*, 29 February 2000.

11 Mr Dawson, *Committee Hansard*, 6 December 1999, p. 997.

12 Mark Dodd, 'Fine coffee offers sweet smell of trading success', *The Sydney Morning Herald*, 28 February 2000.

13 UNTAET press briefing, 'UN establishes East Timor's first tax system', 14 March 2000; Eduardo Lachica, 'East Timor creates a financial system', *The Wall Street Journal*, 16 March 2000.

14 Wilson da Silva, 'Timor Ire at Coffee Tax', *Australian Financial Review*, 29 February 2000; Shawn Donnan, 'Coffee is the key', *The Financial Times*, 5 April 2000.

Livestock

2.23 Historically, livestock had been an important source of rural wealth in East Timor. Livestock holdings, particularly of cattle and pigs, fell substantially after 1975 and had never fully recovered.

Fisheries

2.24 Small-scale fishing was not widespread amongst the East Timorese, who were not traditional seafarers, with an estimated 400-700 tons produced per annum. According to Indonesian Government estimates, East Timor had the potential to produce 630,000 tons of fish and marine produce from 102,000 square kilometres of coastal and EEZ waters. However, large-scale fishing would need additional port infrastructure.

Other commercial crops

2.25 There were small-scale areca nut, candlenut and kapok plantations in East Timor. Rubber had been grown in small quantities in the past. Other possible commercial cropping opportunities included coconuts, vanilla, cashew nuts, cloves, abaca palm, pineapple and aquaculture.

Mining and energy

2.26 Mining has been restricted to sand and stone quarrying for the construction industry and accounted for only one per cent of East Timor's GDP. However, past geological surveys have indicated promising deposits of manganese, marble, copper, gold, silver, iron, oil, natural gas and coal. Marble quarrying was also a possibility.

Timor Gap oil

2.27 This topic is dealt with in Chapter 4.

Manufacturing

2.28 The manufacturing sector in East Timor accounted for just three per cent of GDP in 1997, mainly concentrated in very small scale handicraft production (weaving), food processing (coffee, salt and bakeries) and the construction industry (bricks, tiles). The best prospects for expansion were in resource-based processing activities, especially focused on estate crops, such as coffee and coconuts.

Infrastructure and construction

2.29 DFAT submitted that:

The Indonesian Government has invested considerable effort in developing infrastructure in East Timor—including irrigation, roads, bridges, water supply systems, schools, housing improvements and waste/garbage disposal.

The Indonesian Government has spent approximately \$A18.8 million since integration on public works.¹⁵

2.30 Additional information provided by DFAT showed that the amount of \$18.8 million was up to 1992. Nevertheless, this was a paltry sum spent on infrastructure over a period of 17 years.

2.31 According to DFAT, East Timor had some 2,700km of asphalted roads. There was a sealed coastal road, which circled most of the province and sealed roads linking Dili with all the district centres. The roads, including those into West Timor, were capable of taking heavy vehicles. However, many of the roads were of poor quality and were regularly washed away in the wet season.

2.32 East Timor had six airports; the Dili (Comoro) airport was usable by C130 and passenger aircraft as well as helicopters but was limited by its pavement, which was rated unsuitable for high-pressure type aircraft. There were three very small ports; Dili, Com and Hera. Dili port could not accommodate ships over 100 metres in length, eight metres in draft and over 5,000 dead weight tonnes; it had a berthing limit of 180 metres, which would make it difficult to berth even two ships at once. Improvements to shipping services in East Timor had been difficult because of the limited infrastructure and lack of profitability of small trading volumes.

2.33 The 1990 population census showed that only 16 per cent of households in East Timor had electricity. An AusAID report noted that in 1997, 80 per cent of urban households and 20 per cent of rural households had electricity. Outside of Dili, electricity was generated by diesel generators using fuel heavily subsidised by the Indonesian Government, as elsewhere in Indonesia. Prior to September 1999, there were 60 power stations in East Timor: by August 2000, 30 were back in operation after the destruction that accompanied the Indonesian withdrawal.¹⁶

Services

2.34 There was not a significant indigenous mercantile class in East Timor and some 75 per cent of the formal economy was controlled by non-indigenous residents, including ethnic Chinese, Bugis and Makassans. Historically, traders had been non-indigenous migrants and most services (shops, banks, utilities, transport) were staffed by non-East Timorese.

Financial services

2.35 Although there were several banks, both national and local, the banking sector was dominated by the government-owned Regional Development Bank. Financial services were almost completely controlled by non-East Timorese. The Portuguese

15 DFAT, submission no. 52, p. 29.

16 *UNTAET Daily Briefing*, 14 August 2000.

Banco Nacional Ultramarino was the first bank to re-open in East Timor after the Indonesian withdrawal when it opened in Dili on 29 November 1999.¹⁷

2.36 The United States dollar was established by UNTAET as the official currency for East Timor on 24 January 2000. Following a decision at a special session of the National Consultative Council, East Timor's Central Payments Office, the forerunner of a central bank, was established on the same date. The Indonesian rupiah was also recognised as currency for a transitional period.¹⁸

Transport services

2.37 Outside Dili, transport facilities were limited to local buses and minibuses. Merpati was the only carrier flying to East Timor and operated several flights per week between Jakarta and Dili via Bali and flights between Kupang and Dili. Bus and boat services to West Timor and elsewhere in the archipelago were also available.

2.38 On 25 January 2000, Air North Regional Pty Ltd began the first commercial airline service between Darwin and Dili, with eleven return flights a week.¹⁹ Qantas subsidiary Airlink began regular flights in May, and Merpati has resumed flights to Dili from Kupang and Bali.²⁰

Telecommunications

2.39 Basic telecommunications and postal services were available, including fax and Internet services. The East Timor Postal Service was re-opened on 28 April 2000.²¹

Media

2.40 East Timor had television and radio services, a daily newspaper *Suara Timor Timur*, and a weekly newspaper, the *Timor Post*. The office and printing plant of *Suara Timor Timur* were destroyed by the militias before the 30 August 1999 ballot, and no newspapers were published from then until 21 January 2000, when the first issue appeared of *Lalalok* (Mirror), a photocopied weekly newspaper published in Tetum.²² By August 2000, *Suara Timor Timur* had been revived as *Suara Timor Loro Sae*.²³

17 Ian Timberlake, 'Portuguese bank opens first operations in ruined East Timor', *Agence France-Presse*, 29 November 1999.

18 UNTAET Publication Information Office press briefing, 24 January 2000.

19 'Australian company starts Darwin-Dili commercial air service', *Dow Jones Newswires*, 19 January 2000.

20 'Qantas to fly to Timor four times a week', *AAP*, 14 April 2000; 'Qantas flies into East Timor', *Associated Press*, 4 May 2000.

21 *UNTAET Daily Briefing*, 1 May 2000; Mark Dodd, 'Post office's stamp of success', *The Sydney Morning Herald*, 4 May 2000.

22 Arnold Zeitlin, 'East Timor Press Struggles to Emerge', *The Freedom Forum Online*, 21 February 2000.

23 *UNTAET Daily Briefing*, 14 August 2000.

Retail

2.41 East Timor's retail sector was small and rudimentary and consisted mainly of small family-owned shops.

Tourism

2.42 Prior to 1975 there had been a small but successful tourism industry centred on a weekly flight from Darwin to Baucau. East Timor had some good beaches, and Portuguese-style villas in cooler mountain temperatures were also an attraction. Although an estimated several thousand visitors from Australia travelled to West Timor annually, most bypassed East Timor and went on to destinations elsewhere in Indonesia. The hotel industry had survived in East Timor during the Indonesian period by catering for travelling officials and NGO workers. Tourism is regarded as a potential source of income for East Timor. There has been speculation about the establishment of a casino to attract visitors.

Conclusion

2.43 Under Portuguese and then Indonesian rule, the East Timorese economy had little opportunity to develop its potential. In fact, coffee, the main cash crop, became less profitable under Indonesian rule than it had been under the Portuguese. Widespread illiteracy and poverty are still formidable barriers to economic development but, with international support, they can be overcome. Oil revenues will also in the longer term provide East Timor with regular income. It is inevitable that East Timor will be dependent for a long time on foreign aid. However, provided that security issues can be resolved and competing political factions can work together in the interests of the country, East Timor should ultimately realise its economic potential.

2.44 Although foreign investment will play an important role in East Timor's economic development, care will need to be taken to ensure that such investment is in the interests of the nation and its people. With the new nation struggling to find its feet after a long and painful birth, it is likely to be subject to commercial exploitation if government does not take steps to prevent it.

Land tenure

2.45 Dr Robert Murfet drew attention to the importance of giving priority in reconstruction to establishing who owned what land: 'You can very quickly regress back into a state of disarray when you have arguments about who owned what back through history'.²⁴ On 28 April 2000, Mr Vieira de Mello said the records of property and land ownership were badly damaged during the post-ballot violence in September 1999. 'Land acquisition is one of our nightmares. There are no records of who owns what and where.' Mr de Mello said UNTAET had sought the assistance of the Indonesian and Portuguese Governments to re-establish the records, and that an

24 Dr Murfet, *Committee Hansard*, 15 September 1999, p. 524.

Independent Land and Property Commission would be set up to address the problem: 'Without this, it's difficult to invite foreign investments. Once this is settled and the current security is maintained, we will invite businessmen from Malaysia and from the region to invest in East Timor.'²⁵

2.46 On 22 May 2000, Australian barrister and former Northern Territory Chief Magistrate Ian Gray accepted an offer to run UNTAET's Land and Property Commission, with the task of designing and implementing a system to resolve disputes and claims over land. His six-month term was effective from the beginning of June. Mr Gray, a former Commissioner on the Council for Aboriginal Reconciliation between 1995 and 1997, said his brief was to, 'achieve certainty in relation to land ownership, occupation and use' as soon as possible. 'This will necessarily involve wide and deep consultations with the East Timorese people as to the systems which have traditionally and customarily operated in both the country and the towns and what they want to operate from now on,' he said. 'Implicit in the job is that the sooner there is certainty over land, the sooner there will be economic stability and the opportunity for greater job creation.'²⁶

2.47 At the hearing on 18 November 1999, Mr Abel Guterres indicated that the claims to ownership over extensive real estate by former President Soeharto and his family would not be recognized by a government of independent East Timor.²⁷ CNRT policy on this issue had been announced in March 1999 in Dili by CNRT Vice President David Ximenes, who said that properties acquired illegally after Indonesia's 1975 invasion would be given back to the people of East Timor.²⁸ At the same time, Mr Xanana Gusmão made clear that land legitimately acquired by foreigners would be protected, a policy he reaffirmed in Jakarta on 1 May 2000.²⁹

Health

2.48 Professor Graeme Hugo drew attention to the official Indonesian statistics on mortality, which showed that the life expectancy at birth in East Timor was lower than elsewhere in Indonesia. The latest figures, for 1996, put life expectancy at birth in East Timor at 59 for males and 62 for females, in each case about five years lower than the Indonesian average. About 10 per cent of babies died in their first year, an indication of very low standards of living for the people in the area.³⁰

2.49 The level of fertility in East Timor, at 4.4 per woman in 1997, was substantially higher than the Indonesian national average. The comparable figure for Indonesia at that time was 2.7. The proportion of women using family planning was

25 'UNTAET wants to restore Timor land records', *Malaysian National News Agency*, 28 April 2000.

26 David Nason, 'Barrister to rule on who owns Timor's land', *The Australian*, 23 May 2000.

27 Mr Guterres, *Committee Hansard*, 18 November 1999, p. 936.

28 Lindsay Murdoch, 'Soeharto family to Timor lands', *The Age*, 30 March 1999.

29 'Gusmao Calls on Indonesians to Invest in East Timor', *Asia Pulse*, 1 May 2000.

30 Professor Hugo, *Committee Hansard*, 19 July 1999, p. 55.

lower in East Timor than in any other province of Indonesia. The high fertility was one of the major factors in the very rapid growth in population.³¹

2.50 All of the major indicators of poverty showed East Timor at or near the bottom of the list of Indonesian provinces. The percentage of the population that died before they reached the age of 40 was significantly higher in East Timor than in Indonesia as a whole. The illiteracy rates were by far the highest. The percentage with access to clean water was low but at about the Indonesian national average. There was more difficulty in getting access to medical facilities and there was a higher proportion of infants with low levels of nutrition. In the basic variables for which the Indonesian Government collected statistics, East Timor was at or near the bottom in every indicator. The only other comparable province was nearby West Nusa Tenggara.³²

2.51 AusAID told the Committee that the pattern of health problems in East Timor reflected its high poverty levels. The common diseases were respiratory infection, malaria, influenza, diarrhoea, tuberculosis and skin problems. Infant and maternal mortality rates were among the highest in Indonesia. While there were many health centres, their quality and location meant they were under-used. AusAID warned early in 1999 that without significant donor support, rural health services were likely to deteriorate with the departure of non-East Timorese health staff (particularly doctors) who predominated at district level and above.³³ The Mercy Hospital for Women said that the dominant causes of death during 1995 were infectious diseases: tuberculosis (15.7 per cent), malaria (11.8 per cent), diarrhoea (5.9 per cent), urinary and respiratory tract infection (5.9 per cent) and broncho-pneumonia (4.1 per cent).³⁴

Australian assistance

2.52 AusAID had not given much direct support for health in East Timor. Australia's main contribution in this field had been through water and sanitation projects. An AusAID-funded water supply and sanitation project significantly increased access to water and sanitation facilities in 150 villages. AusAID estimated that the percentage of the population with access to water and sanitation facilities in 1999 was 66 per cent and 55 per cent respectively.³⁵

2.53 The major health problems were mostly related to water and sanitation. In 1993, the Indonesian Government estimated that 53 per cent of the population in East Timor did not have access to safe water. Most districts (30.7 per cent) obtained their water from running springs. Access to clean water in rural areas was particularly bad, although the percentage of people with access to running water in the Dili district had

31 Professor Hugo, *Committee Hansard*, 19 July 1999, p. 56.

32 Professor Hugo, *Committee Hansard*, 19 July 1999, p. 60.

33 AusAid, submission no. 52, p. 17.

34 Mercy Hospital for Women, submission no. 65, p. 5.

35 Department of Foreign Affairs and Trade and AusAID, submission no. 52, p. 23.

also decreased in recent years. Although 45.8 per cent of the East Timorese population had access to private sanitation facilities, 43 per cent did not have adequate sanitation.³⁶

2.54 In 1999, AusAID was funding (\$A1.6 million) only one project—technical assistance in support of the Indonesian National Tuberculosis Program in East Timor and Flores Island from June 1998 to June 2001. Activities included training health workers, public information, community outreach and operational research in tuberculosis drug resistance.³⁷

National Tuberculosis Program in East Timor

2.55 On World Tuberculosis Day, 2 March 2000, UNTAET stated that tuberculosis was one of the major public health issues in East Timor. The World Health Organization estimated that between 10,000 and 15,000 people in East Timor were infected with tuberculosis. This estimate was calculated after the evacuation of East Timorese to Darwin in September 1999. At that time, it was established that three per cent of evacuees from different age groups carried the disease. The National Tuberculosis Program of East Timor resumed in February 2000 under co-ordination of the Interim Health Authority and combined an immunization program and a program of treatment of infectious cases. As at 24 March 2000, 557 patients had begun treatment in Dili, including 161 who were smear positive. In the other regions, there were fewer than 50 tuberculosis cases registered. According to the Program, it was expected that all the regions would have clinics or hospitals equipped to work on tuberculosis by the end of the year 2000.³⁸

Conclusion

2.56 Poverty, lack of clean water and sanitation, military oppression, inadequate health facilities and a lack of medicines and drugs all contributed to widespread health problems and a lower life expectancy for the East Timorese people. Health has always been a priority task for UNTAET. Although establishment and staffing of medical clinics and hospitals will help to treat health problems, fundamental improvements in health will not be achieved until the underlying socio-economic problems, which contribute significantly to poor health within the East Timorese community, are resolved.

36 Department of Foreign Affairs and Trade and AusAID, submission no. 52, p. 23.

37 AusAid, submission no. 52, p. 17.

38 *UNTAET Daily Briefing*, 24 March 2000

Table 4.1: National Indicators of poverty, 1999

	East Timor		Indonesia	
	1990	1995	1990	1995
Percentage of population dying before age 40	22.7	18.5	15.2	12.3
Percentage of adults illiterate	59.8	54.5	18.5	14.5
Percentage with poor access to clean water	50.5	44.7	54.7	52.8
Percentage greater than 5 km to medical facilities	20.3	31.1	14.0	10.6
Percentage of infants with poor nutrition	55.4	47.4	44.5	36.1

Source: Professor Graeme Hugo, submission.

Table 4.2: Indonesia and East Timor: Health indicators

	East Timor	Indonesia
Access to health facilities (%)	68.9	89.4
Access to clean water (%)	55.3	47.2
Calorie consumption per day per person	1856.9	2019.8
Children with under nutrition (%)	47.4	36.1
Anaemia among pregnant women (%)	48.0	63.5
Medical officer present at birth (%)	17.9	48.2
Comprehensive immunisation (%)	21.7	41.7

Source: *Laporan Pembangunan Manusia Indonesia*, 1996.

Education

2.57 Professor Graeme Hugo told the Committee that, in East Timor, the nought to four age group made up 18 per cent of the total population in 1990, compared to only 11.7 per cent in Indonesia and 7.5 per cent in Australia. The number of children coming into the school age groups at a time of great disruption and a lack of services represented a huge challenge for future development.³⁹ Given the importance of human resource development as a fundamental element of economic and social development, Professor Hugo argued that this should be a priority area for Australian aid to an independent East Timor.⁴⁰

2.58 The rates of illiteracy were very high for all age groups. In Indonesia as a whole, illiteracy was mainly concentrated in older age groups. But, in East Timor, a fifth to a quarter of young adults were illiterate; four or five times more than in the rest of Indonesia. There were few schools during the Portuguese period so Indonesia had started from a very low base. Nevertheless, statistics for 1992 showed two-thirds of East Timorese had not completed primary school. East Timor was conspicuous in terms of the very low proportions of those aged seven to 18 going to school. This was due partly to the residual effect of poor education provision over a long period of time but, even in 1998-99, the actual number going to school was very low.⁴¹

2.59 AusAID told the Committee that illiteracy rates in East Timor were high at 56 per cent of women and 39 per cent of men. After 1975, Bahasa Indonesia had been the sole medium of instruction and communication, following a ban on the use of Portuguese and local languages in schools and throughout the administration. Despite this, according to an AusAID report, in 1997, only 65 per cent of the population were conversant in Bahasa Indonesia.⁴² The vast majority of teachers prior to Indonesia's withdrawal in 1999 were non-East Timorese, who left before or after the 30 August 1999 ballot. By then, high schools were much more affected than the primary schools because high school teachers had been predominantly drawn from other parts of Indonesia.⁴³ The training needs of East Timor were vast and spanned basic primary, secondary and tertiary levels, vocational training, training for government administrators and upgrading for teachers and medical personnel.⁴⁴

Australian assistance

2.60 Australian educational assistance to East Timor prior to September 1999 had been a sub-set of the development assistance program for Indonesia. Education and training assistance to Indonesia had been mostly directed at the tertiary level. A 1997 Program Planning Mission concluded that a move into basic education would be

39 Professor Hugo, *Committee Hansard*, 19 July 1999, p. 59.

40 Professor Hugo, *Committee Hansard*, 19 July 1999, p. 60.

41 Professor Hugo, *Committee Hansard*, 19 July 1999, p. 61.

42 Department of Foreign Affairs and Trade and AusAID, submission no. 52, p. 21.

43 Ms Tate, *Committee Hansard*, 3 November 1999, p. 635.

44 AusAID, submission no. 52, p. 18.

appropriate. This was both because of the extent of structural change under way in this sector, and the magnitude of Indonesia's needs. In response to this recommendation, a Basic Education Adviser was placed in Nusa Tenggara Timor (Kupang), with responsibility for identifying activities for possible AusAID funding in that province and East Timor. The Partnership for Skills Development, with an Australian budget of \$A3.4 million, was to run from July 1998 to June 2003 to provide East Timorese with a range of training opportunities, especially vocational training.⁴⁵ Future aid interventions were to focus on basic education and vocational training.⁴⁶

2.61 The Second Indonesia Australia Polytechnic Project, with an Australian budget of approximately \$A30,000, ran from January 1992 to January 1997 and supported a number of polytechnics in Indonesia, including the one in Dili. Activities included upgrading teaching facilities, course development and teaching practice development.⁴⁷

2.62 Since 1994, eleven students from East Timor had been awarded scholarships under the Australian Development Scholarships program, which provided post-graduate scholarships for Indonesian students to study in Australia.⁴⁸

2.63 APHEDA (Australian People for Health, Education and Development Abroad) had supported education projects in East Timor since July 1998 in alliance with the Mary MacKillop Institute for East Timorese Studies.⁴⁹ The MacKillop Institute literacy program, *Mai Hatene Tetun*, had the capacity to be the foundation program for the teaching of reading and writing in Tetum, the most widely used indigenous language.⁵⁰ The program had been initiated in 1994 at the request of Bishop Ximenes Belo. By mid-1999, it had been established in 42 diocesan schools of the Dili diocese. The teachers who were teaching it had co-operated in two workshops. The program had been completed to the end of year three, the first three years of school. Preparations were in train for completing the programs for years 4, 5 and 6. The program included teachers' manuals and teachers' notes. The teacher training component was important as there had been no teacher training for primary education in Timor for some time. It was envisaged that a secondary school program would also be produced. UNICEF had shown interest in the program.⁵¹

2.64 Sister Susan Connelly of the MacKillop Institute said that, although it had not yet been decided as to which languages would be used in schools, Tetum would be one of those used because it was the language of two-thirds of the population and it was understood throughout East Timor. Tetum had been chosen for that reason from

45 AusAID, submission no. 52, p. 18.

46 AusAID, submission no. 52, p. 18.

47 AusAID, submission no. 52, p. 18.

48 AusAID, submission no. 52, p.18.

49 APHEDA, submission no. 67, p. 1.

50 Mary MacKillop Institute for East Timorese Studies, submission no. 59, p. 12.

51 Sister Connelly, *Committee Hansard*, 3 November 1999, p. 686.

among the fourteen other languages spoken on the island.⁵² The stories for the literacy program were written by Timorese people, in Timor and in Australia. Because it was an unwritten language much work was required to decide questions of vocabulary, grammar and spelling.⁵³

2.65 All the basic materials and publications, including artwork and text, that had been produced for the Tetum literacy development program; that is, school books for grades 1 to 3 prepared by the Mary MacKillop Institute, were held in Australia. So, although all the publications that had been distributed to the schools in East Timor were destroyed, the program could be revived when the material had been reprinted and redistributed. The teacher training support that had been conducted as part of the program retained its relevance for teachers who were able to return to their schools. In Baucau and in some of the regions in eastern East Timor, the schools had never stopped functioning, in contrast to the rest of East Timor, where there had been such destruction that there was literally not a pencil left.⁵⁴ In the Lospalos and Viqueque regions, most of the schools had been destroyed.⁵⁵

2.66 Whether Tetum, Portuguese, Indonesian/Malay or English would be used in the schools was a fundamental political question for the Timorese leadership.

2.67 On 23 March 2000, UNTAET announced that 92 per cent of East Timorese children who had attended primary school in 1998-99 had returned to school. More than 147,000 children were being taught by almost 6,400 teachers across East Timor. The total number of schools registered by UNICEF stood at 686 (compared to 800 before 30 August 1999). Schools had been rehabilitated with the efforts of UNTAET peacekeeping force, Interfet and the United States Navy. UNICEF and its implementing partners had distributed two hundred and fifty metric tones of roofing materials for primary schools across East Timor. There was no standard curriculum yet in East Timor. Depending on the region, classes were being taught in Tetum, Bahasa Indonesia, Portuguese or English. UNTAET was planning to establish a standard curriculum by October when a congress of teachers was to be held in the territory.⁵⁶ With most of the territory's 140 secondary schools in ruins, higher education had effectively been halted, according to UNICEF.⁵⁷

2.68 Ms Alison Tate, of APHEDA, said that educators and students, with whom she had held discussions in East Timor, had seen English language training as a fundamental vocational need, because the main employers under the Transitional Authority would be the United Nations and international non-government

52 Sister Connelly, *Committee Hansard*, 3 November 1999, p. 686.

53 Sister Connelly, *Committee Hansard*, 3 November 1999, p. 686.

54 Ms Tate, *Committee Hansard*, 3 November 1999, p. 634.

55 Ms Tate, *Committee Hansard*, 3 November 1999, p. 647.

56 *UNTAET Daily Briefing*, 23 March 2000.

57 Mark Dodd, 'Rebuilding Timor's education system', *The Age*, 27 April 2000.

organisations, most of whom spoke English.⁵⁸ Australia had technical expertise to offer in the development of English as a second language and in bilingual education.⁵⁹

2.69 The redevelopment of the education system in East Timor required significant input from the East Timorese who had been involved in the education sector. The CNRT education task force had been considering the development of a new national curriculum at primary and high school levels.⁶⁰ At a political level, there was unwillingness to incorporate an Indonesian curriculum for a high school system. The East Timor Strategic Development Planning Conference, which was hosted by the CNRT in Melbourne in April 1999, had looked at future planning, and adopted as strategic goals the reintroduction of Portuguese language and literacy programs and intensification of the teaching of Tetum.⁶¹

2.70 APHEDA had been approached for technical input from Australian educators for materials, curriculum and teacher training methodology at secondary and primary school levels.⁶² Ms Tate said that UNICEF had already conducted a 'needs' assessment of what would be required for rebuilding or repairs to schools and of the human resources available in regional areas.⁶³

2.71 Some State and Territory Governments have pledged support for the education system in East Timor. On 4 April 2000, the Australian Capital Territory Legislative Assembly committed itself to help repair East Timor's schools. The commitment was made in response to an address to the Assembly by the education spokesman for the CNRT, Fr Filomeno Jacob, on practical ways in which Australian governments could help.⁶⁴

2.72 On 11 August 2000, the Victorian Government pledged significant financial support to help rebuild the education system of East Timor, including sponsoring the first teachers' congress in independent East Timor and providing practical support. Education Minister Mary Delahunty said financial assistance included the provision of a heavy duty photocopier, to be shipped from Darwin, \$65,000 to assist Timorese teachers to attend the congress in Dili, and paper, pens and books for teachers attending the congress. Ms Delahunty said: 'There is a concerted effort from governments around Australia to help create a new education system in East Timor and this initial assistance from Victoria will provide for the launch of a new curriculum. Basically we will be asking the East Timorese what assistance they want,

58 Ms Tate, *Committee Hansard*, 3 November 1999, p. 634.

59 Ms Tate, *Committee Hansard*, 3 November 1999, p. 644.

60 Ms Tate, *Committee Hansard*, 3 November 1999, p. 635.

61 Ms Tate, *Committee Hansard*, 3 November 1999, p. 639; *East Timor Strategic Development Planning Conference Results*, Melbourne, April 1999, pp. 38-9.

62 Ms Tate, *Committee Hansard*, 3 November 1999, p. 639.

63 Ms Tate, *Committee Hansard*, 3 November 1999, p. 647.

64 Emma Macdonald, 'Australian pledge to repair schools', *The Canberra Times*, 4 April 2000

that we can provide.’⁶⁵ Ms Delahunty visited Dili on 12-13 August and met Xanana Gusmão and Education Minister Fr Filomeno Jacob. She said Victoria was considering education aid to East Timor, such as teacher training, school equipment and ‘twin school relationships’. She said her department would examine ways to help the country rebuild its secondary education system.⁶⁶

2.73 Dr Dennis Shoesmith proposed practical ways that the Northern Territory University and Darwin could contribute to the strengthening of the capacity of the East Timorese people to establish a viable society:

The university in Dili has been destroyed, and I acknowledge that a rehabilitation of that institution would mean building it from nothing. But there has to be a university in Dili eventually, because the contribution a university in Dili could make is crucial. One of the things that East Timor will need in the future is a trained, educated population that can contribute to its self-governance and its development.⁶⁷

2.74 Dr Shoesmith argued that the Northern Territory University had advantages in this situation that were not shared by larger universities in southern Australia. It was close to East Timor and there was an East Timorese population resident in Darwin, and the scale of the university in Darwin was appropriate to the rehabilitation of a university in East Timor.⁶⁸ It also offered courses across the whole spectrum, from vocational education and training (VET) to PhDs. In VET training, it already had experience in delivering programs in eastern Indonesia and had collaborative arrangements with universities in Malaysia and elsewhere. A partnership between the university in Dili and the university in Darwin, with staff exchanges, joint projects, the training of the first generation of civil servants, administrators and media people in East Timor, would be a very practical contribution. The university was not able to co-ordinate a large-scale development program to East Timor, but it could co-ordinate aspects of it that would be productive in the long term in helping the East Timor. That would require financial support from Canberra, as the university did not have the financial resources to pay for such programs, but it had the personnel, the infrastructure and the expertise to make useful contributions.⁶⁹

65 ‘Victorian Government helps to kickstart education in East Timor’, Government of Victoria Media Release, 11 August 2000.

66 Mark Dodd, ‘Australian teachers may help in Timor’, *The Age*, 15 August 2000.

67 Dr Shoesmith, *Committee Hansard*, 9 September 1999, p. 442.

68 Dr Shoesmith, *Committee Hansard*, 9 September 1999, p. 441.

69 Dr Shoesmith, *Committee Hansard*, 9 September 1999, p. 442.

Table 4.3: Percentage inhabitants aged 5 years and above according to age group and usual language in the year 1990

Age Group	Bahasa Indonesia	Non-Bahasa Indonesia		Total
		Able to speak Bahasa Indonesia	Unable to speak Bahasa Indonesia	
(1)	(2)	(3)	(4)	(5)
5-9	4.6	38.5	56.9	100.0
10-14	5.1	76.3	18.6	100.0
15-24	8.9	69.3	21.7	100.0
25-49	9.1	37.3	53.6	100.0
50+	1.2	15.9	82.9	100.0
Total	7.0	47.2	45.8	100.0

Source: Biro Pusat Statistik, 1992b.

Table 4.4: Percentage of illiterate inhabitants aged 10 years and above according to age group and sex in the year 1990

Age Group	Male	Female	Total
(1)	(2)	(3)	(4)
10-14	21.8	25.4	23.5
15-19	20.1	29.6	24.5
20-24	29.7	50.2	39.9
25-29	42.1	65.9	54.0
30-34	51.9	77.4	64.4
35-39	65.5	85.8	75.1
40-44	76.1	91.1	83.9
45-49	79.2	91.9	85.3
50+	86.3	93.9	89.9
No response	0.0	20.8	20.8
Total	47.1	63.2	54.9

Source: Biro Pusat Statistik, 1992 b.

Table 4.5: Percentage of population 10 years and above by education and sex

Education	Male	Female	Total East Timor	Total Indonesia
Never been to school	47.1	63.4	55.0	37.6
Not completed primary school	19.4	15.4	17.5	
Primary school	16.0	11.5	13.8	36.2
Lower secondary	8.5	5.9	7.3	12.8
Upper secondary	7.5	3.3	5.5	11.9
Diploma	0.4	0.1	0.3	
Academy	0.5	0.5	0.3	0.6
University	0.6	0.1	0.4	0.3
Total	100.00	100.0	100.0	100.0

Source: Biro Pusat Statistik, 1992.

Conclusion

2.75 It is crucial for the development of the East Timorese community and economy that education be made available to all East Timorese children. It will obviously take time to re-establish schools, not just their physical structures but also the provision of teachers, equipment and curriculum material. It will be through education that the East Timorese will eventually be able to take over all the administrative, technical and professional functions of government in all its manifestations.

2.76 Australian governments and institutions should do all they can to assist East Timor to develop its education system, given possible language constraints. The Committee notes a difference of opinion between the CNRT leadership, who prefer Portuguese for East Timor, and younger East Timorese, who have been taught in Indonesian and who have no knowledge of Portuguese. As mentioned elsewhere in this report, the languages to be used in schools should have the broad support of the East Timorese people.

2.77 Given that illiteracy is widespread in East Timor and that few people have had more than a rudimentary education, education should be made available to teenagers and adults. In fact, their participation should be encouraged. Illiteracy, if not dealt with, will continue the impoverishment of much of the population, which will make it more difficult for the nation to develop a society and an economy able to survive in the modern world.

2.78 Vocational education will also play an important role in the development of the East Timorese economy by giving East Timorese new vocational skills that will broaden their employment options and give them more fulfilling lives.

The rule of law

2.79 From the outset, witnesses emphasised the need for the United Nations administration to establish the rule of law in East Timor.

2.80 On 15 September 1999, Lieutenant General John Sanderson, representing Paxiquest, argued that establishing an effective justice system as a precursor to, or in parallel with, the establishment of government was essential for the success of the international peace operation in East Timor.⁷⁰ He told the Committee:

The Cambodian mission was a paradigm in the sense that this was the first time the United Nations had undertaken that full transition authority role. The object of it was to hold Cambodia in a state of suspense by controlling all the key institutions of governance whilst the Cambodians worked out a new foundation in law for the relationship between the government and society.

I believe it was a very successful operation in terms of the bandaid that was given. But what we failed ... to lay the foundation for the rule of law and justice in Cambodia. So, to all intents and purposes, some people are very satisfied with the governance institutions that have been established in Cambodia and some are terribly dissatisfied because they still have the hallmarks of a one-party state. In other words, the police and judiciary are responsive to the party rather than to the people and the law. There is that flaw in the Cambodian operation. That is the message that we have been trying to get across.⁷¹

2.81 Mr Mark Plunkett, also of Paxiquest, in his submission to the Committee, set out a blueprint for a comprehensive rule of law campaign plan.⁷²

2.82 Drawing on her experience in Cambodia and East Timor, Ms Sue Downie also urged that priority be given to establishing the rule of law. She said that in East Timor, the United Nations will have the opportunity to plan and implement strong

70 Lt. Gen. Sanderson, *Committee Hansard*, 15 September 1999, p. 520.

71 Lt. Gen Sanderson, *Committee Hansard*, 15 September 1999, p. 532.

72 Mr Plunkett, submission no. 92; *Committee Hansard*, 15 September 1999, p. 515.

state building measures in East Timor: ‘without rule of law you cannot build schools, because they will be vandalised. There is no point in training teachers if they are going to be corrupt’.⁷³ Ms Downie recognized that it would be a long, slow process, first adopting rules and laws and training police, court officials, prosecutors, prison officials and officers. It would have to take place in addition to, and perhaps at the same time as, re-establishing and rebuilding the shattered infrastructure. The rule of law had not been established in Cambodia before the departure of UNTAC. East Timor’s leaders would have to address three points which Ms Downie thought Cambodia’s current leaders have failed to do: ‘that is, impunity, nepotism and corruption. This comes back to rule of law. Without rule of law you cannot combat those three issues that have caused such problems in Cambodia’.⁷⁴

2.83 UNTAET has given priority to re-establishing the judicial system. New South Wales Attorney-General Jeff Shaw reported, following a visit to East Timor in April 2000, on the process of establishing a court system to deal independently with criminal and civil cases. He wrote: ‘In light of the pressing need for people with the skills and training, the destruction of court houses, burnt law libraries, scarce resources and multiplicity of languages (the traditional Tetum, Portuguese, English and Bahasa Indonesian), this is a formidable challenge’. UNTAET had reinstated Indonesian law on a transitional basis, as the law which potential judges and legal practitioners, East Timorese men and women educated in Indonesia, understood after a period of 24 years of Indonesian rule. That law was modified so that it did not apply where it conflicted with internationally recognised human rights standards (for example, Indonesian laws in respect of anti-subversion, national security and defence had been abrogated). Capital punishment had been abolished. Eight judges had been appointed to the District Court in Dili, on the basis of a two-year probationary period. Prosecutors and public defenders had also been appointed. They were mostly young, Indonesian-educated lawyers without substantial practical experience who were going through intensive training, with the unavoidable result that the backlog of criminal trials was growing.⁷⁵

2.84 Several witnesses drew the Committee’s attention to the seminal role played by the rule of law in democratic societies and the need to establish at an early date the rule of law in East Timor. There has been criticism of UNTAET for not moving fast enough to give effect to the rule of law, as there has been of other areas of UNTAET’s administration. However, delays are inevitable. In establishing a new nation from the rubble of the post-ballot scorched earth policy of the militias and TNI, it has taken time to put in place a legal system and the appointment and training of personnel who will run it.

73 Ms Downie, *Committee Hansard*, 18 November 1999, p. 959.

74 Ms Downie, *Committee Hansard*, 18 November 1999, p. 960.

75 Jeff Shaw, ‘Establishing rule of law in Dili’, *The Sydney Morning Herald*, 17 April 2000. UNTAET Regulation No. 1999/1 ‘On the Authority of the Transitional Administration in East Timor’, 27 November 1999.

2.85 In a society that was racked with violence for 25 years and where arbitrary arrest, detention, torture, rape and execution of East Timorese people were carried out without regard to the rule of law, it may be difficult, in some cases, for East Timorese to come to terms with the concept of rule of law. It is therefore important for the legal system to gain quickly the respect and support of the population so that people automatically turn to the legal system for redress rather than resort to violence.

Portugal and Portuguese

2.86 Ambassador Justo da Silva told the Committee on 13 August 1999 that Portugal had already set up a commission, which had done preparatory work on civil administration, education and related matters, in anticipation of making a contribution to the United Nations administration in East Timor. He said Portugal accepted that it had obligations and anticipated continuing co-operation with East Timor for a long time, and that it would be in the first rank of international aid donors.⁷⁶

2.87 Following the United Nations and the World Bank meeting on aid to East Timor in Tokyo on 17 December 1999, Portugal pledged \$US50 million to pay for the establishment and running of the territory's new civil service.⁷⁷ During a visit to Dili on 3 December 1999, the Portuguese Foreign Minister, Mr Jaime Gama, announced that Portugal planned to spend 75 million euros on aid to East Timor until 2003, having already spent between 55 and 60 million euros since May 1999.⁷⁸ Mr Gama said at the European Union Foreign Ministers meeting in Luxembourg on 14 June 2000 that Portugal would make \$US100 million available during 2000 as part of the international initiative to reconstruct the territory.⁷⁹ By the end of August 2000, Portugal had become in dollar terms the single most important contributor of aid to East Timor.⁸⁰

2.88 The Banco Nacional Ultramarino was the first bank to re-open in East Timor after the Indonesian withdrawal when it opened in Dili on 29 November 1999, making payments in escudos, which remained a recognized currency in the territory until the United States dollar was made the official currency on 24 January 2000.⁸¹

76 Ambassador Justo da Silva, *Committee Hansard*, 13 August 1999, p. 269.

77 'East Timor chooses Portuguese as official language', *Associated Press*, 14 February 2000. On 12 April 2000, in Dili, a contribution agreement for \$US 50 million over four years to the Trust Fund for East Timor (TFET) was signed by Luis Amado, Secretary of State for Foreign Affairs and Cooperation of the Republic of Portugal, and Jemal-ud-din Kassum, World Bank Vice President for East Asia and the Pacific Region ('Portugal gives \$50 million', *World Bank*, 12 April 2000).

78 'Portugal to Spend Euros 225 Million over next 3 Years, says FM Gama', *Lusa*, 13 December 1999.

79 'Portugal to double East Timor aid', *ABC News Online*, 14 June 2000.

80 Xanana Gusmão and José Ramos Horta, 'New nation has passed the test', *The Australian*, 30 August 2000.

81 Ian Timberlake, 'Portuguese bank opens first operations in ruined East Timor', *Agence France-Presse*, 29 November 1999; Hubert Laverne, 'Portugal moves back into East Timor', *Agence France-Presse*, 3 December 1999; 'Escudo shunned as East Timor demands US dollars', *The News Weekly* (Lisbon), 29 January 2000.

2.89 Prime Minister António Guterres visited East Timor during 22-26 April 2000.⁸² In the course of the visit, Mr Guterres pledged a monthly subvention of 50,000 euros to Falantil, the military wing of the CNRT.⁸³ Defence Minister Castro Caldas announced at a meeting of European Union Ministers in Luxembourg on 13 June 2000 that the Portuguese Navy would send a mission to East Timor to prepare the creation of a naval school and begin crew training for two patrol boats to be provided by Portugal.⁸⁴

2.90 Portugal and Portuguese citizens had been the biggest contributors to the CNRT since its founding, according to an accounting report setting out details of spending by the CNRT since its founding in April 1998. The report was presented by Mr Gusmao to a CNRT congress in Dili on 21 August 2000.⁸⁵ For the financial year 2000, the Portuguese Government provided 240 million of the 300 million escudo CNRT income.⁸⁶

2.91 On 11 February 2000 in Dili, CNRT President Mr Gusmão announced:

We will keep Portuguese as the official language. Our position is clear that the official one will be Portuguese because it is part of our heritage. It is a political decision and the youth have to agree with this. We understand very well the concerns of the youth. If the Portuguese left many years ago, the Dutch would have taken this area and we would have become Indonesia. We have them to thank for our own identity.⁸⁷

2.92 The announcement of the official language came just before Portuguese President Jorge Sampaio visited East Timor. During his visit, from 13 to 16 February, the President discussed reconstruction and security matters with UNTAET, Interfet and the CNRT.⁸⁸

2.93 According to the 1990 population census, only 3,000 East Timorese identified Portuguese as the language spoken at home, although a significantly larger number

82 Heather Paterson, 'Portuguese premier pledges continued support for E Timor', *AP*, 26 April 2000; 'Portuguese PM concerned over future of East Timor', *Agence France-Presse*, 26 April 2000.

83 'Guterres pledges aid to guerillas', *The News Weekly* (Lisbon), 29 April 2000.

84 'Timor gets 10 million euros and Portuguese training', *The News Weekly* (Lisbon), 17 June 2000.

85 'East Timor: Gusmao presents CNRT Accounts for First Time', *Lusa*, 21 August 2000.

86 'CNRT de Lisboa recebeu mais de 300 contos este ano', *Lusa*, 22 Agosto 2000.

87 'Portuguese to be East Timor's official language: Gusmao', *Agence France-Presse*, 11 February 2000; 'East Timor chooses Portuguese as official language', *Associated Press*, 14 February 2000. Mr Whitlam made a similar point, referring to the Papal Bulls *Inter caetera* and the Treaty of Tordesillas: 'There is no question that, but for the arrangement made by Alexander VI and approved by Julius II, each side of 1500, that the island would have been united. It is a pure accident of history that it was separated' (*Committee Hansard*, 6 December 1999, p. 986).

88 UNTAET briefing, 16 February 2000.

understood it and it remained popular among the diaspora. English was not widely spoken, although university graduates more often spoke English than Portuguese.⁸⁹

2.94 Virgilio da Silva Guterres, chief editor of the first independence-era newspaper, *Lalalok (Mirror)*, stated on 21 February:

CNRT keeps Timor Lorosae people in the dark. The people eagerly await to hear CNRT's plans for kick-starting the economy and political reconciliation, but to no avail. To date they have kept silent and have yet to clarify their stance on these important matters. In the case of language and currency, it's clearly the matter of a tiny minority trying to impose their will on the majority. While Tetum is the lingua franca, these political elites insist on Portuguese.⁹⁰

2.95 Mr Gusmão's announcement was in accord with the decision of the CNRT's East Timor Strategic Development Planning Conference held in Melbourne in April 1999, which had adopted the strategic goal of reintroducing of Portuguese language and making it an official language of the new state. The policy demonstrated continuity with the language policy formulated by Fretilin in 1974 in anticipation of independence, that Portuguese was to be retained as the official language.⁹¹

2.96 On 13 February 2000, Mr Vieira de Mello stated in Dili, after meeting President Jorge Sampaio of Portugal, that he expected Portugal and other countries of Portuguese Official Language would have a very important role to play in education. He also noted the anxiety of the youth of the generation, who grew up under the Indonesian administration and were educated in Indonesian. He said that it was necessary, whatever the final decision was on the language of education, that through the mechanism of the National Consultative Council it receive the unanimous support of the Timorese.⁹²

2.97 During an official visit to Brazil, Mr Gusmão received assurances of assistance from President Fernando Henrique Cardoso and the National Council of Brazilian Bishops, including teachers and teaching materials for institutionalization of the Portuguese language.⁹³ Mr Gusmão addressed the assembly of the Community of the Portuguese-speaking Countries (CPLP) meeting in Maputo, Mozambique, on 18 July 2000, which issued a declaration that East Timor would join the CPLP as its eighth member once it gained full sovereignty.⁹⁴

89 Department of Foreign Affairs and Trade and AusAID, submission no. 52, p. 21.

90 Arnold Zeitlin, 'East Timor Press Struggles to Emerge', *The Freedom Forum Online*, 21 February 2000.

91 'Geoffrey Hull on why Portuguese is the right choice as the official language in East Timor', *Lingua Franca*, 24 March 2000.

92 UNTAET briefing, 13 February 2000.

93 'Brazil Bishops offer aid', *Folha de São Paulo*, 7 April 2000.

94 'Português será língua oficial, confirma Xanana Gusmão', *Lusa*, 18 Julho 2000; 'East Timor to join the community of the Portuguese speaking countries', *Xinhua*, 19 July 2000; 'Cimeira CPLP: Declaração sobre Timor-Leste apoia independência', *Lusa*, 18 Julho 2000.

2.98 The Committee believes that it is for the East Timorese themselves to decide which language(s) should be their official language(s) and which languages should be taught in schools. Undoubtedly, as the most widely spoken local language, Tetum will continue to be used throughout the country. With regard to foreign languages, the East Timorese must balance the heritage value of Portuguese against the practicalities of both Indonesian and English, the two languages most understood in the region. As indicated by UNTAET, whatever decisions on language are taken, they should have the support of most East Timorese.

Role of the Catholic Church

2.99 Bishop Kevin Manning referred to the rapid growth in the proportion of Catholics in the population of East Timor from around 250,000 in a population of 700,000 in 1975 to 750,000-800,000 in a population of 820,000 in 1999. He said:

One has to question the miraculous upsurge in numbers. This type of thing has happened in other countries where people have jumped onto the coat-tails of the Church because she was the one who was fighting for social justice. It was a rallying point ... When I was in Jakarta two years ago, I spoke with the Pro-nuncio and he suggested that a lot of the adherence to Catholicity was because they saw the church as a leader for human rights.⁹⁵

2.100 Bishop William Brennan explained that, in accordance with the Indonesian state ideology of the Five Principles, *Pancasila*, the first principle being belief in One God, the Timorese had had to make a choice between Catholicism and Islam. They chose Catholicism, in his opinion, because that was the religion of the Portuguese: 'The Portuguese were very effective colonisers in transmitting a culture that people accepted and identified with and loved, even though individual Portuguese and governors were nasty people. The whole cultural totality was something that they bought quite readily'.⁹⁶

2.101 Although it had been an enormous educational task to catechise 300,000 or 400,000 adults in a short time, Bishop William Brennan thought that in such a poor country they would stay with the Church once East Timor became independent, as perhaps would not be the case in a more affluent society.⁹⁷

2.102 Bishop Hilton Deakin explained that the reaction of the Indonesian Catholic Church had been to look at the situation in East Timor from a very strong Indonesian point of view. Initially, in 1975, the Indonesian bishops had come out in a very strong condemnatory manner over what the Indonesian military (ABRI) was doing in East Timor. 'But they were sat on very quickly. Any conversation that has been held since

95 Bishop Manning, *Committee Hansard*, 3 November 1999, p. 697.

96 Bishop Brennan, *Committee Hansard*, 3 November, p. 708.

97 Bishop Brennan, *Committee Hansard*, 3 November 1999, p. 714.

then has been much quieter ... I have met Indonesian bishops and asked them about East Timor. They say, “East Timor, where’s that?”⁹⁸

2.103 The Australian Catholic Social Justice Council had secured an AIDAB grant from the Australian Government to help Bishop Ximenes Belo establish the Dili Catholic Commission for Justice and Peace.⁹⁹ Bishop Brennan explained:

The setting up of a Justice and Peace Commission gave the Bishop at least some staff to handle all of these inquiries that he was getting. As I say, he was the only one the people could turn to because he was head of the Church.¹⁰⁰

2.104 Bishop Brennan said that Bishop Belo had always been shown great respect by the Indonesians. The military commanders had held him in high regard and shown him respect, and he had been able to get information from them. When he was given names of people who had disappeared, he was able to go to the chief of police, or to the governor or to the military commander and find out what they knew about them, at least whether they were in detention and when they might be released.¹⁰¹

2.105 Bishop Deakin said that for a long time there was only one bishop in East Timor, and because nobody else could talk publicly, he became, in a sense, ‘the keeper of the flame’. He had been pressured by a great number of people in and out of the Church to be quiet: ‘They said, “Mind your own business. You shouldn’t be interfering in politics,” and all that sort of thing. One looks back now on what he did and wonders how anybody could say anything like that. There are now two or maybe three bishops in East Timor. It is developing a hegemony, a leadership and an identity all of its own, and it will be that much more Timorese as a result’.¹⁰²

2.106 Bishop Brennan said that Bishop Belo had been the only significant non-Indonesian figure, which was another reason why the people had flocked to the churches and why they had flocked to the Bishop to help them. Although the governors were East Timorese, they were employed by the Indonesians, and were not trusted by the people to the extent that the Bishop was.¹⁰³

2.107 The Catholic Church was also the only place where Timorese could speak their native language in public. Indonesian was the only official language, so the Tetum language was not allowed to be spoken in public, except in church.¹⁰⁴

98 Bishop Deakin, *Committee Hansard*, 27 August 1999, p. 348.

99 Bishop Manning, *Committee Hansard*, 3 November 1999, p. 699; Bishop Brennan, *Committee Hansard*, 3 November 1999, pp.704-5. ‘AIDAB’ is the former name of ‘AusAID’.

100 Bishop Brennan, *Committee Hansard*, 3 November 1999, pp. 704-5.

101 Bishop Brennan, *Committee Hansard*, 3 November 1999, pp. 704-5.

102 Bishop Deakin, *Committee Hansard*, 27 August 1999, p. 348.

103 Bishop Brennan, *Committee Hansard*, 3 November , pp. 704-5.

104 Bishop Brennan, *Committee Hansard*, 3 November , pp. 704-5.

2.108 The Committee was told that many of the Catholic clergy in East Timor had been implacably hostile to the Indonesian military and encouraged passive resistance and the independence movement. The Church made little effort to come to terms with the Indonesian administration and tacitly supported the resistance. The clergy enjoyed a high level of respect among the people, analogous to the situation in pre-World War One Ireland or in Poland before the end of the communist regime, and constituted a 'theocratic' counter to the Indonesian Government.¹⁰⁵

2.109 A different view was put by Mr John Scott-Murphy, of Caritas Australia, who said that, in his experience, independence was not a religion-based issue. The Church itself was split on the issue of independence. There were many people in the Catholic Church in East Timor who did not support independence. There were many people in the Catholic Church throughout Indonesia who supported independence for East Timor but others did not.¹⁰⁶

2.110 Bishop Manning said that he hoped that the Church would not play a big part in the government of East Timor, but that the people would be allowed to determine that for themselves. The Church was there to give advice and to help wherever it could, but it had to listen to the voice of the people. He noted that Bishop Belo had always been very careful not to involve himself in governments: 'He has walked a tightrope. He has given very good spiritual advice, but he has tried to keep himself above political statements, and I believe that he will continue to do that'.¹⁰⁷

2.111 President of the National Council of Timorese Resistance, Xanana Gusmão, announced during a visit to São Paulo, Brazil, on 1 April 2000 that the new government of independent East Timor would be secular, although the Catholic Church would play a strong role: 'We will have a secular system, but the Church will play a role, not only in the transition, but also in independence, reinforcing our effort to consolidate the process, stabilising it, and bringing it to fruition ... In education, the Church will also have an important role'. He said Bishop Ximenes Belo would not become directly involved in the government.¹⁰⁸

105 *In camera* evidence.

106 Mr Scott-Murphy, *Committee Hansard*, 10 September 1999, p. 495.

107 Bishop Manning, *Committee Hansard*, 3 November, p. 699.

108 'Timor government to be secular, speak Portuguese', *Agence France-Presse*, 2 April 2000.

CHAPTER 3

HUMANITARIAN ASSISTANCE AND SECURITY MATTERS

Humanitarian and development assistance

Initial aid activities

3.1 Mr Dawson, AusAID, told the Committee on 6 December 1999 that the violence associated with the ballot had necessitated the withdrawal of all project staff from East Timor and the suspension of all humanitarian development assistance activities.

3.2 In the aftermath of the post-ballot violence and before a presence could be re-established on the ground in East Timor, AusAID had worked closely with the World Food Program to deliver over 180,000 daily rations to isolated areas within East Timor using Australian Defence Force aircraft. In addition, warehouses were set up in Darwin to receive relief goods from international agencies and Australian NGOs; commercial air and sea transport were secured to move supplies quickly from Darwin to East Timor; and trucks and other vehicles were obtained for transporting supplies within East Timor. Mr Dawson said that ‘these contributions of transport and logistical support had been widely acknowledged by international relief agencies as having greatly enhanced the effectiveness and the responsiveness of the international relief effort’.¹

3.3 Once Interfet arrived in East Timor, aid agencies initially focussed on providing critical humanitarian needs for food, water, shelter and medical assistance.² As the major supply routes were secured and displaced East Timorese began to return from West Timor, international agencies and Australian NGOs began providing assistance to family groups to re-establish themselves in East Timor and ensure adequate shelter and care for people during the 1999-2000 wet season.³ After an intense period of immediate humanitarian assistance, the focus shifted to planning for longer-term reconstruction and recovery.

Australian financial aid

3.4 In September and October 1999, the Australian Government announced \$14 million in emergency and humanitarian assistance for East Timor through international relief agencies, especially the World Food Program, the United Nations High Commissioner for Refugees, the International Committee of the Red Cross and Australian NGOs. On 22 November 1999, Foreign Minister Downer announced that

1 Mr Dawson, *Committee Hansard*, 6 December 1999, p. 993.

2 Mr Dawson, *Committee Hansard*, 6 December 1999, p. 993.

3 Mr Dawson, *Committee Hansard*, 6 December 1999, pp. 993-4.

aid program funding for East Timor in 1999-2000 would be increased by a further \$60 million, of which \$23 million would be given to the consolidated international humanitarian appeal for East and West Timor.⁴

3.5 This appeal, which then totalled over \$300 million, was used to meet identified urgent humanitarian needs over the following nine months and it provided a framework for donors to co-ordinate their assistance. Australia's contributions to the appeal focussed strongly on 'assisting return and resettlement of displaced East Timorese from West Timor, the restoration of basic health and education services, urgent work on water supply and sanitation, and support for peace-building and initiatives involving local East Timorese groups'.⁵

3.6 Australia's humanitarian assistance to the East Timor crisis for 1999-2000 totalled approximately \$37 million, which was the largest Australian contribution ever made to an international humanitarian relief effort. AusAID also provided assistance with reconstruction for longer-term development needs.⁶

3.7 Foreign Minister Downer said on 18 December 1999 that Australia would contribute \$A25 million to the Reconstruction and Development Trust Fund and the United Nations Trust Fund for East Timor during 1999-2000. He said Australia's total program of assistance to East Timor for 1999-2000 would be at least \$A75 million.⁷ As it turned out, Australian Government assistance for East Timor in 1999-2000 totalled \$81 million.⁸

3.8 In the 2000-01 budget, the Government committed \$150 million over the following four years towards the reconstruction of East Timor, with \$40 million allocated for the current year.⁹

3.9 All aid provided by Australia was under the humanitarian program in close consultation with the United Nations co-ordinating authorities, which identified priorities and tried to match donor resources against those priorities. Anything done by Australia for longer-term development was done in accordance with the priorities that UNTAET set down through its consultative mechanisms with the East Timorese representatives.¹⁰ Australia agreed to participate in World Bank Multilateral Trust Fund programming by providing community development, agriculture, infrastructure and social sector experts.¹¹

4 Mr Dawson, *Committee Hansard*, 6 December 1999, p. 994.

5 Mr Dawson, *Committee Hansard*, 6 December 1999, p. 994.

6 Mr Dawson, *Committee Hansard*, 6 December 1999, p. 994.

7 'Australia pledges \$25m to huge reconstruction fund for East Timor', *AAP*, 8 December 1999.

8 AusAID, *East Timor Update*, 11 September 2000.

9 Minister for Foreign Affairs, Alexander Downer and Minister for Trade, Mark Vaile, media release, 9 May 2000.

10 Mr Dawson, *Committee Hansard*, 6 December 1999, p. 997.

11 World Bank Multilateral Trust Fund for East Timor, fact sheet, 23 February 2000.

3.10 Australia provided advice to UNTAET on a number of recovery and reconstruction matters, including assessment of immediate needs in water supply and sanitation, the provision of an expert adviser in that sector, and advice on telecommunications needs and other areas. Australia also assisted with building the capacity of local NGOs, redeploying some longer-term project staff and picking up work which was commenced before the ballot.¹²

3.11 Bishop Manning said that the Australian Catholic Church was giving support through Caritas Australia. The Church would help the East Timorese in the area of human rights if there were human rights abuses, and by helping them on a humanitarian basis to help themselves by, for example, helping them to grow their crops or develop water supplies.¹³

International aid

3.12 Mr Dawson told the Committee that:

the World Bank took the lead in organising a joint assessment mission comprising representatives of bilateral donors, UN organisations, the Asian Development Bank and East Timorese technical experts. The IMF also conducted a parallel assessment mission. This mission was a very important exercise in longer term planning.

...

The mission identified immediate economic priorities, including restarting the flow of goods and services, establishing payments and banking systems and organising a budget. The mission also identified a range of key development challenges, including restoring agriculture, re-establishing basic health and education services, rebuilding essential infrastructure, creating a new civil service and judicial system and training East Timorese in rebuilding communities.

The total cost of these activities over three years is estimated to be in the range of \$US260 million to \$US300 million.¹⁴

3.13 The results of the mission were discussed at a meeting of international donors from over 50 countries and international agencies, jointly chaired by the United Nations and the World Bank and hosted by the Government of Japan, in Tokyo on 17 December 1999. The Tokyo meeting exceeded expectations and gathered over \$US522 million in pledges of grant funds for the following three years, of which \$US373 million was allocated for the reconstruction, development and civil administration of East Timor, including \$US31.5 million for UNTAET expenses. An amount of \$US215 million was allocated to two trust funds, one of \$US140 million to

12 Mr Dawson, *Committee Hansard*, 6 December 1999, p. 995.

13 Bishop Manning, *Committee Hansard*, 3 November 1999, pp. 699-700.

14 Mr Dawson, *Committee Hansard*, 6 December 1999, p. 994.

be administered by the World Bank and the Asian Development Bank (ADB), the other to be administered by UNTAET in consultation with East Timorese representatives. Another \$US149 million was for humanitarian assistance. The \$US158 million remaining from the fund for development and reconstruction was pledged for other bilateral and multilateral reconstruction assistance.¹⁵

3.14 The ADB drew upon the \$US140 million trust fund, which it jointly administered with the World Bank for meeting infrastructure needs in East Timor, while the World Bank drew upon the fund for agriculture, health and educational development.¹⁶ During a visit to Dili on 21 February 2000, Mr James Wolfensohn, President of the World Bank, signed the Bank's first project commitment for East Timor, \$US21.5 million over two and a half years for a Community Empowerment and Local Governance Project (CEP).¹⁷

3.15 Japan pledged \$US100 million over the following three years, of which \$US28 million was for humanitarian assistance. Japan also promised to provide financial support to East Timorese students studying at Indonesian universities.¹⁸ The Japan International Cooperation Agency (JICA) was expected to spend \$US30 million by September 2000 on infrastructure repair and development, agriculture, health and community assistance. JICA-funded projects began in February 2000 with rehabilitation of the road network, water supply improvement in fifteen towns, assistance to rice producers in Lautem and Manatuto, and fishery training and development.¹⁹

3.16 The European Commission pledged 'at least' 60 million euros.²⁰ The United States Congress had voted \$US25 million for aid for East Timor in the 1999 budget.²¹ At the United Nations and the World Bank meeting on aid to East Timor in Tokyo on 17 December 1999, the United States pledged \$US72 million for humanitarian and development aid.²² The United States Congress approved a further \$25 million aid for the fiscal year beginning 1 October 2000.²³

15 Shingo Ito, 'Donors pledge \$A800 million for East Timor', *Agence France-Presse*, 17 December 1999; Suvendrini Kakuchi, 'East Timor gets 522 million dollars in aid pledges', *IPS*, 20 December 1999.

16 'ADB to start releasing funds for E. Timor', *Reuters*, 6 February 2000.

17 'World Bank President arrives in East Timor', *Agence France-Presse*, 21 February 2000; 'World Bank inks development grants for East Timor'; *Deutsche Presse-Agentur*, 21 February 2000; Mark Dodd, 'UN and World Bank row over aid deal', 'UN staff battle over independence policy'; *The Sydney Morning Herald*, 22 February, 13 March 2000.

18 *Asia Pulse*, 20 December 1999.

19 *UNTAET Daily Briefing*, 29 March 2000.

20 Shingo Ito, 'Donors pledge \$A800 million for East Timor', *Agence France-Presse*, 17 December 1999.

21 Jim Abrams, 'Nation-building to be formidable task, State Department says', *AP*, 11 February 2000.

22 'Clinton advisor praises Australian leadership on East Timor', *7.30 Report*, 13 January 2000; 'US to keep observers in Timor, spend \$US 70 million', *Reuters*, 11 February 2000.

23 USIS, *Washington File*, EPF302, 25 October 2000.

3.17 On 1 March 2000, the World Bank country director for East Timor, Mr Klaus Rohland, said that, since September 1999, per capita income in the territory had fallen from \$US380 to around \$US190 a year. Although crops, such as wheat, rice and coffee, had been little affected by the September violence, many animals had been killed, including cattle and most chickens, the mainstay of the local subsistence economy. Therefore, a plan to increase the number of cattle and chickens was a priority project for rebuilding East Timor. Mr Rohland said that the most important task was to replace international aid with productive economic activities.²⁴

3.18 In response to a plea from CNRT President, Mr Xanana Gusmão and Vice-President, Dr José Ramos-Horta, which was made on 5 February 2000, the Asian Development Bank (ADB), on 23 March, approved a \$US1 million grant over two years to develop a capacity building plan for parliamentary business, justice administration and public sector management.²⁵ On 29 March, the ADB and UNTAET signed a \$US 29.7 million grant agreement for roads, ports and electricity repair and maintenance.²⁶

3.19 On 26 May 2000, Hedi Annabi, United Nations Assistant Secretary-General for Peacekeeping, said \$US14.1 million in a United Nations trust fund of \$US28.6 million had been disbursed but the World Bank, which had collected \$US38.4 million of \$US147 million pledged by donors in Tokyo in December 1999, had only spent \$US2 million to date. However, he said the bank had now finished planning the health, education and agricultural projects it would fund and was expected to spend up to \$US40 million in coming months.²⁷

Co-ordination

3.20 One of the key functions of UNTAET was to establish mechanisms for setting aid priorities. The Office of the Secretary-General's Special Representative had a position dedicated to perform that function, in close consultation with East Timorese representatives through the established consultative processes.²⁸ Prioritisation of programs financed by the World Bank Multilateral Trust Fund of \$US147 million is performed every six months by an East Timorese group in close consultation with UNTAET and the World Bank. Trust Fund work plans are discussed with donors to the Fund to avoid overlap with bilateral projects.²⁹

24 Robert Garran, 'World Bank rounds up cash cows', *The Australian*, 2 March 2000.

25 'ADB extends US\$1 million grant to East Timor', *Asia Pulse*, 24 March 2000; 'ADB approves one million dollar assistance to East Timor', *Agence France-Presse*, 23 March 2000.

26 *UNTAET Daily Briefing*, 29 March 2000.

27 'Security Council worries about West Timor refugees', *Reuters*, 26 May 2000.

28 Mr Dawson, *Committee Hansard*, 6 December 1999, p. 997.

29 World Bank Multilateral Trust Fund for East Timor, fact sheet, 23 February 2000.

3.21 Under the Office for the Co-ordination of Humanitarian Affairs (OCHA) working groups were set up for particular sectors. A representative of AusAID regularly attended the daily OCHA co-ordination meetings.³⁰

The Oecusse enclave

3.22 The district of Oecusse, also known as Ambeno, forms an enclave on the north-west coast separated by some 80 kilometres of Indonesian territory from the rest of East Timor.³¹ It is where the Portuguese first established themselves on Timor.³² The present border was the product of the centuries of struggle between the Dutch and Portuguese. Mr Michael Grant explained:

To put the border in a brief historical context, the borders of East and West Timor reflect centuries of political compromise between Holland and Portugal, the two ex-colonial powers. The borders do not reflect distinct cultural or linguistic boundaries. Perhaps these days they reflect a psychological boundary, nor, apart from the enclave of Oekussi, do they reflect indigenous Timorese ethnic boundaries. The boundary of the enclave Oekussi was a natural indigenous, autonomous boundary of a kingdom that traditionally has not wanted to be dominated by either Dili or Kupang in West Timor.³³

3.23 Mr Grant referred to the land swaps that had taken place during the period of colonial rule. Maucatar on the southern salient of the East/West border was part of Dutch West Timor up until 1916 when it was swapped for other parts of Timor, and there was an earlier land swap in 1859. Maubara, where much of the political violence has occurred, was once a Dutch enclave.³⁴ At one stage during the border negotiations from 1859 to 1916 between the Dutch and Portuguese, the Portuguese had wanted to exchange Oecusse for territory contiguous to the rest of their Timorese territory. The local ruler had refused to agree.³⁵ Professor James Fox referred to the historical importance of the kingdom of Ambeno which, as a nominal vassal of Portugal, had

30 Mr Dawson, *Committee Hansard*, 6 December 1999, p. 998.

31 Oecusse is also spelt Oecussi, Oe Cusse, Oekusi and Wekusi. 'Perhaps a third of all settlement names on Timor include the word for water—Oe, Wai, We or Be—indicating a source of fresh water' (attachment to submission no. 37, James J. Fox, 'The Paradox of Powerlessness: Timor in Historical Perspective', p. 7). Mr P.G. Spillett recorded the following explanation from the Raja of Ambenu, Nune Benu, whom he interviewed on 24 March 1997: 'The name Oekusi appeared from the name Kusi (husband of Sila Benu). They lived near a spring of water (Oe), so that the place where they lived was called Oe Kusi. Sila Benu and Kusi had a son who was... afterwards given the name of Am Benu. The region is now called Ambenu Oekusi' (attachment to submission no. 17, P.G. Spillett, *The Pre-Colonial History of the Island of Timor*, Darwin, Museum and Art Gallery of the Northern Territory, 1999, p. 52).

32 Mr Aitken, *Committee Hansard*, 20 July 1999, p. 129. Prime Minister António Guterres included Oe Cusse in his visit to East Timor during 22-26 April 2000 ('Guterres pledges aid to guerillas', *The News Weekly*, Lisbon, 29 April 2000).

33 Mr Grant, *Committee Hansard*, 20 July 1999, p. 205.

34 Mr Grant, *Committee Hansard*, 20 July 1999, p. 210.

35 Attachment to submission no. 17, P.G. Spillett, *The Pre-Colonial History of the Island of Timor*, Darwin, Museum and Art Gallery of the Northern Territory, 1999, p. 138.

been able to preserve a large measure of Timorese independence from both the Dutch and Portuguese until the early part of the twentieth century.³⁶

3.24 The predominant language in Oecusse is Dawan rather than Tetum, the official local language of East Timor.³⁷ Dawan is also the predominant language in the central part of West Timor.

3.25 During the post-referendum violence, some 50,000 of its 58,400 inhabitants were forced to flee or were driven away from their homes. The local TNI-sponsored Saukunar militia, led by Laurentinho 'Moko' Soares, was accused of conducting a rampage of arson, kidnapping and murder.³⁸ Interfet entered Ambeno on 22 October 1999 and, by 25 January 2000, more than 230 bodies had been found across the district by United Nations authorities, including the site at Passabe of possibly the largest single massacre in all of East Timor following the referendum.³⁹

3.26 The district's isolated location invited the question of its continued viability as part of an independent East Timor.

3.27 Dr Peter Bartu saw long-term difficulties in defending the enclave: 'It was such a historical and geographic anomaly that it would be a challenge for any Dili based government to bring the enclave fully into East Timor.'⁴⁰ Mr Hamish McDonald said:

In terms of its viability, I think that would largely depend on the nature of the border that comes into being between East Timor and Indonesia. If it was what you might call a hard border, patrolled and with restricted crossing, then I think it would be very difficult for Oecussi to be supported from East Timor ... If it returns to the porous border that it was in Portuguese times, I think it could quite easily exist as an enclave.⁴¹

3.28 Mr McDonald explained that viability would rest on the assumption that there was fairly free movement of citizens on a local level across the border and free movement along the roads across West Timor territory back into East Timor. He

36 James J. Fox, attachments to submission no. 37, 'The Paradox of Powerlessness: Timor in Historical Perspective' and 'The Great Lord rests at the centre'; see also his 'Forgotten, neglected but not peaceful: a history of Timor', *The Canberra Times*, 27 November 1975, and 'Tracing the path, recounting the past: historical perspectives on Timor', in James J. Fox and Dionisio Babo Soares (eds.), *Out of Ashes: deconstruction and reconstruction of East Timor*, Adelaide, Crawford House, 2000, pp. 1-29.

37 The similarity of this language to the dialects spoken in Solor and eastern Flores was a significant factor in the establishment of the Portuguese in this part of Timor in the 17th century (Professor James J. Fox, attachment to submission no. 37, 'The Historical Position of Tetun among the languages of the Timor area', p. 8).

38 Michael Ware, 'Militia terror file handed over', *The Australian*, 1 February 2000; Richard Lloyd Parry, 'Militia leader's ingeniously cruel forms of murder', *The Independent*, 2 February 2000.

39 Mark Dodd, 'Passabe massacre: Marked for killing frenzy', *Sydney Morning Herald*, 8 February 2000; 'Militia leader arrested for East Timor murders', *ABC News Online*, 10 February 2000.

40 Dr Bartu, *Committee Hansard*, 3 November 1999, p. 654.

41 Mr McDonald, *Committee Hansard*, 4 November 1999, p. 813.

referred to the two land routes: a central route, going south out of Oecusse to Kefamananu and then joining the central highway in West Timor, and a more recently constructed coast road, linking Oecusse with the East Timor border near Atapupu, and said, if those roads were open and there was a co-operative spirit on both sides of the border, there was no reason why Oecusse should not continue to be an East Timorese territory. He concluded:

Politically, I think it would be foolish for the East Timorese leadership to even talk about offering up Oecussi as a territorial concession at this stage, given that there are voices on the Indonesian side and on the pro-Indonesian side in East Timor still talking about a partition of the main part of East Timor and keeping the western districts as some kind of Indonesian buffer zone or even a separate territory.⁴²

3.29 Dr Gerry van Klinken was of the view that, if relations remained hostile, it would be difficult for the enclave to remain part of an independent East Timor. He went on to point out that treatment of the enclave's population by the militia was identical to, if not worse than, the way the East Timorese had been treated in the rest of East Timor. This indicated that the pro-independence feeling in the enclave had been just as strongly in favour of independence as it had been elsewhere. The international community therefore owed it to the people of Oecusse to treat them in exactly the same way as they treated the rest of East Timor.⁴³

3.30 Mr Abel Guterres told the Committee the enclave was not negotiable:

Oecussi was still part of the territory of East Timor ... Before the Indonesian invasion they were under Portuguese rule. There was access. Things will change. We hope to have a good, cooperative relationship with West Timor, with Kupang, with the Nusa Tenggara Timor government. We hope to have that good working relationship in the area with the whole of eastern Indonesia. That will happen. There was endeavour in terms of communicating with local West Timor leadership. It will be in their interest and in our interest to maintain that cooperative role.⁴⁴

3.31 Professor Charles Sampford said that the residents of Oecusse should be asked if they wanted to stay part of East Timor, and that their wishes should be respected. He said it was better to work on creating an international order in which border differences did not mean as much:

changing those boundaries would be a real problem. 'Those who try to correct the accidents of history create some of its greatest tragedies.' I think it was best in this particular case to say to the Indonesians or anybody else

42 Mr McDonald, *Committee Hansard*, 4 November 1999, p. 813.

43 Dr van Klinken, *Committee Hansard*, 4 November 1999, p. 810.

44 Mr Guterres, *Committee Hansard*, 18 November 1999, p. 933.

that that was part of East Timor until they want to leave and just work with it.⁴⁵

3.32 The Committee notes that the basic international instrument, the *Declaration on the Granting of Independence to Colonial Countries and Peoples* of December 1960, expressly asserts, ‘Any attempt aimed at the partial or total disruption of the national unity and the territorial integrity of a country is incompatible with the purposes and principles of the Charter of the United Nations.’⁴⁶ This would appear to give strong support to those in Timor who desired to preserve the territorial boundaries as finally established in 1916.⁴⁷

3.33 On 29 February 2000, during President Abdurrahman Wahid’s visit to Dili, Indonesia and UNTAET reached in principle agreement for free access by land from Ambeno to the rest of East Timor by way of a ‘special corridor’.⁴⁸ Further talks on this were held on 8 June when the Governor of Nusa Tenggara Timur (West Timor and adjacent islands), Piet Tallo, visited Dili for round table talks with UNTAET officials and East Timorese leaders, and on 5 and 6 July during UNTAET-Indonesia talks on the border in Surabaya.⁴⁹ It had not been established by October 2000 because of the fragile security situation in West Timor.

3.34 Upon handing over to his Timorese successor at the end of July 2000, the first UNTAET district administrator of Ambeno, Mr Graham Day, said that it was essential for the future of the enclave that East Timor establish a transport link between Oecusse and Dili by sea that was entirely under its own control. ‘Be it humble, be it infrequent, it must fly the Timorese flag, be controlled by Timorese authorities, and be subject to Timorese laws’, he said. ‘No resident of Oecusse is going to have confidence in a corridor open to the influence of the militia groups that continue to be active in the region.’⁵⁰

3.35 UNTAET said that ‘The takeover of parts of West Timor by militia groups makes it unlikely that a land corridor can be established anytime soon. Therefore, the only economic possibility for transport between Oecussi and East Timor proper is by sea’, and announced that a passenger ferry service was being established to supplement the limited air service until a land corridor could be established. The East Timor Transitional Cabinet decided to provide a subsidy of \$US5,000 per month to enable the Australia-based East Timor Shipping and Supply (ETSS) to operate the

45 Prof. Sampford, *Committee Hansard*, 3 November 1999, p. 730.

46 Quoted in Gough Whitlam, *The Whitlam Government, 1972-1975*, Melbourne, Viking, 1985, p. 114.

47 Cf. Steve Farram, ‘The Two Timors: The partitioning of Timor by the Portuguese and the Dutch’, *Studies in Languages and Cultures of East Timor*, vol.2, 1999.

48 Joint communiqué signed by President Abdurrahman Wahid and UNTAET chief Sergio Viera de Mello in Dili, 29 February 2000.

49 ‘W Timor Governor calls for repatriation of E Timor refugees’, *Deutsche Presse-Agentur*, 8 June 2000; Mark Dodd, ‘West Timor wants to empty camps’, *The Sydney Morning Herald*, 9 June 2000; ‘Agreement reached on border demarcation but not on Oe Cusse corridor’, *Lusa*, 10 July 2000.

50 ‘Um ano depois: “Treinador” de Oecusse quer substituto timorense’, *Lusa*, 10 August 2000.

service. Early in 2001, there was speculation that another company might take over the ETSS passenger ferry service, which UNTAET called ‘a temporary solution’.⁵¹

3.36 The Committee believes that the long-term future of Oecusse should be based on the wishes of the residents of the enclave. In the meantime, everything possible should be done to establish a secure land link between Oecusse and the rest of East Timor, free from the ravages and harassment of the militia or others yet to come to terms with an independent East Timor. Once security is restored in West Timor, and with co-operative Indonesian authorities, there is no reason to believe why Oecusse cannot operate successfully as part of East Timor.

AUSCIVPOL

3.37 The 2000-01 Budget provided for the maintenance of Australia’s civilian police presence in UNTAET, funded from the \$104.3 million over four years allocated to aid to East Timor. The Budget initiative provided for a continued civilian policing capacity of up to 80 deployed Australian civilian police (AUSCIVPOL) to meet UNTAET’s requirement. A reserve pool of some 240 trained members was established, drawn from recently retired AFP and serving State and Territory police.⁵²

3.38 The role of civilian police with UNTAET is to assist in every aspect of its peacekeeping and capacity-building role, from maintaining law and order at a community level to investigations to ensuring the security of prisons, airports, courts and harbours. They are also involved in the development and training of an East Timorese police force.⁵³

3.39 On 15 February 2000, 28 State and Territory police were sworn in as Special Members of the Australian Federal Police to allow them to serve in East Timor. This was the first time that State or Territory police had served with a United Nations mission since 1976, when they served with the United Nations Force in Cyprus. Since then, although several police from Victoria and Queensland served as part of a United States-led multinational force in Haiti in 1995, the responsibility for contributing to United Nations missions had fallen solely to the AFP.⁵⁴ More than 250 Australian police served in East Timor between July 1999 and August 2000.⁵⁵

3.40 Mr Alan Mills was selected by the United Nations to head the civilian police detachment (CIVPOL) which helped to conduct the 30 August 1999 ballot. Mr Mills

51 (UN Newservice. 28 September 2000, ETISC, http://www.esattimor.com/news_today/2706.htm (28 September 2000).

52 ‘AFP East Timor Presence Continues’, *Media Release*, Minister for Justice & Customs, Senator the Hon Amanda Vanstone, Senator for South Australia, 9 May 2000.

53 ‘State and Territory police sworn in for East Timor role’, *Media Release*, Minister for Justice & Customs, Senator the Hon Amanda Vanstone, Senator for South Australia, 15 February 2000.

54 ‘Australian announced as head of UN Civilian Police in East Timor’, *Media Release*, Minister for Justice & Customs, Senator the Hon Amanda Vanstone, Senator for South Australia Tuesday 15 June 1999.

55 ‘Federal Police members awarded for service in East Timor Timor Police’, *AAP*, 8 August 2000.

headed a detachment of some 270 police, drawn from 15 countries, that liaised with the Indonesian police, who were responsible for security for the ballot.⁵⁶

3.41 At the hearing of 15 September 1999, former Australian Federal Police agent, Mr Gary Wood, who was an accredited UN observer of the East Timor ballot, was critical of the conditions under which it was allowed to take place:

I think that, compared with formulas in the past, the formula of how they went was not quite right. If you take the example of Mozambique, there was a formula. People agree to go to different areas, the combatants go to different areas, the military come in, they then feed them and clothe them. The weapons are handed in, the military takes control and it is reasonably safe, then the military starts to withdraw, the civilian police start to come in and eventually there is some harmony on the ground. Then the electoral people come in with the humanitarian people ... and towards the end there is an election ... In 1994 I saw it work in Mozambique. East Timor was the opposite way around. It was like, 'Let's have an election and everything will be okay' ... All the combatants were there. The anger, hostility and violence were still there. I thought that made the position of our people on the ground very difficult.⁵⁷

3.42 Mr Wood referred to the very difficult situation unarmed CIVPOL officers consequently found themselves in when, following the ballot, they were required to protect people from the militias.

From the accounts of these good friends of mine, they said that when they had had enough - and you have to realise that these people are highly trained policeman who are used to being in a position of authority and having some power on the ground - and they had shouted at the militia, the police turned their firearms towards their stomachs and said, 'If you keep yelling at the militia, we will kill you.' That was on Tuesday morning, the day after the elections.⁵⁸

3.43 Mr Wood said that people who had worked with the Australian CIVPOL as drivers and interpreters had been executed by the militias, in particular in the areas of Maliana and Ermera.⁵⁹

3.44 Federal agent Sharon McCarthy, who received the International Policewoman's Association's Medal of Valour for her work in East Timor, took part in the evacuation from the UN's Liquiça compound when it came under fire from pro-Indonesian militia. She later described the experience:

56 'Australian announced as head of UN Civilian Police in East Timor', *Media Release*, Minister for Justice & Customs, Senator the Hon Amanda Vanstone, Tuesday, 15 June 1999.

57 Mr Wood, *Committee Hansard*, 15 September 1999, p. 521.

58 Mr Wood, *Committee Hansard*, 15 September 1999, p. 522.

59 Mr Wood, *Committee Hansard*, 15 September 1999, p. 542.

There was militia on either side of the road. I remember seeing people in army uniforms with weapons. I remember weapons pointed at our vehicles, and I remember gunshots going off all around us. I remember a very large explosion in our vehicle—a strong smell of cordite ... When I later got out of the vehicle I realised that a round had actually come up through where my feet were in the vehicle and had gone through my backpack and up through the ceiling of the vehicle. We had shrapnel, sort of, all over us. We were picking it out of our skin for days. Not large chunks, but, you know, splinters of metal and glass.⁶⁰

3.45 Public recognition of the vital role played by civilian police in securing the popular ballot in East Timor and in subsequent efforts to restore order to the territory was shown on 19 April 2000 when some 30 AFP members, who had served with UNAMET, Interfet and UNTAET, took part in the parade held in Sydney on that day for Australian Defence Force and AFP personnel who had served in East Timor.⁶¹ Speaking in Sydney on 19 May 2000, Interfet Commander Major General Peter Cosgrove saluted the peacekeeping efforts of Australian Federal Police: ‘Let there be no doubt the Australian Defence Force salutes the AFP for their great service in East Timor’.⁶²

3.46 Presenting 16 members of the AFP with Police Overseas Service Medals and Clasp in Canberra on 8 August 2000, Justice and Customs Minister Senator Amanda Vanstone said:

AFP officers were amongst the first international contingents into East Timor, having served there since July 1999 when they played a significant role in the successful conduct of the self-determination ballot. Let’s remember they were there first, they were there unarmed, they protected the Timorese while the ballot was being undertaken and they protected the ballot boxes to make sure that the will of the people was properly recorded.⁶³

3.47 On 14 October 2000, Senator Vanstone announced that the United Nations would award its Service Medal for East Timor to the first detachment of Australian police officers who served in East Timor during the 1999 popular consultation. This involved the United Nations waiving the normal condition of award of a 90-day minimum period of service. The fourth detachment of 70 Australian police became the first to be presented with the medal in a ceremony in Dili on 14 October 2000. The first three detachments of about 170 police sent to East Timor since June 1999 had all been ineligible for the medal because of the 90-day condition. Senator Vanstone said she was pleased the UN had finally agreed to recognise the first and most deserving

60 ‘Federal Police disappointed in United Nations’, *AM*, 16 August 2000.

61 ‘Public recognition of police members serving in East Timor’, Australian Federal Police media release, April 18, 2000

62 ‘Cosgrove applauds AFP efforts in Timor’, *Agence France-Presse*, 19 May 2000.

63 ‘Federal Police members awarded for service in East Timor Timor Police’, *AAP*, 8 August 2000.

police sent to oversee the August 30 independence ballot. 'It was an accident of history that these people didn't serve the time normally required to achieve the UN medal,' she said. 'The men and women who went through the most dangerous time in Timor, who were there first, who were there unarmed before the army, are the ones who most deserve the medal.'⁶⁴

3.48 The Committee believes that the police who served in East Timor as part of UNAMET had a more difficult and dangerous job than did the military as part of Interfet. They were unarmed and served there during the height of militia harassment and violence in the lead up to the 30 August poll and afterwards in the systemic destruction of the territory. Indonesia, which demanded and got responsibility for maintaining security in East Timor during the UNAMET period, abjectly failed in fulfilling that responsibility. There are obviously lessons to be learnt from this experience and the Australian Government should consider not acceding to such deployments in the future where the United Nations does not have responsibility for the security of its mission and where security arrangements are unlikely to be satisfactory.

United States role in East Timor

3.49 The United States had an important role to play in the processes that led to East Timor gaining its independence. Mr Alan Dupont emphasised this point in evidence to the Committee:

I think it is absolutely critical for the US to remain engaged politically and to be prepared to pressure the Indonesians, if necessary, because at the end of the day the US is the world's only superpower ... I think American political support is crucial to seeing ultimately a viable East Timorese state emerge from the ashes of the destruction of the last couple of months.⁶⁵

3.50 Professor Hugh Smith agreed that the diplomatic role of the United States had been a key one, by providing diplomatic back-up and economic clout, through the IMF and other agencies, to create the right political and diplomatic atmosphere.⁶⁶

3.51 Mr Tom Uren drew attention to the change in American policy toward East Timor. From 1975 until the Dili massacre, Indonesian actions in the territory had been accepted without question. Following that massacre, the Congress and Administration became concerned about human rights abuses and this changed to outright support for independence after the August 1999 ballot.⁶⁷ Mr Uren regretted that Australia had not worked to gain American support for East Timor's independence earlier in 1999, a view also put by Mr Robert Lowry, who said: 'I think that one of the great failures on

⁶⁴ Rod McGuirk, 'UN to award Timor medals to all Aust police Timor', *AAP*, 14 October 2000.

⁶⁵ Mr Dupont, *Committee Hansard*, 24 September 1999, p. 626.

⁶⁶ Professor Smith, *Committee Hansard*, 24 September 1999, p. 599.

⁶⁷ Mr Uren, *Committee Hansard*, 4 November 1999, p. 767.

Australia's part was not to mobilise support from the United States at that earlier period back in April or May'.⁶⁸

3.52 Dr Harold Crouch referred to reports that senior American military and naval officers had spoken to Indonesian Armed Forces Chief, General Wiranto, during the crisis in early September 1999, to gain Indonesia's agreement to an international peacekeeping force in East Timor.⁶⁹ Following President Bill Clinton's condemnation of the Indonesian military's refusal to stop the violence in East Timor, the Commander-in-Chief of the United States Pacific Command, Admiral Dennis Blair, travelled to Jakarta, where he told General Wiranto the United States was cutting off the remainder of its military relations with Indonesia. He then left the country, cancelling a speech he was to deliver at the army staff college in Bandung. Meanwhile, Chairman of the Joint Chiefs of Staff, General Henry Shelton, spoke on three occasions with General Wiranto, finally on 10 September saying the United States would block the International Monetary Fund from delivering the funds that Indonesia needed to recover further from the Asian economic crisis unless either the violence in East Timor was halted or an international peacekeeping force was allowed into the territory. After visiting East Timor to inspect the situation there, General Wiranto telephoned General Shelton on 12 September to say he would recommend to President B.J. Habibie that he ask immediately for an international peacekeeping force.⁷⁰

3.53 The United States provided vital support for Interfet, in particular in the form of state of the art intelligence equipment and expert personnel sent directly to Canberra in late September 1999 for installation at the Defence Signals Directorate headquarters at Russell Hill.⁷¹

3.54 Admiral Dennis Blair, Commander-in-Chief, Pacific (CINCPAC), said on 4 April 2000, during a visit to Jakarta, that Indonesia's armed forces needed to become more professional before military co-operation could resume. Admiral Blair said there were two main areas the Indonesian military needed to focus on. The first was that military personnel responsible for the rape, murder and destruction in East Timor in September 1999 should be brought to justice. The resumption of military links was also conditional on a peaceful solution being found to the refugee crisis in Indonesian West Timor, where United Nations officials estimated there were still about 120,000 East Timorese sheltering in camps, many of them being prevented from

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

69 Dr Crouch, *Committee Hansard*, 20 September 1999, p. 578.

70 Elizabeth Becker, 'General speaks a language that Wiranto understands', *The New York Times*, 14 September 1999. Thailand also played an important role in getting Indonesia to accept Interfet. Foreign Minister Surin Pitsuwan met General Wiranto and President Habibie in Jakarta on 14 September and, after obtaining Wiranto's consent to an ASEAN contribution, asked all ASEAN members to support Interfet and to assist in solving the refugee crisis. Bruce Cheesman, 'Thailand pressed to take Timor reins', *Australian Financial Review*, 15 October 1999.

71 Lincoln Wright, 'US spy gear used in Canberra', *The Canberra Times*, 21 March 2000.

returning home by anti-independence militias. ‘We need to see the disbanding and stopping of support to the militias’, he said.⁷²

3.55 Although Australia was instrumental in galvanising international support for the United Nations sponsored Interfet intervention in East Timor as a result of the post-ballot violence, it was the United States, using leverage that only it could bring into play, that finally persuaded Indonesia to support Interfet, thus allowing Interfet to operate in East Timor. The Committee believes that the United States has a continuing role to play in ensuring the future security of East Timor and the successful return of the remaining East Timorese held against their will by East Timorese militias in refugee camps in West Timor. With elements of the TNI still frustrating Indonesian Government efforts to resolve security and other problems in West Timor, United States involvement may be crucial in neutralising ‘rogue elements’.

Radio Australia

3.56 It was put to the Committee that the reduction of service to Indonesia by Radio Australia following the closure of the transmission station at Cox Peninsula near Darwin in June 1997 had had the unfortunate effect of reducing the flow of information into Indonesia and East Timor. Mr Bruce Haigh said: ‘we withdrew the Radio Australia service, so how can they possibly know what is going on? We should have increased it, not decreased it. It is in our interests to have as much information flowing into the region as we can manage because, from their own sources, from their own newspapers, from their own radios, they will not get this information’.⁷³

3.57 From 11 September 1999, Radio Australia was able to broadcast directly across Indonesia for the first time since 1997 because of a six-month contract the ABC negotiated for the lease of two transmitters in Taiwan and Singapore. This significantly increased broadcasting capacity, which had been limited to the transmission facilities at Shepparton, and enabled Radio Australia to be heard, on a not very good signal, in East Timor for about three hours or less per day.⁷⁴ Attempts by UNAMET to obtain transmission time on the Radio Australia transmitters were unsuccessful, and UNAMET finally turned to the Portuguese national broadcaster RTPi for access to their facilities.⁷⁵

3.58 Former Radio Australia correspondent Ms Sue Downie told the Committee its importance for the East Timorese and Indonesian populations was to provide them with access to information about what was happening in their own territory, in Indonesia and the rest of the world.⁷⁶ Sister Susan Connelly said the re-installation of Radio Australia broadcasts in the region would allow its listeners an alternative view

72 ‘US Admiral sees no quick resumption of Indonesian ties’, *AP*, 4 April 2000.

73 Mr Haigh, *Committee Hansard*, 3 November 1999, p. 673.

74 *Committee Hansard*, 8 September 1999, p. 373.

75 Michelle Gilchrist, ‘Deaf to Timor radio plea’, *The Australian*, 10 November 1999.

76 Ms Downie, *Committee Hansard*, 18 November 1999, p. 965.

and could be welcomed by the new Indonesian Government.⁷⁷ Other witnesses also supported the case for an increase in Radio Australia services to East Timor and Indonesia.⁷⁸ Mr James Dunn said:

At this time, I think it is more important than ever that Radio Australia be opened. It is not only for the Timorese; it is also to give another side to the Indonesians who listen into radio quite a lot ... It should give our point of view and demonstrate over the airwaves, as Radio Australia was always good at, that Australians really care and are not just picking on Indonesia.⁷⁹

3.59 Lieutenant General John Sanderson noted that explaining to the Indonesian people what Australia's actions, intentions and desires were would be equally important as explaining them to the East Timorese.⁸⁰

3.60 Mr John Scott-Murphy agreed that it was important for Radio Australia to provide educational and general broadcasting services with an independent view to East Timor and for current services to be expanded. Caritas Australia had made a submission at the time of the proposed closing down of the service to that effect. He regarded Radio Australia as a crucial element of the provision of information to the local people, and for communication with people in general throughout South East Asia. He said: 'It really should be seen now as a terrible mistake to have reduced the service'.⁸¹

3.61 On 8 August 2000, the Australian Government announced that Radio Australia would receive up to \$9 million over three years to extend its short-wave radio broadcasts. The Australian Government also would consider supporting commercial television broadcasts to the region. Minister for Communications, Information Technology and the Arts, Mr Richard Alston, and Minister for Foreign Affairs, Mr Alexander Downer, said the initiatives were a recognition of the importance of a credible, reliable and independent broadcaster in the region: 'Recent events have highlighted the value of Australia's international broadcasting activities in conveying accurate news and information to the region, as well as providing an Australian perspective'. ABC Chairman Donald McDonald said the ABC could now consider buying time at the Cox transmitter, which had been sold to the British charity broadcaster Christian Vision.⁸²

77 Sister Connelly, *Committee Hansard*, 4 November 1999, p. 681

78 Bishop Brennan, *Committee Hansard*, 3 November 1999, p. 703; Mr Plunkett, *Committee Hansard*, 15 September 1999, p. 552; Mr Lowry, *Committee Hansard*, 20 September 1999, p. 657; Mr Wesley-Smith, *Committee Hansard*, 8 September 1999, p. 373; Ms Hunt, *Committee Hansard*, 13 August 1999, p. 254.

79 Mr Dunn, *Committee Hansard*, 24 September 1999, p. 605.

80 Lt. Gen. Sanderson, *Committee Hansard*, 15 September 1999, p. 552.

81 Mr Scott-Murphy, *Committee Hansard*, 10 September 1999, p. 506.

82 'Radio Australia to get more funding for Asian broadcasts', *AAP*, 8 August 2000.

3.62 In its Interim Report of September 1999, the Committee made three recommendations aimed at increasing Radio Australia transmissions to Indonesia. The Committee is pleased that the Australian Government has now enabled Radio Australia to improve its service to Indonesia, in accordance with the Committee's recommendations, even though it took the Government more than 10 months to come to that decision. In so doing, the Government has, at last, recognised the need to counter false and unfair criticisms of Australia, which have been broadcast by Indonesian broadcasters, and to put an Australian viewpoint direct to the Indonesian people.

CHAPTER 4

THE TIMOR GAP (ZONE OF CO-OPERATION) TREATY

Introduction

4.1 The Timor Gap Treaty is a unique arrangement for enabling petroleum exploration and exploitation in offshore areas, subject to competing claims by two countries, and for the sharing of the benefits between those countries.¹

4.2 The Treaty between Australia and Indonesia was signed in December 1989, and deals provisionally with the gap in the seabed area not covered by the 1972 Seabed Agreement between Australia and Indonesia; that is, the seabed area between Australia and East Timor. When the 1972 seabed agreement was negotiated, East Timor was not part of Indonesia and, as a result, a ‘gap’ was left between the eastern and western parts of the Australia-Indonesia seabed boundary: the ‘Timor Gap’. The Treaty establishes a Zone of Co-operation comprising three distinct areas—Areas A, B and C. It creates a regime that allows for the exploration and development of hydrocarbon resources in the Zone. Area B lies at the southern end of the Zone and is administered by Australia. Area C lies at the northern end of the Zone and was administered by Indonesia. Area A is the largest area and lies in the centre of the Zone. The rights and responsibilities of Australia and Indonesia in relation to Area A were exercised by a Ministerial Council and a Joint Authority established by the Treaty. The Joint Authority is responsible to the Ministerial Council.²

4.3 The Treaty was entered into for an initial term of 40 years, with provision being made for successive terms of 20 years, unless by the end of each term, including the initial term of 40 years, the contracting states should have concluded an agreement on the permanent delimitation of the continental shelf between Australia and East Timor—a seabed treaty.³

4.4 The Treaty was challenged by Portugal in the International Court of Justice when it entered into effect in 1991 on the grounds that it violated the rights of the people of East Timor to self-determination and violated Portugal’s rights as the administering power of East Timor. As Indonesia declined to consent to the jurisdiction of the Court, the Court was unable to adjudicate the matter.⁴

4.5 The Treaty arrangements proved to be beneficial to both Indonesia and Australia. Within the Zone of Co-operation, an exploration program, which involved

1 Mr Payne, *Committee Hansard*, 11 November 1999, p. 873.

2 Attorney-General’s Department, submission no. 65, p. 3.

3 Attorney-General’s Department, submission no. 65, p. 2.

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

the drilling of 42 wells, resulted in the discovery of hydrocarbons in 36 of the wells and the identification in Area A of about 400 million barrels of condensate (a light oil) and LPG (liquid petroleum gas) and three trillion cubic feet of gas. These resources have been discovered in some medium to small oilfields, including at Elang-Kakatua and Jahal, and some large gas fields at Bayu-Undan and Sunrise Troubadour.⁵

4.6 At each Ministerial Council, Ministers from Indonesia and Australia gave reports on activities in Area C and Area B respectively. To date, there has been no exploration carried out in Area C and it is not seen as particularly prospective, both because of its depth and the geology of the area.⁶

4.7 In Area B, the Australian area of jurisdiction, there has been some exploration, both seismic and drilling of wells, but to date no hydrocarbons have been found.⁷

4.8 In Area A, the Elang-Kakatua field began commercial production in mid-1998 with production to November 1999 valued around \$A250 million, returning to each contracting state around \$5 million in revenues from the production sharing arrangements. East Timor received its first royalty payment from the Timor Gap, worth over US\$3 million, on 18 October 2000.⁸ The revenue came from oil lifted from the Elang-Kakatua field, the only active oil field in the Timor Sea. The figure represented half of the revenues collected from production sharing between 25 October 1999 and 25 September 2000.

4.9 The cumulative employment figure for Area A of the Zone from the commencement of operations in 1991 to November 1999 was around 124,000 man-days for Australians and 80,000 man-days for Indonesians.⁹

4.10 The Treaty and associated arrangements attracted exploration and development to the Zone of Co-operation with significant industry investment. The Committee was told the Treaty provisions had withstood the test of time over the period 1991 to November 1999, and there had been no need to amend the Treaty, the petroleum mining code or the model production sharing contract. From time to time, various issues arose and were successfully resolved through the Joint Authority and Ministerial Council.¹⁰

5 Mr Payne, *Committee Hansard*, 11 November 1999, p. 873.

6 Mr Kjar, *Committee Hansard*, 11 November 1999, p. 878.

7 Mr Kjar, *Committee Hansard*, 11 November 1999, p. 879.

8 UNTAET daily briefing, 24 October 2000. Due to the one-time nature of this windfall, this revenue was not expected to change the East Timorese budget in any significant way.

9 Mr Payne, *Committee Hansard*, 11 November 1999, p. 873.

10 Mr Payne, *Committee Hansard*, 11 November 1999, p. 873. At the eighth Ministerial Council meeting in Cairns in November 1997, Minister for Resources and Energy Senator Warwick Parer and his Indonesian counterpart, General Sudjana, struck an agreement on mutually acceptable principles for sharing production benefits of oil and gas deposits in the Zone of Co-operation. The Treaty signed in 1989 had not addressed what would occur if processing occurred outside the Zone of Co-operation, whether in

4.11 During the interim phase before independence, the United Nations transitional administration (UNTAET), has overall authority for the administration of East Timor and consequently, an important role to play in respect of continuity of the Timor Gap Treaty regime.¹¹

Indonesia's interest

4.12 The Zone of Co-operation established by the Timor Gap Treaty was intended to be referable only to the coast of East Timor and the opposite coastline of Australia. There is a question whether Indonesia has any remaining legal interest in the location of the boundaries of the Zone following the movement of East Timor out of Indonesian sovereignty. In this respect, the focus would be on points A16 and A17, identified in the 1972 seabed boundary agreement.¹² These are at the eastern and western extremities of the Timor Gap Zone of Co-operation (see map of the Zone of Co-operation).¹³ Points A16 and A17 (at 9°28'S and 127°56'E, and 10°28'S and 126°E) are the points at which the Australia-Indonesia seabed boundary joins the Zone of Co-operation, on each side. It is those two points, termed *tripoints*, where the interests of Australia, independent East Timor and Indonesia would meet, and it is in the location of those points where Indonesia might have a continuing interest.¹⁴ The 1972 seabed treaty noted in Article 3 that the lines connecting points 15 and 16, and points 17 and 18, indicated the direction of the boundary and that negotiations with other governments that claimed sovereign rights to the seabed (then Portugal, now East Timor) might require adjustments to points 16 and 17.¹⁵

4.13 Since the 1972 seabed boundary agreement was established, Indonesia has twice accepted those points as being reasonable, and in the proper location: first, in the negotiation of the Timor Gap Treaty itself; and, second, in the 1997 agreement between Australia and Indonesia establishing an exclusive economic zone boundary and certain seabed boundaries.¹⁶

4.14 The agreement of the Indonesian Government is not required for any changes to the Treaty. There are details which required attention in terms of Indonesian disengagement but, Indonesia, as representatives of Indonesia have said publicly, has no role in its future.¹⁷

Indonesian waters or in Australian waters. These basic principles of fiscal benefit sharing paved the way for the development of the Bayu-Undan gas discovery (*Senate Hansard*, 25 November 1997, p. 9347).

11 Mr Campbell, *Committee Hansard*, 11 November 1999, p. 869

12 Mr Campbell, *Committee Hansard*, 11 November 1999, p. 869.

13 Mr Campbell, *Committee Hansard*, 11 November 1999, p. 870.

14 Mr Campbell, *Committee Hansard*, 11 November 1999, p. 870.

15 Department of Foreign Affairs, *Agreement between... Australia and... Indonesia Establishing Certain Seabed Boundaries*, Treaty Series 1973, No. 31.

16 Mr Campbell, *Committee Hansard*, 11 November 1999, p. 870.

17 Mr French, *Committee Hansard*, 11 November 1999, p. 883.

4.15 The two tripoints A16 and A17 are closer to the island of Timor than the mid-points between the island and Australia. In 1972, Indonesia accepted the Australian contention that the seabed boundary between the two countries should lie between the mid-line and the deepest part of the seabed, the Timor Trough.¹⁸ Negotiations on a seabed treaty with Portugal failed at that time because Portugal argued for a boundary along the mid-line between Australia and Portuguese Timor.¹⁹ If, in a new treaty, Australia were to concede to East Timor a seabed boundary along the mid-line, Indonesia might be prompted to seek re-negotiation of its seabed boundary with Australia.²⁰ Dr Gillian Triggs, Associate Dean of the University of Melbourne's Law Faculty, has commented: 'There is no doubt Indonesia will feel quite aggrieved if we have unequal boundaries in certain areas with Indonesia and we suddenly blow the boundary out and make a more equidistant one in relation to East Timor'.²¹ The border alongside the Zone of Co-operation is a sensitive issue as several major gas and oil deposits lie just outside Indonesian territory in Australian waters including the 140,000 barrels-per-day Laminaria field.

4.16 However, it should also be noted that: (a) the seabed boundary treaty stands in perpetuity; (b) that amendment to the 1972 treaty can only be made by agreement of both parties; and (c) a party can only withdraw from the treaty with the agreement of the other party. As a consequence, it would be extremely difficult, if not impossible, for Indonesia to reopen the question of the seabed boundaries outside the Timor Gap (aside from the possibility of adjustment of tripoints A16 and A17). Any unilateral denunciation by Indonesia would be rejected by the International Court of Justice.

4.17 In August 1999, Australia defined the south-western maritime boundary for the Interfet operational area in East Timor by drawing a line perpendicular to the general direction of the coastline starting from the mouth of the Massin River, which separates West and East Timor. A similar projection of East Timor's maritime claims, if adopted as part of settlement of Timor Gap maritime boundaries, would bring the

18 Indonesian Foreign Minister Mochtar Kusumaatmadja, who in 1971-72 was a principal member of the Indonesian negotiating team on the seabed boundary, complained in December 1978 that Australia had 'taken Indonesia to the cleaners' in 1972 ('Boundary threat to seabed leases', *The Sydney Morning Herald*, 21 December 1978). He did not specify how Australia had taken unfair advantage.

19 J.R.V. Prescott, 'The Australian-Indonesian Continental Shelf Agreements', *Australia's Neighbours*, vol. 82, September-October 1972, pp. 1-2. Brian Toohey, 'Oil: Portuguese tail-twisting could backfire', *The Australian Financial Review*, 26 March 1974; 'Canberra, Lisbon head for row', *The Age*, 26 March 1974; 'Australia calls for report on oil leases', *The Sydney Morning Herald*, 14 December 1974. Portuguese Ambassador Carlos Empis Wemans to Lisbon, 25 March 1974, Cour internationale de justice, *Affaire relative au Timor oriental (Portugal c. Australie): mémoire du gouvernement de la république Portugaise*, La Haye, 1991, Annexe IV.9, pp. 321-3.

20 Michael Richardson, 'Oil Reserves are Sensitive Independence Issue', *International Herald Tribune*, 15 December 1999.

21 Wendy Pugh, 'Australia seeks to avoid East Timor border dispute', *Reuters*, 6 October 2000.

Laminaria/Corallina fields, which are just outside the current western boundary of the Zone of Co-operation, within the sovereignty of East Timor.²²

4.18 According to some experts, the line on the eastern side of the Gap seems to have been drawn from the eastern tip of the East Timor mainland, not the small outlying island of Jaco. If the eastern boundary were rectified to take this into account, the adjustment would put more of the Sunrise-Troubadour gas fields, found by Woodside Petroleum and partners, into the Timor Gap (north of the median line) rather than the Australian exclusive zone. Under the Treaty, this group of gas reservoirs extends about 20 per cent under the shared zone.²³

1997 Delimitation Treaty

4.19 The March 1997 Delimitation Treaty between Indonesia and Australia was a treaty which completed the negotiation of maritime boundaries between Australia and Indonesia. It has not yet been ratified, or entered into force. The Treaty delimited the exclusive economic zone boundary between East Timor and Australia. The Australian view is that the 1997 treaty remains in a satisfactory form between Indonesia and Australia, but it will have to be amended to reflect the fact that East Timor is no longer under Indonesian sovereignty.²⁴ On 2 September 1997, Portugal lodged a challenge to the Treaty, which was circulated at the United Nations. The protest document disputed the right of the Treaty to set a water-column line running through the Timor Gap, on the same grounds as Portugal's earlier challenge to the Timor Gap Treaty.²⁵

Administrative arrangements in the transitional period

4.20 Following the 30 August 1999 popular consultation, the Australian Government developed and implemented a strategy aimed at ensuring the smooth transition of the Treaty. Officers from the Department of Foreign Affairs and Trade, the Attorney-General's department, and the Department of Industry, Science and Resources liaised with officials from the United Nations and East Timorese representatives and consulted the petroleum industry to enable a smooth transition of operations under the Treaty. Transition arrangements needed to cover issues such as:

- the location of the headquarters of the Joint Authority, originally in Jakarta;
- appointment by the United Nations of appropriate representatives on the Ministerial Council and of people to participate on the Joint Authority; and

22 Cmdr. Robin Warner, RAN, 'Law of the Sea Issues for the Timor Sea: A Defence perspective', *East Timor and its Maritime Dimensions: Law and Policy Implications for Australia*, Canberra, Australian Institute of International Affairs, 14 June 2000.

23 Hamish McDonald, 'Sounding the gap', *The Sydney Morning Herald*, 21 October 2000.

24 Mr Campbell, *Committee Hansard*, 11 November 1999, p. 871.

25 'Australia's sea boundary challenged', *ABC News*, 2 September 1997.

- the status of the existing production sharing contracts as well as the existing regulations, directions and other matters resolved to date by the Ministerial Council and the Joint Authority.²⁶

4.21 In discussions with the Australian Government, East Timorese representatives, particularly Mr Gusmão, Dr Ramos-Horta, and the East Timorese spokesman on Timor Gap matters, Dr Alkatiri, confirmed their willingness to see the Treaty continue in its current form. The United Nations indicated a similar view.²⁷

Bayu-Undan liquids recovery and gas recycle project

4.22 The Darwin Area Manager of Phillips Oil Company Australia, Mr James Godlove, told the Committee on 8 September 1999:

Phillips, through various subsidiary companies, have major economic interests relating to petroleum development within area A of the Zone of Co-operation. We have already made very significant investments. With our co-venturers we are nearing a decision to approve a \$US1.4 billion budget for the construction and operation of the Bayu-Undan Liquids Recovery and Gas Recycle Project ... To provide a secure environment for these investments and to realise the full potential of petroleum resources in this area, it is vital that the treaty be sustained and that key transitional issues accompanying any change in the sovereign status of East Timor be managed smoothly.²⁸

Mr Godlove also said:

... the present commercial and fiscal terms of the treaty must be maintained. These include provisions relating to production sharing and cost recovery of capital and operating expenses. Furthermore, any tax regime established in East Timor should be no more onerous than the Indonesian regime being replaced. These provisions establish the basis for petroleum development in the zone of cooperation and any adverse change in these provisions could have a profound effect on our project economics.²⁹

Speaking at a seminar in Canberra on 14 June 2000, Mr Godlove said:

The major unresolved matter that does need to be addressed expeditiously is the lack of a defined fiscal regime in the terms of the Treaty regarding gas exported from the Zone of Co-operation. An agreement on that matter

26 Mr Payne, *Committee Hansard*, 11 November 1999, p. 874.

27 Mr Michael Potts, *Committee Hansard*, 11 November 1999, pp. 871-2.

28 *Committee Hansard*, 8 September 1999, p. 417.

29 Mr J. Godlove, *Committee Hansard*, 8 September 1999, p. 418.

would have significant economic benefits to both East Timor and Australia.³⁰

4.23 Mr Keith Spence, Woodside Energy Limited, told the Committee on 20 July 1999 that his company was concerned to preserve the stability and elimination of sovereign risk that the current Treaty regime provided.³¹ Woodside expected to be among the suppliers to major new customers in the region, based on substantial reserves in the Sunrise-Troubadour field that extends into the Zone of Co-operation. Sunrise-Troubadour could probably produce ten trillion cubic feet of gas, as opposed to three to four trillion cubic feet from Bayu-Undan.³²

4.24 A consortium led by Phillips Petroleum announced on 26 October 1999 that it would proceed with the first stage of the development of the Bayu-Undan field, in Area A of the Zone of Co-operation. This would involve the extraction of gas, stripping of the condensate and LPG liquids from the gas, and re-injection of the dry gas. The consortium would invest capital expenditure of about \$US1.4 billion. The project would provide significant employment opportunities to Australians and East Timorese. Phillips indicated that revenues of 'many tens of millions of US dollars' a year were likely to flow to Australia and East Timor.³³ In the press release announcing its decision to proceed with Bayu-Undan, Phillips referred to substantive and encouraging discussions with all relevant parties involved in East Timor's transition to independence.³⁴ They had received a letter signed by Mr Gusmão, Dr Ramos Horta and Mr Alkatiri saying they would honour Timor Gap petroleum zone arrangements.³⁵

4.25 Santos Ltd, which holds 11.8 per cent of the Bayu-Undan gas project, confirmed on 18 November 1999 that it had opted to participate in the project.³⁶ Santos was the last of the six partners in the project to publicly confirm its continuing participation, opening the way for the development plan to be submitted to the Joint Authority for final approval.³⁷ The project was expected to produce 110,000 barrels of

30 Australian Institute of International Affairs, Centre for Maritime Policy at the University of Wollongong, and the International Law Association, *East Timor and its Maritime Dimensions: Legal and Policy Implications for Australia*, Canberra, 14 June 2000. Cf. Trevor Sykes, 'The looming oil war with Indonesia', *The Australian Financial Review*, 15 October 1997: 'The various compromises reached by the diplomats have produced a rat's nest of ownership and royalty regimes'. Sykes pointed out that the Treaty when signed in 1989 did not anticipate that an unfinished product might be exported across one of the boundaries. Phillips wished to pipe gas from Bayu-Undan to Darwin for conversion to LNG, which raised the question of whether the royalty to be paid to Indonesia would be on the value of the gas or the LNG.

31 *Committee Hansard*, 20 July 1999, p. 112.

32 Mr John Akehurst, Managing Director, Woodside Petroleum Ltd, quoted in 'Australia's Woodside Sees No Threat from Timor Gas Rivalry', *Asia Pulse*, 6 December 1999.

33 Mr Godlove, *Committee Hansard*, 8 September 1999, p. 421; Mr Payne, *Committee Hansard*, 11 November 1999, p. 873.

34 Mr Payne, *Committee Hansard*, 11 November 1999, p. 885.

35 Paul Tait, 'East Timor backs gas project but warns on treaty', *Reuters*, 10 November 1999.

36 Mr Ross Adler, Managing Director, Santos Ltd, *Asia Pulse*, 18 November 1999.

37 The partners are: Phillips Petroleum Company, 50.29%, Santos Ltd, 11.83%, Inpex, 11.71%, Kerr McGee Corporation, 11.2%, Petroz NL, 8.26%, British Borneo, 6.72%.

condensate and LPG from 2004. The second stage of the project proposed construction of a gas pipeline to a LNG production facility in Darwin, which would then sell the product to overseas customers.³⁸

4.26 On 28 February 2000, the United Nations Transitional Administrator in East Timor, Mr Vieira de Mello, and the Australian Minister for Industry, Science and Resources, Senator Nick Minchin, announced that approval had been given by the Joint Authority for the first phase of the Bayu-Undan petroleum project in Area A of the Timor Gap Zone of Co-operation.³⁹

4.27 It is not possible to predict with certainty the likely revenues to flow to East Timor and Australia from the Bayu-Undan project. The actual revenues received will depend on highly variable oil and gas prices received from the project. Production rates tend to peak in the first few years of a liquids project and then decline, while gas projects have a relatively flat production profile related to the requirements of their gas customers and the timing with which the various phases of the project come on stream.⁴⁰

4.28 Given uncertainties associated with price and different start-up dates for the phases of the project, the prospective income stream is in the order of several tens of millions of dollars annually, for over a decade from 2003. That would represent a significant proportion of East Timorese GDP.⁴¹ In addition, Treaty-related activities would provide important employment and training opportunities for East Timorese across a range of disciplines from engineering to administration.⁴²

4.29 In an interview on the ABC radio program *Asia Pacific* broadcast on 10 October 2000, Mr Peter Galbraith, Member for Political Affairs of the East Timor Transitional Cabinet, said:

These resources are enormously important to East Timor. By the end of the decade it could mean between \$US100 million and \$US200 million for East Timor, depending on how these negotiations turn out, and for a country whose annual budget is just \$US45 million that makes all the difference ... The resources of the Timor Sea could make the difference between having to choose between children's health and children's education to being able to do both.

The transition from Indonesia to East Timor

4.30 Concerning the treaty obligations of new states, the Attorney-General's Department quoted an authoritative statement by Lord McNair:

38 *Asia Pulse*, 18 November 1999.

39 Senator Nick Minchin, 'World Scale Petroleum Project for Timor Sea', Media Release 00/49.

40 Mr Payne, *Committee Hansard*, 11 November 1999, pp. 873-4.

41 Mr Michael Potts, *Committee Hansard*, 11 November 1999, p. 871.

42 Mr Michael Potts, *Committee Hansard*, 11 November 1999, pp. 871-2.

Newly established States which do not result from a political dismemberment and cannot fairly be said to involve political continuity with any predecessor, start with a clean slate in the matter of treaty obligations...⁴³

4.31 When one state or one part of a state separates from an existing state there arises the question of whether that new state takes on the treaty obligations of the previous state or whether there is what is called a 'clean slate'. In other words, can they start again and choose those treaty obligations of the former state which they will take on later? In these circumstances, there are two relevant conventions,⁴⁴ but as Australia is not a party to them, customary international law becomes the basis. In terms of customary international law, if East Timor had become immediately independent from Indonesia without an interim period of United Nations administration, it would have been subject to the clean slate doctrine; it would not have been forced to take on the treaty obligations of Indonesia but, nevertheless, could have chosen those obligations which it did want to take on.⁴⁵

4.32 However, East Timor was not the usual scenario. Indonesia no longer exercised sovereignty. The view was that Portugal should not re-assert its sovereignty, even in the most technical sense, a view shared by Portugal. But, as no new independent East Timorese state had emerged, Australia faced the situation of there being no state with which to treat. In the absence of such a state, with whom could Australia enter into agreement to secure the continued operation of the Treaty?⁴⁶

4.33 The answer involved a new precedent in international law. Under Security Council resolution 1272, which set up the United Nations Transitional Administration in East Timor, UNTAET, a transitional period of some two to three years was established for East Timorese transition to independence. Under paragraph 35 of the United Nations Secretary-General's report, which was incorporated by specific reference into the Security Council resolution, the United Nations would 'conclude such international agreements with states and international organisations as may be necessary for the carrying out of the functions of UNTAET in East Timor'. Resolution 1272 stressed the need for UNTAET to consult and co-operate closely with the East Timorese people in order to carry out its mandate, including the question of keeping the Treaty on foot.⁴⁷ This gave UNTAET a wide treaty making power, providing more than sufficient basis for the United Nations to enter into an agreement with Australia to confirm the continued operation of the Treaty. In effect, the United

43 McNair, Arnold Duncan, Baron *The Law of Treaties*, 1961 edition, p. 601; quoted in Attorney-General's Department, submission no. 65, p. 4.

44 The 1978 *Vienna Convention on Succession of States in Respect of Treaties*, and the 1983 *Vienna Convention on Succession of States in Respect of State Property, Archives and Debts*; quoted in Attorney-General's Department, submission no. 65, p. 4.

45 Mr Campbell, *Committee Hansard*, 11 November 1999, p. 879.

46 Mr Michael Potts, *Committee Hansard*, 11 November 1999, p. 872.

47 Mr Campbell, *Committee Hansard*, 11 November 1999, p. 881.

Nations, through UNTAET, would be Australia's treaty party until the independent state of East Timor emerged.⁴⁸

4.34 A workshop on the Treaty of interested parties was held in Dili, 17–19 January 2000, attended by about 50 geologists, lawyers, engineers, economists and other experts from Australia, the United Nations, East Timor, Portugal and Mozambique. Woodside Petroleum and Phillips Petroleum were represented at the workshop. Dr José Ramos-Horta and other members of the East Timor National Consultative Council attended. Mr James Godlove, of Phillips Petroleum, said following the workshop, 'There was strong expressions of support for continuation of the Treaty and any continuation of the terms of the Treaty'.⁴⁹

4.35 When the Committee took evidence in November 1999, the Government was involved in discussions with the United Nations on the detail of the arrangements for the transition of the Treaty. Some adjustments had to be made to the Treaty, primarily to the arrangements for the Joint Authority which managed the rights and responsibilities under the Treaty on a day to day basis.⁵⁰ While working to ensure the Treaty's future, there was the need to deal in an orderly way with the Treaty's past. Australian officials had discussions at a technical level within the Joint Authority concerning the process of Indonesian disengagement from the Treaty. Indonesian representatives, including the Ambassador at Large for the Law of the Sea and Maritime Affairs, Hasjim Djalal, expressed the view that Indonesia would no longer have a role to play in the Treaty. This view was shared by the Australian Government, and after the separation of East Timor from Indonesia was completed, detailed discussions commenced with Indonesia on the mechanics of Indonesian disengagement.⁵¹

4.36 On 10 February 2000, diplomatic notes were exchanged in Dili by the United Nations Transitional Administrator, Mr Vieira de Mello, and Australia's Representative in East Timor, Mr James Batley, to give effect to a new agreement, whereby UNTAET replaced Indonesia as Australia's partner in the Treaty. Under the agreement, which was negotiated in close consultation with East Timorese representatives, the terms of the Treaty would continue to apply. In talks in Jakarta preceding the agreement, Indonesian representatives had agreed that following the separation of East Timor from Indonesia, the area covered by the Treaty was now outside Indonesia's jurisdiction and that the Treaty ceased to be in force as between Australia and Indonesia when Indonesian authority over East Timor transferred to the

48 Mr Michael Potts, *Committee Hansard*, 11 November 1999, p. 872.

49 'Support for Timor Gap Treaty at Dili workshop', *Australian Associated Press*, 20 January 2000.

50 Mr Michael Potts, *Committee Hansard*, 11 November 1999, p. 872.

51 Mr Michael Potts, *Committee Hansard*, 11 November 1999, p. 872.

United Nations.⁵² The Australian *Timor Gap Treaty (Transitional Arrangements) Act 2000* formalised this position.⁵³

4.37 Under the Treaty, the industry already had provided significant employment opportunities: of the number of man days, 124,000 were Australian and 80,000 were Indonesian. Those figures covered all activities related to exploration as well as production in the Zone, to October 1999. The employment included labouring jobs; technical jobs such as in engineering; and vocational jobs such as welders, electricians, engineers and geophysicists.⁵⁴ For the Indonesian share of employment to be transferred to the East Timorese, there was need to assist them in obtaining the skills and the skill levels needed to take up the available employment opportunities. Australia undertook to attempt to make those same opportunities available to East Timorese workers. A World Bank survey was undertaken of the training needs of the East Timorese population, to help them participate in an independent state. Part of that was to identify the kinds of skills that they would need if they were to take advantage of the opportunities presented under the Treaty.⁵⁵

4.38 Responsibility under the Treaty for determining employment shares primarily rested with the production sharing contractors, with encouragement through the Joint Authority and the Ministerial Council. Under the terms of their contract, the production sharing contractors had the objective of giving preference to employing Australian and Indonesian (now East Timorese) nationals in equal numbers, subject to the requirement of good oilfield practice. The imbalance had been in Australia's favour but was gradually moving towards Indonesia's favour with employment on the Modec venture to develop Elang-Kakatua.⁵⁶ Both contractors and sub-contractors were bound by these employment requirements. Contractors required competent employees with requisite skills who could observe good oil field practice and safety at all times. As few East Timorese had such skills, training was required to enable them to attain the necessary skills to participate in the oil industry.⁵⁷ The Committee was told:

We have also been holding discussions with the production sharing contractors in terms of whether there are opportunities for them to provide training and work experience for East Timorese. As we work our way through the Joint Authority and the workshop which we will be having in December, and as we continue with those sorts of discussions through the Ministerial Council and through the Joint Authority, we would be hoping to get an indication from the East Timorese of where their priorities lie and

52 Minister for Foreign Affairs and Minister for Industry, Science and Resources Joint Media Release, 10 February 2000.

53 *Senate Hansard*, 13 March 2000.

54 Mr Payne, *Committee Hansard*, 11 November 1999, p. 877.

55 Mr Payne, *Committee Hansard*, 11 November 1999, p. 877.

56 Mr Kjar, *Committee Hansard*, 11 November 1999, p. 878.

57 Mr Kjar, *Committee Hansard*, 11 November 1999, p. 878.

where the industry can fit in with aid agencies - whether they be AusAID, World Bank, Asian Development Bank or the other aid and service providers.⁵⁸

4.39 On 4 October 2000, Minister for Resources Senator Nick Minchin announced two initiatives under the auspices of the Timor Gap Zone of Cooperation Ministerial Council. Funding of \$US700,000 per annum would be provided out of Joint Authority revenues for the following two years to train East Timorese in administration and policy development in relation to the Timor Gap Treaty and the resources covered by it. Also, a steering committee would be formed to look at petroleum related training and employment for East Timorese in the Timor Gap petroleum fields and associated areas.⁵⁹

Attitude of the East Timorese

4.40 A *CNRT Statement on Timor Gap Oil* dated 22 July 1998, signed by Dr Ramos-Horta, Dr Mari Alkatiri and Mr João Carrascalão said:

The National Council of Timorese Resistance will endeavour to show the Australian Government and the Timor Gap contractors that their commercial interests will not be adversely affected by East Timorese self-determination. The CNRT supports the rights of the existing Timor Gap contractors and those of the Australian Government to jointly develop East Timor's offshore oil reserves in cooperation with the people of East Timor.

4.41 The Committee was assured that there was a spirit of goodwill by all the parties for projects under the Treaty regime to proceed successfully. According to Mr Stephen Payne, General Manager, Petroleum Exploration and Development Branch, Department of Industry, Science and Resources:

We certainly recognise the importance of that stability and predictability for a project like Bayu-Undan, which is a massive project. With the first phase of it, you are looking at \$US1.4 billion and you are looking at long-lived projects so companies, understandably, need stability so they can make their decisions on investments. We have had indications from the East Timorese leadership ... that they are conscious of the need for the Treaty to continue to operate in a way that companies understand and which is predictable.⁶⁰

4.42 With respect to future developments, Mr Payne told the Committee that Australia's approach had always been that there ought to be one set of rules for all projects under the Treaty, as had been the case with Indonesia. He said that Phillips had received an assurance from the East Timorese leadership, which had been taken into account before the companies made their decision to commit to the first stage of

58 Mr Kjar, *Committee Hansard*, 11 November 1999, p. 878.

59 *Senate Hansard*, 4 October 2000, p. 17785.

60 Mr Michael Potts and Mr Payne, *Committee Hansard*, 11 November 1999, p. 876.

the Bayu-Undan project. The terms of that assurance talked about future projects as well as existing ones.⁶¹

4.43 At the hearing on 18 November 1999, Mr Abel Guterres, Chairman of the East Timor Relief Association, told the Committee:

Touching a little bit on the Timor Gap Treaty, I am sure the leadership has expressed that the bulk of the agreement will remain. But a time will come when people in the leadership will express their views on the subject. At this stage not a lot has been discussed because everyone is concentrating very much on the emergency needs of that population, that is, shelter and food. Hopefully, by some time next year, once UNTAET takes over, we can get that planning and those processes in train ... I do not think we would touch on the core aspect of the agreement because it is a waste of time ... I think there could be concerns in terms of taxation and royalties that may go to East Timor in terms of increase.⁶²

4.44 The Committee was assured by the Attorney-General's Department that there were no legal barriers to East Timor and Australia signing off on a future agreement on the Zone of Co-operation.⁶³

4.45 The East Timorese spokesman on Timor Gap matters, Dr Mari Alkatiri, stated on 10 November 1999 in reference to the letter to Phillips Petroleum signed by Mr Gusmão, Dr Ramos-Horta and himself giving an assurance that they would honour the Treaty arrangements:

Yes, it was sent ... but that doesn't mean we have already accepted the Treaty as it is. It's not a problem of oil and gas, it's a problem of maritime borders ... I think we have to redefine, renegotiate the border later on when East Timor becomes independent.⁶⁴

In a further statement in Jakarta on 29 November 1999, Dr Alkatiri said:

We still consider the Timor Gap Treaty an illegal treaty. This is a point of principle. We are not going to be a successor to an illegal treaty.

Dr Alkatiri said the East Timorese were willing to make transitional arrangements so that existing operators could continue their projects. Negotiations between the United Nations, Portugal and Australia were under way to sort out intermediate arrangements, he said.⁶⁵

61 Mr Payne, *Committee Hansard*, 11 November 1999, pp. 876-7.

62 Mr Guterres, *Committee Hansard*, 18 November 1999, pp. 927, 937.

63 Mr Campbell, *Committee Hansard*, 11 November 1999, p. 883.

64 Paul Tait, 'East Timor backs gas project but warns on treaty', *Reuters*, 10 November 1999.

65 Karen Polglaze, 'Future of Timor Gap Treaty thrown into doubt', *Australian Associated Press*, 29 November, *The Sydney Morning Herald*, 30 November 1999.

4.46 The Treaty was designed to expire after 40 years, in 2029. At that time, if not before, the contracting parties would have the options of renewing it for a further twenty years, re-negotiating the Treaty as an interim arrangement, or attempting to negotiate a seabed treaty. It is important to note that the boundaries of Zone A, the shared area, were drawn with reference to the seabed boundary between Indonesia and Australia agreed to in 1972, which is closer to Indonesia than the mid-point between the two countries. If the Treaty were re-negotiated so that Zone A was shifted to sit closer to Australia astride the mid-line with East Timor, or if the Treaty were replaced by a seabed treaty which took the mid-line as the boundary, East Timor would come into possession of the bulk of the prospective hydrocarbons deposits.⁶⁶ Alternatively, there could be re-negotiation of the respective shares of revenue from the Zone going to both parties: Dr Ramos-Horta declared on 7 May 2000 that East Timor was entitled to up to 90 per cent of the revenues.⁶⁷ It should be noted that the Treaty covered revenue sharing arrangements only for petroleum; natural gas revenues were not explicitly included in the Treaty, although the Committee was told at the hearing on 11 November 1999 that ‘the approach had always been that there ought to be one set of rules for all projects under the Treaty ... That helps companies when they are making the major investment decisions that they do when you are talking about oil and gas developments’.⁶⁸

4.47 On 15 June 2000, Dr Alkatiri announced CNRT policy on the Treaty. The CNRT would be seeking, prior to UNTAET relinquishing its mandate, a new seabed boundary drawn an equal distance between East Timor and Australia as the starting point for negotiations on a new oil and gas revenue-sharing agreement. He said: ‘We are not thinking of renegotiation but a new treaty. Of course, some of the terms will be the same but the starting point needs to be the drawing of a maritime boundary between our countries and that means the Treaty would not have any effect any more’.⁶⁹

4.48 Dr Alkatiri was visiting Canberra as part of an UNTAET team to negotiate with Australia on a new treaty. Another member of the team, UNTAET’s Director of Political Affairs Peter Galbraith, made a statement following the talks, saying:

What UNTAET seeks is what the East Timorese seek. The East Timorese leadership has made it clear that the critical issue for them is to maximise the revenues of the Timor Gap. The legal situation is this: UNTAET has to continue the terms, but only the terms of the old Timor Gap Treaty and only

66 Andrew McNaughtan, ‘New nation has opportunity for gains in the Gap’, *The Sydney Morning Herald*, 13 April 2000.

67 ‘Ramos-Horta calls on Australia to renounce Timor Gap oil treaty’, *Agence-France Presse*, 8 May 2000.

68 Mr Payne, *Committee Hansard*, 11 November 1999, pp. 876-7; ‘Bayu-Undan Project Good for East Timor–Phillips Petroleum CEO’, *Dow Jones*, 27 June 2000.

69 Peter Alford and Robert Garran, ‘East Timor wants new gap treaty’, *The Australian*, 15 June 2000; Rod McGuirk, ‘Downer stresses need for stability in Timor Gap’, *AAP*, 15 June 2000.

until independence. Therefore a new regime will have to be in place on the date of independence.⁷⁰

4.49 The Australian Government's position was stated by a spokesman for Foreign Minister Alexander Downer on 11 July 2000, who said that Australia 'understands the discussion or debate is about the share of revenue; it's not delimitation of the seabed'.⁷¹

4.50 Speaking at a CNRT congress in Dili on 26 August 2000, Dr Alkatiri said East Timor wanted its maritime boundary with Australia to be equidistant between the two countries, which would put all the current oil and gas activity in the Timor Gap on East Timor's side. He stressed the need for a new legal instrument so as not to retroactively legitimise the 1989 Treaty: 'We refuse to accept that East Timor be the successor to Indonesia to the Treaty'.⁷² Mr Galbraith said in a radio interview on 10 October 2000:

UNTAET's position, acting on behalf of the East Timorese people, is that the royalties and the tax revenue from the area north of the mid-point should come to East Timor, and if there is not going to be a maritime delimitation East Timor, however should have the same benefit as if there were a maritime delimitation. That, after all is what East Timor is entitled to under international law.⁷³

4.51 In the same interview, Mr Galbraith said that any state, including the independent country of East Timor, had the option of going to the International Court of Justice to seek a maritime delimitation. 'Hopefully', he said, 'it won't come to that because an agreement acceptable to the East Timorese will be negotiated and in place by independence'.

4.52 On 18 September 2000, Foreign Minister Alexander Downer, Resources Minister Nick Minchin and Attorney General Daryl Williams announced that Australian officials would travel to Dili for a preliminary round of negotiations over three days from 9 October with UNTAET and East Timorese representatives on rights for future exploration and exploitation for petroleum in the Timor Gap. The Ministers said the aim of the talks was to reach agreement on a replacement for the Timor Gap Treaty to enter into force on East Timor's independence. 'It is expected there will be several rounds of talks', they said. 'Australia currently has an agreement with UNTAET which provides for the continued operation of the terms of the Timor Gap Treaty originally negotiated with Indonesia. It will expire on the date East Timor

70 Mark Dodd, 'Timor Gap deal set to deliver windfall for Dili', *The Sydney Morning Herald*, 21 June 2000.

71 Ray Brindal, 'Australia says revenue, not border, focus of Timor talks', *Dow Jones Newswires*, 14 July 2000.

72 'Dili & Canberra to begin sea boundary talks in October', *Kyodo*, 28 August 2000; 'East Timor: Oil Negotiations with Australia to begin in October', *Lusa*, 28 August 2000.

73 *Asia Pacific*, 10 October 2000.

becomes independent.’ The Ministers said it was necessary to avoid a legal vacuum and to provide commercial certainty for the petroleum industry operating in the gap: ‘The eventual export of petroleum by pipeline from the Timor Gap to Darwin would bring considerable benefits in terms of Australian regional development. It is very important that there is a seamless transition or arrangements governing petroleum exploitation in the Timor Gap. These negotiations are a first step in that direction.’⁷⁴

4.53 As already mentioned, there are two ways of providing East Timor with a better deal than the present 50:50 split as set out in the Timor Gap Treaty:

- by opting for a mid-point delimitation in a seabed boundary treaty rather than the joint co-operation zone on which the Timor Gap Treaty was based; or
- by providing East Timor with a generous share of the royalties derived from Area A in the joint zone of co-operation in a renewal of the present treaty - in effect, abolishing the distinction between ZOC A and ZOC C.

4.54 The Law of the Sea Convention, which entered into force in 1994, is not prescriptive about the basis for delimitation. Article 83 (1) reads:

The delimitation of the continental shelf between States with opposite or adjacent coasts shall be effected by agreement on the basis of international law, as referred to in Article 38 of the Statute of the International Court of Justice, in order to achieve an equitable solution.⁷⁵

4.55 Article 38 of the Statute of the International Court of Justice reads:

The Court, whose function is to decide in accordance with international law such disputes as are submitted to it, shall apply:

- a. international conventions, whether general or particular, establishing rules expressly recognized by the contesting states;
- b. international custom, as evidence of a general practice accepted as law;
- c. the general principles of law recognized by civilized nations;
- d. subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.

74 Minister for Foreign Affairs, ‘Timor Gap Treaty Negotiations to Begin’, media release, 18 September 2000; ‘Renegotiation of Timor Gap treaty to begin’, *AAP*, 18 September 2000.

75 Article 83 (1) in the Informal composite negotiating text, Document A/CONF.62/WP.10 of 15 July 1977 of the Law of the Sea Conference read: ‘The delimitation of the continental shelf between adjacent or opposite States, shall be effected by agreement in accordance with equitable principles, employing where appropriate, the median or equidistant line, and taking account all the relevant circumstances’. The reference to the ‘median or equidistant line’ was omitted in the final version of the Convention. The 1977 draft was included as Appendix II in the report of the Joint Committee on Foreign Affairs and Defence, *Australia, Antarctica and the Law of the Sea, Interim Report*, 1978.

2. This provision shall not prejudice the power of the Court to decide a case *ex aequo et bono*, if the parties agree thereto.

4.56 Although the Law of the Sea Convention does not prescribe the median point for delimitation purposes, the median point is now generally accepted as the basis for delimitation. It should be noted that Australia adopted the median line in 1981 as the fisheries boundary.

4.57 If the midpoint were adopted as the basis for delimitation purposes in a seabed boundary between Australia and East Timor, the current ZOC A would be located in East Timorese territory. It could also have implications for the boundary between Australia and Indonesia as the new Australia-East Timor boundary would be south of the two tripoints marking the Timor Gap in the Australia-Indonesia boundary. This could lead to Indonesian claims for a revision of its boundary with Australia. There could also be other ramifications.

4.58 In view of current international law, if the boundary between Australia and East Timor were confirmed as being a more or less straight line between the two tripoints marking the Timor Gap in the Australia-Indonesia boundary, Australia would be under at least a moral obligation to direct most of the revenue flowing from oil and gas production in Area A to East Timor. The ratio of 90:10, as claimed by East Timor, would not be unreasonable.

4.59 The Committee believes that it is in Australia's interest for East Timor to become a viable nation; one that does not remain a mendicant state and one that can play a constructive role in regional affairs. In one way or another, Australia has had an association with East Timor for almost 60 years and, for about half of that time, not one which has been particularly creditable to Australia. Although Australia did much to regain its reputation through its role in the establishment and deployment of Interfet, it has an opportunity in current negotiations on the Timor Gap Treaty to cement its future relations with East Timor.

4.60 Australian policy towards East Timor has often been characterised as one in which pragmatism, expediency and short-term self-interest have prevailed at the expense of a more principled approach. As is now evident, such foreign policy characteristics have not always been in Australia's long-term interests. By acting honourably and taking account of current international law, the Australian Government might not only earn the good will of East Timor but also of other interested parties, as well as providing East Timor with an economic basis on which it might be able to reduce its dependency on foreign aid. Any such reduction would, of course, also benefit Australia. However, the Committee does not believe that foreign aid should be used as a lever in the current negotiations.

4.61 The commercial operators have expressed concern relating to the outcome of the negotiations. In the event of unduly protracted negotiations, commercial operators could defer further decisions on investment in the Timor Sea. Any such decision would undoubtedly have adverse effects for both East Timor and Australia. In addition, as indicated by Mr Peter Galbraith, East Timor could also take the matter to

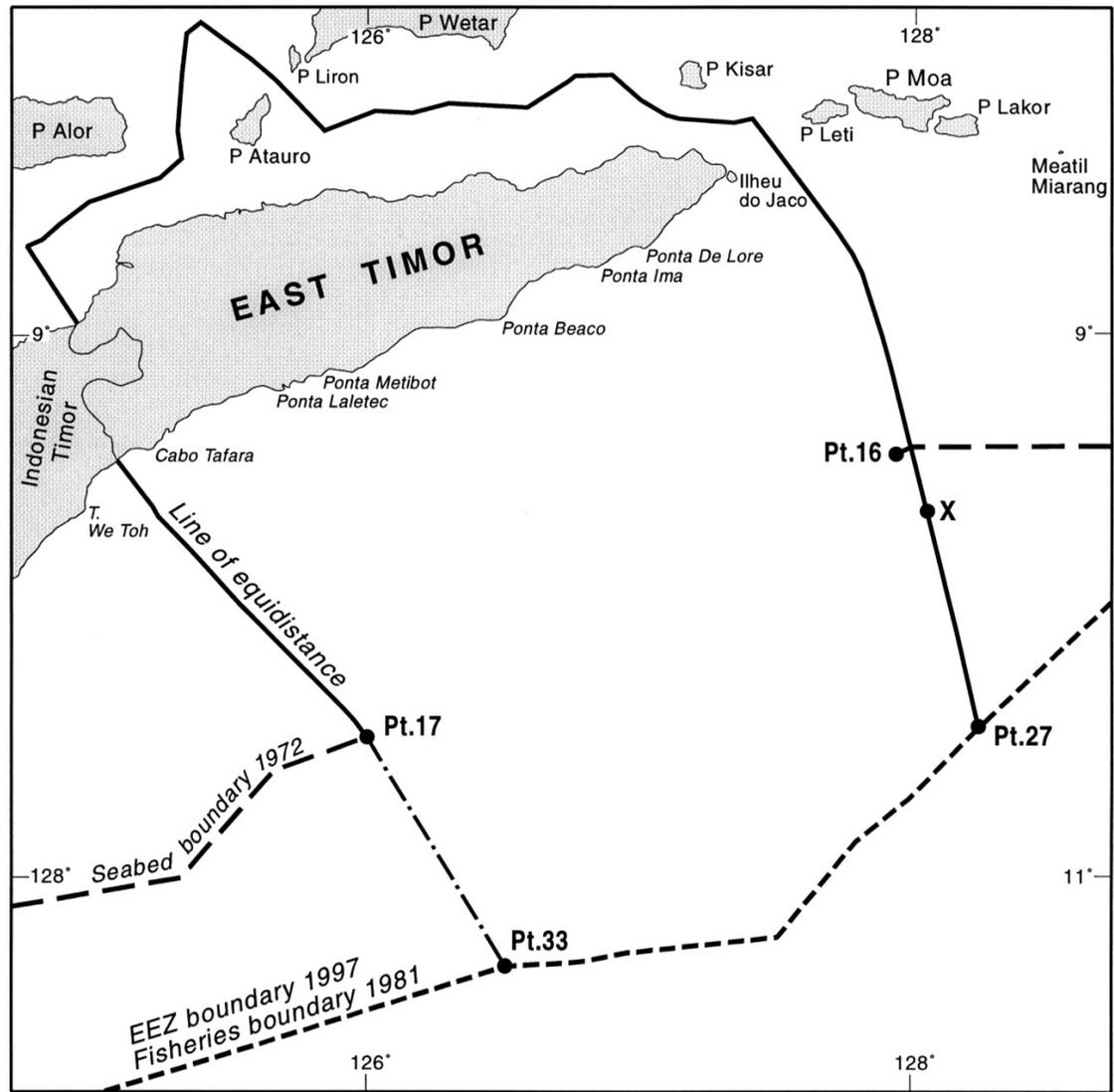
the International Court of Justice should it regard Australia as being unduly intransigent. Such a course of action, which could result in lengthy proceedings, would be inimical to Australia's interests and international standing.

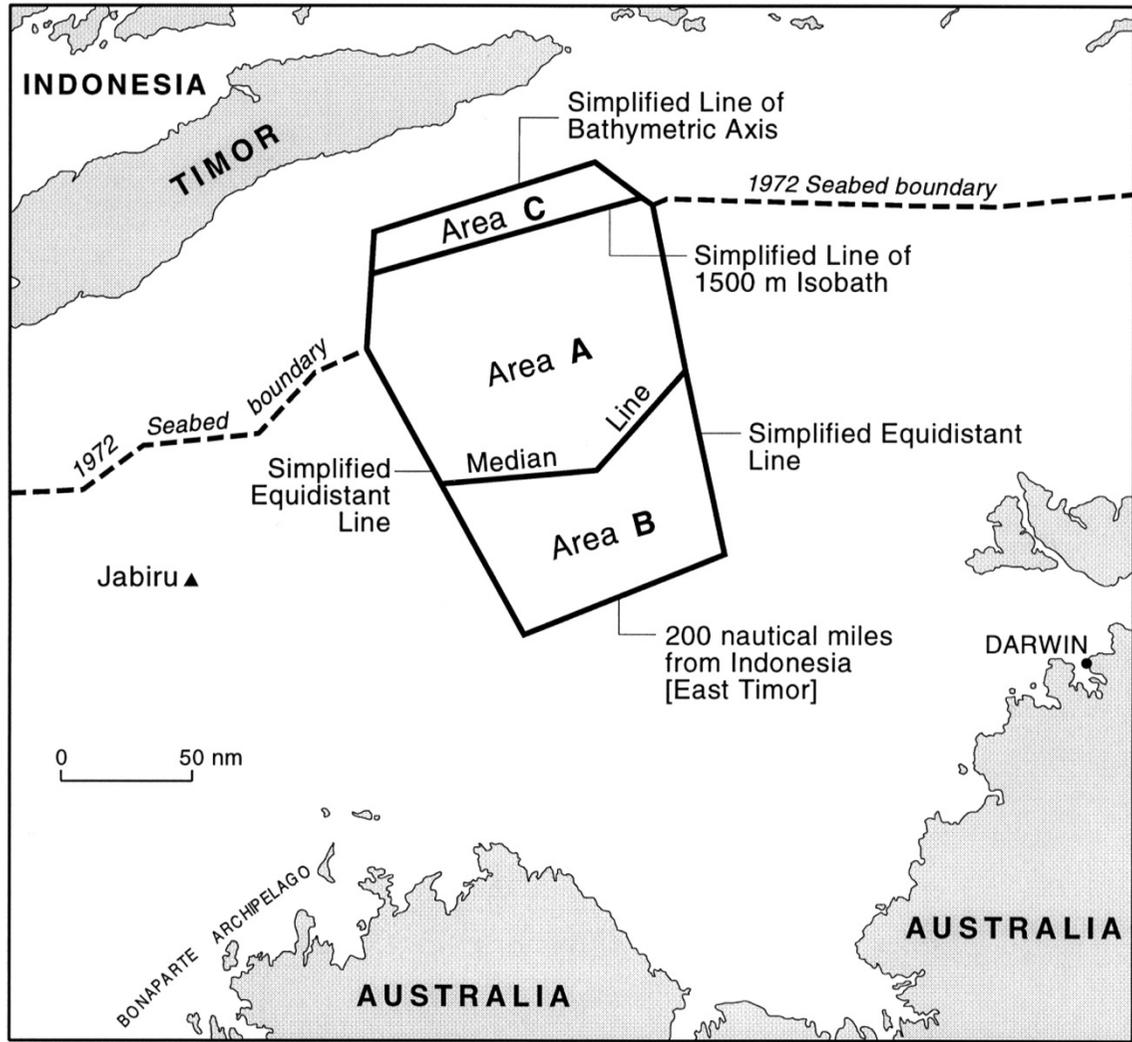
4.62 In the Committee's view, it is incumbent on Australia at this time to act generously towards East Timor to provide it with the means by which it can develop a society and economy in keeping with the region. The revenues from oil and gas royalties would inevitably become the cornerstone of its future economic and social development.

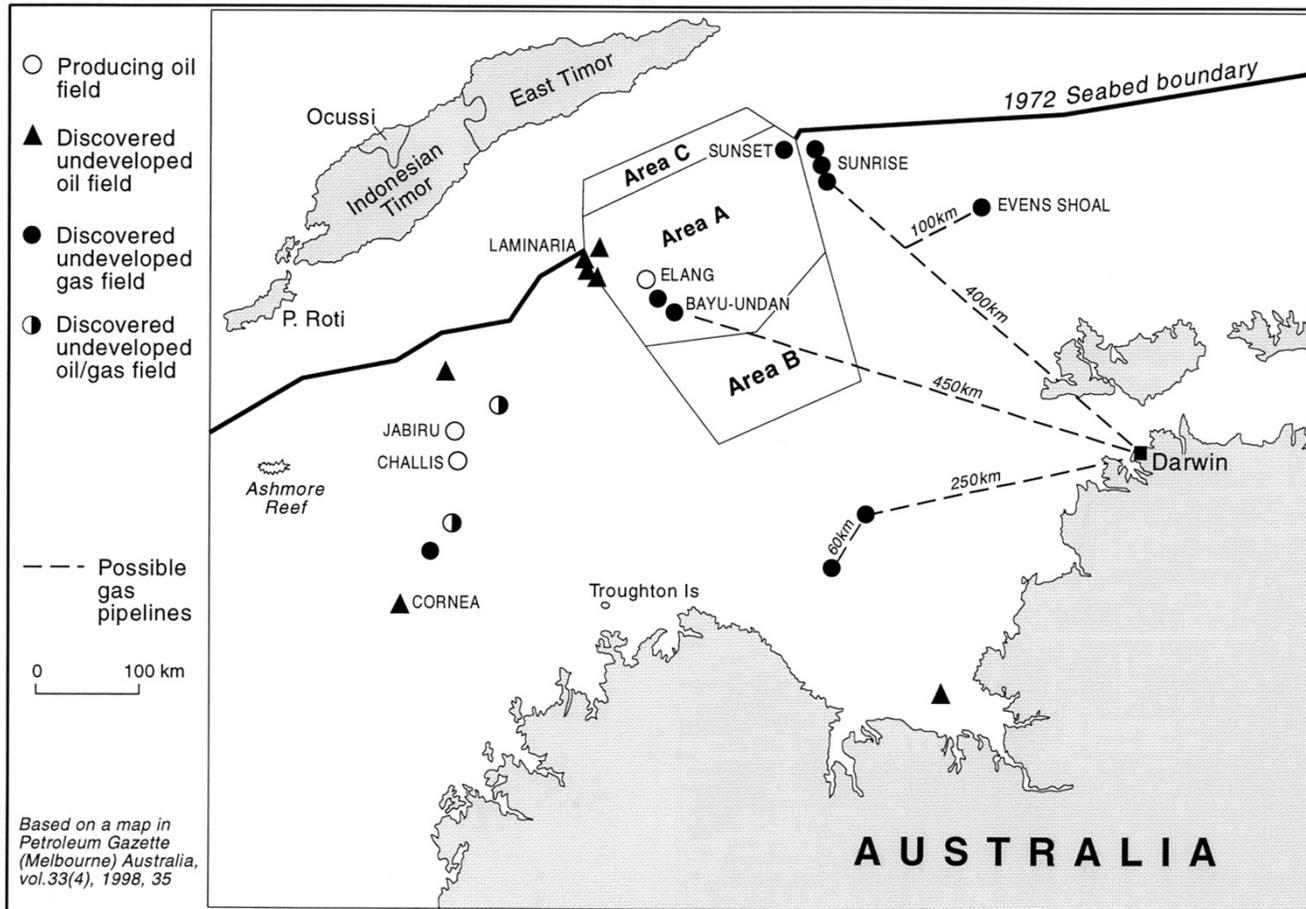
Recommendation

The Committee RECOMMENDS that, in its negotiations with UNTAET on the future of the Timor Gap Treaty, the Australian Government should take into account current international law in relation to seabed boundaries, the history of our relations with the East Timorese people, the need to develop good bilateral relations with East Timor and the need for East Timor to have sources of income that might reduce dependency on foreign aid.

Cartography by Chandra Jayasuriya originally prepared for: Victor Prescott, 'East Timor's Potential Maritime Boundaries', presented at *East Timor and its Maritime Dimensions: Legal and Policy Implications for Australia*, Australian Institute of International Affairs, Canberra, 14 June 2000.







CHAPTER 5

HUMAN RIGHTS IN EAST TIMOR

Human rights abuses in East Timor since 1975

Death toll

5.1 At its most extreme, abuse of human rights involves the taking of human life. The number of deaths caused during the period of Indonesian rule is a measure of the extent of human rights abuses in East Timor.

5.2 Mr John Dauth, Deputy Secretary, DFAT, told the Committee that he did not think anyone would be able to offer a figure as to the number of people who had met violent ends and been the victims of the civil disorder and oppression over the 25 years: 'I do not think such a figure exists in anybody's knowledge. It is possible, of course, to get all sorts of accounts from people who have been there and they vary in credibility. What is clear is that many people have died.'¹ He also said, 'It is sadly the case that there have been a number of times when large numbers of people have died.'²

5.3 Professor Graeme Hugo also drew attention to the difficulty of obtaining a definitive figure for the loss of life that had resulted from the Indonesian invasion and subsequent occupation. Referring to the deficiencies of the pre-1975 Portuguese population records, which had been used as the basis for projections, he said:

I believe, at least with the existing information we have, that it is virtually impossible to calculate demographically what the loss of life, other than by natural causes, has been.

If we were to have some accurate population information from the pre-Indonesian period, if there were in the Portuguese records, an age-sex distribution of the population from the 1970s, it would give us the possibility of making some quite accurate estimates, I would say, of the extent of that undoubtedly significant loss of life in the process of Indonesia taking over and running East Timor.³

5.4 Mr Francisco Soares, a member of the East Timorese community in Perth, told the Committee that as a consequence of the Indonesian invasion, more than 200,000 people had been killed: 'It is one-third of the population and it is genocide'.⁴

1 Mr Dauth, *Committee Hansard*, 13 August 1999, p. 232.

2 Mr Dauth, *Committee Hansard*, 13 August 1999, p. 232.

3 Professor Hugo, *Committee Hansard*, 19 July 1999, p. 55.

4 Mr Soares, *Committee Hansard*, 20 July 1999, p. 194.

5.5 This estimate was, in general terms, supported by Professor James Cotton, who referred to a statement made in November 1979 by Dr Mochtar Kusumaatmadja, then Indonesian Foreign Minister, that 120,000 people had died in connection with famine, civil war and the occupation: ‘Years have passed since then, so between that number and 200,000 is probably a reasonable figure, which is a frightening proportion.’⁵ Dr William Maley also agreed that ‘a couple of hundred thousand over twenty-four years is quite a plausible figure’.⁶

5.6 Mr Rob Wesley-Smith referred to the 1993 Joint Standing Committee on Foreign Affairs, Defence and Trade report, *Australia’s Relations with Indonesia*, which said that, since 1975, ‘the evidence suggests that at least 200,000 East Timorese have died from causes directly or indirectly attributable to integration by Indonesia’.⁷

5.7 Mr Jim Aubrey explained how this widely quoted estimate had been arrived at:

it becomes a simple exercise in statistical projection to approximate a total fatality figure of East Timorese from the 1975 invasion through the subsequent 24 years ... In the period of 1960 to 1970, the population annual growth rate in East Timor was 1.7 per cent. This figure contrasts conservatively with the current rate of 2.35 per cent and with the 1980s rate of 3.02 per cent. The pre-invasion population in 1975, based on census and demographic studies, is reported to have been around 690,000. Projecting this figure with the conservative 1.7 per cent growth rate to the year 1995 gives an estimated population of 966,643. The last Indonesian census was conducted in 1995. According to this data the population of East Timor for that year was 840,000 people. Even without subtracting a figure for Indonesian transmigrants, the contrast between the 1995 Indonesian census and the projected population total for 1995 leaves 126,924 people missing ... relying on Indonesian government statistics for transmigration from the 1997 statistical yearbook of Indonesia, compiled by the Department of Information, we are told that East Timor had 58,856 transmigrants by the end of 1995. It now becomes possible to subtract the transmigration figure from the Indonesian census total for 1995, leaving 780,863 bona fide East Timorese people. Subtracting this figure from the projected population total for 1995 gives a conservative indication based upon all the available empirical evidence of the number of East Timorese men, women and children who have perished under the Indonesian occupation—185,780 ... This information was available in 1980 when the first Indonesian census was made giving a population total of 555,000. The projected population

5 Professor Cotton, *Committee Hansard*, 13 August 1999, p. 281. Professor Cotton subsequently wrote that ‘the total number of fatalities during the period of Indonesian numbered at least 120,000 and could have been as high as 200,000’ (‘The Emergence of an Independent East Timor: National and Regional Challenges’, *Contemporary Southeast Asia*, vol. 22, No. 1, April 2000, p. 3).

6 Dr William Maley, *Committee Hansard*, 11 November 1999, p. 862.

7 Mr Wesley-Smith, *Committee Hansard*, 8 September 1999, p. 369. The passage quoted is on page 96 of the Committee’s report.

figure of 1980 is 750,677. This leaves an absence of 195,677 East Timorese ... it is not unreasonable to make allowance for the conservative growth rate used throughout the population projection, and the possibility that the number of transmigrants in East Timor has been underestimated by Indonesia's department of information. Therefore, it is highly possible that the estimate of East Timorese who perished during the invasion and under the subsequent 24 years of Indonesian occupation far exceeds the often quoted 200,000. Only when East Timor is independent can the empirical evidence be gathered to substantiate the estimation.⁸

5.8 Mr James Dunn wrote that, in the mid-1970s, East Timor's population was growing at a rate of between 1.8 and 2.1 per cent per annum and, therefore, had conditions been normal, by 1995 about one million Timorese would have been living in the province, or 300,000 more than the current estimate of the indigenous population. He wrote: 'Most of this massive loss of population is clearly attributable to the conditions created by the Indonesian invasion, and the East Timorese people have been denied international acknowledgment of what has been, in relative terms one of the worst disasters of its kind in modern history.'⁹ On 24 September 1999, Mr Dunn told the Committee of a massacre near Bobonaro in 1976, which he had reported on to the United Nations in 1977, where between 1,200 and 2,000 refugees had been killed by Indonesian troops: 'In places like that, there will be areas where there have been mass killings and probably are mass graves.'¹⁰

5.9 In August 2000, the United Nations Chief Prosecutor in East Timor, Mr Mohamed Othman, a Tanzanian lawyer and former chief prosecutor at the Rwandan International Criminal Tribunal, began the task of compiling a report on atrocities committed after the 1975 invasion. The United Nations human rights chief in Dili, Mr Patrick Burgess, announced on 25 August 2000 that Mr Othman would lead a team examining whether there was a systematic campaign of violence following the imposition of Indonesian rule.¹¹ On 4 October 2000, Mr Othman was appointed Prosecutor-General for East Timor by Secretary-General Kofi Annan, with exclusive responsibility to investigate and prosecute international crimes committed in connection with the popular consultation of 30 August 1999. He was also given

8 Mr Aubrey, *Committee Hansard*, 27 August 1999, p. 314.

9 James Dunn, *Timor: A People Betrayed*, Sydney, ABC Books, 1996, p. 284. In evidence to the Senate Standing Committee on Foreign Affairs and Defence's inquiry into human rights in East Timor, Mr Dunn said the 'actual loss of life could be up around 200,000 people' (*Committee Hansard*, 9 June 1982, p. 401). Xanana Gusmão said in an interview in 1990 that he believed that 'more than 200,000' people had died over the previous 15 years from fighting, famine and disease (*Background Briefing*, 28 October 1990).

10 Mr Dunn, *Committee Hansard*, 24 September 1999, p. 612. During its 1982-83 inquiry into the human rights and conditions of the people of East Timor, the Senate Standing Committee on Foreign Affairs and Defence received evidence from eyewitnesses to massacres and other flagrant abuses of human rights. This evidence was kept *in camera* to protect witnesses in East Timor.

11 Mark Dodd, 'War crimes lawyer to study 1975 invasion', *The Sydney Morning Herald*, 26 August 2000; Ian Timberlake, 'East Timor militia accused to be charged', *Agence France-Presse*, 29 August 2000.

responsibility for laying the foundation for the future office of Attorney General for East Timor.¹²

5.10 On 10 October 2000, a warrant for the arrest of Mr Eurico Guterres, leader of the East Timorese Aitarak militia group, was submitted simultaneously to the Head of the Indonesian Diplomatic Mission in Dili and to the Indonesian Attorney's General in Jakarta. The arrest warrant, the first to be issued in connection with the violence in 1999, was signed at the request of the Prosecutor-General of East Timor by Judge Alexandre Corte Real, one of three judges serving on the territory's Special Panel for Serious Criminal Offenses, and related to Mr Guterres' involvement in two 1999 massacres, in Liquiça and Dili. Mr Sergio Vieira de Mello requested Attorney General Marzuki Darusman to ensure that the competent authorities in Indonesia enforce the warrant and that Guterres be surrendered so that he can face justice in East Timor. The request was made pursuant to the Memorandum of Understanding Regarding Cooperation in Legal, Judicial and Human Rights Related Matters, signed on 6 April 2000 by Mr Vieira de Mello and Mr Marzuki Darusman, in which UNTAET and Indonesia pledged to facilitate the transfer of people from one jurisdiction to another.¹³

The human rights record, 1975—1999

5.11 'No people on earth has seen a greater portion of its population perish under tyranny since the nightmare of the European Holocaust', declared the Central Conference of American Rabbis in a statement on East Timor in June 1997. The statement continued:

Despite world outrage over these events, and despite the United Nations resolutions calling for immediate Indonesian withdrawal from East Timor, the occupation, and the cruel abuses of human rights attendant upon it, continue to this day. For more than twenty years East Timor has now lived under a brutal military occupation. Arbitrary arrests, torture and extrajudicial executions are everyday occurrences, as are programs of compulsory relocation, confinement in concentration camps, and systematic starvation. The occupying forces have deprived the Timorese of the most basic freedoms of expression and assembly; the Timorese language, Tetum, has been suppressed and many forms of cultural expression banned. Political opposition is punished by detention, torture and death. Contact with the outside world has been severely restricted, and were it not for the courage of the several foreign journalists who witnessed the event, even the appalling massacre of more than two hundred peaceful Timorese

12 *Daily News* (Dili), 5 October 2000; 'Tanzanian appointed U.N. prosecutor general for East Timor,' *Xinhua*, 9 October 2000.

13 'Arrest Warrant For Eurico Guterres', *UNTAET News*, 11 October 2000; Mark Dodd, 'Hand over militia head, says UN', *The Sydney Morning Herald*, 12 October 2000.

demonstrators at a Dili cemetery in 1991 would have gone unrecorded and unprotected.¹⁴

5.12 The United Nations Special Rapporteur on Torture, Professor P. Koojimans, said, in January 1992, that in East Timor ‘torture is said to be practised rather routinely’ in police and army interrogations, and that he had heard of ‘no case of the courts having concluded that a detention was illegal or that a statement was obtained under duress’.¹⁵ He recommended that Indonesia ratify its signature to the 1984 United Nations Convention against Torture, but this was not done until 28 October 1998.¹⁶ The December 1997 report of Professor Koojimans’ successor as Special Rapporteur on Torture, Mr Nigel S. Rodley, detailed 27 cases in East Timor which had been brought to his attention, of which the following gives the general tenor:

Aliança Soares dos Santos (female), reportedly detained, along with seven members of her family, in Atabae, Bobonaro district on 5 December 1996. All of the family members were allegedly beaten and Aliança was allegedly tied up, threatened with a knife and taken to KORAMIL (Sub-District Military Command) in Ermera. She was allegedly subjected to torture, including rape by an Indonesian Armed Forces soldier, who threatened to kill her if she reported the rape. She was subsequently transferred to a Rajawali batallion camp at Luli Rema and allegedly twice raped by a sergeant. She was released on 16 December 1996. The Government confirmed that she had been temporarily arrested, though on a different date, but said that there was no evidence that she had been raped.¹⁷

5.13 The Committee received evidence that torture was used routinely as a means of control:

it became a routine, a way of life, over in East Timor for a while, and much of it probably was able to occur without necessarily the endorsement of all members of the Indonesian military, but the climate was so unstable and there was virtually complete impunity for actions. As a result, it was a very pervasive process.¹⁸

5.14 The February 1998 report of the Secretary-General on the human rights situation in East Timor found that ‘Indonesia’s overwhelming military presence has an enormous impact on the human rights situation and is undoubtedly the cause of

14 Resolution adopted by the 108th Annual Convention of the Central Conference of American Rabbis in June 1997.

15 *Visit of the Special Rapporteur to Indonesia and East Timor*, U.N. Doc. E/CN.4/1992/17/Add.1, paras. 73, 74.

16 Canada. Department of Foreign Affairs and International Trade, *For the Record 1998: the UN Human Rights System*, vol. 3, ‘Asia: Indonesia’.

17 *Report of the Special Rapporteur, Mr Nigel S. Rodley: Summary of cases transmitted to Governments and replies received*, E/CN.4/1998/38/Add.1

18 Mr Paris Aristotle, Director, Victorian Foundation for the Survivors of Torture, *Committee Hansard*, 27 August 1999, p. 304.

serious tensions as people are at all times reminded that they are under a repressive military occupation'. The Secretary-General reported that, in June and July 1997, military teams rounded up systematically large numbers of people, detaining them for days or weeks without a warrant or detention order, and intimidating or torturing them so that the army could get information about possible guerrillas. He said sources also indicated that torture continued to be endemic in East Timor, a method used to get information about suspected guerrilla activity or to force confessions:

Standard methods include application of electric shocks, burning the skin with lighted cigarettes, placing the hand or foot under a chair or table leg which the interrogator then sits on; and kicking and severe beating, sometimes with pieces of plywood, pipe or electric cable. The perpetrators can be any branch of the military, including the police, but the most feared interrogators are those from Kopassus, the army special forces, and the various joint counterinsurgency teams they command.¹⁹

5.15 The Special Rapporteur on Violence against Women referred to East Timor in her 1998 report to the Commission. She indicated that she had received a large number of submissions regarding sexual violence in East Timor by Indonesian Security Forces: 'Among the violations complained of are sexual violence, rape, forced marriage, forced prostitution and the intimidation of female relatives of suspected activists. Indonesian State authorities have not responded in accordance with their international obligations. No cases have thus far resulted in prosecution.'²⁰

5.16 An investigation of the Indonesian national family planning program (*Keluarga Berencana Nasional—KB*) in East Timor by Miranda E. Sissons of the Yale Center for International and Area Studies, was drawn to the attention of the Committee by the East Timor Human Rights Centre.²¹ Sissons found that, set in a context of wide-scale repression and fear, the KB program in East Timor consistently violated recognised standards of family planning and reproductive health care as defined by the Beijing Declaration of the United Nations Fourth World Conference on Women. The design and implementation of the KB program in East Timor had caused serious violations of women's human rights under both international and Indonesian domestic law. The majority of East Timorese people perceived the KB program as a deliberate, politically-inspired means of controlling the local population in both literal and demographic terms. The resulting fear of violence and covert sterilisation had undermined the efficacy of the government health system and, in a number of cases, had significantly affected women's access to education. Abuses such as covert, forcible injection of young women with hormonal contraceptives, and continuing military involvement in the program, had contributed to a strong belief by the local

19 United Nations Commission on Human Rights, *Situation in East Timor, Report of the Secretary-General*, 25 February 1998, E/CN.4/1998/58, pp. 15-7.

20 E/CN.4/1998/54, paras. 26-27.

21 Miranda S. Sissons, *From One Day to Another: Violations of Women's Reproductive and Sexual Rights in East Timor*, Melbourne, East Timor Human Rights Centre, 1997.

population that the KB program was used by the Indonesian Government as a politically-motivated instrument to deliberately undermine the survival of the East Timorese as a national group. Fear of the KB program severely undermined the efficacy of the government health system in East Timor, resulting in a mortality rate double that in the rest of Indonesia and, in the case of infant mortality, among the highest in the world.

5.17 The uneasy 18 months of political freedom East Timor experienced following April 1974, when the new Portuguese Government announced that it would free all its colonies, was brought to an end in December 1975, when Indonesian forces invaded with considerable brutality. A civil war in June-July 1975 between UDT and Fretilin supporters created divisions that took many years to heal among the Timorese, including among the expatriates. These divisions were fully exploited by certain Indonesian officers before and following the invasion.

5.18 From 1976-78, many East Timorese fled from the invading forces into the mountains. Deaths from warfare, bombing and starvation are estimated, using census data, to be between 100,000 and 200,000. Indonesian actions also contributed to starvation—many villagers in contested areas were completely moved to less fertile areas controlled by Indonesia (some of this land was reportedly later given to migrants and army personnel). Real or suspected opponents of Indonesian rule were often badly treated and there were some notorious mass-killings, such as those at Kraras (200 reported killed in 1983), Lacluta (up to 400 reported killed in 1981) and at Hauba near Bobonaro (where 100 men were reported killed in 1984).²²

5.19 During a visit to Australia shortly after his dismissal as Apostolic Administrator of Dili in May 1983, Monsignor Martinho da Costa Lopes gave an interview, in which he said:

For us of the Church it was terrible, there was no one the people could go to for help except us, and we could do so little. Each time I went to the commander and complained; for years I did this. Maybe it helped for a short while, but really nothing, the military treated us with contempt, so after five years I started to speak out. I spoke in the church against the military. I told them that if they wished to kill me they knew where I was ... Your Mr Whitlam said bad things about me, I know this, yes. I cannot worry about such people. I must say what is true. The people relied on me to do this.²³

5.20 From the mid-1980s, the Indonesian authorities introduced the 'smiling policy' to win acceptance by 'top-down' economic and social development schemes, such as sending hundreds of Timorese students to universities in Java and Bali.

22 John G. Taylor, *East Timor, the Price of Freedom*, London, Zed Books, 1999, pp. 101-2, 111; Ross Warnke, 'Timor: tales of torture', *The Age*, 14 May 1982; *Committee Hansard, in camera evidence*, 14 May 1982; Peter Millership, 'Timor Bishop accuses military of massacring 84 villagers', *Reuters*, 1 March 1984.

23 Michele Turner, *Telling East Timor: Personal Testimonies, 1942-1992*, Sydney, UNSW Press, 1992, pp. 166-7.

Amnesty International submitted that the ‘smiling policy’ did not make army abuses more acceptable. ‘The first trials of political prisoners took place in late 1983. Most lacked basic fairness and many relied on evidence obtained by duress. Amnesty International knows of only a handful of political trials in East Timor that have not lead (sic) to a conviction. Nearly 200 people were convicted.’²⁴

5.21 East Timor was opened to most foreign visitors in 1989 and increasingly pro-independence groups sought to use public demonstrations to publicize their aims. ‘Indonesian authorities reacted with mass arrests before and after the visits of President Suharto in 1988, Pope John Paul II in 1989, U.S. Ambassador Monjo in 1990 and before the aborted UN sponsored Portuguese delegation in October 1991.’²⁵

5.22 Amnesty International submitted that a memorial procession for Sebastião Gomes Rangel, who had been killed by Indonesian agents, ended in tragedy when between 100 and 270 people were killed by Indonesian troops at the Santa Cruz cemetery in November 1991. Up to 200 unarmed demonstrators ‘disappeared’ after being detained. At subsequent court-martials the army portrayed this as the reaction of a few troops incensed by the (slight) wound experienced by an intelligence officer who remonstrated with some of the demonstrators at the start of the procession. This account did not match the accounts of eye-witnesses who spoke of a well-organized force that fired systematically at the crowd.²⁶ The Committee received an eyewitness account of the events in Dili of 12 November 1991 from Mr Russell Anderson:

Bob Muntz and I decided we should leave. I had taken ten hurried steps north along the cemetery [*sic*] wall and was glancing back to see the helmets of the military front line bobbing up and down, jogging or marching towards the crowd. The crowd began to walk backwards, walk away some were already running. Suddenly a few shots rang out continued by an explosive volley of automatic rifle fire that persisted for 2 to 3 minutes. It sounded like the whole fifteen in the front row had their fingers pressed firmly on the trigger. They were firing directly into the crowd. I ran like everybody else. I took a quick glance around and saw people falling. I realised that I would be shot in the back if a bullet lodged into my body. Most people, especially in that initial burst of fire would have been shot in the back running away ... In my opinion it was a cold blooded butchery [butcherous] massacre. Statements about orders like ‘don’t fire’ being mistaken for ‘fire’ do not ring true. The firing went on and on. The foreigners who were not brandishing or throwing anything received the same treatment as the East Timorese. The only difference was the foreigners, those still alive, were able to flee the country and tell what had happened.²⁷

24 Amnesty International Australia, submission no. 43, p. 18.

25 Amnesty International Australia, submission no. 43, p. 18.

26 Amnesty International Australia, submission no. 43, p. 18.

27 Russell Anderson, submission no. 64, pp. 8, 12.

5.23 It has never been made clear why Indonesian troops opened fire on the demonstrators.

5.24 According to Amnesty International, ‘After Santa Cruz, access to East Timor was heavily restricted, the ICRC was obstructed in its work and there were many arrests of suspected pro-independence sympathizers. There were also mass detentions during the visits of official delegations. These intensified after the arrest of Mr Xanana Gusmão in December 1992.’²⁸

5.25 In December 1992, the Joint Committee on Foreign Affairs, Defence and Trade reported that:

Witnesses who gave *in camera* evidence ... talked of the fear engendered by a military whose presence was all pervasive, which was inclined to use summary detention and arrest. They spoke of a system of surveillance of the population which restricted movement and interrogated youths for speaking to foreigners or for singing pro-independence songs. The tension in East Timor, described by the numerous submissions to the Indonesian inquiry, would seem to be the result of a long history of repression of the province since the invasion of 1975.²⁹

5.26 It was not until the 1990s that human rights bodies were formed in East Timor. After 1992, the Catholic Church formed an informal Justice and Peace Commission, which tried to monitor human rights abuses. However, it lacked staff until November 1996. In early 1999, the Catholic Dioceses of Dili and Baucau each had a Justice and Peace Commission’s attached to it.

5.27 In 1997, another human rights body, Yayasan HAK, (Hukum, hak Azasi dan Keadilan—Law, Human Rights and Justice) was formed with the support of various East Timorese NGOs. It had a staff of Timorese lawyers able to collect information on human rights abuses, to assist detainees during police questioning and to represent those brought to trial.³⁰

5.28 Komnas HAM established a Dili office in July 1996 but this never worked successfully. It did not have the support of the the East Timorese until the appointment of a well-known NGO activist, Florentino Sarmiento, as head of Komnas’ Dili office in late 1998, improved local attitudes to Komnas HAM.³¹

5.29 In December 1998, the Justice and Peace Commission of the Dili Diocese reported that it had received the following number of cases:

28 Amnesty International Australia, submission no. 43, p. 19.

29 *A Review of Australia's Efforts to Promote and Protect Human Rights*, Canberra, 1992, p. 71.

30 Amnesty International Australia, submission no. 43, p. 8.

31 Amnesty International Australia, submission no. 43, p. 8.

212 cases of arbitrary arrest and detention—a decrease since 1997

54 cases of arbitrary executions—three times the number in 1997

19 cases of apparent ‘disappearances’

89 cases of torture—four times the number reported in 1997

14 cases of rape.³²

5.30 Yayasan HAK published its first annual report in March 1998—it had taken on 128 criminal and 30 civil complaints. In a later report covering the first half of 1998, the Justice and Peace Commission noted 25 killings by security personnel and 10 disappearances while Yayasan HAK reported 23 killings and 17 disappearances. The Yayasan HAK report made the following comment on the use of torture:

Generally, every arrest of a civilian in East Timor is accompanied by torture or mistreatment (*penyiksaan*). And the arrest and torture are not only done by the police, the agency empowered to arrest [under the Indonesian government's criminal code], but by agencies that are not empowered to arrest, such as the military and groups of civilians armed by ABRI (Halilintar, Makikit, Alfa, Saka, and others). And generally, those civilians arrested and tortured are those presumed to be behind political activities—clandestine activities such as a secret meeting, organizing resistance against the government, providing logistical support or materially supplying the guerrillas in the forest. ... Generally, it only takes a suspicion or a report from an intelligence agent for the security forces to go and directly arrest a person. In the majority of cases, the arrest is not based on an arrest warrant. ... The form of the torture generally inflicted on the victim involves kicking, stomping, hitting with an iron rod, removing the fingernails or smashing them under table legs, electric shock on all parts of the body (including the genitals), burning with cigarettes, dunking in dirty water, among other tortures.³³

5.31 Amnesty International submitted that:

In March 1997, hundreds of young people held a peaceful demonstration in Dili during the visit of Mr Jamsheed Marker, the Personal Representative of the United Nations Secretary General, to Dili. They hoped to tell him of their concerns. Instead they were assaulted by police and 33 were eventually tried either for ‘expressing hatred towards the Government’ or for assault on the police and 17 eventually received one year sentences. An investigation by Komnas HAM showed that many were so seriously beaten that they

32 Amnesty International Australia, submission no. 43, p. 9.

33 Quoted in Amnesty International Australia, submission no. 43, p. 9.

could not eat for four days and that they had been denied medical care for several days.³⁴

5.32 Both sides resorted to violence. According to Amnesty International:

On May 28th, [1997] one day before the Indonesian General Elections, Falintil forces attacked a police station in Dili. There were co-ordinated attacks in other places, including attacks on polling booths and an attack which killed 18 police travelling in a truck at Quelicai near Baucau. In all about 40 people, including civilians, were reported killed in the largest Falintil attack for many years.

Amnesty International condemned the killings of civilians and recognized the right of the Indonesian authorities to arrest those responsible. There were many arrests, particularly around Dili and Baucau and there were allegations of torture. The capture and death of resistance leader David Alex near Baucau on June 25th [1997] lead [sic] to further arrests near Baucau.³⁵

5.33 After President Soeharto's resignation in May 1998, human rights abuses decreased and security forces did not interfere with public rallies and demonstrations in major towns. Amnesty recorded positive developments in 1998, which included:

a suggestion that soldiers responsible for human rights abuses would be held accountable for their actions—Indonesian authorities reacted promptly when Herman das Dores Soares (21) was shot dead by soldiers as he was collecting wood near Manatuto on 16 June, 1998—the soldiers offered no assistance so that he bled to death. An Indonesian soldier, Agus Medi, was given a 10 year sentence for shooting him, far heavier than any previously imposed for killing civilians.

In November 1998, the Indonesian Government allowed the UN Special Rapporteur on Violence Against Women to visit East Timor and in February 1999 the UN Working Group on Arbitrary Detention was also given access to the territory.

The ability of East Timorese in Dili at least to hold peaceful political demonstrations and discussions without immediate arrests.

The release of some 60 political prisoners and the movement of Xanana Gusmão from Cipinang Prison to house arrest in Jakarta.³⁶

5.34 However, this more tolerant approach did not last long and serious abuses became more frequent from late 1998.

34 Amnesty International Australia, submission no. 43, p. 4.

35 Amnesty International Australia, submission no. 43, p. 4.

36 Amnesty International Australia, submission no. 43, p. 5.

5.35 In smaller towns, the East Timorese did not have so much political freedom. The growing recruitment of paramilitary groups led to human rights abuses. The authorities maintained restrictions on human rights monitoring, particularly during military operations. Amnesty International submitted:

Paramilitary forces, which had already been armed in December 1998, were increasingly involved in killings, torture and illegal detention, either alone or with regular units. Indonesian authorities made no effort to restrain these abuses.

...

Unlawful killings, 'disappearances', arbitrary detention and torture all continued to be reported in the context of ABRI's operations against the East Timorese National Liberation Army (Falintil).³⁷

5.36 Reflecting on 'the slow civil war in East Timor which had killed around 200,000 people between 1975 and 1998', Minister for Foreign Affairs Alexander Downer said on 17 July 2000: 'Those breaches of human rights built and built and built opposition to Indonesian rule in East Timor'.³⁸

Violence within East Timorese society

5.37 Dr Geoffrey Hull said that there were rivalries among the East Timorese people themselves and that cardinal to the establishment of a lasting peace was education. The fact that most people were not educated lent itself to the natural divisiveness in East Timorese society. He noted that East Timor had 15 indigenous languages, some even unrelated to each other, which mirrored its history of a collection of warring tribes. Only Portuguese colonialism and the need for resistance against common enemies united them. The natural tendency in East Timorese society was division, as manifested in 1974-75.³⁹

5.38 Evidence indicated that, during the Indonesian occupation, there were two levels of violence: one between Indonesians and the East Timorese, and the other at a more domestic level. Professor James Warren, Murdoch University, saw it as a milieu that had been created consciously and intentionally:

it is a classic example of low intensity warfare and counter-insurgency techniques. The Kopassus ... had been trained to operate in communities to create a climate of terror, hysteria and violence ... The violence is meant to create a situation ultimately where it is necessary then to step in to restore order ... So I would argue as to whether in fact you are talking about culture

37 Amnesty International Australia, submission no. 43, p. 6.

38 'Increasing Interconnectedness: Globalisation and International Intervention', Speech by the Hon Alexander Downer, MP, Minister for Foreign Affairs, to the Sydney Institute, Sydney, 17 July 2000; Peter Allport, 'Irian Jaya is part of Indonesia, says Downer', *AAP*, 17 July 2000.

39 Dr Hull, *Committee Hansard*, 10 September 1999, pp. 511-2.

and human behaviour, that we are talking about a culture where there was, prior to the presence of these militias, a culture of violence. I do not think that necessarily has been the case—I think it has been fostered; I think it has been nurtured.⁴⁰

5.39 Drawing on her experience in East Timor, Dr Gaynor Dawson, a consultant with AusAID and the Asian Development Bank, told the Committee that violence was widespread and had limited previous development projects. ‘Intimidation and terrorism had disrupted people’s lives. People have been forced to leave their traditional lands for security reasons. Killings are often followed by the mutilation of bodies. It is a culture of violence which pervades daily life.’ The solution to problems was seen generally as violence. While she was there, doctors in the hospital had been beaten because of the deaths of patients, and teachers were beaten if they did not give good marks to students. In one case she saw on Atauro Island, the water for a water supply and sanitation project was diverted by a village head for commercial purposes. When people in the village protested, the village head had employed thugs from Dili to beat the protesters. Dr Dawson urged that aid projects should address conflict resolution and assist the reconciliation process at the local level. Local conflicts and intimidation, which would affect the successful implementation of aid projects, needed to be addressed and resolved before project implementation. Approaches should ensure that communities developed strategies and had the capacity to resolve conflicts themselves after the project ended.⁴¹

5.40 In 1998, a coalition of pro-independence factions and interests formed the CNRT (*Conselho Nacional da Resistência Timorese*). They put aside their differences and presented a united and, therefore, more formidable opposition to Indonesian occupation. Although independence has since been achieved, the CNRT is continuing to operate but will soon be replaced by new political parties, which are being formed to contest elections in a multi-party system. History has shown that violence has achieved nothing worthwhile for the East Timorese people and it will be a constant reminder to them as they participate in a new political system.

5.41 It will take time, patience and determination to instil in the whole East Timorese population, after being subjected to prolonged and severe violence, the need to put aside violence as a means of settling differences and abide by the rule of law. This will particularly apply in communities where pro-integrationists return to live with those who suffered at the hands of the militias. The legal and judicial systems need to be widely understood and respected if they are to achieve their purpose. As argued by Dr Hull, literacy and other areas of education will help people to understand the concept of rule of law and to use legal processes rather than violence to deal with grievances. The Church, too, as a highly respected institution in East Timor, has a key role to play in promoting the rule of law.

40 Professor Warren, *Committee Hansard*, 20 July 1999, p. 104.

41 Dr Dawson, *Committee Hansard*, 20 July 1999, pp. 100-01.

Responsibility for militia violence leading up to and following the 30 August 1999 vote

5.42 During its 1999 hearings, the Committee sought to elucidate who was responsible for the violence that occurred in East Timor during the course of that year. At the final hearing on 9 December, when DFAT Deputy Secretary, Mr John Dauth, was asked whether he still held to the view he had expressed at an estimates hearing on 5 May 1999⁴² that the militias were armed and organised by local commanders operating outside the TNI's chain of command, he said:

Our knowledge of what was going on, of course, has never been precise. There has been an enormous amount of information available to us, including information from intelligence sources ... with the passage of time, the complicity of TNI became clearer and clearer to us. There is no doubt that, for example, by August, when I appeared before this committee, we were very much more concerned about the level of complicity, about the numbers of people in TNI engaged in active complicity with militia and about the extent to which the broader TNI chain of command was involved.⁴³

5.43 At the Committee's hearing on 13 August 1999, when asked about the presence of Kopassus special forces in East Timor, Mr Dauth replied:

Just precisely what the make-up of the Indonesian military in East Timor is I am not really able to say, not because I am hiding anything but because we do not have definitive information on that.⁴⁴

5.44 This statement seemed to be at odds with alleged statements made by DFAT in discussions on East Timor between Australian and United States officials held in Washington on 16 and 17 August 1999, which read: 'There was agreement that fundamental security problems remained, including the presence of Kopassus forces and hence the potential for mischief, especially in western regencies.'⁴⁵ At the hearing on 9 December 1999, Mr Dauth explained:

I think the real answer to this question, and to so many other questions of this sort, is that it comes back to what I have said already: an enormous amount of information has been available to us. In both advising government and trying, with the best will in the world, to be helpful in the hearings of this Senate committee and others, we have to be careful, judicious and conservative about offering judgments. It does not serve the

42 Senate Foreign Affairs, Defence and Trade Legislation Committee, *Committee Hansard* (estimates hearings), 5 May 1999, pp. 288-89.

43 Mr Dauth, *Committee Hansard*, 6 December 1999, p. 1023.

44 Mr Dauth, *Committee Hansard*, 13 August 1999, p. 230.

45 Quoted in John Lyons, 'The Secret Timor Dossier', *The Bulletin*, 12 October 1999, p. 29. The information in the article was based allegedly on leaked documents from the Defence Intelligence Organisation.

public record or your deliberations very well for us to be offering half-baked judgments. I am not suggesting in any way that the judgments made in the discussion in Washington were half-baked, but I would want to be extremely careful in what I said for the record for a Senate inquiry because there is a particular significance to hearings of this sort. It is possible to have conversations in private and to rely a bit more selectively on some of the information available to us in coming to judgments, but I think it is quite a different thing to come to a public hearing of a Senate inquiry and make firm judgments. I for one will not come along and mislead the Committee, and I was not then and I will not now.⁴⁶

5.45 On 15 September 1999, when it was put to General Sanderson that, rather than so-called ‘rogue elements’ being responsible for the violence, it had become apparent that such operations were under fairly direct control, he responded:

I have no evidence to substantiate that view one way or the other. There are indications quite clearly that there has been an engagement of parts of the Indonesian military with militia. The extent of that I think we will have to determine in the fullness of time. Whether that has been with rogue elements of the militia or not, I do not know. One thing I am relatively sure of—and this is not a personal opinion—is that there is a significant power struggle going on in Jakarta at the moment.⁴⁷

5.46 The view that there were divided counsels in the Indonesian Government, and the TNI, which were reflected in contradictory policies and approaches being followed by the Indonesian civil and military administration in East Timor, was supported by Mr Mark Plunkett, who said, ‘there seemed to be dual-streams or tri-streams of command’.⁴⁸

5.47 At the hearing on 20 September, Mr Robert Lowry took a firmer view, saying:

It has been quite obvious right from the start that the current governor strongly supported autonomy within Indonesia. Several of the spokesmen for the militia and the pro-autonomy group came from within the government. But it is also clear that these people could not have taken such militant action, as you have described before, without the consent of the Indonesian military. There are very strict rules and laws relating to the control of firearms in Indonesia. This man was obviously breaking those laws and he was doing it at least with the tacit approval of the authorities.⁴⁹

5.48 Dr Harold Crouch said he thought, in retrospect, that General Wiranto had, from the outset:

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

47 General Sanderson, *Committee Hansard*, 15 September 1999, p. 547.

48 Mr Mark Plunkett, *Committee Hansard*, 15 September 1999, p. 547.

49 Mr Lowry, *Committee Hansard*, 20 September 1999, p. 559.

accepted the holding of the referendum and decided the military was going to make sure that Indonesia won. The debate then became a question of: is it rogue elements on the ground in East Timor or is it the military as an institution? I think it became increasingly obvious that it must have been the military as an institution. Part of the evidence for that is sort of people that Wiranto was appointing in command positions in East Timor, and particularly the former intelligence chief, Major General Zacky Anwar Makarim, who was appointed as liaison officer to UNAMET. From his public statements, he was clearly committed to keeping East Timor for Indonesia, and it was not possible that he was appointed without Wiranto's approval. He was a person who also had links with the disgraced General Prabowo. Then later, at the time of the referendum, General Sjafrie Sjamsuddin, another of Prabowo's guys and who was the commander in Jakarta during the disorders in May last year [1998], was also sent to East Timor. These people could not have just gone there without Wiranto's approval. So it was clear that it was not just rogue elements in the military but that Wiranto was giving his approval, as part of policy, to make sure that Indonesia won the referendum.

At some point their intelligence people must have got the message that they were not going to win. But I doubt that they thought they were going to lose so badly. After the referendum, the questions became: was this completely planned or did it run out of control and, if it ran out of control, did it run out of control from day one or was it that the military leadership in Jakarta said, 'Let's have a bit of destruction just to teach them a lesson' and maybe after a few days it really ran completely out of control?'⁵⁰

5.49 Dr Crouch did not know whether the Indonesian military intended to destroy Dili in the way that it happened. But the way in which refugees were forced out of East Timor was evidence of planning. Dr Crouch said that the Indonesians had announced earlier that they expected 200,000 refugees in the event of a vote for independence in the referendum. As only 90,000 people voted to stay with Indonesia, it appeared they might not get the 200,000 for whom they had prepared. Accordingly, it appeared that they started forcing people out of East Timor to show that there were as many East Timorese as expected, who really wanted to stay with Indonesia. The only question was: 'at what point did they lose control, if indeed they did lose control?'⁵¹

5.50 Documents found by the East Timorese Human Rights Foundation (*Yayasan Hukum Hak Asasi dan Keadilan*) since the Indonesian withdrawal from East Timor provide confirmation of the support of the TNI for the militias. For example, in Vikeke (Viqueque), researchers from the Foundation found a log book detailing the weapons distributed to the local Wanra militia and pro-Jakarta leaders. Also found was a document produced by the Dili police department in August 1999, *Operation Remember Lorosae II*, a plan to 'evacuate' 258,710 persons to West Timor and other

50 Dr Crouch, *Committee Hansard*, 20 September 1999, pp. 579-80.

51 Dr Crouch *Committee Hansard*, 20 September 1999, p. 580.

parts of Indonesia in case the vote was for independence. Another of the documents found was an order cabled from General Subagyo Hadi Siswoyo, TNI Chief of Staff, to Colonel Tono Suratman, commanding officer in Dili, on 5 May 1999: 'Prepare a security plan to prevent civil war that includes preventative action (create conditions), policing measures, repressive/coercive measures and a plan to move to the rear/evacuate if the second option [independence] is chosen.'⁵²

5.51 Visiting Manila on 5 February 2000, President of the CNRT, Mr Gusmão, and CNRT foreign policy spokesman, Dr Ramos-Horta, said that the former Indonesian armed forces chief, General Wiranto, was directly responsible for the destruction and violence in East Timor during 1999, and that credible witnesses could testify against him. Dr Ramos-Horta said:

I say I do not have any doubt whatsoever that Wiranto as defence minister and the commander in chief of the armed forces was directly implicated in the preparation, in the training, in the funding and the execution of destruction and killing in East Timor. If there is going to be a war crimes tribunal, we would be able to testify with witnesses that would prove beyond reasonable doubt that General Wiranto is responsible for war crimes and crimes against humanity in East Timor.

5.52 Mr Gusmão said:

We met Wiranto before consultations in June in Jakarta. In this meeting we asked him to disarm militias and he told us that 'I can disarm them in two days'.⁵³

Holding to account those responsible for crimes

5.53 DFAT told the Committee that one of the key challenges facing East Timor in its transition to independence would be to address, in a substantive and just way, the crimes committed before and after the ballot. The investigation of human rights abuses in East Timor and the bringing to justice of the perpetrators of serious crimes were seen to be an important part of the healing and reconciliation process.⁵⁴

5.54 'Operation Indictment: War Crimes committed by Indonesian military and security forces against the peoples of East Timor', prepared by Mr G.E. Lambert, a retired Justice of the Family Court of Australia, identified facts relating to 44 cases that occurred during the period between September 1975 and March 1999 which could, in the opinion of Mr Lambert, cause a war crimes tribunal validly to find that they constituted war crimes perpetrated by personnel of Indonesian military and paramilitary forces against citizens of East Timor.⁵⁵

52 Richard Lloyd Parry, 'Conclusive proof TNI planned reign of terror', *The Independent*, 7 February 2000.

53 'Wiranto responsible for Timor atrocities: Gusmao', *Agence France-Presse*, 6 February 2000.

54 Mr Dauth, *Committee Hansard*, 6 December 1999, p. 993.

55 Mr G.E. Lambert, attachment to submission no. 47.

5.55 The United Nations High Commissioner for Human Rights, Mrs Mary Robinson, made a report on 17 September 1999 following a visit to Darwin and Jakarta, in which she said there was ‘overwhelming evidence that East Timor has seen a deliberate, vicious and systematic campaign of gross violations of human rights. I condemn those responsible in the strongest terms’. She urged the Indonesian Government to co-operate in setting up an international commission of inquiry on the alleged human rights violations.⁵⁶

5.56 Mrs Robinson’s report was considered by a special session of the United Nations Commission on Human Rights, which resolved on 27 September 1999 to establish an international commission of inquiry to gather and compile systematically information on possible violations of human rights and acts which might constitute breaches of international humanitarian law committed in East Timor since January 1999. The resolution of the Human Rights Commission was endorsed by the United Nations Economic and Social Council on 15 November 1999. The International Commission visited Darwin, Dili and other centres in East Timor, and Jakarta between 23 November and 8 December 1999, and its report was released by the Secretary-General in New York on 31 January 2000.⁵⁷ It found that there was no doubt that the evidence it had gathered clearly demonstrated a pattern of serious violations of fundamental human rights and humanitarian law. It recommended the setting up of an international human rights tribunal consisting of judges appointed by the United Nations with the participation of members from East Timor and Indonesia, which should sit in East Timor and Indonesia.⁵⁸

5.57 In its resolution establishing the International Commission, the Commission on Human Rights also requested its Special Rapporteurs on torture, on extrajudicial executions and on violence against women to carry out a fact-finding mission in East Timor. This joint mission visited Dili, Suai, Maliana and Oecusse during 4 to 10 November 1999, and its report was presented to the General Assembly by the Secretary-General on 10 December. It recommended:

Rapid action should be taken to meet the most pressing need of UNTAET with regard to expertise in forensic anthropology and pathology, autopsy facilities, medical professionals, in particular those qualified to conduct medical examinations of possible victims of rape and sexual abuse, criminal investigation with appropriate equipment and logistical support, human

56 United Nations Economic and Social Council, *Report of the High Commissioner for Human Rights on the human rights situation in East Timor*, 17 September 1999, E/CN.4/S-4/CRP.1.

57 On the same date the report of the Investigative Commission on Violence in East Timor of the Indonesian National Human Rights Commission (Komnas-HAM), was made public in Jakarta. The Indonesian national inquiry had been set up after the Indonesian Government had refused to accept the international commission.

58 United Nations, *Report of International Commission of Inquiry into human rights violations*, General Assembly/Security Council, 1 February 2000.

rights investigators, human rights training and liaison officers, and relevant staff for an effective information storage and retrieval system.⁵⁹

5.58 In its January 2000 report, the International Commission of Inquiry into Human Rights Violations blamed Indonesia's army and the militia it organised for a campaign of killings, rape, arson and other atrocities in East Timor in the period leading up to and following the 30 August 1999 ballot, and called for an international tribunal to try the culprits.⁶⁰

5.59 A similar view of the responsibility of the TNI (*Tentara Nasional Indonesia*—the Indonesian army) was taken by the Indonesian National Human Rights Commission's (Komnas-HAM) Investigative Commission on Violence in East Timor (KPP-HAM), which, in its final report of 31 January 2000, recommended that six generals, including former armed forces chief General Wiranto, and some 40 other persons (military and police officers, government officials and militia leaders) should be formally investigated in connection with the violence that occurred following the 30 August vote.⁶¹

5.60 Amnesty International appeared before the Committee on 4 November 1999. At that time, Amnesty's researcher on East Timor, Ms Lucia Withers, and her associates were in Dili working with NGOs gathering testimony and preparing for a forensic workshop with an Argentinian forensic specialist to assist the Timorese NGOs with the preservation of evidence for the UN commission of inquiry.⁶² Mr Des Hogan emphasised that non-government organisations were no substitute for international action:

The very fact that we are having to give this forensic workshop in Dili points to the fact that the evidence was never secured. When they went in, Interfet did not have any clear mandate about how they were going to secure or investigate sites which could go forward to any UN investigation.⁶³

5.61 Amnesty believed that there was *prima facie* evidence of crimes against humanity, and possibly war crimes, when account was taken of the systematic nature of intimidation and killings and the large scale of civil deportation that took place. War crimes included extensive destruction and appropriation of property in cases where there was no military justification. The statute of the International Criminal

59 United Nations General Assembly, *Situation of human rights in East Timor*, 10 December 1999, A/54/660.

60 United Nations Office of the High Commissioner for Human Rights, *Report of the International Commission of Inquiry on East Timor to the Secretary-General*, January, 2000.

61 Indonesia. National Human Rights Commission (Komnas-HAM), *Report on the Investigation of Human Rights Violations in East Timor*, 31 January 2000, (English translation).

62 Mr O'Connor, *Committee Hansard*, 4 November 1999, p. 784.

63 Mr Hogan, *Committee Hansard*, 4 November 1999, p. 789.

Court contained a provision to the effect that attacks on Red Cross premises, such as occurred in Dili on 6 September, were counted as a war crime.⁶⁴

5.62 Amnesty pointed out that crimes against humanity and war crimes carried individual responsibility, and that those who gave the approval and the orders for such things to occur might be considered to be more guilty than the people who actually carried them out. It was important both for East Timor and Indonesia that accountability exist. Every country had an obligation to assist in the investigation and prosecution of crimes under international law if no international tribunal was established, although Amnesty did have some reservations about the ability of the Indonesian justice system to bring to account those accused of war crimes and crimes against humanity.⁶⁵

5.63 Amnesty saw the Australian Government having an important role in supporting the establishment of an appropriate tribunal to try those accused of war crimes and crimes against humanity, and in providing support by seconding technical experts and by sharing information in its possession that shed light on the chain of command, on 'the people actually responsible and going back as far as possible, either to the provincial level or to the military district level from Bali, to elucidate the responsibility of those senior officers'.⁶⁶ There was provision in the statute of the International Criminal Court for intelligence information to be shared on a confidential basis, and a precedent for this had been set in the sharing of information from the United States and British Governments with the tribunal on Yugoslavia.⁶⁷

5.64 The East Timor Evidence Project of the International Commission of Jurists (ICJ), Australian Section, was designed to obtain 'from East Timorese refugees and evacuees in Australia and from other persons who have some direct knowledge of recent events in East Timor the evidence that those persons would be able to give to a properly constituted tribunal, whether that be an international criminal tribunal, a commission of inquiry or a court having jurisdiction over such matters at some time in the future.'⁶⁸ By announcing and setting up the project in September 1999, the ICJ had three things in mind. First, it hoped to deter perpetrators of offences against customary international law in East Timor. Secondly, the ICJ wanted to obtain the available evidence while it was still fresh and uncontaminated. Thirdly, the ICJ wanted to produce a body of evidence to demonstrate the scale of the events in East Timor, as well to support the establishment of an international criminal tribunal having jurisdiction to examine those matters.⁶⁹

64 Mr Anthony O'Connor, *Committee Hansard*, 4 November 1999, p. 785.

65 Mr Anthony O'Connor, *Committee Hansard*, 4 November 1999, p. 786.

66 Mr Anthony O'Connor, *Committee Hansard*, 4 November 1999, p. 786.

67 Mr Anthony O'Connor, *Committee Hansard*, 4 November 1999, p. 787.

68 Mr Nicholas Cowdery, *Committee Hansard*, 4 November 1999, pp. 736-37.

69 Mr Nicholas Cowdery, *Committee Hansard*, 4 November 1999, p. 737.

5.65 The ICJ said that the commission of crimes against customary international law fell into three categories: crimes against humanity, genocide and war crimes. The definitions and elements of those offences were being established through the work of the international tribunals at The Hague and the work for the establishment of the International Criminal Court. There was a need for people to be taught about the elements of those offences, what was required to establish them, and how to identify evidence that might be produced to support allegations of the commission of those offences.⁷⁰

5.66 Justice Dowd said the ICJ believed it and other international agencies had a duty to gather evidence, which should be used at a war crimes tribunal, as had been done in Rwanda and the former Yugoslavia. He said:

We believe the East Timorese are now in the process of reconciliation, but we cannot stand back and say, 'Let's not make a fuss; let them all wash over', with international war crimes. We cannot just ignore them. We have a duty to the East Timorese people—those who died and for those in the future in case there are border intrusions—to see that, if there are war crimes, they are dealt with, as in other conflicts, by appropriate bodies. If we do not do something about war crimes, they will continue.⁷¹

5.67 Justice Dowd made the point that direct evidence was not required to obtain a conviction. Juries were able to convict on inferences and accumulation of evidence. It was not essential to observe a crime occurring to convict and, in fact, most convictions occurred without that kind of eyewitness evidence. Crime scene preservation and putting together criminal prosecutions was an art which police forces did all the time:

It is not difficult to get courts to draw inferences from such things as who was their commander at the time, what conversations were held, what units were there and evidence from individuals about units being there ... The East Timorese themselves may ultimately try people, whether they are locals or Indonesians. It may happen in another country; it does not have to be international. We just believe that evidence should be preserved so that the people of the future can make a decision as to what prosecutions will occur.⁷²

5.68 Mr Michael O'Connor of the Australia Defence Association expressed the view that, as far as possible, prosecutions for human rights violations should be pursued within East Timor on the basis of the ordinary criminal law that was in effect at the time, on the principle that the rule of law would be served by people observing

70 Mr Nicholas Cowdery, *Committee Hansard*, 4 November 1999, p. 737.

71 Justice Dowd *Committee Hansard*, 4 November 1999, p. 741.

72 Justice Dowd, *Committee Hansard*, 4 November 1999, p. 741.

criminals being dealt with by their own courts under their own laws. Murder, rape, arson or malicious damage were criminal offences under Indonesian law.⁷³

5.69 Later in his evidence, Mr O'Connor went on to say that:

While we need to apply criminal law in East Timor to those who can be tracked down and dealt with in that way, there probably is a need for an international human rights tribunal to try to track down those who are outside the jurisdiction of East Timor.⁷⁴

5.70 On 18 August 2000, the Indonesian People's Consultative Assembly passed a decree blocking prosecution of troops involved in abuses in provinces such as East Timor, Aceh and Irian Jaya. The decree stated: 'The right not to be prosecuted based on a law which can be applied retroactively [is a] human right which cannot be diminished under any conditions'. The decree banning retroactive prosecution of human rights cases effectively ruled out charges against senior officers, because Indonesia's criminal code did not recognise culpability by those in command. Only those who carried out orders could be charged and prosecuted. The Chairman of Indonesia's Commission for Missing Persons and Victims of Violence, Mr Munir, dismissed claims by some politicians that soldiers or police could still be tried over past abuses under the criminal code: 'All laws and bills which carry a retroactive principle will be defeated by this article of the Constitution', he said. 'The criminal code does not recognise human rights crimes, such as war crimes and crimes against humanity.' The decree gave reason for the United Nations to set up its own war crimes tribunal to try Indonesians over crimes committed in East Timor during the period of Indonesian rule. The United Nations has set up a major crimes unit in Dili to investigate war crimes, crimes against humanity, torture, rape and murder. United Nations officials have said it is possible that Indonesian soldiers could be extradited to East Timor to stand trial for crimes committed there.⁷⁵

5.71 On 7 August 2000, Justice Dowd publicly renewed the call from the ICJ for an international criminal tribunal to bring to justice those responsible for last year's massacres in East Timor. He said in an interview on the SBS radio program *World View*:

The Indonesian Government has persuaded the United Nations that they are going to effectively prosecute. In my view, that is unlikely to occur, because I don't think they'll get witnesses prepared to give evidence, nor do I think they'll get adequate statements, and the only way that this can be achieved is by the establishment of an international war crimes commission.

5.72 The call followed a demand by Mrs Mary Robinson earlier, on 7 August 2000, for Indonesia to act against those who perpetrated the atrocities. Speaking at a

73 Mr Michael O'Connor, *Committee Hansard*, 18 November 1999, p. 912.

74 Mr Michael O'Connor, *Committee Hansard*, 18 November 1999, p. 916.

75 Lindsay Murdoch, 'Blanket amnesty for officers: they were only issuing orders', *The Sydney Morning Herald*, 19 August 2000.

press conference in Dili before leaving for Jakarta after a three-day visit to East Timor, Mrs Robinson stressed that the violence occurred while East Timor was under United Nations guardianship around the time of the popular consultation. The Human Rights Commissioner said that this meant that the United Nations must ensure that Indonesia's judicial process was credible: 'The most important thing is to bring perpetrators to justice. That can either be done by the courts in Indonesia or by the courts here in East Timor. Or, if necessary, it can be done by an international tribunal. I don't rule out the need—if it comes to that—for an international tribunal.'⁷⁶

5.73 On 13 October 2000, Indonesian Foreign Minister Alwi Shihab rejected a call by Dr Ramos-Horta for the establishment of an international war crimes tribunal, saying that Indonesia was a sovereign country and would take responsibility for prosecuting persons responsible for human rights violations arising out of the post ballot violence in East Timor.⁷⁷ Indonesian prosecutors had named 22 suspects, including prominent militia leader Eurico Guterres, but not General Wiranto.

5.74 The Committee believes that justice should prevail, whether it is carried out by Indonesia, East Timor or by an international tribunal. Given the difficulties of getting hold of Indonesian suspects residing in Indonesia, it is preferable to let justice take its course through the Indonesian justice system. If, on completion of that process, the international community remained dissatisfied with the outcome, it should press for the establishment of an international tribunal to instigate its own proceedings against alleged perpetrators of the violence.

International Commission of Jurists' offer

5.75 The Committee heard evidence from the ICJ that, in September 1999, they had approached the Department of Defence to offer the services of forensic experts in Australia, including the Victorian Forensic Institute and a number of retired police officers, to assist Interfet with crime scene preservation, advice and evidence in East Timor.⁷⁸ After four unsuccessful attempts to get an answer, the ICJ had been told by Commodore Geoff Earley, Director-General of Defence Legal Office, that an inter-departmental committee of the Department of Foreign Affairs and Trade, the Attorney-General's Department and the Department of Defence had already made a decision not to accept the offer of assistance but to defer to the inquiry then being conducted by the United Nations Human Rights Commissioner.

5.76 Justice Dowd's comment on this advice was that it was 'hopelessly inept in that Mary Robinson's inquiry, at the request of the Secretary-General, is not about crime scene preservation. They are doing an inquiry as to what has happened. They are seeking to set up a war crimes tribunal or some sort of tribunal ... Crime scene

76 UNTAET briefing, 7 August 2000.

77 Edith M. Lederer, Associated Press writer, *Indonesia Rejects E. Timor Tribunal*, included in ETISC, *Timor Today*.

78 Justice Dowd, *Committee Hansard*, 4 November 1999, p. 739.

preservation is an art form where, obviously, the defence forces in East Timor have a difficult task to do. However, they are coming upon crime scenes and, with a bit of advice, they can do it better.⁷⁹

5.77 Justice Dowd gave his reasons for attempting to bypass the Department of Foreign Affairs and Trade by approaching directly the Department of Defence:

I have no confidence in the Department of Foreign Affairs and Trade in terms of cooperation. The advice that has been my understanding has tended to be very frustrating in terms of not offending the Indonesians. In talking to various officers I have constantly had a lack of cooperation from Foreign Affairs ... It was a matter of making [our offer of assistance] available, because it did not seem to me to be a Foreign Affairs matter.⁸⁰

5.78 At the hearing on 11 November 1999, Air Commodore Kerry Clarke, representing the Department of Defence, confirmed that the ICJ had been asked by the inter-departmental committee to refer its offer to the United Nations, in particular the UNHCR (United Nations High Commissioner for Refugees) and OCHR (Office of the Commissioner for Human Rights).⁸¹ Air Commodore Clarke said that a small team had been established as part of Interfet to investigate reports and to document locations and evidence. The 'documented track' assembled by this team had been handed over to the United Nations. The United Nations Commissioner for Human Rights had subsequently commented very positively on the processes that had been put in place by Interfet commander, General Cosgrove, to manage the evidence.⁸²

5.79 Mr Michael Scrafton, Head of the East Timor Policy Unit of the Department of Defence, explained that the inter-departmental committee was a standing strategic policy co-ordination group, chaired by the Department of Foreign Affairs and Trade or the Department of the Prime Minister and Cabinet.⁸³ He said: 'in the inter-departmental consideration, one of the issues was the extent of the Interfet mandate which, you might recall, gave responsibility—however realistic it was—to Indonesia to actually manage a legal administration on the ground in East Timor.'⁸⁴

5.80 When the Committee asked whether the Department of Foreign Affairs and Trade had approached the International Commission of Jurists to see what advice they were prepared to give, the response from the Department was that it was not a matter primarily for that portfolio, but primarily for the Australian Federal Police.⁸⁵

79 Justice Dowd, *Committee Hansard*, 4 November 1999, p. 735.

80 Justice Dowd, *Committee Hansard*, 4 November 1999, p. 739.

81 Air Commodore Clarke, *Committee Hansard*, 11 November 1999, p. 848.

82 Mr Scrafton, *Committee Hansard*, 11 November 1999, p. 848.

83 Mr Scrafton, *Committee Hansard*, 11 November 1999, p. 848.

84 Mr Scrafton, *Committee Hansard*, 11 November 1999, p. 849.

85 Mr Dauth, *Committee Hansard*, 9 December 1999, p. 1030.

Displaced persons in West Timor

5.81 At the hearing of 6 December 1999, Mr John Dauth, Deputy Secretary, DFAT, told the Committee, ‘Without a doubt, the most pressing humanitarian problem is the situation of up to 150,000 displaced East Timorese remaining in West Timor’.⁸⁶

5.82 The Government of Indonesia had indicated that those wishing to return to East Timor should be able to do so, but there was clear evidence that militias were still intimidating refugees. The United States Ambassador to the United Nations, Mr Richard Holbrooke, and Assistant Secretary of State for East Asian and Pacific Affairs, Mr Stanley Roth, visited militia-controlled camps in Kupang and Atambua on 22 November 1999. During the visit to Atambua, Mr Holbrooke said: ‘The Indonesians have to move into their new democratic era and they cannot do that as long as they are stuck in the mud—literally—of the refugee camps, which is the mud of the crimes of the past.’⁸⁷

5.83 The visit of Mr Holbrooke and Mr Roth was referred to by Mr Dauth as important in highlighting the situation in West Timor.⁸⁸ Mr Dauth told the Committee that the United Nations, Australia, the United States and many other countries had been pressing Indonesia strongly to bring the militias under control and to promote secure access to all refugee camps in West Timor. Commitment on a continuing basis to facilitating the return of displaced persons from West Timor was necessary if the international community was to be reassured of Indonesia’s *bona fides*, Mr Dauth said.⁸⁹

5.84 Approximately \$3 million was allocated specifically for health and other activities in West Timor, in addition to the \$2 million already provided, in the \$23 million contributed by Australia in response to the consolidated international humanitarian appeal for East and West Timor.⁹⁰

5.85 The return and resettlement of the displaced East Timorese still in West Timor was largely being managed for the international community by UNHCR.⁹¹ Mr Plunkett referred to the outstanding record of the UNHCR in its protection offices, particularly the resettlement of some 350,000 people in Cambodia: ‘there are mechanisms and *modus operandi* used by UNHCR which would enable the

86 Mr Dauth, *Committee Hansard*, 6 December 1999, pp. 991-2.

87 Tim Johnston, ‘Timor camps test for Jakarta—Holbrooke’, *Reuters*, 22 November 1999.

88 Mr Dauth, *Committee Hansard*, 6 December 1999, p. 991; and 9 December 1999, p. 1029.

89 Mr Dauth, *Committee Hansard*, 6 December 1999, pp. 991-2.

90 Mr Dawson, *Committee Hansard*, 6 December 1999, p. 995. The \$23 million formed part of the total increase of \$60 million in the Australian aid program funding for East Timor in the financial year 1999-2000 which the Minister for Foreign Affairs and Trade, Mr Downer, announced on 22 November.

91 Mr Dawson, *Committee Hansard*, 6 December 1999, p. 998.

facilitation of people making a request to return to be returned ... I could easily see a UNHCR model being used so long as people had access to it.’⁹²

5.86 Mr Pat Walsh, Australian Council for Overseas Aid, argued that the Indonesian military-backed militias were the primary obstacle to resolving the issue of large numbers of East Timorese being kept in West Timor against their wishes. He said that delays in their return would disadvantage efforts to gather evidence on human rights abuses because much of the best evidence on abuses in Timor during 1999 was still with them: ‘They are not going to talk until they are home. It is also likely that their relatives in Timor will not talk until their family members are back in East Timor.’⁹³

5.87 On 3 February 2000, the head of UNTAET, Mr Sérgio Vieira de Mello, stated that the number of displaced East Timorese still in West Timor was 110,000 according to the UNHCR, but 174,000 according to the Indonesian Government.⁹⁴ The Governor of the province of East Nusa Tenggara, of which West Timor forms part, Mr Piet Tallo, said on 15 February that there were 158,000 East Timorese in refugee camps in West Timor as at the end of January 2000.⁹⁵ Visiting Dili on 8 June, Mr Tallo called for the repatriation of the estimated 120,000 remaining in West Timor: ‘I feel the time has come for them to go back home. It is a tremendous burden to shelter them’.⁹⁶

5.88 On 31 July 2000, President Abdurrahman Wahid ordered the immediate closure of refugee camps in West Timor following international pressure to stop pro-Jakarta militias from using them as bases to launch attacks into East Timor. Foreign Minister Alwi Shihab said the approximately 120,000 East Timorese refugees would be registered and told to immediately choose whether to remain in Indonesia or return home. More than 160,000 East Timorese had returned home in the previous ten months, but the remaining refugees were said by Indonesian officials to be either afraid of retribution, or were being intimidated or forcibly prevented from leaving by the militias. The international community subjected Indonesia to new pressure to close the camps and disband the militias after a United Nations peacekeeper from New Zealand was shot dead in East Timor on 24 July, allegedly by militiamen who had crossed the border.⁹⁷ The refugee camps were regarded as both a haven for the militias and a potential recruiting ground. The consensus of opinion is that while the refugee camps remain in operation, there will be continuing militia incursions into East Timor.

92 Mr Plunkett, *Committee Hansard*, 15 September 1999, p. 549.

93 Mr Walsh, *Committee Hansard*, 18 November 1999, p. 898.

94 ‘Annan to visit camps in West Timor, UN says’, *Agence France-Presse*, 4 February 2000.

95 ‘Governor wants rid of burdensome East Timor refugees’, *Jawa Pos*, 15 February 2000.

96 ‘W Timor Governor calls for repatriation of E Timor refugees’, *Deutsche Presse-Agentur*, 8 June 2000; Mark Dodd, ‘West Timor wants to empty camps’, *The Sydney Morning Herald*, 9 June 2000.

97 *Deutsche-Presse Agentur*, 31 July 2000.

5.89 On 3 August 2000, the United Nations Security Council expressed its 'profound concern' at the continuing presence of large numbers of Timorese refugees in West Timor, as well as the intimidation by militia towards the refugee population and staff of the UNHCR. Calling for 'a more determined involvement' by Indonesia in dealing with these problems, the Council urged the Indonesian authorities to restore law and order and ensure the protection of refugees and humanitarian personnel in West Timor. It also called on them to separate former military personnel, police and civil servants from the refugees and to arrest those militia extremists trying to sabotage the resettlement process.⁹⁸

5.90 Despite the urging of the Security Council, the situation in West Timor did not improve to any degree over the next month. On 7 September 2000, following the murder of a militia leader, militias stormed the UNHCR office in Atambua and murdered three UNHCR staff. As a result, United Nations agencies operating in West Timor evacuated all their staff from the province. The task of feeding and providing other basic services to the remaining 120,000 refugees was left to Indonesian authorities and NGOs to cope as best they could.

5.91 Indonesia came under renewed international pressure to disarm and control the militias and prevent their continued harassment of the refugees. An ultimatum by the Indonesian Government to the militias to voluntarily surrender their weapons to Indonesian authorities by 24 September 2000, was extended to 27 September 2000. In a report to the United Nations Security Council on 29 September 2000, the Permanent Representative of Indonesia, Dr Makarim Wibisono, referred to the surrender of weapons on 24 September 2000:

This included a voluntary hand-over of 888 home assembled weapons, 34 standard weapons, 4 grenades and 1000 rounds of ammunition. My delegation would like to stress that the process of disarming the militias did not just begin on 24 September 2000 but the process was long underway since December 1999, which resulted in the seizure of 817 firearms comprising of 214 standard weapons, 603 home assembled weapons, 19,926 ammunition and 66 grenades. Mindful of the complexity of this process and to ensure that it was conducted in an orderly, peaceful and complete manner, the Indonesian Government had extended the period from 24 September to 27 September 2000. Since then, an additional 215 weapons, including 4 units of M-16s, 13 grenades and 1900 ammunition have been surrendered.

5.92 Despite the surrender of many weapons and ammunition, it is generally accepted that the militias still retain many of the weapons that they had acquired, especially their military-style weapons. However, the Indonesian authorities have apparently taken a less lenient approach to the militias and their activities. There is also some evidence of a withdrawal of TNI support for militias operating in East Timor forcing them to return to West Timor. Nevertheless, militia intimidation of

98 'Security Council urges Indonesia to help end cross-border attacks in East Timor', *UN News*, 3 August 2000.

refugees has continued. An UNHCR spokesman, Kris Janowski, was reported on 11 November 2000 as saying that 'Returning refugees are still reporting a strong militia presence in the refugee camps, and while the pro-Jakarta gangs are no longer brazenly carrying weapons, their intimidation tactics and other pressure on the refugees remain strong'.⁹⁹ Another UNHCR worker based in Suai, East Timor, Joan Allison, also reported continuing militia intimidation in the refugee camps.¹⁰⁰

5.93 The investigation of the murder of the three UNHCR workers was proceeding and six men had been arrested in connection with the murders. They were due to be tried in November 2000. Meanwhile, the security situation in West Timor has not been considered safe enough for the return of aid workers. However, some UNHCR staff returned temporarily to West Timor in mid November to assist with the return of 450 (including 65 family members) East Timorese, who were enlisted in the Indonesian military, to East Timor. Some 800 of the 2,800 East Timorese serving in the Indonesian Army had already returned home, encouraged by East Timor's new leaders.¹⁰¹

5.94 A United Nations Security Council delegation visited Timor and then Jakarta in mid November 2000 to review implementation of UNSC resolution No. 1319/2000, which demanded the disarmament of civilian militias and an investigation into the murder of the three UNHCR workers in Atambua. The delegation also investigated the plight of the remaining of the estimated 120,000 East Timorese refugees in West Timor and their return to East Timor.

5.95 The key to the resolution of the twin problems of the return of East Timorese refugees to East Timor and implementation of effective security in both East and West Timor is the disarming and disbanding of the East Timorese militias. There is evidence that the Indonesian authorities are beginning to assert some control over the militias in the face of mounting international pressure to resolve both problems. Local TNI resistance to reigning in the militias is weakening and there is evidence that the militias, while still intimidating refugees, are not as dangerous as they were prior to the Indonesian Government's requirement for the surrender of their weapons.

5.96 Although the situation in West Timor is looking more hopeful, there is still much to be done to return the estimated 120,000 refugees who are still living in refugee camps. A long-term solution also still has to be found for the militias, who have been carrying on the struggle against an independent East Timor. It is not in the interests of East Timor, Indonesia or the international community to have armed militias continuing their attempts to destabilise East Timor. Indonesia has enough internal security problems without a continuing militia problem in West Timor. It would also be blamed by the international community if foreign troops were forced to

99 AAP news report, carried on NINEMSN Internet news report 12:36 AEDT, 11 November 2000.

100 Bronwyn Curran, *Ex-Timor militias still threaten, intimidate refugees: UN official*, Agence France-Presse (AFP) 13 November 2000.

101 AAP news report, carried on NINEMSN Internet news report 12:36 AEDT, 11 November 2000.

stay in East Timor longer than planned because of continuing militia action. East Timor, too, needs a stable security environment in order to establish itself as an independent sovereign nation. Although Australia and other members of the international community should do everything possible to assist Indonesia overcome its problems in West Timor, West Timor is Indonesian territory and, consequently, primary responsibility resides with Indonesia.

Electoral information data base

5.97 Australian Electoral Commissioner Bill Gray told the Committee that the voter register, which had been compiled for the 30 August 1999 ballot, could be used to give a rollcall of the East Timorese people. He said: 'It is a very important piece of information. It is in the hands of the United Nations now, and I think it will become a very important and relevant point of reference for any of the work that may then be conducted in respect of missing persons and the issues and events that occurred there immediately following the ballot.'¹⁰²

5.98 UNTAET had asked the Australian Electoral Commission (AEC) to help image the voter registration records permanently.¹⁰³ Imaging them was important because not all of the information that was on the records was captured in the data entry process for the conduct of the ballot. Because of the time constraints which UNAMET was facing in getting the lists ready for the ballot, the data that were captured were essentially those which were needed for the production of the lists of voters.¹⁰⁴

5.99 The AEC and the United Nations Electoral Assistance Division in New York had discussed a process for putting information that was only in the multi-part stationery registration forms into more permanent form, using a method of digital imaging. The advantage of doing this was to enable the permanently recorded information to be available in one form or another at different sites, which could be useful for reconciling the population in the territory with who was there in the period before the ballot. AusAID had given the AEC positive indications on funding the project.¹⁰⁵ On 29 August 2000, UNTAET announced that the Australian Government was preparing to donate this database, on CD-ROMs, to the East Timor National Archives.¹⁰⁶

East Timorese asylum seekers

5.100 The attention of the Committee was drawn to the situation of East Timorese asylum seekers in Australia, numbering around 1,650, whose applications to be

102 Mr Gray, *Committee Hansard*, 11 November 1999, p. 91.

103 Mr Maley, *Committee Hansard*, 11 November 1999, p. 891.

104 Mr Maley, *Committee Hansard*, 11 November 1999, p. 892.

105 Mr Maley, *Committee Hansard*, 11 November 1999, p. 894.

106 UNTAET briefing, 29 August 2000.

granted residence in Australia on the grounds of refugee status had been delayed for many years because of Government policy to regard them as holders of Portuguese citizenship, which would require them to seek asylum as refugees in Portugal. They rejected the contention that they were Portuguese citizens, and consequently became involved in very lengthy appeal processes entailing great hardships. Sr Susan Connelly explained the circumstances:

If we just look at the composition of the 1,500 asylum seekers, you would recall that most people who came to Australia prior to 1995 were given refugee status fairly readily. It was after the event of the Australian public rising up in horror at the suggestion that a certain Indonesian would be named as ambassador to Australia ... General Mantiri ... Mantiri made some quite disgraceful comments about the Santa Cruz massacre, and it was after his appointment was knocked back that Indonesia complained about the ready access of Australia to refugees. It was then that screws started to be put on people seeking refugee status.¹⁰⁷

5.101 Sr Connelly and Ms Elizabeth Biok referred to the desire of the asylum seekers to obtain educational qualifications in Australia. Ms Biok explained:

Most of the asylum seekers are young people. Most of them would have been under 25 when they arrived and most of them were young people who were active in the independence movement and who were forced to flee because of their involvement in Santa Cruz and the clandestine movement and the demonstrations in the early 1990s. Most of them came to Australia between 1992 and 1995. Most of them want to go back to East Timor and have always wanted to go back to build a new Timor, but the one line they all have is, 'We want to go back with skills. We want to go back with something to build up.'¹⁰⁸

5.102 Ms Biok and Sr Connelly pointed out that the asylum seekers, as persons having non-resident status, were not eligible for state assistance for tertiary education, and were unable to obtain stable employment. They said that it would be in accord with Australia's aspirations for an independent East Timor if the asylum seekers could be given the opportunity to obtain educational qualifications in Australia so that they might have the option of returning to make a contribution to re-building their country.

5.103 Dr Kenneth Chan proposed, in view of the long delay in resolving their status, that they be given a once-only grant of amnesty and allowed to remain: 'I do not think that, in all fairness, we should keep people on hold indefinitely and not come to a decision of this issue ... It only requires a government decision that they agree to do this.'¹⁰⁹

107 Sister Connelly, *Committee Hansard*, 3 November 1999, p. 682. Ian McPhedran, 'Three-way tussle over the fate of Timorese', *The Canberra Times*, 28 July 1995.

108 Ms Biok, *Committee Hansard*, 4 November 1999, p. 744.

109 Dr Chan, *Committee Hansard*, 11 November 1999, p. 840.

5.104 Portuguese Ambassador Justo da Silva informed the Committee that, in the twenty-three years since the Indonesian occupation of East Timor in 1975, not a single East Timorese had made a request of the Portuguese Embassy in Canberra, or of the consulates of Portugal, for Portuguese nationality: ‘It means a lot. It means that East Timorese want to be East Timorese ... not a single one of the 20,000 East Timorese here in this country has asked for a Portuguese passport.’¹¹⁰ The Portuguese Embassy had issued a statement on the matter on 3 June 1998, which said, referring to the test case of Mr Jong Kim Koe:

As other East Timorese asylum seekers in Australia, Mr Koe has never applied for Portuguese citizenship, therefore there is no basis for him to enjoy protection from the Portuguese authorities. Portugal has consistently stated that the attribution of Portuguese citizenship to East Timorese born persons presupposes an individual and voluntary application that reveals the wish to become a Portuguese national. It means that East Timorese are not automatically Portuguese nationals. Portuguese nationality laws were not designed to force the assimilation of East Timorese people into the Portuguese State, but to positively provide them with the right of exercising a free choice on what concerns their nationality until self determination is settled in the Territory. The application of Portuguese nationality laws must be done in accordance with the right to self-determination of the people of East Timor, as required by Article 293 of the Portuguese Constitution and international law.¹¹¹

5.105 Ms Biok referred to the decision of the Minister for Immigration and Multicultural Affairs to request an adjournment of the test case that he appealed to the Full Bench of the Federal Court—this was the case of Mr Lay Kon Tji, where Justice Finkelstein of the Federal Court had ruled on 30 October 1998 that the asylum seekers did not have effective protection of the Portuguese Government and that the continued refusal of the Australian Government to offer protection was illegal.¹¹² Ms Biok asked that the asylum seekers be granted a visa that ensured that they would have access to tertiary education to gain the skills that would be needed in Timor.¹¹³

5.106 On 29 June 2000, Ms Biok confirmed that the situation for the 1,600 asylum seekers was still uncertain. After the Federal Court cases were conceded, approximately 30 cases returned to the Refugee Review Tribunal for a merits determination in relation to the current situation in East Timor. The Principal Member of the Tribunal then referred a test case to the Administrative Appeals Tribunal to be heard by a three member tribunal, to be held in Darwin where the individual concerned resided from 17 July. All the issues of citizenship and fear of persecution were to be determined in the context of the changed political situation in Timor. Ms

110 Ambassador da Silva, *Committee Hansard*, 13 August 1999, p. 274.

111 Embassy of Portugal, Press Communiqué, 3 June 1998.

112 Leigh Murray, ‘1,600 Timorese refugees may stay in Australia: govt.’, *AAP*, 8 October 1999.

113 Ms Biok, *Committee Hansard*, 4 November 1999, p. 745.

Biok wrote: 'It is my view that it is too early to assume that there is security and stability here [in East Timor], as there is no operational police force and the court system is not hearing any case. In addition, there is a lot of hostility to persons returning from overseas.'¹¹⁴

5.107 The individual whose case was heard as the test case was a 31-year-old ethnic Chinese East Timorese man who came to Australia in 1994 as an Indonesian citizen with a temporary visa and applied for a protection visa. He claimed to fear for his life because of brutal and discriminatory treatment by Indonesian authorities of East Timorese such as himself who were regarded as anti-Indonesian. The asylum application was rejected in 1995 by the Ministry for Immigration and Multicultural Affairs on the grounds that he was a Portuguese citizen and that Portugal was obliged to offer him protection under the Refugees Convention. He appealed to the Refugee Review Tribunal which transferred the hearing to the AAT.

5.108 The Administrative Appeals Tribunal (AAT) found on 5 October 2000 in its decision on the test case in Darwin in favour of the asylum seeker's application for refugee status. The AAT ruled that he had a real and substantial fear of persecution if he were to return to East Timor. The Tribunal also found there was no effective protection available for him in East Timor, Portugal or Indonesia: 'The Tribunal is satisfied that the applicant is a person to whom Australia has protection obligations under the Refugees Convention as amended by the Refugees Protocol. We have reached the conclusion that UNTAET cannot at this stage give adequate protection for the applicant from persecution by reason of his ethnicity. The return of the applicant to a country [Indonesia] which regarded the applicant and his family as anti-Indonesian would not afford him effective protection'. Although born in what was until 1975 a Portuguese colony, the Tribunal could not find that the man was a Portuguese citizen under Portuguese domestic law. The AAT found that the case should be sent back to the Refugee Review Tribunal with a direction that the applicant was 'a person to whom Australia has protection obligations under the Refugees Convention'. The AAT decision implied that Australia could not send the other 1,600 East Timorese asylum seekers to Portugal. The Tribunal also found that the United Nations Transitional Administration for East Timor (UNTAET) could not adequately protect ethnic Chinese from racial persecution, which could imply that other ethnic Chinese East Timorese would also be allowed to stay in Australia.¹¹⁵

5.109 The Committee believes that, in light of the AAT decision, the other 1,600 cases be processed by the Refugee Review Tribunal as quickly as possible.

114 Ms Biok, supplementary submission, 29 June 2000; Dennis Schulz, 'Spotlight on Timorese asylum seekers in Australia', *The Age*, 17 July 2000.

115 'East Timorese man gains refugee status', *AAP*, 5 October 2000; Andrew Clennell, 'Landmark ruling gives hope to 1,500 East Timor refugees', *The Sydney Morning Herald*, 6 October 2000.

CHAPTER 6

AUSTRALIAN POLICY: INDONESIA'S INCORPORATION OF EAST TIMOR

Introduction

6.1 In this chapter, the Committee examines Australian policy towards East Timor from its beginnings in 1941 to the Indonesian invasion in 1975. The period is divided into three discrete sections: Australia's breach of Portuguese neutrality in 1941; the Menzies government; and, finally, the Whitlam government. The period from 1975 to 1999 is dealt with in Chapter 7.

Australia's breach of Portugal's neutrality in 1941

6.2 In his submission, Mr Rodney Lewis drew the Committee's attention to a cable sent to Prime Minister Curtin on 18 December 1941 by the Governor of Portuguese Timor, Manuel d'Abreu Ferreira de Carvalho. The Governor sent the cable on the direct instructions of the Prime Minister of Portugal, Dr António de Oliveira Salazar, who had told the Governor to:

Protest vigorously against the aggression, absolutely contrary to the principles of law, being carried out against this part of Portuguese territory, by Dutch and Australian forces, who claim to be acting in accordance with instructions received from the Government of the Netherlands Indies in agreement with the Government of the Commonwealth of Australia.¹

6.3 Prime Minister Curtin replied immediately to Governor Ferreira de Carvalho, saying:

In reply to your communication, Commonwealth Government regrets that in order to defend against Japanese aggression it has been found necessary to prevent Japanese breach neutrality in Timor.²

6.4 Mr Jack Carey, Secretary, 2/2 Commando Association, summarised the Australian intervention in Portuguese Timor:

Early in 1941 the British, Australian and Netherlands war cabinets met and decided that, in the event of war with Japan, East Timor should be occupied. But this did not meet with the approval, naturally, of Portugal, who wanted

1 Ferreira de Carvalho to Evatt, 18 December 1941, W.J. Hudson and H.J. Stokes (eds.), *Documents on Australian Foreign Policy, 1937-1949*, Canberra, Department of Foreign Affairs, 1982, vol. v, p. 321; quoted in Rodney Lewis, submission no. 93, 'Timor 1941: Unwelcome Visitors', p. 165.

2 Curtin to Ferreira de Carvalho, 18 December 1941, W.J. Hudson and H.J. Stokes (eds.), *Documents on Australian Foreign Policy, 1937-1949*, Canberra, Department of Foreign Affairs, 1982, vol. v, p. 321; quoted in Rodney Lewis, submission no. 93, 'Timor 1941: Unwelcome Visitors', p. 165.

to remain neutral. When war broke out on 7 December, the Japanese Consul in Dili, Mr Tokitaro, warned the Portuguese Governor—that is Governor Carvalho—that Japan was now at war with America and Britain and Australia. Japan expected Portugal to remain neutral. The Governor replied that Portugal intended to do so. On 16 December of that year a force of Javanese and Menadonese troops under white Dutch officers and 150 of the 2nd Australian Independent Company landed in East Timor; the rest of the company arrived a few days later. The Company took over the airfield, which was an 800-metre field, and the Javanese and Menadonese occupied the Dili township and took up strategic points.³

6.5 The Australian official record cited in Mr Lewis' submission showed that the Australian Government was acting at the behest of Britain and her allies, in this case Holland. The Portuguese objected vehemently to the presence of Dutch and Australian troops in Dili, which they saw as one more attempt by the Dutch to gain control of the whole of the island of Timor, under the pretext of preventing a Japanese invasion. Earlier, Secretary of State for Dominion Affairs, Lord Cranbourne, had cabled Prime Minister Curtin:

The Dutch have made representations here and in Lisbon on the need for safeguarding Portuguese Timor ... Considerable importance is attached here to the association with any Dutch force sent to Portuguese Timor of even a very small token force of Australians ...⁴

6.6 As events unfolded in late 1941, Prime Minister Curtin became increasingly disenchanted with the policy to which he had been persuaded to agree and, on 26 December 1941, made his feelings clear in a cable to Lord Cranbourne:

On December 13th you informed us that Portugal, by virtue of ancient alliance, had accepted proposal to forestall Japanese aggression and had agreed to instruct Governor either to invite assistance or to acquiesce in assistance being furnished ... Subsequently plan was arranged and Dutch fixed time for landing ... At your request we agreed to amend plan so that landing should take place more than two hours after consultation with the Governor. It was only after expedition had set out that we heard from you that Portuguese Government had suddenly become hostile and lost its nerve. Your view was that because of the change of attitude by Portugal United Kingdom's association with operation should not be mentioned by us although the plan was primarily yours ... Commonwealth Prime Minister received a protest direct from the Governor and in difficult circumstances and solely in order to meet your position we confined ourselves to a reply to

3 Mr Carey, *Committee Hansard*, 20 July 1999, p. 122, and submission no. 72, appendix A, 'East Timorese Casualties, Erroneous History', p. 1. The accuracy of Mr Carey's account is supported by a study referred to the Committee by Mr Lewis: Henry Frei, 'Japan's Reluctant Decision to Occupy Portuguese Timor, 1 January 1942-20 February 1942', *Australian Historical Studies*, vol. 27, no. 107, October 1996, pp. 281-302.

4 Cranbourne to Curtin, 10 and 11 December 1941, W.J. Hudson and H.J. Stokes (eds.), *Documents on Australian Foreign Policy, 1937-1949*, Canberra, Department of Foreign Affairs, 1982, vol. v, pp. 296 and 304; quoted in Rodney Lewis, submission no. 93, 'Timor 1941: Unwelcome Visitors', p. 162.

the Governor making no reference whatsoever to your part in the enterprise and we made no public statement whatever. Subsequently you expressed to Portugal deep regret that action was taken by Allied military authorities on the spot, the suggestion being that you were not a party to the plan.⁵

6.7 Prime Minister Curtin told Lord Cranbourne that his military advisers at Dili were saying that the position there was most unsatisfactory, that the Governor was organising troops to harass the Allied troops and would certainly assist any Japanese landing. The information was that the Dutch commander was awaiting instructions from his headquarters authorising him to take full military control and disarm the Portuguese. The Governor was complaining to his government that Allied commanders at Dili had acted high-handedly and requisitioned extensively.⁶

6.8 By 17 February 1942, Allied policy had changed and the force in Dili was to hand over to a reinforced Portuguese garrison that would be able to secure the province's neutrality. The day before the Portuguese reinforcements arrived from Mozambique, Japanese forces landed.⁷ Mr Carey told the Committee:

The Japanese, before deciding to invade East Timor, deliberated for the best part of six weeks, and it was not until the end of January that they finally decided they would invade East Timor. The Japanese navy were always in favour of it but the army were not. Tojo himself was not in favour. They preferred to respect the neutrality of Portugal and they had already done so in Macao. They landed there on 19 February.⁸

6.9 Mr Carey said that the decision by the Allies at the time to take over East Timor provoked the Japanese invasion. As a consequence, Timor became a battleground: over the three and a half years of the Japanese occupation, thousands of lives were lost. A successful guerrilla campaign was carried out but at great cost to the inhabitants of the island. The Australian troops of the 2nd/2nd withdrew on 16 December 1942 and the 2nd/4th Independent Company withdrew early in 1943. The Japanese did not leave Timor until September 1945. During that time, particularly in the 1943-44 period under Japanese rule, thousands of East Timorese people died through starvation and lack of medical care. The Portuguese were moved into zones of

5 Curtin to Cranbourne, 26 December 1941, W.J. Hudson and H.J. Stokes (eds.), *Documents on Australian Foreign Policy, 1937-1949*, Canberra, Department of Foreign Affairs, 1982, vol. v, pp. 360-1; quoted in Rodney Lewis, submission no. 93, 'Timor 1941: Unwelcome Visitors', pp. 166-7. Also cited in Frei, p. 287.

6 Curtin to Cranbourne, 26 December 1941, W.J. Hudson and H.J. Stokes (eds.), *Documents on Australian Foreign Policy, 1937-1949*, Canberra, Department of Foreign Affairs, 1982, vol. v, pp. 360-1; quoted in Rodney Lewis, submission no. 93, 'Timor 1941: Unwelcome Visitors', p. 167. Also cited in Frei, p. 287.

7 Henry Frei, 'Japan's Reluctant Decision to Occupy Portuguese Timor, 1 January 1942-20 February 1942', *Australian Historical Studies*, vol. 27, no. 107, October 1996, p. 298.

8 Mr Carey, *Committee Hansard*, 20 July 1999, p. 122, and submission no. 72, appendix A, 'East Timorese Casualties, Erroneous History', p. 1. The accuracy of Mr Carey's account is supported by a study referred to the Committee by Mr Lewis: Henry Frei, 'Japan's Reluctant Decision to Occupy Portuguese Timor, 1 January 1942-20 February 1942', *Australian Historical Studies*, vol. 27, no. 107, October 1996, pp. 281-302.

concentration, mainly at Liquiça. Mr Carey commented: 'Australia, as part of the tripartite [Britain, Netherlands and Australia], caused a neutral country to be involved in a war, so we owe a debt to the people of East Timor in that respect.'⁹

6.10 Mr Tom Uren, who fought and was taken a prisoner of war in western Timor at this period, agreed with this view:

The fact is that we did invade a neutral East Timor or Portuguese Timor. Because of that and because of their support of us, around 50,000 people were killed, murdered or brutalised or died of starvation during that occupation period. Would the Japanese have invaded Portuguese Timor, keeping in mind that it was a neo-Fascist government in Portugal at that time and that they did not occupy Macao in China? It was odds on that they would not have invaded.¹⁰

6.11 Mr Lewis, who represented the International Commission of Jurists, drew the attention of the Committee to a cable sent from the Australian High Commissioner in London to Prime Minister Curtin on 28 December 1941:

the hard facts are that Portuguese reaction to the landing without previous consent of the Portuguese before actual attack by the Japanese was misjudged [by us] and the sooner this is admitted, the better.¹¹

The consequence of this, in the opinion of Mr Lewis, was that:

the obligation that we have to these people did not begin - as is popularly understood - when they shed blood for Australian lives; no, it goes back to 17 December, when we made an egregious error in breaching neutrality and thus bringing the Second World War to these people where otherwise it would not have occurred.¹²

6.12 The Australian Minister for External Affairs, Dr H.V. Evatt, made a statement on 27 November 1941, that Australia had a very direct interest in preserving 'the complete political independence' of East Timor and that Australia could not see with equanimity any development which threatened the integrity of that part of the Portuguese empire.¹³

9 Mr Carey, *Committee Hansard*, 20 July 1999, p. 122.

10 Mr Uren, *Committee Hansard*, 4 November 1999, p. 754.

11 Mr Lewis, *Committee Hansard*, 4 November 1999, p. 751, quoting W.J. Hudson and H.J. Stokes (eds.), *Documents on Australian Foreign Policy, 1937-1949*, Canberra, Department of Foreign Affairs, 1982, vol. v, p. 373.

12 Mr Lewis, *Committee Hansard*, 4 November 1999, p. 751; submission no. 93, 'Proposals for due recognition of the people of East Timor by the Government & people of Australia - their struggle for freedom; our obligation'.

13 Salazar to Menzies regarding Timor, 1 March 1962, NAA A1209/80, 1974/9010, p. 4, referring to statement by Evatt, House of Representatives, *Hansard*, 27 November 1941, p. 977.

6.13 A note from the British Embassy in Lisbon of 14 September 1943 said that ‘His Majesty’s Government in the Commonwealth of Australia’ were glad to associate themselves with the assurance given by the British Government that, at the conclusion of hostilities, Allied forces would be withdrawn from the Azores, and Portuguese sovereignty over all its colonies would be maintained.¹⁴ Dr Evatt had explained the background to this in a statement to Parliament on 26 March 1946:

The occupation and use of the Azores as an air base by the United States of America and the United Kingdom were of supreme importance, and an arrangement had to be made between Great Britain and Portugal. The Portuguese asked the British Government, as a part of the arrangement over the Azores, to ensure that the Government of Australia should give an undertaking that in its post-war planning it would make no attempt to alter the sovereignty of Portuguese Timor.¹⁵

In accordance with this policy, Timor had been restored to Portuguese rule at the end of the War after having been occupied by Japanese forces since 20 February 1942.

The Menzies period

6.14 At the hearing on 24 September 1999, Mr James Dunn, Australian Consul in Dili during the Portuguese period, told the Committee that one reason for his posting as Australian Consul to Portuguese Timor in January 1962 was because it was generally accepted in Canberra that, after Indonesia had gained control over West Irian, Portuguese Timor would be the next object of Indonesian attention.¹⁶ However, when West Irian was incorporated into Indonesia, President Soekarno’s government turned its attention to Malaysia, and confrontation against that country had left Portuguese Timor quiet during his time in the territory.¹⁷

6.15 Mr Dunn said that the situation in Portuguese Timor was calm. Although the territory was undeveloped, the Portuguese had a harmonious relationship with the Timorese people. Not many of them were well educated, but there was a greater degree of participation in government than existed in Papua New Guinea at the time.¹⁸ The Portuguese intermarried and mingled easily with the Timorese. There was no sense of discrimination, other than on the grounds of ‘civilisation’, as it was called:

14 Salazar to Menzies regarding Timor, 1 March 1962, NAA A1209/80, 1974/9010, p. 4, see Curtin to Evatt, 3 July 1943, W.J. Hudson and H.J. Stokes (eds.), *Documents on Australian Foreign Policy, 1937-1949*, Canberra, Department of Foreign Affairs, 1983, vol. vi, pp. 444-6.

15 H.V. Evatt, House of Representatives, *Hansard*, 26 March 1946, pp. 625-6.

16 Indonesian Foreign Minister Dr Subandrio was reported as saying in a statement to the Indonesian Parliament that ‘the Portuguese should beware of their position in Timor’ (Jack Percival, ‘Timor: the new Indies sore spot’, *The Sun-Herald*, 13 August 1961).

17 Mr Dunn, *Committee Hansard*, 24 September 1999, p. 601.

18 Mr Dunn, *Committee Hansard*, 24 September 1999, p. 600.

the better educated mixed together regardless of whether they were local or from Portugal.¹⁹

6.16 However, only three years earlier, in June 1959, the serenity had been broken by an uprising near Viqueque, which had been suppressed only after much bloodshed.²⁰ The survivors of the uprising (which had been assisted by 14 exiled Indonesian army officers, who had fled to Portuguese Timor from the 1958 revolt in Sulawesi) later formed the nucleus of Apodeti, which supported integration with Indonesia.²¹ One of the captured leaders of the uprising, José Manuel Duarte, later wrote that he had been complaining since 1953 against the Portuguese use of forced labour, whipping and other forms of corporal punishment, and wage discrimination against Timorese. The actual uprising was reportedly sparked by the action of a local Portuguese official who cheated Timorese workers of the wages due to them from the Australia-based Timor Oil company, which was conducting exploration in the area.²²

6.17 The uprising was referred to in a memorandum dated 21 February 1963 presented to the Menzies Cabinet by External Affairs Minister Garfield Barwick, which was drawn to the attention of the Committee by Mr Whitlam.²³ The memorandum also said that, generally, Portuguese Timor presented a picture of fatalistic calm, but it was widely believed by the administration that Indonesian seizure of the province could not be prevented and was only a matter of time. It seemed certain, according to the memorandum, that the intention of the Indonesian Government was to take over Portuguese Timor at some stage, and it would be an easy military operation to do so. Barwick's memorandum referred to correspondence between Prime Ministers Menzies and Salazar and concluded by reflecting on Cabinet Decision 632 of 5 February 1963, which stated:

In relation to Portuguese Timor, the Cabinet accepted the view that in the current state of world opinion, no practicable alternative to eventual

19 Mr Dunn, *Committee Hansard*, 24 September 1999, p. 601. A different impression was recorded by Osmar White, who wrote of the 'spiritual deformity' which seemed to affect the Timorese under Portuguese rule: 'I have travelled a great deal in parts of Asia where white men are disliked and distrusted, but I have never been so sensible of fear-paralysed hostility as I was in Timor' ('Timor—Island of Fear', *The Melbourne Herald*, 2 April 1963).

20 Quoted in Mr Whitlam, submission, no. 5, 30 November 1999, p. 4. Also referred to in Jack Percival, 'Timor: the new Indies sore spot', *The Sun-Herald*, 13 August 1961.

21 Bruce Juddery, 'East Timor: which way to turn?', *The Canberra Times*, 18 April 1975; Jill Jolliffe, 'Indonesia now wants all the gory details', *The Canberra Times*, 19 August 1995. The officers had come to Portuguese Timor as a result of a request by the Menzies Government to Portugal in March 1958 for co-operation in assisting a rebel movement (Permesta) in Sulawesi and Maluku which was attempting to break away from the unitary Indonesian state of President Soekarno (Geoffrey Slater and Jack Waterford, 'Finger in the Pie', *The Canberra Times*, 17 February 1991). In November 2000, a woman pro-integrationist refugee from Viqueque residing in Kupang told *The Jakarta Post*: 'My father joined the 1959 rebellion. Many were killed, the river simply turned red with their blood' (Lela E. Madjiah, 'What could be worse than East Timorese refugee camps?' *The Jakarta Post*, 23 November 2000).

22 George J. Aditjandro, *Is Oil Thicker than Blood*, New York, Nova Science, 1999, p. 10.

23 Published in Gough Whitlam, *Abiding Interests*, Brisbane, University of Queensland Press, 1997, pp. 290-5.

Indonesian sovereignty over Portuguese Timor presented itself. It would not be acceptable to Australia or the West for Indonesia to proceed against Portuguese Timor with arms, and this must be brought home to Indonesia. But otherwise the course which it seemed best to follow is for Australia to bring such quiet pressure as it can upon Portugal to cede peacefully and in addition to explore ways by which the international community might bring pressure on Portugal.

6.18 Prime Minister Menzies wrote to Dr Salazar on 8 February 1963 in accordance with the Cabinet Decision. In his reply of 1 March 1963 and again in his reply of 5 March 1964 to Mr Menzies' subsequent letter of 15 October 1963, Dr Salazar expressed the view that Portuguese Timor could not survive as an independent country and that it would probably be preferable from an Australian point of view that Timor remain in Portuguese hands rather than be handed to Indonesia. He wrote, in part, on 1 March 1963:

I should think that the greatest concern of Australia would be not a disturbance of order, not an attack on Portuguese sovereignty in Timor, but to know who afterwards would exercise sovereignty in that territory. Given the fact that Timor cannot be an independent State, the territory either continues to be a part of Portugal as an autonomous province that it is or is annexed to the Republic of Indonesia; there does not seem to be any foreseeable hypothesis of an Australian dominion or condominium. However good and intimate Australian relations with Indonesia may be, a Portuguese Timor seems incomparably safer and more attentive to the interests of Australia than the same Timor integrated in that Republic.

6.19 In his letter of 5 March 1964 to Prime Minister Menzies, Dr Salazar wrote, in part:

Your Excellency is aware that Portuguese Timor cannot constitute an independent nation. Your Excellency is aware that the Republic of Indonesia would never consent to the existence of an independent Timor. In this context, what policy can be formulated which, not maintaining the status quo on one hand, would take into account on the other hand the impossibility of the independence of the territory and would avoid the annexation of it by Indonesia? Your Excellency submits that the interest which the United Nations would take in Timor could protect the territory from external pressures. I do not know whether there might not have been something of *naïveté* in this suggestion. As for myself, Mr Prime Minister, I believe the United Nations took a profound interest in Dutch New Guinea: but that did not secure self-determination for the people of West Irian.²⁴

6.20 Dr Salazar explained that there could be no political independence without economic viability, and referred to Portugal's experience of African affairs. He said that the damage caused to the African populations by the policy adopted by the West and the United Nations had been very severe and, in some respects, irreparable:

24 Dr Salazar to Mr Menzies regarding Timor, 5 March 1964, NAA A1209/80, 1974/9010, pp. 3-4.

‘misery, economic and political regression, disorder in administration, lack of order and security everywhere, submission to a new type of colonialism, exploitation of the populations disguised as economic aid which compensates itself by manipulation of prices of basic products, growing ascendancy in Africa of the communist bloc ...’²⁵

The Whitlam government

6.21 Mr Whitlam said that it was clear in the 1960s that Portugal would take no steps towards self-determination in Timor.²⁶

6.22 Dr Salazar was incapacitated in 1968 and was succeeded by Marcelo Caetano. On 25 April 1974, the ‘Carnation Revolution’ (*Revolução dos Cravos*) took place in Lisbon, and Caetano and the President, António Tomás, were ‘relegated’ (banished) to the Azores. The new Portuguese Government was committed to decolonisation.²⁷ ‘At that time’, said Mr Whitlam, ‘there was a change: they decided to get out of all their colonies’.²⁸

6.23 Mr Whitlam held the view that colonialism was doomed in the Indian and Pacific Oceans as a result of the Pacific War.²⁹ He said that the Labor Government elected on 2 December 1972 was determined to end the Portuguese colonialism which Australian Governments had condoned, and often supported, by their votes in the United Nations since 1960.³⁰ Addressing the United Nations General Assembly on 30 September 1974, Mr Whitlam said:

There is to me, I must say, a most satisfying symmetry in the march of events by which Portugal the oldest, and Australia the newest, of the colonial powers are acting at the same time towards the liquidation of colonialism [in Timor and Papua New Guinea]. Across the distance of 400 years the new world in Australia clasps hands with the old, in ending a false, demeaning, unworthy power over others.³¹

25 Salazar to Menzies regarding Timor, 5 March 1964, NAA A1209/80, 1974/9010, pp. 5-6.

26 Mr Whitlam, submission, no. 5, 26 March 1999, p. 6.

27 Mr Whitlam, submission, no. 5, 26 March 1999, p. 7.

28 Mr Whitlam, *Committee Hansard*, 6 December 1999, p. 976. In Timor, the decolonisation policy was to be implemented by a team led by Colonel Mario Lemos Pires, who took up his appointment as Governor on 18 November 1974.

29 Mr Whitlam, submission, no. 5, 26 March 1999, p. 3; *Committee Hansard*, 6 December 1999, p. 979.

30 Mr Whitlam, submission, no. 5, 26 March 1999, p. 7.

31 Mr Whitlam, submission, no. 5, 26 March 1999, p. 7. Mr Whitlam had expressed his opposition to Portuguese rule in Timor in 1963, when he said in delivering the 14th Roy Milne Memorial Lecture: ‘Eastern Timor must appear as an anachronism to every country in the world except Portugal ... We would not have a worthy supporter in the world if we backed the Portuguese’. This was drawn to the attention of the press in 1973 when Portugal was showing reluctance to engage in negotiations with Australia over a seabed boundary (Paul Webster, ‘Dying empire next door’, *The Australian*, 13 July 1973; Michael Davenport, ‘Portuguese Timor: a colonial embarrassment at our front doorstep’, *The National Times*, 16 July 1973).

6.24 Mr Whitlam was of the view that it was indisputable that there had been culpable neglect of East Timor by the Portuguese for four centuries, and by the Catholic Church.³² He said that the ‘great tragedy’ was that Portuguese Timor had been kept in a cocoon. The only contacts that Timor had were with Macao, where the Church had a bishop.³³ There were no contacts with West Timor. ‘There is no question’, he said, ‘that but for the arrangement made by Alexander VI and approved by Julius II, each side of 1500, the island would have been united.’³⁴ It was a pure accident of history that it was separated. It was by sheer Portuguese intransigence, both political and ecclesiastical, that there were no contacts with West Timor’.³⁵ He characterised the leaders of the three main political parties which arose in Timor after the 1974 revolution in Portugal as ‘mostly *mestiços* who had spent some time in seminaries and the army and who often seemed to be desperate to succeed the Portuguese as rulers of the rest of the population’.³⁶ Mr Whitlam explained to the Committee:

As I said, East Timor was cocooned. There were no contacts with West Timor, and there has been no trouble in West Timor. The point is that they both had an indigenous language, Tetum ... they did have the same language ... There was a possibility that if they could meet each other, as they would over a three - or five - or eight-year period, that they would learn to communicate ... there was a chance, with proper preparation, that the two Timors could have got to live together.³⁷

6.25 Mr Whitlam told the Committee that Mr Barwick’s 1963 analysis, Dr Salazar’s views and those of the Menzies government all came to the same conclusion, that East Timor was non-viable politically and economically.³⁸ That was also his own view, which he had formed after he had taken advice from Secretary of the Prime Minister’s Department, Sir John Bunting, who had also held that position at the time of the Menzies-Salazar correspondence.³⁹ Sir John thought that Portuguese

32 Mr Whitlam, *Committee Hansard*, 6 December 1999, p. 984.

33 Mr Whitlam, *Committee Hansard*, 6 December 1999, p. 984.

34 Referring to the Papal bulls *Inter caetera* of 3 May 1493 and 24 January 1506, and the Treaties of Tordesillas (1494) and Saragossa (1529). Cf. Edward G. Bourne, ‘The History and Determination of the Line of Demarcation by Pope Alexander VI, between the Spanish and Portuguese Fields of Discovery and Colonization’, *Senate Miscellaneous Documents*, Washington, vol 5, 1891-92, pp. 103-30; Lourdes Díaz-Trechuelo, ‘El Tratado de Tordesillas y su proyección en el Pacífico’, *Revista Española del Pacífico*, no. 4, Año IV, Enero-Diciembre 1994, pp. 11-21.

35 Mr Whitlam, *Committee Hansard*, 6 December 1999, p. 986.

36 Mr Whitlam, *Committee Hansard*, 14 May 1982, p. 12; Gough Whitlam, *The Whitlam Government*, Melbourne, Viking, 1985, p. 107.

37 Mr Whitlam, *Committee Hansard*, 6 December 1999, p. 986. José Osorio Soares, Secretary-General of Apodeti, expressed a similar view in 1975, saying that East and West Timor should be joined in one autonomous province: ‘We become a part of Indonesia, then the government in Kupang gets independence from Indonesia for a united Timor. It is only one land; how can it be divided?’ Bill Nicol, *Timor: The Stillborn Nation*, Melbourne, Visa, 1978, p. 62.

38 Mr Whitlam, submission, no. 5, 30 November 1999, pp. 9-10.

39 Mr Whitlam, *Committee Hansard*, 6 December 1999, pp. 976, 986

Timor was not viable as an independent state, and this view was shared by the Secretary of the Department of Defence, Sir Arthur Tange, the Secretary of the Treasury, Sir Frederick Wheeler, and the Secretary of the Department of Foreign Affairs, Sir Keith Waller.⁴⁰

6.26 Prior to Mr Whitlam's meeting with President Soeharto at Yogyakarta, the Minister for Foreign Affairs, Senator Willesee, approved a policy that gave emphasis to self-determination for the East Timorese people rather than to the outcome of that process. That policy was included in the talking points in the brief prepared by the Department of Foreign Affairs for Mr Whitlam's meeting with President Soeharto on 6 September 1974:

- (c) In keeping with the general tenor of Australia's foreign policy and our attitude towards Portugal's African territories, we are committed to decolonization in Portuguese Timor on the basis of valid self-determination. Australia would be bound by the results of a genuine and internationally acceptable act of self-determination in Portuguese Timor.
- (d) On this basis any of the three options for the future of the territory—continuing association with Portugal, independence, or incorporation in Indonesia—would be legitimate in Australia's view.
- (e) Conversely, any future disposition of Portuguese Timor which was contrary to the wishes of the people would be likely, in Australia's view, to have a destabilising influence in the region. It would be important for this reason that the act of self-determination should be accepted as a genuine test of Timorese opinion by the Governments and people of the countries in the region.⁴¹

6.27 In 1997, Mr Whitlam wrote that he had been shown the Menzies-Salazar correspondence by the Department of Foreign Affairs (by Mr Renouf's predecessor, Sir Keith Waller) and had been referred to the Cabinet decision of February 1963 which established Australian policy on Portuguese Timor. The supporting paper, the departmental brief for the Yogyakarta meeting on 6 September 1974, was not government policy in the opinion of Mr Whitlam.⁴²

6.28 Mr Renouf had earlier written that the policy approved by the Minister for Foreign Affairs, Senator Willesee, had not been put to Mr Whitlam: 'the matter had

40 Mr Whitlam, submission no. 5, 30 November 1999, p. 3. A 4 April 1963 report of the Working Group of Departmental Officers, 'The Future of East Timor', suggested 'Perhaps in theory the problem of self-determination is not insurmountable and might be overcome by a West New Guinea type of arrangement' (Wendy Way, Damien Browne and Vivianne Johnson (eds.), *Australia and the Indonesian incorporation of Portuguese Timor, 1974-1976*, Melbourne University Press, 2000, p. 31).

41 Wendy Way, Damien Browne and Vivianne Johnson (eds.), *Australia and the Indonesian Incorporation of East Timor, 1974-76*, Melbourne University Press, 2000, p. 92.

42 Gough Whitlam, *Abiding Interests*, Brisbane, University of Queensland Press, 1997, pp. 72-74.

not been prominent enough and his approval of self-determination had been assumed'.⁴³

6.29 At his meeting with President Soeharto at the Wonosobo state guest house near Yogyakarta on 6 September 1974, Mr Whitlam took a different line to the brief:

The Prime Minister said that he felt two things were basic to his own thinking on Portuguese Timor. First, he believed that Portuguese Timor should become part of Indonesia. Second, this should happen in accordance with the properly expressed wishes of the people of Portuguese Timor. The Prime Minister emphasised that this was not yet Government policy but that it was likely to become that.⁴⁴

6.30 This was the same viewpoint as that he had inherited from the preceding governments, as he told the Committee, unchanged except for seeking the consent of the Timorese people rather than that of the Portuguese Government. The policy had been settled since 1963. Cabinet Decision 632 of 1963 stated that, while no practical alternative to Indonesian sovereignty over Portuguese Timor presented itself, 'It would not be acceptable to Australia or the West for Indonesia to proceed against Portuguese Timor with arms', and Australia should bring 'quiet pressure' on Portugal to cede peacefully.⁴⁵

6.31 The Department of Foreign Affairs prepared a background paper dated 11 September 1974, on the future of Portuguese Timor, to take account of the approach adopted by the Prime Minister on the territory in his talks with President Soeharto. The background paper included the following comments:

In the Australian view the primary questions requiring determination are the wishes of the people of Portuguese Timor regarding the future of the territory, and how the long-term stability of the region might best be assured.

Because the rudimentary stage of political development in the territory an act of self-determination would need to be prepared carefully, gradually and over a period of time, otherwise the decision of the people may not be based on a full and informed appreciation of the best future interests of the territory and could therefore prejudice regional stability.

At the present stage Australia has doubts whether the territory would in fact achieve real independence if its people chose completely separate status, given the relative weakness of the economy and its inevitably limited defence capability. Accordingly Australia appreciates Indonesia's concern about the future of the territory and shares its belief that the voluntary union

43 Alan Renouf, *The Frightened Country*, Melbourne, Macmillan, 1979, p. 443.

44 Wendy Way, Damien Browne and Vivianne Johnson (eds.), *Australia and the Indonesian Incorporation of East Timor, 1974-76*, Melbourne University Press, 2000, p. 95.

45 Quoted in Gough Whitlam, *Abiding Interests*, Brisbane, University of Queensland Press, 1997, p. 295.

of Portuguese Timor with Indonesia, on the basis of an internationally acceptable act of self-determination, would seem to serve the objective of decolonisation, and at the same time the interests of stability in the region.⁴⁶

6.32 In November 1991, Mr Willesee said that he had been ‘surprised’ to learn what Mr Whitlam had done at Wonosobo: ‘Gough and I had some disagreements. That was one we diverted on. I believed we ought not to play God, but let the Timorese decide’.⁴⁷ In an interview on 9 March 1999, he said:

There is no doubt that Gough felt East Timor should be incorporated within Indonesia. I just believed that we should have left the decision to the East Timorese, without any suggestions or trying to lead them to Indonesia. That was the difference between myself and Gough. I was constrained at the time. But as Foreign Minister you’ve got to manage your relationship with the Prime Minister. I had to compromise my way through the entire issue. My view the whole time was that the decision should be left absolutely to the East Timorese, but Gough just had a very firm opinion.⁴⁸

6.33 President Soeharto’s response to Mr Whitlam’s statement of his position on Portuguese Timor was to point out the important constitutional and legal problems for Indonesia that incorporation involved (which had already been raised by the incorporation of Irian Barat). The 1945 Indonesian constitution provided for a unitary state. The constitution, adopted as a challenge to colonial rule, would neither accept colonialism nor allow the Indonesian Government to seek to colonise others. The emphasis in the constitution on the unitary state also meant that incorporation could not lead to a violation of it by giving the territory any special status. Portuguese Timor could not be incorporated as a separate state within the Indonesian Republic, which was not a federation. Ultimately, the Indonesians hoped for incorporation, but this should occur on the basis of the freely expressed wishes of the people of Portuguese Timor.⁴⁹

6.34 This view was reiterated in a public statement on 18 October 1974, following President Soeharto’s meeting in Jakarta with the Portuguese Minister for Inter-territorial Co-ordination, António Almeida Santos: ‘Indonesia would accept

46 Wendy Way, Damien Browne and Vivianne Johnson (eds.), *Australia and the Indonesian Incorporation of East Timor, 1974-76*, Melbourne University Press, 2000, pp. 101-02.

47 David Jenkins, ‘Whitlam can’t maintain outrage over East Timor’, *The Sydney Morning Herald*, 30 November 1991.

48 Paul Kelly, ‘Willesee: Whitlam reigned on East Timor’, *The Australian*, 10 March 1999.

49 ‘Record of Meeting between the Prime Minister and President Soeharto, State Guest House, Yogyakarta, 6 September 1975’, pp. 3, 4; published in *The Sydney Morning Herald*, 6 March 1999 and included in Mr Whitlam’s submission, no. 5, 23 November 1999. Wendy Way, Damien Browne and Vivianne Johnson (eds.), *Australia and the Indonesian incorporation of Portuguese Timor, 1974-1976*, Melbourne University Press, 2000, pp. 95-8.

Portuguese Timor as a province of the Indonesian nation, though not as an independent state within an Indonesian federation'.⁵⁰

6.35 Mr Whitlam made his position clear in private conversation with Foreign Affairs officers, as recorded in a departmental minute from Mr Graham Feakes to Ambassador Frank Cooper in Lisbon, which quoted Mr Whitlam as saying: 'I am in favour of incorporation but obeisance is to be made to self-determination. I want it incorporated but I do not want this done in a way which will create argument in Australia which would make people more critical of Indonesia.'⁵¹

6.36 With Senator Willesee's approval, Mr Renouf warned his Indonesian counterparts at the annual officials talks in Jakarta in October 1974 that Australia would not condone the use of force in incorporating Portuguese Timor. He also argued that an independent East Timor should not necessarily concern Indonesia.⁵² In 1997, Mr Whitlam commented that Mr Renouf had exaggerated the significance of the discussions.⁵³ Mr Renouf acknowledged that his arguments had not convinced the Indonesians, as was borne out when Foreign Minister Adam Malik declared in early December 1974 his conviction that independence for Portuguese Timor was not a practical option. Senator Willesee responded on 5 December, saying that he disagreed with the Indonesians, and that Australia's attitude was that the territory's options including independence, should be decided freely by the Timorese.⁵⁴ By implication, Senator Willesee also disagreed with his Prime Minister.

6.37 Mr Malik had changed his attitude since June 1974 when he had, with the approval of Soeharto, given Dr Ramos-Horta a letter in Jakarta in which he declared:

50 *Associated Press*, 18 October 1974; quoted in Bill Nicol, *Timor: The Stillborn Nation*, Melbourne, Visa, 1978, p. 62.

51 First Assistant Secretary (South East Asia) Feakes to Cooper, 24 September 1974, NAA: A10005/2, TS202/1/1, annex; also in Deputy Secretary Woolcott to Secretary Renouf, 24 September 1974, Wendy Way, Damien Browne and Vivianne Johnson (eds.), *Australia and the Indonesian Incorporation of East Timor, 1974-76*, Melbourne University Press, 2000, p. 111; Hamish McDonald, 'Politics of betrayal', *The Sydney Morning Herald*, 13 September 2000.

52 Alan Renouf, *The Frightened Country*, Melbourne, Macmillan, 1979, p. 444; Michael Richardson, 'We'll tell Jakarta: hands off Timor', *The Age*, 30 October 1974. Cf. Magalhael Cruz to Francisco da Costa Gomes, 13 November 1974: 'A month and a half having passed since the meeting in Jakarta and, perhaps because the government in Canberra considers itself better informed than then, the Australian delegation seems now in the recent conversations to have been authorised to take a step backward with regard to the conclusions which President Soeharto and Prime Minister Whitlam reached last September. Rather than integration being "the natural and inevitable" solution for Portuguese Timor it was the wishes of the people which received major emphasis on the part of the Australians ... As well, Whitlam himself had already warned the Indonesian side against certain practices which had been employed by the Jakarta Government in the integration of West Irian' (Presidência do Conselho de Ministros, *Relatórios da descolonização de Timor*, Lisboa, 1981, 'Relatório de Governador Mário Lemos Pires', doc. 2.9, in Jill Joliffe (ed.), *The East Timor question*, Lisse, The Netherlands, MMF Publications, 1997).

53 Gough Whitlam, *Abiding Interests*, Brisbane, University of Queensland Press, 1997. p. 74.

54 Michael Richardson, 'Timor: first sign of rift', *The Age*, 6 December 1974.

‘The independence of every country is the right of every nation, with no exception for the people of [East] Timor’.⁵⁵

6.38 In November 1974, as Indonesia prepared for a subversion campaign and began infiltration into Portuguese Timor (*Operasi Komodo*), Mr Renouf had his Department prepare a working paper which fleshed out the alternative course he had expounded in Jakarta on 29 October 1974 into a proposal, which Senator Willesee endorsed. The working paper, dated 13 December 1974, recommended that Australia ‘should be regarding the association of Portuguese Timor with Indonesia as only one of several acceptable results of an act of self-determination’, and that Australia ‘should try to bring the Indonesians to recognise that, if the Timorese are clearly intent on independence, it should be possible to live with that’.⁵⁶

6.39 On 4 February 1975, Portuguese Foreign Minister Santos proposed that Australia become more involved in the resolution of the future of Portuguese Timor. As a response to this proposal, the Department of Foreign Affairs put a further submission, dated 10 February 1975, to Senator Willesee, who, on the basis of the submission, reaffirmed that Australia should ‘place more emphasis in our future policy on self-determination’, but should also ‘take a step backwards from involvement in the problem of P. Timor lest we become more enmeshed in it than need be’. He also proposed that Australia indicate to Portugal and Indonesia that it was willing to consider providing an aid program of one or two million dollars yearly, ‘in the light of changing circumstances’.⁵⁷

6.40 Mr Whitlam told the Committee that by early 1975 he had changed his mind about East Timor, so that he was willing to contemplate the possibility of eventual independence for the territory.⁵⁸ This view was expressed in a letter dated 28 February 1975 which he gave newly appointed Ambassador Richard Woolcott to give President Soeharto when he presented his credentials.⁵⁹ The letter said:

55 Michael Richardson, ‘Canberra-Jakarta talks soon on Timor future’, *The Australian Financial Review*, 16 May 1974; ‘Timor in no hurry to change’, *The Canberra News*, 10 July 1974; José Ramos-Horta, ‘A warm welcome’, *The National Times*, 29 July 1974; *Sinar Harapan*, 27 July 1974. Mr Ali Alatas, who served as interpreter at the meeting between Malik and Ramos Horta in June 1974, commented as Foreign Minister in September 1997: ‘I was there ... clearly at that time Adam Malik said, “We have no claims on East Timor. We will accept any outcome of a good decolonisation”. This is what Ramos Horta doesn’t say. The only thing that we wanted was that all parties got the same treatment. Got the same fair chance to compete and that whoever won in a clean and just decolonisation process we would gladly accept ... But everybody knows that it didn’t happen that way’ (David Jenkins, ‘Alatas cites history in East Timor conundrum’, *The Sydney Morning Herald*, 13 September 1997).

56 Alan Renouf, *The Frightened Country*, Melbourne, Macmillan, 1979, p. 444. Submission to Willesee, 13 December 1974; Wendy Way, Damien Browne and Vivianne Johnson (eds.), *Australia and the Indonesian Incorporation of East Timor, 1974-76*, Melbourne University Press, 2000, pp. 148-53.

57 Submission to Willesee, 10 February 1975; and cablegram to Lisbon, 11 February 1975, Wendy Way, Damien Browne and Vivianne Johnson (eds.), *Australia and the Indonesian Incorporation of East Timor, 1974-76*, Melbourne University Press, 2000, pp. 170-6.

58 Mr Whitlam, *Committee Hansard*, 6 December 1999, p. 986.

59 Mr Whitlam, *Committee Hansard*, 6 December 1999, p. 984.

Developments in the territory over the last months have been more rapid than we had expected, and the direction in which they seem to be leading the territory is towards eventual independence ... Although various reports have attributed to the UDT and FRETILIN a call for immediate *de jure* independence, the two parties have, on the contrary, proposed to Portugal a program for constitutional progress extending over a period of eight years, during which power would be progressively transferred to a transitional government and elections would be held for a constituent assembly ... The UDT–FRETILIN proposals could offer, I suggest, a promising basis for close co-operative arrangements between Portuguese Timor and Indonesia and one which, in time, could no doubt be developed or modified.⁶⁰

6.41 The letter of 28 February 1975 was also given to Mr Woolcott to serve as his working brief in Jakarta. The paper assumed that independence for East Timor would be the eventual outcome of Portuguese decolonisation. It stated that it was ‘basic to the philosophy of the Australian Government that the inhabitants of Portuguese Timor should be given the opportunity to decide their own future through an internationally acceptable act of self-determination’. If they were to opt for merger with Indonesia, Australia would welcome that choice, ‘But we must also respect their choice if it were for a political process leading to continuing links with Portugal, or for an independent status’.⁶¹ On his arrival in Jakarta, Mr Woolcott quickly ascertained, he later said, that already for some months previously the Indonesians had settled on a policy of incorporation.⁶²

6.42 The personal letter to the President was supported by a statement in the House of Representatives on 25 February 1975 by the Minister for Science and Acting Minister for Foreign Affairs, Mr Bill Morrison. Australia’s position, he said, was that ‘we support a measured and deliberate process of decolonisation in Portuguese Timor through arrangements leading to an internationally acceptable act of self-determination’.⁶³

6.43 In his letter of 28 February 1975 to President Soeharto, Mr Whitlam alluded to ‘newspaper reports about the possibility of some Indonesian military action against

60 Whitlam to Soeharto, 28 February 1975; included in Mr Whitlam’s submission, no. 5, 23 November 1999, and published in *The Canberra Times*, 6 March 1999.

61 Memorandum to Jakarta, 3 March 1975; Wendy Way, Damien Browne and Vivianne Johnson (eds.), *Australia and the Indonesian Incorporation of East Timor, 1974-76*, Melbourne University Press, 2000, p. 204-8. Michael Richardson, ‘East Timor: the war Australia might have prevented’, *The National Times*, 24 July 1976, p. 11.

62 Woolcott to Department of Foreign Affairs, 5 January 1976, quoted in Bruce Juddery, ‘Envoy puts Jakarta’s view’, *The Canberra Times*, 16 January 1976. Wendy Way, Damien Browne and Vivianne Johnson (eds.), *Australia and the Indonesian Incorporation of East Timor, 1974-76*, Melbourne University Press, 2000, p. 652.

63 House of Representatives *Hansard*, 25 February 1975, pp. 643-4, *Australian Yearbook of International Law*, vol. 6, 1974-1975, p. 208; cited in The Hon. Bill Morrison, AO, to Committee Secretary, 10 December 1999.

Portuguese Timor'.⁶⁴ These had been prompted by a major combined armed forces amphibious landing exercise in Lampung Selatan, Sumatra, on 18 February; in fact, it was a preparation for the later *Operasi Seroja* invasion of Dili.⁶⁵ The Indonesian Ministry of Defence and Security had established *Operasi Komodo* in January 1975.⁶⁶ This was a covert operation headed by Major General Ali Moertopo with the aim of bringing about the incorporation of Portuguese Timor as quickly as possible with the assistance of pro-Indonesian Timorese, preferably by non-military means.⁶⁷ Moertopo had played a principal role in organising the vote for the incorporation of Irian Barat (West New Guinea) in the 1969 'Act of Free Choice'.⁶⁸ The formation of the UDT-Fretilin coalition on 21 January 1975 had prompted Major General Benny Moerdani to urge early Indonesian military intervention, but the exposure of the Lampung Selatan landing exercise caused Defence Minister Marden Panggabean to give preference, for a time, to Moertopo's covert subversive approach.⁶⁹

6.44 Mr Whitlam and President Soeharto discussed Portuguese Timor again during their meeting at Townsville, North Queensland, on 4 April 1975. The President told him that Indonesia had had discussions with the Portuguese in London, and there were two proposals. The Portuguese had said: 'We're thinking of having an interim administration composed of the three parties and they could get training for three, five or even eight years. Alternatively, you might like to have the Portuguese governor stay there advised by a council composed of those three parties for the same period.' The President told Mr Whitlam, 'We rejected the first and we accepted the second.'⁷⁰

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- 64 Peter Hastings, 'Jakarta ponders a military "solution"', *The Sydney Morning Herald*, 21 February 1975; Gary Scully, *AM*, 25 February 1975; these reports were based on Australian intelligence, which the Defence Department disclosed to the media as a warning to the Indonesians not to proceed with the military option (Bill Nicol, *Timor: The Stillborn Nation*, Melbourne, Visa, 1978, pp. 284-6).
- 65 John G. Taylor, *Indonesia's Forgotten War*, London, Zed Books, 1991, p. 40; James Dunn, *Timor: A People Betrayed*, Sydney, ABC Books, 1993, p. 103; Julius Pour, *Benny Moerdani: Profile of a Soldier Statesman*, Jakarta, Yayasan Kejuangan Panglima Besar Sudirman, 1993, p. 334.
- 66 Julius Pour, *Benny Moerdani: Profile of a Soldier Statesman*, Jakarta, Yayasan Kejuangan Panglima Besar Sudirman, 1993, p. 319.
- 67 James Dunn, *Timor: A People Betrayed*, Sydney, ABC Books, 1993, p. 99.
- 68 Hamish McDonald, *Suharto's Indonesia*, Melbourne, Fontana, 1980, p. 66.
- 69 Bill Nicol, *Timor: The Stillborn Nation*, Melbourne, Visa, 1978, p. 266.
- 70 Mr Whitlam, *Committee Hansard*, 6 December 1999, pp. 984-5. The meeting in London to which President Soeharto referred took place on 9 March 1975. The Indonesians were left with the impression that the Portuguese regarded eventual incorporation of the province into Indonesia as inevitable (Bill Nicol, *Timor: The Stillborn Nation*, Melbourne, Visa, 1978, p. 297). The Portuguese did not disavow the views expressed by President Costa Gomes and Prime Minister Vasco Gonçalves to Ali Moertopo at an initial meeting in Lisbon in October 1974 that independence for Timor was 'unrealistic' and 'nonsense', and that Timor remaining part of Portugal 'did not accord with the policy of his [President Gomes'] state'. At the 9 March 1975 meeting, the Portuguese maintained 'an attitude of indefiniteness' in the words of Lemos Pires, toward the Indonesians' explicitly expressed intention to integrate the province. The official Portuguese record of the meeting, quoted by Lemos Pires, stated: 'Portugal nada fará dificultar a integração de Timor na Indonésia' ['Portugal will make no difficulty for integration of Timor with Indonesia.'] (James Dunn, *Timor: A People Betrayed*, Sydney, ABC Books, 1993, pp. 75, 81; José Ramos-Horta, *Funu: the Unfinished Saga of East Timor*, Lawrenceville NJ, The Red Sea Press, 1987,

6.45 The official record of the discussion on Portuguese Timor between Prime Minister Whitlam and President Soeharto at their meeting in Townsville on 4 April 1975 confirms Mr Whitlam's account. President Soeharto had also said that, while Indonesia had no ambitions to include the territory of Portuguese Timor into the Republic of Indonesia, Indonesia had concluded that integration, provided that this was what the people of the territory wanted, was the best outcome.⁷¹ Mr Whitlam agreed, according to the official record of the meeting:

The Prime Minister referred to his discussions with President Soeharto last September on Portuguese Timor. He said that he still hoped that Portuguese Timor would be associated with or integrated into Indonesia; but this result should be achieved in a way which would not upset the Australian people. The Prime Minister mentioned in this context the possibility of United Nations consideration of the Timor question and noted that the Indonesian Ambassador to the UN, Mr Anwar Sani, would become Chairman of the Committee of Twenty-Four this year. He suggested that this circumstance presented opportunities for cooperation between Australia and Indonesia in the formulation of measures for the ascertainment of the wishes of the people of Portuguese Timor.⁷²

6.46 After the meeting between Prime Minister Whitlam and President Soeharto in Townsville, it became clear that Indonesia was bent on incorporation, and had secured Portuguese acquiescence to this. In support of the policy of promoting independence as a viable option, Senator Willesee had his Department draw up an aid program, which focussed on food, security and training. Proposals for the aid program were completed in July 1975 and had been submitted to Senator Willesee for approval when the outbreak of conflict between the UDT and Fretilin in mid-August prevented the program's implementation.⁷³

Fretilin–UDT conflict

6.47 The two Timorese pro-independence parties, UDT and Fretilin, had formed a coalition on 21 January 1975. During the following four months, it became clear that Fretilin was benefiting from the arrangement to the detriment of its partner, and on

pp. 69-70; Mário Lemos Pires, *Descolonização de Timor: Missão impossível?*, Lisboa, Publicações Dom Quixote, 1991, p. 125).

71 'Meeting between the Prime Minister and President Soeharto in Townsville, 3-5 April, 1975: Record of the second discussion, 4 April 1975'; published in *The Sydney Morning Herald*, 6 March 1999 and included in Mr Whitlam's submission, no. 5, 23 November 1999. Wendy Way, Damien Browne and Vivianne Johnson (eds.), *Australia and the Indonesian incorporation of Portuguese Timor, 1974-1976*, Melbourne University Press, 2000, pp. 244-8.

72 Wendy Way, Damien Browne and Vivianne Johnson (eds.), *Australia and the Indonesian incorporation of Portuguese Timor, 1974-1976*, Melbourne University Press, 2000, p. 245.

73 Canberra to Jakarta, 23 April 1975; Woolcott to Willesee, 2 June 1975; Wendy Way, Damien Browne and Vivianne Johnson (eds.), *Australia and the Indonesian incorporation of Portuguese Timor, 1974-1976*, Melbourne University Press, 2000, pp. 256-7; 265-6. Michael Richardson, 'East Timor: the war Australia might have prevented', *The National Times*, 24 July 1976, p. 11.

27 May 1975, UDT withdrew from the coalition.⁷⁴ On 2 August 1975, the UDT leadership met Ali Moertopo and his officers in Jakarta, where they were told that Indonesia would not accept an independent East Timor whose government was dominated by Fretilin.⁷⁵ On 10 August, UDT, armed with police and customs handguns, occupied the police headquarters and other administration buildings in Dili and demanded the arrest of Fretilin leaders. On 15 August 1975, Fretilin proclaimed a general armed insurrection and, on 18 August, occupied the Armed Forces Training Centre. On 21 August, Portugal notified the United Nations Secretary-General that the International Committee of the Red Cross (ICRC), Indonesia and Australia had been asked to give humanitarian support in East Timor and, on 25 August, notified him of evacuation arrangements and 'generalised' panic in Dili. During the night of 27 August 1975, the Portuguese Governor, Mario Lemos Pires, and his officers decamped to the offshore island of Atauro.⁷⁶ They left 15,000 rifles and other NATO weapons for Fretilin, and Fretilin took over.⁷⁷

6.48 Commenting on the situation in Portuguese Timor in a statement to Parliament on 26 August 1975, Prime Minister Whitlam said:

The events of the last few weeks have dashed the hopes for Portuguese Timor which followed the change of government and Portuguese colonial policy in Lisbon. In a little over a year, the situation in Portuguese Timor has become a very dangerous one, mainly—it must be said—because of the shortsightedness of some of the territory's aspiring political leaders.⁷⁸

6.49 International Red Cross representative in Indonesia and East Timor, Mr André Pasquier told Mr Whitlam at the time that 40,000 people had fled into West Timor from Fretilin.⁷⁹ Although the civil war spread throughout East Timor, the main fighting took place in Dili and the western part of the territory. The actual number of those who fled was later disputed⁸⁰, but from them, recruits were drawn to strengthen a force of about 300 which had been formed as part of *Operasi Komodo* under the

74 Mr Whitlam, submission, no. 5, 26 March 1999, p. 7; Gough Whitlam, *The Whitlam Government*, Melbourne, Viking, 1985, p. 108.

75 João Carrascalão, *Committee Hansard*, 12 August 1982, p. 1226; James Dunn, *Timor: A People Betrayed*, Sydney, ABC Books, 1993, pp. 147-9.

76 Mr Whitlam, submission, no. 5, 26 March 1999, pp. 7-8.

77 Mr Whitlam, *Committee Hansard*, 6 December 1999, p. 976.

78 House of Representatives *Hansard*, 26 August 1975, p. 493.

79 Mr Whitlam, *Committee Hansard*, 6 December 1999, p. 978.

80 Fr Francisco Fernandes, a Timorese priest, who served for some months on the refugee committee set up in the border area by the Indonesians, claimed that the Indonesians falsified the number, and claimed the true figure never exceeded 20,000. James Dunn said that some UDT leaders subsequently told him that 10,000 to 15,000 Timorese had crossed over into West Timor. (James Dunn, *Timor: A People Betrayed*, Sydney, ABC Books, 1996, p. 161).

command of the traditional ruler (*liurai*) of Atsabe and leader of Apodeti, Guilherme Gonçalves and his son, Tomás.⁸¹

6.50 Australia refused to assist the *de facto* administration which Fretilin established in Dili following the defeat of the UDT and withdrawal to Atauro of the Portuguese Governor.⁸² Australia's policy was set out in a letter dated 24 September 1975 from Ambassador Woolcott to Canberra Times journalist Bruce Juddery, which read in part:

The alternatives now seem to be a *de facto* Fretilin Government or the integration of East Timor into Indonesia. neither will involve a genuine act of self-determination although both results could be achieved through what could appear to be such an act. Basically, this situation is Portugal's—not Indonesia's—fault. Given this Hobson's choice, I believe Australia's interests are better served by association with Indonesia than by independence.⁸³

Australian attempts at mediation

6.51 Fretilin foreign affairs spokesman Dr Ramos-Horta visited Australia at the time in the hope, Mr Whitlam said, that he would persuade the Australian Government to favour Fretilin's claims to take over the territory. Mr Whitlam told the Committee he had made it plain to his Ministers, and to anybody in authority, that they were to give no indication whatever that the Australian Government was favouring Fretilin. Until the unilateral declaration of independence on 28 November 1975, Australia was pursuing efforts in Geneva, New York, Washington, and wherever possible, to get the parties together:

We said we would make Darwin available for all the parties to get together, and I think Macao was suggested, and Lisbon, and there were other ones. But whoever was winning, or hoping to win, would not come. Ramos-Horta at that time was unquestionably a representative of Fretilin, an advocate for one side in the civil war, and if we looked as though we were favouring Fretilin over the others, we would lose all influence in getting UDT and Apodeti to the conference table in Darwin, or wherever else it was.⁸⁴

6.52 As Mr Whitlam related to the Committee, these efforts at mediation were unsuccessful: 'Before long, they said, "Oh well, let's do what Frelimo did. We needn't worry about elections. We'll take over."'⁸⁵ He related how there was a stir in Dili

81 Mr João Carrascalão, *Committee Hansard* (Senate Standing Committee on Foreign Affairs and Defence) 12 August 1982, pp. 1244-5.

82 Mr Dunn, *Committee Hansard*, 24 September 1999, p. 601.

83 Wendy Way, Damien Browne and Vivianne Johnson (eds.), *Australia and the Indonesian Incorporation of East Timor, 1974-76*, Melbourne University Press, 2000, p. 433.

84 Mr Whitlam, *Committee Hansard*, 6 December 1999, p. 983.

85 Mr Whitlam, *Committee Hansard*, 6 December 1999, p. 976.

when five school teachers, ‘four *mestiços* and the Portuguese wife of one of them’, all described as communist, arrived from Mozambique.⁸⁶ He said:

There was this sudden link with apparatchiks that came from Frelimo in Mozambique after Ramos-Horta had come here. Then Fretilin changed. They said, ‘Wait a bit, let’s go the Frelimo way.’ And they left Ramos-Horta stranded. His brief was to get us on side and we said, ‘We want all the parties to get together and end the civil war. Have an armistice at least.’⁸⁷

Indonesian fear of Communist influence in Fretilin

6.53 Mr Whitlam acknowledged that the Indonesians were obsessed by the possibility of communism. He said that in his discussions with President Soeharto he discounted that possibility. He had said to him concerning the idea that some of the President’s advisers had suggested to him that communists in Australia would be supplying weapons to East Timor, that they did not have the resources to do that, and that the communists had no direct representatives in any Australian parliament.⁸⁸ He said to the Committee:

The Indonesians, particularly under Soeharto, were obsessed with communism. I had to hose down the idea that the communists dominated Fretilin or that China had an interest.⁸⁹

6.54 Mr Uren observed to the Committee: ‘People get upset about me reminding them that this same government murdered half-a-million people back in 1965. Everybody wants to forget about that’.⁹⁰ The significance of this for the events in East Timor ten years later was that anti-communism was the legitimising principle that underpinned the Soeharto regime: it had come to power through the succession of coup and counter-coup in 1965, and a persistent struggle against President Soekarno’s followers the next year. The initial coup had been by a small number of leftist officers,

86 Gough Whitlam, *The Whitlam Government*, Melbourne, Viking, 1985, p. 112. Mr Whitlam was apparently referring to Abilio and Guilhermina Araujo, Vincente Manoel Dos-Reis, Ailieu Venansio, and António Duarte Carvarino, who returned to Dili from overseas studies in September 1974: they were labelled ‘ideologically Communist [*berideologi Komunis*]’ by Samuel Pardede in a widely-quoted article in *Sinar Harapan* of 31 October 1974, ‘Fretilin: Ekstrim Dihadapi Dengan Ekstrim [Fretilin: Extreme Confronts Extreme]’. Carvarino became Vice-President of the Democratic Republic of East Timor proclaimed on 28 November 1975, and succeeded as third leader of the Republic when Nicolau Lobato, who overthrew the first President Francisco Xavier do Amaral on 7 September 1977, was killed in battle on 31 December 1978; he was captured and killed by the Indonesians on 2 February 1979.

87 Mr Whitlam, *Committee Hansard*, 6 December 1999, p. 985.

88 Mr Whitlam, *Committee Hansard*, 6 December 1999, p. 981.

89 Mr Whitlam, *Committee Hansard*, 6 December 1999, p. 982.

90 Mr Uren, *Committee Hansard*, 4 November 1999, p. 763. On a visit to Portuguese Timor in 1966, Senator John Wheeldon was told that ‘the army was running wild in Indonesian Timor and had imposed a reign of terror; that some three thousand persons had been murdered between October and June by the army in Indonesian Timor’. Wheeldon wrote: ‘One certain conclusion that I did come to was that if there is a menace to peace in [Timor] it is not coming from the Portuguese but coming from the present military rulers of Indonesia’ (John Wheeldon ‘Portuguese Timor: A Recent Visit’, *Pacific*, vol. 1, January/February 1967, pp. 5-6).

who had killed six out of an intended seven of the senior generals critical of Soekarno and opposed to the Indonesian Communist Party (PKI). Large-scale massacres of communists and those accused of being communist sympathisers followed Soeharto's counter-coup.⁹¹ The Carnation Revolution in Lisbon in 1974 led by leftist officers was seen from this perspective, as were subsequent developments in Dili where leftist army officers played a significant role in the decolonisation process.⁹²

6.55 Mr Whitlam drew to the attention of the Committee a recent comment by the Prime Minister of Portugal, António Guterres: 'the April Revolution of 1974 gave way to a curious period in the history of our membership of NATO, lasting for a little more than a year, during which the Portuguese government was controlled by supporters of a political party with close ties with Moscow'.⁹³ This was a reference to the replacement of António Spínola as President by Francisco da Costa Gomes on 30 September 1974. This coincided fairly closely with the change on 12 September of the ASDT (*Associação Social Democrática Timorense*) to Fretilin (*Frente Revolucionária de Timor Leste Independente*). From the perspective of Soeharto's *Orde Baru*, a pro-communist regime in Lisbon assisting a pro-communist independence movement to come to power in Timor would not have been a desirable development.⁹⁴

6.56 On 28 February 1975, in the House of Representatives, after preambles, Mr Anthony asked Mr Whitlam, 'Does the Government feel concerned in any way that Timor might become communist controlled?' and a little later, Mr Fraser asked, 'I ask him again: Is he concerned at all at the possible establishment of communist control in Portuguese Timor so close to Australia?'⁹⁵

6.57 In response, Mr Whitlam pointed out that Fretilin had communist influence in it, but they were not all communist; and it was wrong to say they were all communists.⁹⁶ Against this, he said to the Committee that when Fretilin issued a

91 David Jenkins, 'Indonesia: the silent watchers', *The Sydney Morning Herald*, 12 July 1999.

92 George Munster, *Secrets of State*, Sydney, Walsh and Munster, 1982, p. 88.

93 António Guterres, Prime Minister of Portugal, 'To set the Goal for the Future', *NATO's Sixteen Nations*, special issue, 1998, p. 6; included in Mr Whitlam's submission, no. 5, 25 March 1999, pp. 7-8.

94 Bill Nicol, *Timor: The Stillborn Nation*, Melbourne, Visa, 1978, pp. 245-7. The CIA's *national Intelligence Daily* labelled Fretilin in its reports as 'pro-Marxist' and 'leftist' (Dale van Atta and Brian Toohey, 'The Timor Papers', *The National Times*, 30 May-5 June 1982).

95 House of Representatives Hansard, 28 February 1975, pp. 685 and 689.

96 House of Representatives *Hansard*, 28 August 1975, p. 689; Mr Whitlam, *Committee Hansard*, 6 December 1999, p. 980. UDT leader João Carrascalão told the Senate Standing Committee on Foreign Affairs and Defence in 1982 that he did not believe Fretilin was a left wing communist movement: 'I do not think there is any difference between the supporters of Fretilin and the supporters of UDT. They have one thing in common, nationalism. They might have two or three leaders indoctrinated by the Portuguese who might be regarded as communist, but even the majority of the leaders of Fretilin cannot be considered as communists ... That was only an excuse for Indonesia to take over Timor', *Committee Hansard*, 12 August 1982, p. 1226). Bishop Carlos Ximenes Belo dismissed as 'nonsensical' in 1985 claims that Fretilin were Marxist-Leninists, saying they were 'pure nationalists' (Jill Jolliffe, 'Why Portugal is so angry over Timor', *The Age*, 4 September 1985).

unilateral declaration of independence they called the new state the ‘Democratic People’s Republic of East Timor. That is, they used the terminology of North Korea or East Germany and the others. What is the inference?’⁹⁷

6.58 The effect on Indonesian attitudes of the stance of the Federal Coalition Opposition and subsequent Government in Australia led by Mr Fraser and Mr Anthony was noted by Mr Whitlam:

the Liberal Whip was put up to ask questions of me, and of course Malcolm Fraser and Doug Anthony did. When they took over, then there was the impression in Jakarta, ‘You now have a government in Australia which says that East Timor is communist, it is under communists.’ Some of the generals were telling Soeharto, ‘Look, you should not stick to what you told him. You have now got a Prime Minister and a Deputy Prime Minister installed who say that East Timor is occupied by Fretilin and they are communists.’ So it did not help.⁹⁸

6.59 In *The Whitlam Government*, Mr Whitlam wrote that, from 11 November 1975, Indonesia knew that any ‘anti-communist’ action it took would have support from Canberra, and that President Soeharto was entitled to believe that the personal undertakings he had made to Mr Whitlam as Prime Minister had lapsed.⁹⁹

6.60 Weight is given to Mr Whitlam’s comment by the fact that President Soeharto took the decision to launch *Operasi Seroja*, the invasion of Dili, on 3 December 1975.¹⁰⁰ The invasion took place on 7 December.

6.61 It should also be noted that, in concluding an answer to a question in Parliament on 28 August 1975, Mr Whitlam said: ‘The Indonesian Government, which over the past year has expressed repeatedly its intention not to intervene in East Timor, may thus be turned to as the only force capable of restoring calm in the territory’.¹⁰¹ In addition to this public hint to Indonesia, it was claimed in *The National Times* of 15–20 December 1975 that Mr Whitlam sent a private message to President

97 Mr Whitlam, *Committee Hansard*, 6 December 1999, p. 981. The actual title was the Democratic Republic of East Timor (*República Democrática de Timor Leste*). The constitution of the Republic was suspended in 1984 when the Timorese resistance movement acknowledged the sovereignty of Portugal. The first President of the Republic, Francisco Xavier do Amaral, returned from exile in Portugal to Dili in February 2000 (Jill Jolliffe, ‘Fretilin drops demand’, *The Age*, 7 November 1984; Jill Jolliffe, ‘Return of East Timor’s tortured soul’, *The Sydney Morning Herald*, 5 February 2000; Mark Dodd, ‘Rocky road ahead for divided Fretilin’, *The Sydney Morning Herald*, 22 May 2000).

98 Mr Whitlam, *Committee Hansard*, 6 December 1999, p. 981. Mr Whitlam had made the same point in an interview on 7 December 1975: ‘things have certainly not been made easier by reason of Mr Anthony’s question without notice a couple of months ago, followed the same day by a question from Mr Fraser - stating that Fretilin is pro-communist; their description of Fretilin would have ignited or fanned Indonesia’s attitudes towards Fretilin’ (‘Whitlam is concerned’, *The Age*, 8 December 1975).

99 Gough Whitlam, *The Whitlam Government*, Melbourne, Viking, 1985, p. 111.

100 Julius Pour, *Benny Moerdani: Profile of a Soldier Statesman*, Jakarta, Yayasan Kejuangan Panglima Besar Sudirman, 1993, pp. 328-9.

101 House of Representatives *Hansard*, 28 August 1975, p. 688.

Soeharto through Mr Woolcott that nothing he had said earlier should be interpreted as a veto on Indonesian action in the changed circumstances.¹⁰² This claim was not tested during the Committee's inquiry.

Balibo

6.62 The Committee reiterates that it was never intended for this inquiry to investigate in detail what happened to the five journalists at Balibo. In this section, the Committee deals with Indonesian invasion of East Timor near Balibo in the wider context of Indonesia's moves to assume control of East Timor.

6.63 Ambassador Richard Woolcott sent a cable from Jakarta on 13 October 1975, passing on advice he had received from the Indonesian Centre for Strategic and International Studies that, on the morning of 16 October 1975, a mixed force of 3,600 *Kopassanda* (Indonesian commandos) and Timorese supporters would attack across the border to capture the towns of Maliana, Atsabe and Balibo.¹⁰³ This was *Operasi Flamboyant*.¹⁰⁴ During this covert operation, five newsmen employed by Australian television networks were killed at Balibo.¹⁰⁵ In *Abiding Interests*, Mr Whitlam wrote that he was advised that he should not yet reveal why his Government did not know of the incursion across the border to Balibo and why they were able immediately afterwards to learn that the five had been killed.¹⁰⁶ In a newspaper article on

- 102 Hamish McDonald, 'Australia supports Indonesia takeover of East Timor', *The National Times*, 15-20 December 1975. Hamish McDonald, *Suharto's Indonesia*, Melbourne, Fontana, 1980, p. 207.
- 103 Wendy Way, Damien Browne and Vivianne Johnson (eds.), *Australia and the Indonesian Incorporation of East Timor, 1974-76*, Melbourne University Press, 2000, p. 462; David Jenkins, 'The Five Ghosts of Balibo rise once more to haunt Indonesia - and us', *The Sydney Morning Herald*, 14 October 1995, p. 24. Foreign Minister Willesee expressed his concern to Graham Feakes, his First Assistant Secretary (South East Asia), that Australia's agreement to receive this information on a confidential basis from the Indonesians compromised Australia, making Australia party to the covert invasion of Portuguese Timor (Feakes to Willesee, 27 October 1975, also Willesee to Whitlam, 20 August 1975, Wendy Way, Damien Browne and Vivianne Johnson (eds.), *Australia and the Indonesian Incorporation of East Timor, 1974-76*, Melbourne University Press, 2000, pp. 516, 370; Hamish McDonald, 'Revealed: how the Balibo murders were covered up', *The Sydney Morning Herald*, 24 August 1998).
- 104 Desmond Ball and Hamish McDonald *Death in Balibo, Lies in Canberra*, Sydney, Allen & Unwin, 2000, p. 30.
- 105 Commander of the Timorese volunteers, Tomas Gonçaves said in an interview on the SBS *Dateline* program 26 April 2000 that Captain Junus Yosfiah, who commanded the *Kopassanda* special forces (and who later became Information Minister in the government of President Habibie), had opened fire on the journalists while they were surrendering: 'In the debrief, they said they had to shoot them so they wouldn't publicise what they saw to the outside world' (Jeff Centenera, 'Former minister started shooting at journalists', *The Canberra Times*, 26 April 2000). 'We can't have any witnesses,' Moerdani is alleged to have said, referring to the journalists (including a Portuguese television crew led by Adelino Gomes who were in the area) in a message from Jakarta to Colonel Dading Kalboeadi in Batugade just prior to the attack on Balibo led by Junus. This message was intercepted by the Australian Defence Signals Directorate (DSD), according to Desmond Ball and Hamish McDonald (*Death in Balibo, Lies in Canberra*, Sydney, Allen & Unwin, 2000, pp. 115-8; quoted in Marian Wilkinson, 'Our spies knew Balibo five at risk', *The Sydney Morning Herald*, 13 July 2000).
- 106 Gough Whitlam, *Abiding Interests*, Brisbane, University of Queensland Press, 1997, p. 77; also his letter to *The Sydney Morning Herald*, 17 March 1999. Mr Laurie Oakes was quoted in an article in *The Canberra Times* of 9 February 1978 ('Australia "knew Indonesia troops killed newsmen"') as saying that Indonesian messages reporting that the newsmen had been killed by Indonesian troops and their

21 September 2000, he clarified that it was DFAT which had provided the advice that he should not reveal how he learned of the deaths of the journalists.¹⁰⁷

6.64 In *The Whitlam Government*, Mr Whitlam wrote that the newsmen were killed at Balibo on the day that Malcolm Fraser announced that the Senate would hold up the Budget.¹⁰⁸ He told the Committee: ‘We could have made big fellows of ourselves by saying, “Supply is being held up and we are in a crisis. Let us have a war.” We could have sent troops in.’¹⁰⁹ In *The Whitlam Government* he wrote: ‘This cynical course, however, would not have helped the people of Timor; it would certainly have embittered our relations with Indonesia for many years’.¹¹⁰ He said in his submission to the Committee that the history of Australia’s earlier relations with Indonesia had demonstrated the futility of such a course. In West New Guinea, Australia collaborated with the Dutch against Indonesia and expected American support. American support was withheld and the Dutch forces withdrew.¹¹¹

6.65 Mr Whitlam referred to the letter of 7 November 1975 he had sent to President Soeharto through Indonesian Ambassador Her Tasning, who was going home on leave, about the five news people who were killed in Balibo.¹¹² The letter said:

I recognize that Indonesia might not feel well-placed to provide information on an incident which occurred in Portuguese Timor. But Indonesia is the only country in direct touch with UDT and APODETI forces and we have, therefore, been enlisting the good offices of your Government in trying to bring this matter to a satisfactory conclusion.¹¹³

6.66 His letter was delivered to the President on 13 November but, as he later wrote, was not followed up by the Fraser Government.¹¹⁴ The letter made no comment

bodies burnt were intercepted by Australia’s Defence Signals Division within hours of the attack on Balibo.

107 In an article in *The Sydney Morning Herald* of 21 September 2000 (‘Failing memories, missing documents’) Mr Whitlam wrote: ‘Last week, *Herald* foreign editor Hamish McDonald, the co-author of *Death in Balibo, Lies in Canberra*, criticised the withholding of intelligence material. In telecasts from the National Archives his co-author, Des Ball, made the same criticisms. I agree with them. But in 1997 DFAT advised me that I should not yet reveal how I learned of the deaths of the five foolhardy journalists who were killed at Balibo’.

108 Gough Whitlam, *The Whitlam Government*, Melbourne, Viking, 1985, p. 112.

109 Mr Whitlam, *Committee Hansard*, 6 December 1999, p. 974.

110 Gough Whitlam, *The Whitlam Government*, Melbourne, Viking, 1985, p. 112.

111 Mr Whitlam’s submission, no. 5, 26 March 1999, p. 3.

112 Mr Whitlam, *Committee Hansard*, 6 December 1999, p. 976, referring to Whitlam to Soeharto, 7 November 1975.

113 Included in Mr Whitlam’s submission, no. 5, 23 November 1999.

114 Gough Whitlam, *Abiding Interests*, Brisbane, University of Queensland Press, 1997, pp. 77-8.

on Indonesian responsibility for the incursion which had led to the deaths of the five newsmen at Balibo.¹¹⁵

6.67 Mr James Dunn commented to the Committee that it was unfortunate that no formal protest was ever lodged with Indonesia over the killing of the five newsmen, even though the Indonesians knew that Australia knew from monitoring their communications what had happened: ‘The fact that, knowing that, we did not even protest was to the Indonesian military a green light’.¹¹⁶

6.68 Mr Gareth Evans stated to the Committee that there was no foundation to the claim that the Whitlam government knew from the outset from intelligence sources that the five journalists had been murdered in cold blood in Balibo. As Foreign Minister he had sought all contemporary intelligence material relevant to this matter. He recalled there was at least one signal intercept to the effect that five journalists had been killed in the course of an attack upon Balibo by Indonesian troops accompanied by anti-Fretilin East Timorese. He concluded that this material ‘did not give sufficient detail about the circumstances of their deaths to make it possible to conclude that they had been murdered in cold blood, with knowledge of their identity as Australians or journalists, as distinct from having been killed in circumstances of cross-fire or continuing fighting’. Mr Evans stated that the two inquiries conducted by Mr Tom Sherman supported his own conclusions.¹¹⁷

6.69 Since Mr Evans made his submission, more information had come to light on the events in Balibo in October 1975. That information points to Australian knowledge of what happened in Balibo but, by itself, is not conclusive.¹¹⁸

America's policy in 1975

6.70 In his cable to Canberra dated 17 August 1975, Ambassador Woolcott said that:

The United States might have some influence on Indonesia at present as Indonesia really wants and needs United States assistance in its military re-equipment programme. But Ambassador Newsome told me last night that he

115 Whitlam to Soeharto, 7 November 1975, included in Mr Whitlam's submission, no. 5, 23 November 1999; Wendy Way, Damien Browne and Vivianne Johnson (eds.), *Australia and the Indonesian Incorporation of East Timor, 1974-76*, Melbourne University Press, 2000, p. 556. Whitlam and Defence Minister Morrison accepted advice from Defence Secretary Sir Arthur Tange that knowledge of the deaths not be divulged until confirmed by ‘open’ (i.e. non-intelligence) sources, so that the Australian Government subsequently claimed that it only learned of the deaths from a report in the Jakarta daily *Kompas* of 20 October 1975 of an interview of UDT leader Francisco Lopes da Cruz (James Dunn, *Timor: A People Betrayed*, Sydney, ABC Books, 1993, p. 213).

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

117 The Hon. Gareth Evans, QC, MP, submission no.21, p. 2. The two reports by Tom Sherman were: *Report on the deaths of Australian-based journalists in East Timor in 1975*, Canberra, Department of Foreign Affairs and Trade, 1996; and *Second report on the deaths of Australian-based journalists in East Timor in 1975*, Canberra, Department of Foreign Affairs and Trade, 1999.

118 Desmond Ball & Hamish McDonald, *Death in Balibo Lies in Canberra*, Allen & Unwin, Sydney, 2000.

is under instructions from Kissinger personally not to involve himself in discussions on Timor with the Indonesians on the grounds that the United States is involved in enough problems of greater importance overseas at present. The State Department has, we understand, instructed the Embassy to cut down its reporting on Timor.

I will be seeing Newsome on Monday but his present attitude is that the United States should keep out of the Portuguese Timor situation and allow events to take their course. His somewhat cynical comment to me was that if Indonesia were to intervene the United States would hope that they would do so 'effectively, quickly and not use our equipment'.¹¹⁹

6.71 Mr Uren recalled that both Dr Kissinger and President Ford were in Indonesia the day before the actual invasion of East Timor.¹²⁰ Mr Whitlam made the same point:

When the Indonesians did invade, paratroops and marines landed there the day after Ford and Kissinger were told that they were going to land ... Kissinger said when he was over here last time: 'We just thought it was like Goa.'¹²¹

6.72 Dr Kissinger's words lend support to Mr Whitlam's contention that American support would have been withheld had Australia attempted to resist Indonesia's invasion of East Timor.¹²²

6.73 The United States had supported the Soeharto regime since it came to power in 1965. The State Department had also been alerted to the importance of the deepwater straits between Timor and Wetar for unimpeded submerged passage between the Pacific and Indian Oceans for United States nuclear submarines, and the undesirability of having the straits under the control or close observation of a government in East Timor that could be sympathetic to the Soviet Union.¹²³

119 Wendy Way, Damien Browne and Vivianne Johnson (eds.), *Australia and the Indonesian Incorporation of East Timor, 1974-76*, Melbourne University Press, 2000, p. 314.

120 Mr Uren, *Committee Hansard*, 4 November 1999, p. 762. In an interview on New York radio station WNYC on 19 March 1999, Kissinger explained that the visit to Jakarta in December 1975 had been fortuitous: it only took place because a planned five-day visit to China had been cut short because of the illness of Chairman Mao Tse-tung.

121 Mr Whitlam, *Committee Hansard*, 6 December 1999, p. 981, submission no 5, 30 November 1999, p. 3, quoting Dr Kissinger in Sydney on 13 November 1995. Dr Kissinger said the same thing in New York on 11 July 1995 and on WNYC, New York on 19 March 1999. Cf. Barnard to Willesee, 11 February 1975: 'I cannot share the view reported last year from Indonesia that, like India's seizure of Goa, Indonesian seizure of Portuguese Timor "would attract little attention, even if it did, it would not be recalled with any emotion"' (Wendy Way, Damien Browne and Vivianne Johnson (eds.), *Australia and the Indonesian incorporation of Portuguese Timor, 1974-1976*, Melbourne University Press, 2000, p. 177).

122 Mr Whitlam's submission, no. 5, 26 March 1999, p. 3.

123 Michael McCgwire, 'The geopolitical importance of strategic waterways in the Asian-Pacific region', *Orbis*, vol. 19, no. 3, Fall 1975, pp. 1058-76. Michael Richardson, 'Jakarta rules the Way: Why Indonesian good will is vital to America's Indian Ocean submarine force', *The Age*, 4 August 1976.

6.74 João Carrascalão, one of the UDT leaders, was told in Jakarta on 6 December 1975 by Colonel Aloysius Sugiyanto, General Ali Moertopo's right-hand man in *Operasi Komodo*, that the Americans had 'given the green light' to the Indonesians to take over Timor.¹²⁴

Britain's policy in 1975

6.75 Mr Uren commented that Britain had a Labour government and did not play any role in opposing Indonesia's actions in East Timor.¹²⁵ That Australia would not have received support from Britain in resisting an Indonesian takeover of East Timor is indicated by the comments made by the British Ambassador in Jakarta, Sir Archibald Ford, to Woolcott in July 1975:

As seen from here it is in Britain's interest that Indonesia should absorb the territory as soon as possible; and that if it come to the crunch and there is a row in the United Nations we should keep our heads down and avoid siding against the Indonesian Government.¹²⁶

6.76 The British Government took no action on the deaths in Balibo on 16 October 1975 of Nine Network television reporter Malcolm Rennie and cameraman Brian Peters, both of whom were British subjects.¹²⁷

6.77 Britain abstained from the United Nations General Assembly vote of 12 December 1975 which 'deplored' the Indonesian military intervention in Portuguese Timor.

Five-Power partners

6.78 Mr Whitlam said that, when he had met Prime Minister Lee Kuan Yew in Singapore on 9 August 1975, he had asked whether Australia and Singapore, as members of the Five-Power Agreement and the Commonwealth, and as neighbours of the area, should confer about East Timor. Mr Lee would not have anything to do with the proposition. Later, on 15 October, in Canberra, he had conferred with the Prime Minister of Malaysia, Tun Abdul Razak, and his response was entirely the same: 'that is, the people with whom we were associated in the Commonwealth, in the Five-Power Agreement, would have nothing to do with it'.¹²⁸

124 Mr Carrascalão, *Committee Hansard*, 12 August 1982, p. 1245.

125 Mr Uren, *Committee Hansard*, 4 November 1999, p. 762.

126 Woolcott to Canberra, 21 July 1975, quoted in *Documents on Australian Defence and Foreign Policy, 1968-1975*, Sydney, J.R. Walsh and G.J. Munster, 1980, p. 193.

127 Neither did the New Zealand Government take any action regarding the death of New Zealander Gary Cunningham (Desmond Ball and Hamish McDonald, *Death in Balibo, Lies in Canberra*, Sydney, Allen & Unwin, 2000, p. 128).

128 Mr Whitlam, *Committee Hansard*, 6 December 1999, p. 974; submission no. 5, 30 November 1999, p. 5.

Portugal's policy

6.79 Mr Whitlam commented on the part played by Portugal in the events of 1975. Only Portugal, he said, had official status and direct responsibility in East Timor, but at no stage did it take specific initiatives in the United Nations or make specific proposals to Australia or other regional powers. On 26 August 1975, Portuguese Governor Mario Lemos Pires and his 40-strong paratroop detachment fled by landing barge from the fighting in Dili between the UDT and Fretilin to the offshore island of Atauro.¹²⁹ From there, he sent a series of eighteen cables to his superiors in Lisbon, the last of which contained a plea that they 'answer the 17 telegrams I sent earlier'.¹³⁰ He and his officers left their cannon, mortars, bazookas, guns, machine guns, pistols and ammunition for Fretilin. In Portugal, the political situation was in turmoil: the Provisional Government suspended itself on 20 November, and on 26 November Lisbon was placed under curfew and a state of emergency declared. On 7 December, Mr Whitlam said, the most modern warships in the southern hemisphere, the three Portuguese frigates *Oliveira E. Carmo*, *João Roby* and *Afonso Cerqueira*, commissioned respectively in February, June and October 1975, watched Indonesian landings from Atauro without firing a shot.¹³¹

6.80 The Portuguese attitude was expressed by Governor Lemos Pires' information officer, Captain António Fonte Ramos, who, when asked by an Australian journalist if the Portuguese Army in East Timor would resist an Indonesian invasion, responded: 'We would say to the Indonesians "hello, come on in if you want to!"'¹³²

6.81 Portuguese military strength in East Timor was reduced from almost 3,000 in 1974 to around 200 Europeans (a third of them administrative staff) by mid-1975. There were 2,000 Timorese troops on active duty, and a further 6,000 in reserve. There were only three Timorese commissioned officers, who were lieutenants. Dr Ramos-Horta has written that, in his view, the troop reduction was 'the single most damaging error committed by the Portuguese'.¹³³

6.82 Governor Lemos Pires had arrived in Timor on 18 November 1974 having been briefed before his departure from Portugal that independence was unviable, and that the only options were continuing links with Portugal or integration with Indonesia. He had also been shown a memorandum from the Director-General of the Foreign Ministry, Dr Magalhães Cruz, to President Francisco da Costa Gomes, which

129 Mr Whitlam, submission no. 5, 26 March 1999, p. 8; 30 November 1999, p. 3.

130 Quoted in José Ramos-Horta, *Funu: the Unfinished Saga of East Timor*, Lawrenceville NJ, The Red Sea Press, 1987, p. 58. See also James Dunn, *Timor: A People Betrayed*, Sydney, ABC Books, 1993, p. 74.

131 Gough Whitlam, *The Whitlam Government, 1972-1975*, Melbourne, Viking, 1985, pp. 109-10. The Portuguese warships had the weapons systems capability to track and shoot down the aircraft which transported the paratroops for the drop on Dili (Hendro Subroto, *Eyewitness to integration of East Timor*, Jakarta, Pustaka Sinar Harapan, 1997, pp. 158-9).

132 Bruce Stannard, 'Garrison on Timor ready for immediate surrender', *The Australian*, 10 March 1975; Bill Nicol, *Timor: The Stillborn Nation*, Melbourne, Visa, 1978, pp. 210-11, 216.

133 José Ramos-Horta, *Funu: the Unfinished Saga of East Timor*, Lawrenceville NJ, The Red Sea Press, 1987, p. 48.

set out the Portuguese view of the conclusion of the Whitlam-Soeharto meeting of 6 September, which was that Mr Whitlam had given agreement to integration as the 'natural and inevitable solution'. The memorandum said that this fact 'gave the Jakarta Government optimism in dealing from then on with the Timor affair and contributed, without doubt, to reinforce integrationist tendencies within Indonesian political circles ... It was above all from this meeting that the idea that Timor should be integrated into Indonesia arose, always under the cover of "the will of the population"'.¹³⁴

6.83 Mr Whitlam wrote in 1981 that East Timor was incorporated into Indonesia 'not because of any action or inaction by Australian governments but because the Portuguese administrators were unconcerned about the development of democratic post-colonial institutions, the parties were unable to unite or be united, and the Indonesian Government was obsessed with the impact a "communist" Timor would have on national stability'.¹³⁵

Australian disengagement

6.84 At his meeting with President Soeharto at Yogyakarta in September 1974, Mr Whitlam said that he felt very strongly that Australia should not seek, or appear to seek, any special interests in Portuguese Timor. He said they were people with a different ethnic background, languages and culture, and it would be unrealistic and improper if Australia were to seek some special relationship.¹³⁶

6.85 The Indonesian understanding of Australia's position on Portuguese Timor following the Whitlam-Soeharto meeting of September 1974 was expressed by Juwono Sudarsono (then a political scientist at the University of Indonesia) in an interview on 24 February 1975: 'There is a high degree of co-operation between Australia and Indonesia at present. Mr Whitlam may have to put up with criticism from the left of his party. However, Timor is not a major issue in Australian politics, certainly not an election issue. So the Australian Government will allow Indonesia to do, to a certain extent anyway, what it likes with Timor.'¹³⁷

134 'Whitlam ... teria manifestado o acordo da Austrália à eventual integração de Timor português na Indonésia, como sendo a solução natural e inevitável. Tal facto... contribuiu, sem dúvida, para reforçar em certos círculos indonésios as posições integracionistas que estavam já a ser trabalhadas por grupos de pressão internos' Magalhães Cruz to Francisco da Costa Gomes, 13 November 1974, in Presidência do Conselho de Ministros, *Relatórios da descolonização de Timor*, Lisboa, 1981, 'Relatório de Governador Mário Lemos Pires', doc. 2.9; quoted in Jill Jolliffe, 'Whitlam named in military report', *The Canberra Times*, 21 October 1981. Also in Jill Jolliffe (ed.), *The East Timor question*, Lisse, The Netherlands, MMF Publications, 1997.

135 Mr Whitlam, letter to *The Canberra Times*, 22 October 1981, attached to his submission of 18 February 1982, *Committee Hansard*, 14 May 1982, p. 20.

136 'Record of Meeting between the Prime Minister and President Soeharto, State Guest House, Yogyakarta', 6 September 1975, p. 1; published in *The Sydney Morning Herald*, 6 March 1999 and included in Mr Whitlam's submission, no. 5, 23 November 1999.

137 Bill Nicol, *Timor: The Stillborn Nation*, Melbourne, Visa, 1978, p. 245.

6.86 A departmental brief on Portuguese Timor prepared for Foreign Affairs Minister Don Willesee for the ANZUS ministerial meeting in April 1975 said: 'Australia is not directly involved ... The long-term prospects are for a rather sticky situation. The degree of Australian involvement will, it is hoped, be kept to a minimum'.¹³⁸

6.87 The Australian Consulate, which had been established in Dili in 1941, had been withdrawn in August 1971 on the understanding with Portugal that Foreign Affairs officers would make frequent visits to the territory instead.¹³⁹ At Townsville on 4 April 1975, Prime Minister Whitlam affirmed that Australia did not want to be seen as having a primary responsibility for the outcome in Portuguese Timor, an issue which was essentially the responsibility of the people of Portuguese Timor, Portugal and Indonesia: 'The question of Portuguese Timor was simply not the responsibility of Australia'.¹⁴⁰ He explained to President Soeharto that, if the consulate in Dili was re-opened, it would not be allowed to become the instrument of the UDT and Fretilin parties. Nor should the re-opening of the consulate in any way go against the basic principle that Australia's interests in maintaining a good relationship with Indonesia were paramount. Fretilin and UDT, and the Portuguese Governor in Dili, made repeated requests in 1975 for the consulate to be re-opened, but this was not done. In a letter of 22 April 1975 to Senator Arthur Gietzelt, who the previous month had led a delegation of ALP members of Parliament to Timor, Mr Whitlam said that he did not believe that the consulate should be re-opened because it might be subject to misinterpretation: 'Political interests in Portuguese Timor could seek to use our presence to involve us to an extent which I do not feel would be appropriate for Australia'; regular visits by Foreign Affairs officers would be sufficient.¹⁴¹

6.88 In July 1975, Senator Willesee approved an Australian aid program for East Timor to cost several million dollars. Before anything could be done with this, the UDT coup and the Fretilin counter-coup occurred.¹⁴²

6.89 After the outbreak of fighting between UDT and Fretilin, Ambassador Woolcott advised from Jakarta on 17 August: 'I would suggest that our policies should be based on disengaging ourselves as far as possible from the Timor Question; getting Australians presently there out of Timor; leave events to take their course; and

138 Quoted in *Documents on Australian Defence and Foreign Policy, 1968-1975*, Sydney, J.R. Walsh and G.J. Munster, 1980, pp. 189-90; published in Tom Uren, *Straight Left*, Sydney, Random House, 1994, pp. 477-8; cited by the Hon. Tom Uren, *Committee Hansard*, 4 November 1999, p. 757.

139 Mr Whitlam, *Committee Hansard*, 14 May 1982, p. 13; 'Timor in no hurry to change', *The Canberra News*, 10 July 1974.

140 'Meeting between the Prime Minister and President Soeharto in Townsville, 3-5 April, 1975: Record of the second discussion, 4 April 1975' p. 4; published in *The Sydney Morning Herald*, 6 March 1999 and included in Mr Whitlam's submission, no. 5, 23 November 1999.

141 Bruce Juddery, 'Situation in East Timor seems to be warming up again', *The Canberra Times*, 11 June 1975; Peter Hastings, 'Why Australia should reopen its consulate in East Timor', *The Sydney Morning Herald*, 12 June 1975.

142 Alan Renouf, *The Frightened Country*, Melbourne, Macmillan, 1979, p. 445.

if and when Indonesia does intervene act in a way which would be designed to minimise the public impact in Australia and show privately understanding to Indonesia of their problems'.¹⁴³ In tune with this advice, Mr Whitlam made a statement in the House of Representatives on 26 August, in which he said:

The Australian Government does not ... regard itself as a party principal in Portuguese Timor. We continue to hold that the future of the territory is a matter for resolution by Portugal and the Timorese people themselves with Indonesia also occupying an important place because of its predominant interest ... We have no ethnic or cultural ties with the Timorese which would suggest a role for Australia in substitution for Portugal in Portuguese Timor.¹⁴⁴

6.90 Mr Uren indicated to the Committee that policy making on Timor in 1974-75 was confined to the Prime Minister, Minister for Foreign Affairs, Senator Willesee, and Minister for Defence, Mr Morrison.¹⁴⁵ He said: 'During 1975, there was no discussion in cabinet at all on the Timor question, even on Balibo and the five news people who had been killed'.¹⁴⁶ Mr Uren's evidence finds support in a statement made by the Mr. Clyde Cameron on 14 November 1979:

The then Minister for Foreign Affairs, Senator Willesee, told me he had no knowledge of the conversation that took place between Mr Whitlam and President Suharto ... President Suharto was just as astonished to hear Mr Whitlam's remarks as were his own colleagues in the Cabinet ... No member of the Whitlam Cabinet was ever told about the conversation and certainly did not approve of it. Moreover, no member of the Whitlam Cabinet knew of the shooting of the journalists. The signals that came back to Australia concerning the murder of those men were suppressed, not only from the public but from Cabinet members as well.¹⁴⁷

6.91 Following the capture of Balibo and neighbouring towns by Indonesian special forces and pro-Indonesian Timorese, Foreign Minister Willesee made a statement in Parliament on 30 October.¹⁴⁸ Prior to the statement being made,

143 Quoted in *Documents on Australian Defence and Foreign Policy, 1968-1975*, Sydney, J.R. Walsh and G.J. Munster, 1980, p. 199; published in Tom Uren, *Straight Left*, Sydney, Random House, 1994, pp. 477-8; cited by the Hon. Tom Uren, *Committee Hansard*, 4 November 1999, pp. 756-7.

144 House of Representatives *Hansard*, 26 August 1975, pp. 491-3; quoted in *Australian Yearbook of International Law*, vol.6, 1974-1975, p. 209; cited in Mr Whitlam's submission, no. 5, 26 March 1999, p. 8.

145 Mr Uren, *Committee Hansard*, 4 November 1999, p. 761.

146 Mr Uren, *Committee Hansard*, 4 November 1999, pp. 754-5.

147 *House of Representatives, Hansard*, 14 November 1979, pp. 2966-7. Senator Arthur Gietzelt stated to the Senate on 7 April 1976: 'Five Australian journalists were shot down in cold blood. I have been told on reliable information that that information was heard on Australian radio at Shoalhaven'. On 3 June 1976 he corrected this to say: 'information about the murder of the Australian newsmen was available on 16 October' 1975 from radio intercepts made 'at Shoal Bay, near Darwin' (*Senate Hansard*, pp. 1171, 2334).

148 House of Representatives *Hansard*, 30 October 1975, pp. 1609-10, *Australian Yearbook of International Law*, vol. 6, 1974-1975, pp. 209-10.

Ambassador Woolcott had advised from Jakarta: ‘Although we know it is not true, the formal position of the Indonesian Government is still that there is no Indonesian military intervention in East Timor. If the Minister said or implied in public the Indonesian Government was lying we would invite a hurt and angry reaction.’¹⁴⁹ Reflecting this advice, Senator Willesee merely stated that the Government had viewed with concern widespread reports that Indonesia had been involved in military intervention in Portuguese Timor, without commenting on the validity of the reports.

6.92 After having been appointed Prime Minister to replace Mr Whitlam on 11 November 1975, Mr Fraser indicated on 26 November that his caretaker Government would do nothing about reported Indonesian bombings in East Timor. He said that the tragic events that were occurring there were a direct result of the barrenness of the foreign policy of the Whitlam Government, which the caretaker Government had to continue.¹⁵⁰ Nevertheless, Mr Whitlam’s policy was in its essentials maintained by Mr Fraser’s Government and that of succeeding Australian governments until September 1999. DFAT Deputy Secretary, Mr Dauth, acknowledged to the Committee on 6 December 1999 that the Government only finally abandoned its declared preference for East Timor to remain as an autonomous territory within Indonesia when the people of East Timor voted for independence: ‘We made clear always to the Indonesian government throughout the course of this year that we respected their sovereignty until such time as the processes which President Habibie put in train delivered a different outcome’.¹⁵¹

Contradiction between self-determination and incorporation

6.93 Dr James Goodman drew attention to a contradiction in Australian Government policy, which recognised the right of East Timor’s people to self-determination but also Indonesia’s claim to sovereignty. Clearly, if the East Timorese people had the right to self-determination, the Indonesian occupation which flouted that right was illegal. ‘Continued Australian recognition of the occupation suggests that the right to self-determination for the East Timorese people is a secondary consideration; it is not a legal right but a pragmatic necessity.’ Dr Goodman argued that, while the contradiction remained in place, it deadlocked Australian Government policy, preventing it from taking a pro-active role on East Timor.¹⁵²

6.94 Mr Alan Renouf, held a different view to his predecessor, Sir Keith Waller. Although he believed that ultimate integration with Indonesia was best, he thought that in view of the unacceptable features of the ‘Act of Free Choice’ whereby Irian Jaya had been incorporated into Indonesia, priority should be given to Timorese self-determination.¹⁵³ He wrote: ‘The policy had become two-pronged and the two prongs

149 Bruce Juddery, ‘Do not accuse Jakarta: ambassador’, *The Canberra Times*, 31 May 1976; Paul Kelly, ‘Willesee: Whitlam reigned on East Timor’, *The Australian*, 10 March 1999.

150 *The Canberra Times*, 27 November 1975.

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

152 Dr Goodman, *Committee Hansard*, 10 September 1999, p. 482.

153 Alan Renouf, *The Frightened Country*, Melbourne, Macmillan, 1979, pp. 442-3.

might be irreconcilable. What was to happen if the Timorese opted for independence?’¹⁵⁴

6.95 Mr Gareth Evans took issue with this line of argument. In his submission to the Committee, Mr Evans said that there was nothing in Mr Whitlam’s position, or that of the Australian Government of the time, that could be characterised as ‘dangerously ambiguous’: a proper act of self-determination, no military intervention and incorporation into Indonesia were not incompatible propositions.¹⁵⁵ This may have been theoretically possible but never a likely scenario. Apodeti, the East Timorese party supporting integration with Indonesia, was always smaller and far less influential than either Fretilin or UDT. It was clear that the latter two parties had no intention of countenancing incorporation with Indonesia.

6.96 Mr Renouf’s view was shared by Senator Willesee. *The Australian Financial Review* reported on 17 October 1974, ‘Senator Willesee for his part is emphasising the idea of self-determination in an as yet unstated reversal of the priorities Mr Whitlam gave to the Indonesians in which “self-determination” was only needed as some sort of “gloss” to the unflurried handover to Indonesia’.¹⁵⁶

6.97 Mr Uren and Mr Robert Lowry drew the attention of the Committee to the argument put forward by Mr William Pritchett, First Assistant Secretary, Strategic and International Policy, Department of Defence.¹⁵⁷ On 9 October 1975, Mr Pritchett addressed a memorandum to Defence Minister Bill Morrison, which said:

Basically ... we have pursued incompatible lines of policies—that Portuguese Timor should be integrated into Indonesia but that there should be an act of self-determination and that Indonesia should not effect integration by coercion. Since the weight of evidence from the outset has been that any act of self-determination would oppose integration, in effect what we have offered Indonesia with the one hand we have sought to deny them with the other.

6.98 Mr Pritchett argued that it would be prudent to base policy on the balance of probability that Fretilin and associated elements would retain political dominance. To achieve integration, Indonesia would have to dispose of Fretilin. There appeared no prospect at all that this could be achieved by political negotiation: it would require force on a scale that could not be hidden from the Australian public. Even were Fretilin to crack and weaken, it could be expected that a significant residue of opponents of Indonesia would take to the hills in guerrilla operations. Were the Indonesians to use force, they would be in the position of seeking their objective in the face of sustained Australian opposition and strong public condemnation, which would

154 Alan Renouf, *The Frightened Country*, Melbourne, Macmillan, 1979, p. 443.

155 The Hon. Gareth Evans, QC, MP, submission no. 21, pp. 1-2.

156 Brian Toohey, ‘Mr Whitlam has his Yalta’, *The Australian Financial Review*, 17 October 1974.

157 Mr Uren, *Committee Hansard*, 4 November 1999, p. 756; Mr Lowry, *Committee Hansard*, 20 September 1999, p. 555.

continue for some time if resistance to the Indonesians were stubborn. The hope that the Indonesians would be able to bring about quickly and efficiently a settlement without significant political repercussions appeared increasingly misplaced:

Because of the essential dilemmas of the situation and the likely prospect of difficulty with Indonesia if Australian policy were not realistically based, we advocated in Defence very early on a line of policy that appeared to offer reasonable prospects of meeting the basic requirements of all parties, namely acceptance of an independent state in Portuguese Timor.¹⁵⁸

6.99 Mr Whitlam responded to Mr Uren's quoting of Mr Pritchett's memorandum, saying that Sir Arthur Tange, the Secretary of the Department of Defence in 1975, had told him in 1980 that Mr Pritchett (who by then had become Sir Arthur Tange's successor as Secretary) did not express the views of the Department in 1975.¹⁵⁹ Nevertheless, Mr Pritchett had made the point that the line of policy he and his officers were advocating had been departmental policy from 'very early on'.¹⁶⁰ At the start of his memorandum he recalled that he had made a submission on the same concerns to Mr Morrison's predecessor, Mr Lance Barnard, in December 1974 and that, on the basis of this advice, Mr Barnard had written to Senator Willesee in February 1975 urging action to deflect the Indonesians from attempting to use military force to seize Portuguese Timor.¹⁶¹

158 *Documents on Australian Defence and Foreign Policy, 1968-1975*, Sydney, J.R. Walsh and G.J. Munster, 1980, pp. 221-2; also in Brian Toohey and Marian Wilkinson, *The Book of Leaks*, Sydney, Angus & Robertson, 1987, pp. 184-90, and Tom Uren, *Straight Left*, Sydney, Random House, 1994, pp. 481-2; cited by the Hon. Tom Uren, *Committee Hansard*, 4 November 1999, p. 756, and by Mr R. Lowry, *Committee Hansard*, 20 September 1999, p. 555.

159 Mr Whitlam, submission, no. 5, 23 November 1999, pp. 9-10.

160 Defence Department support for Timorese independence was reported by Hugh Armfield in *The Age* of 13 September 1974, 'Canberra aim for Timor: go Indonesian'. An article by Bruce Juddery in *The Canberra Times* of 17 September 1975 stated that an 'eminent Australian strategist' believed a bitter war of resistance to Indonesia could continue in Timor for up to ten years ('Are we about to watch a new show on the Vietnam theme?').

161 *Documents on Australian Defence and Foreign Policy, 1968-1975*, Sydney, J.R. Walsh and G.J. Munster, 1980, p. 220. Draft brief for Barnard [December 1974]; Barnard to Willesee, 11 February 1975; Wendy Way, Damien Browne and Vivianne Johnson (eds.), *Australia and the Indonesian incorporation of Portuguese Timor, 1974-1976*, Melbourne University Press, 2000, pp. 139-41; 176-80. Paul Kelly, in *The Australian* of 25 February 1975 reported, 'The Minister for Defence, Mr Barnard, has already written to Mr Whitlam expressing the concern of the Defence Department' ('PM plans strong note to Suharto'). Defence briefed the media on the arguments against encouraging the Indonesians to incorporate Portuguese Timor using military force: these arguments were set out in Peter Hastings, 'Jakarta ponders a military "solution"', *The Sydney Morning Herald*, 21 February 1975. Cf. draft brief for Barnard, December 1974, *Australia and the Indonesian Incorporation of East Timor 1974-76*, Melbourne University Press, pp. 139-40.

6.100 Mr Pritchett's advice was not adopted. Senator Willesee limited himself in his statement of 30 October 1975 to offering an Australian venue for talks between the Timorese parties, and made no criticism of Indonesian armed intervention.¹⁶²

6.101 With regard to the allegation that the strong Indonesian lobby in the Department of Foreign Affairs prevailed in policy formulation about East Timor, Mr Renouf wrote that it was true that successive Australian ambassadors in Jakarta preferred Mr Whitlam's approach to that of Senator Willesee's and the Department but their influence was not decisive. The major influence of officials upon policy was objective and not dominated by a disposition to go along with Indonesia.¹⁶³

6.102 Mr Uren said to the Committee that when a group of Indonesian generals became interested in seizing East Timor and incorporating it, step by step they moved with careful regard to the attitude of Australia:

They were constantly making contact with us, feeling out how we felt about their position, and were generally encouraged by the attitude that built up in Australia at the time ... That attitude was in the government and of course in the opposition ... it was the Australian accommodation of these attitudes ... that, I believe, encouraged military moves to seize the territory ... The East Timorese were seeking our help and they got none from us ... What is really important is that for much of 1975 we were aware in Canberra that President Soeharto was reluctant to allow the military invasion that his generals were planning and that he kept on holding back. It seems to me that perhaps our greatest failure was that we did not take up the challenge of sending a special envoy to Soeharto to tell him in diplomatic language that he was absolutely right. We could have joined with him to help self-determination in such a way that at that time it would have been possible for East Timor to become independent and have a special relationship with Indonesia. We did not do that; we refused to do it.¹⁶⁴

6.103 Mr Evans said that it was also clearly the case that at all relevant times Mr Whitlam's personal view (of which he made no secret to President Soeharto or anybody else), was that in all the economic and social development and strategic circumstances of the time it was in the best interests of the East Timorese themselves, Indonesia and the region for East Timor to be eventually integrated into Indonesia. It

162 House of Representatives *Hansard*, 30 October 1975, pp. 1609-10, *Australian Yearbook of International Law*, vol. 6, 1974-1975, pp. 209-10; Paul Kelly, 'Willesee: Whitlam reigned on East Timor', *The Australian*, 10 March 1999.

163 Alan Renouf, *The Frightened Country*, Melbourne, Macmillan, 1979, p. 444.

164 Mr Dunn, *Committee Hansard*, 24 September 1999, p. 602; Mr Uren, *Committee Hansard*, 4 November 1999, p. 762. In his letter to Willesee of 11 February 1975; Barnard complained that the Indonesians 'seem to have heard only so much of what we have said to them as they wanted to hear, namely our acceptance of their interest in the future of Portuguese Timor and of its eventual absorption into the Indonesian state' (Wendy Way, Damien Browne and Vivianne Johnson (eds.), *Australia and the Indonesian incorporation of Portuguese Timor, 1974-1976*, Melbourne University Press, 2000, p. 179).

was Mr Whitlam's belief that a properly managed decolonization process by Portugal would be highly likely to produce that outcome.¹⁶⁵

6.104 Mr Evans said that Mr Whitlam did not anticipate, and could not reasonably have anticipated, that the Indonesian presence in East Timor in subsequent years, with the military playing the dominant role, would be as oppressive and insensitive to local aspirations as it proved to be.¹⁶⁶

6.105 Mr Evans did admit that Australia could have done more in 1975 to prevent Indonesian military intervention:

It is true that as the course of events unfolded during 1975, with the abandonment of the territory by the Portuguese in August, the eruption of a bloody civil war, the rejection by Fretilin of a referendum or election (and eventual unilateral declaration of independence in November), and the increasing likelihood of military action by the Indonesians, it became more difficult to believe that a peaceful and genuinely voluntary incorporation was likely. There was a good case, in these circumstances, for Australia to have made further representations to the Indonesian Government again arguing strongly against any military intervention. It is regrettable that this was not done.¹⁶⁷

6.106 There was no basis, Mr Evans said, on which the omission amounted to Australian moral responsibility for what followed. There was no reason whatever for supposing that such representations - made at any time from August until the invasion of Dili on 7 December 1975 would have made any difference. There was nothing, as the Indonesians well knew, that Australia could credibly have done to back its word with action. There was no public mood, after Vietnam, for involvement in another Asian imbroglio, and the United States position was anything but supportive of throwing down the gauntlet to Jakarta. Indonesia's position steadily hardened as the situation deteriorated after Portugal's departure, and it was only a matter of time before President Soeharto—who, on all the available evidence, had been absolutely genuine in his earlier 'no invasion' pledge to Mr Whitlam—fell in behind the ABRI leadership, who had never had such scruples.¹⁶⁸

6.107 Mr Renouf has written that the only reasonable charge against the Labor Government was that its policy was ambiguous: 'This may have facilitated Indonesia's course but Australia's unqualified support for self-determination would not have stopped her. It was a "no-win" situation for Australia, but it goes against the Australian grain to admit such situations'.¹⁶⁹

165 The Hon. Gareth Evans, QC, MP, submission no.21, pp. 1-2.

166 The Hon. Gareth Evans, QC, MP, submission no. 21, pp. 1-2.

167 The Hon. Gareth Evans, QC, MP, submission no. 21, pp. 1-2.

168 The Hon. Gareth Evans, QC, MP, submission no. 21, pp. 1-2.

169 Alan Renouf, *The Frightened Country*, Melbourne, Macmillan, 1979, pp. 447-8.

6.108 In an interview in January 2000, Mr Dunn referred to Foreign Minister Malik's letter of July 1974 to Dr Ramos-Horta. He said that Adam Malik's view was perceptive. If what he had written had been acted upon, the situation would have been vastly different. Thousands of people, Indonesians as well as Timorese, would not have been killed. Today there would be an independent East Timor, but with a special relationship with Indonesia. Instead there had been a whole generation, 25 years, of conflict, bitterness and a situation which was humiliating to Indonesia. It was not that the Timorese were hostile to Indonesia in 1975, but they had had a separate experience as a colony of Portugal. Their's was a different society, and they wanted to go their own way. It was a natural instinct in the process of self-determination. The colonial experience, for good or bad reasons, had created a separate environment. The natural instinct of people who had been liberated, or offered liberation, was to gain independence. Mr Dunn said:

When Prime Minister Gough Whitlam went to Wonosobo [Yogyakarta] to have his meeting with President Soeharto, he astonished the Indonesians by making it very clear that his preferred solution was that East Timor go to Indonesia. I have a lot of information that suggests the Indonesians didn't expect Australia to be so generous. Whitlam's words encouraged the military to believe that this was the way to go ... The Wonosobo meeting, therefore, was the turning point. That was the green light to start *Operasi Komodo* to bring about integration.¹⁷⁰

6.109 Mr Dunn said that President Soeharto had feared that it might end in embarrassment, so he had delayed giving the order for the military intervention. Had Australia gone to President Soeharto and reinforced his position, Mr Dunn purported that the invasion would not have taken place:

had Adam Malik's opportunity been taken up, the outcome would have been radically different. East Timor would have a population of 1.2 million instead of about 800,000. Not because Indonesian soldiers went to kill tens of thousands of people, but because the military operation had an enormous impact on Timor in terms of forcing people into the interior, denying them medical assistance and food.¹⁷¹

6.110 Dr Andrew McNaughtan submitted that Mr Whitlam favoured Indonesian incorporation of Portuguese Timor because, as Mr Woolcott said in his cable of 17 August 1975, closure of the Timor Gap could be 'much more readily negotiated with Indonesia by closing the present gap than with Portugal or an independent Portuguese Timor'.¹⁷² Attempts to negotiate closure with Portugal between 1972 and

170 Michael Richardson reported in *The Age* of 5 September 1974 ('Timor: a colonial question that has to be settled') that Australia's response would be 'crucial' to Indonesia's decision on whether or not to proceed with a policy of incorporation of Portuguese Timor.

171 Aboeprijadi Santoso, 'Weighing the "ifs" of East Timor', *The Jakarta Post*, 20 January 2000.

172 Andrew McNaughtan, submission no. 49, pp. 1-2; and 'New nation has opportunity for gains in the Gap', *The Sydney Morning Herald*, 13 April 2000.

1974 had not been successful.¹⁷³ Mr Whitlam's irritation with Portugal was expressed in Perth on 25 March 1974, when he revealed that the Australian Government had formally protested to Portugal about its alleged encroachment into offshore resources areas claimed by Australia south of Timor by giving a concession to the Oceanic Exploration Company of Denver.¹⁷⁴ A departmental policy planning paper of 3 May 1974 stated that Australia should 'bear in mind that the Indonesians would probably be prepared to accept the same compromise as they did in the negotiations already completed on the seabed boundary between our two countries. Such a compromise would be more acceptable to us than the present Portuguese position.' The paper advised caution to prevent Australia being seen as motivated by its own self-interest in pushing either for independence or incorporation of the territory.¹⁷⁵ In June 1974, drilling at Troubadour No. 1 well confirmed for the first time the presence of hydrocarbons in the seabed of the Timor Sea.¹⁷⁶ The belief that Timor Oil (representing Woodside-Burmah and BP Australia) was waiting for the coup or invasion to re-negotiate its leases, as Indonesia would give much better conditions than the Portuguese or Fretilin were likely to offer, was held by the Portuguese negotiator, Barbosa, who said so in Darwin after he had been evacuated from Dili following the 11 August 1975 coup.¹⁷⁷ Portugal's Socialist Party leader, António Almeida Santos, said in 1985 that he had realized when he visited Australia in September 1975 as Minister for Inter-territorial Co-ordination that oil interests largely determined Australian policy toward Timor.¹⁷⁸ The Committee received no evidence of any agreement with Indonesia that Australia would be favoured in negotiations over the Timor Gap in return for an understanding attitude toward incorporation of Portuguese Timor.

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- 173 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).
- 174 Brian Toohey, 'Oil: Portuguese tail-twisting could backfire', *The Australian Financial Review*, 26 March 1974. This article provoked a protest from the Portuguese Ambassador, Carlos Empis Wemans, that the Prime Minister had made public the dispute with Portugal. A subsequent note from the Ambassador said: 'Whilst regretting the fact of the Australian Prime Minister having made public declarations on the subject, the Portuguese Government maintain their willingness to enter into negotiations with the Australian Government. However, since a conference on the Law of the Sea is scheduled to take place in Caracas, in June next, the Portuguese Government are of the opinion that immediate negotiations would be ill-timed and would therefore prefer to await the results of that Conference' (Cour internationale de justice, *Affaire relative au Timor oriental (Portugal c. Australie): mémoire du gouvernement de la république Portugaise*, La Haye, 1991, pp. 321-6, Annexes IV.9-10, 25 March and 18 April 1974).
- 175 Wendy Way, Damien Browne and Vivianne Johnson (eds.), *Australia and the Indonesian Incorporation of East Timor, 1974-76*, Melbourne University Press, 2000, p. 52.
- 176 John McIlwraith, 'Drilling under way on remote Troubadour Shoals off Timor', *The Australian Financial Review*, 4 July 1974; Nigel Wilson, 'Keep hope fires burning', *The Australian*, 4 October 2000.
- 177 Statement by Senator Cyril Primmer, *Senate Hansard*, 24 February 1976, p. 150.
- 178 Jill Jolliffe, 'Hawke slated over E. Timor', *The Canberra Times*, 30 August 1985. Jill Jolliffe (ed.), *Guide to the East Timor question, 1975-1996*, Rochester, (New York), MMF Publications, 1996.

Conclusion

6.111 It is easy to understand why many people thought that incorporation into Indonesia was the best solution for Portuguese Timor. The Portuguese had not prepared the Timorese for independence. Few Timorese had more than a rudimentary education and many did not even have that. The local economy was tiny and most Timorese outside Dili and the larger towns were subsistence farmers. Few people had any experience of government. Timor would have been very dependent on foreign aid for a long time. Moreover, Apodeti members preferred some association with Indonesia while the two main parties, Fretilin and UDT fought a bloody civil war. The left-leaning Fretilin was of great security concern to Indonesia, which was very anti-communist, in case Fretilin attracted external communist involvement and support. Internationally, there was support of incorporation of Portuguese Timor into Indonesia.

6.112 Despite these shortcomings on the part of Portuguese Timor, Australian policy was generally in support of self-determination for colonies of European countries, including Portuguese colonies. Foreign Minister Willesee had approved a policy along those lines but had not referred it to the Prime Minister who, at Yogyakarta, refused to be bound by it. But through the whole period from April 1974 to the fall of the Whitlam government in November 1975, not once was the future of Portuguese Timor referred to Cabinet for consideration. It has been suggested that, if it had, a different approach might have been taken.

6.113 It is always difficult, even in hindsight, to establish whether a different policy approach would have achieved a significantly different outcome. It is clear that Ministers and public servants generally agreed that Portuguese Timor should have been incorporated into Indonesia. Mr Whitlam appeared, particularly in 1974, to take the view that the outcome was more important than the process. His comment to officers that 'I am in favour of incorporation but obeisance is to be made to self-determination' supports that view. This approach was watered down to some extent in early 1975. Others, such as Senator Don Willesee and Mr Renouf, consistently gave greater emphasis to the process of self-determination than the outcome.

6.114 There was not unanimity of opinion during the inquiry or in published material as to the likely outcome if Mr Whitlam had expressed strongly to President Soeharto, at their meetings in Yogyakarta and Townsville, the view that emphasis be given to self-determination rather than the outcome of incorporation. At the time of the Yogyakarta meeting in September 1974, it appears that President Soeharto was still diffident about incorporating Portuguese Timor in Indonesia. A strong Australian position in favour of self-determination might have bolstered the non-interventionist element in the Soeharto administration as opposed to military elements that supported Indonesian action to effect incorporation. Even if that happened, there was no guarantee that the non-interventionist position could have withstood the events of 1975 in Portuguese Timor (i.e. Fretilin and UDT calling for independence and the civil war between the two, as well as allegations of communist sympathies on the part of Fretilin). As pointed out by Mr Gareth Evans, no-one could have foreseen that

Indonesian invasion and incorporation of Portuguese Timor would have led to 25 years of brutality and callous disregard of human rights. But there were those at the time who did warn that circumstances could be different.

6.115 When, on 17 August 1975, the Australian Ambassador to Jakarta, Mr Woolcott, sent his oft-quoted cable to Canberra arguing in favour of pragmatism rather than principle, it was probably too late for Australia to have changed the course of events. East Timor has been a thorn in the side of the bilateral relationship ever since incorporation and relations between the two countries since Australia led Interfet into East Timor have been at a low ebb.

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.

CHAPTER 8

AUSTRALIA AND INDONESIA

Australia's relations with Indonesia

8.1 Undoubtedly, Australia's role in East Timor's independence has had a deleterious effect on relations between Australia and Indonesia. This was acknowledged by DFAT at the hearing on 6 December 1999.¹

8.2 On 16 September 1999, the Indonesian Government abrogated the 1995 Australia-Indonesia Agreement to Maintain Security. Political and Security Affairs Minister Feisal Tadjung cited Australia's decision to review or cancel a number of bilateral military activities as among the reasons for Indonesia's decision, and said that the attitude and actions of Australia were no longer consistent with the spirit and letter of the Agreement.²

8.3 Many prominent Indonesians and the Indonesian media, including the national broadcaster, Antara, blamed Australia for Indonesia's loss of East Timor and for organising the Interfet operation in securing East Timor in preparation for UNTAET, the United Nations interim administration. They also accused the Australian media and some Australian critics for their broad-brush criticism of Indonesia and Indonesians for what happened in East Timor, rather than focussing on those responsible for the mayhem.

8.4 The Committee does not support any Australian criticism levelled generally at Indonesians over East Timor because it is convinced that most Indonesians would have been horrified by the destruction and murder that occurred in the territory, if they had been given accurate information about it.

8.5 Unfortunately, there was considerable distortion of the truth in Indonesian criticisms of Australia, especially by some Indonesian media, which even accused the Australian military of atrocities in East Timor that had been perpetrated by militias. Although the intensity of the campaign to discredit Australia has subsided, the sniping at Australia has continued and Australia is still unfairly regarded as a scapegoat for the machinations of the TNI, which were the main cause of Indonesian embarrassment over East Timor.

8.6 Having been one of the few countries to give *de jure* recognition of Indonesian sovereignty over East Timor, and having supported Indonesia over East

1 Mr Dauth, *Committee Hansard*, 6 December 1999, p. 991.

2 James Grubel, 'Indonesia scraps security treaty over East Timor', *AAP*, 16 September 1999; Don Greenlees and Robert Garran, 'Jakarta severs security ties with Canberra', *The Australian*, 17 September 1999.

Timor since incorporation in 1976, Australia was regarded by Indonesia as a staunch supporter. It was, therefore, perhaps irksome, from an Indonesian point of view, for Australia to be in the forefront of moves that led eventually to East Timor's independence. It was also embarrassing for Indonesia to have an Australian dominated Interfet force secure East Timor, which an Indonesian force of three or four times the size earlier could not, or so General Wiranto led everyone to believe.

8.7 Since December 1999, relations between Indonesia and Australia have remained strained. Prominent Indonesians still publicly criticise Australia and a proposed visit to Australia by President Wahid has been postponed several times. In late October 2000, the biennial Ministerial Forum between Australian and Indonesian Ministers was postponed by Indonesia at short notice.

Mending relations

8.8 DFAT Deputy Secretary, Mr Dauth, said there was a sound working relationship with Indonesia at many levels but, at the political level, the strains were evident and were not going to be resolved quickly.³

8.9 Since President Wahid was elected to office, he has travelled widely overseas but not to Australia. Although the Australian Government has invited the President to visit Australia, and the invitation has been accepted, the proposed visit has been postponed several times by Indonesia.

8.10 In November 1999, Dr van Langenberg questioned whether the Indonesian Government would be amenable to a high profile summit meeting with Australia. He thought it would not fit into the current foreign relations priorities of the current administration:

So there is, on the one hand, a kind of Asian agenda which has been largely borrowed, I guess, from the Malaysian priorities of recent times; it was an agenda that the Habibie regime too, to some extent, was also trying to develop. On the other hand there is this Middle Eastern agenda and then there is the agenda of rebuilding Indonesia's influence. Australia is very marginal in this scenario and I do not see that any kind of Australia-Indonesia summit is going to receive much sympathetic response in Jakarta at the moment.⁴

8.11 The Committee was advised by Mr Bob Lowry in September 1999 against rushing into mending relations with Indonesia until the new government in Indonesia had acted to carry out the reforms necessary to make a transition to a more democratic state.⁵ Although those basic reforms have been carried out and a new democratic

3 Mr Dauth, *Committee Hansard*, 6 December 1999, p. 996.

4 Dr van Langenberg, *Committee Hansard*, 4 November 1999, p. 781.

5 Mr Lowry, *Committee Hansard*, 20 September 1999, p. 557.

government elected, the fragility of the democratic system has complicated the process of rebuilding the bilateral relationship.

8.12 Dr Kingsbury, too, suggested that Indonesia would move slowly in redressing relations with Australia. He told the Committee in November 1999 that:

I think there is a sense that this will be done and it should be done but that it will be done slowly and it should be done slowly. It may not get back to the level of chumminess perhaps that we saw under Keating. But, then again, that was very superficial and it really did not accurately reflect the nature of the underlying relationship.⁶

8.13 On 8 June 2000, at the funeral of Japan's Prime Minister Keizo Obuchi in Tokyo, Prime Minister John Howard and Indonesian President Abdurrahman Wahid held their first face-to-face meeting. Addressing the *Nihon Keizai* symposium on the future of Asia a few hours before his meeting with Mr Howard, the President said: 'We have to make peace with East Timor and Australia, because the three countries will become the anchor of stability in the area ... Because of (the need to maintain stability in the area), we have the duty to be good to each other, to be friends'.⁷

8.14 Similar sentiments were expressed to the Committee by Mr Dupont in September 1999:

we probably need to do what our ambassador in Jakarta is doing at the moment, which is to say, 'Look, at the end of the day we have to live with each other. We have to do business. We need to see East Timor in the context of our overall relationship.' We must continue to have this relationship because the alternative is conflict and hostility. This is not in anyone's interest. That is all very well for me to say, but the difficulty is getting the message through to powerbrokers. This is the real problem.⁸

6 Dr Kingsbury, *Committee Hansard*, 18 November 1999, p. 942.

7 'Gus Dur-Howard meeting successful: Alwi', *The Jakarta Post*, 9 June 2000. Japan's Foreign Minister Masahiko Komura during a visit to Jakarta in late April had expressed concern to President Wahid and Foreign Minister Alwi Shihab about the deterioration in relations between Indonesia and Australia (Lincoln Wright, 'Japan steps in to smooth ties with Indonesia', *The Canberra Times*, 11 May 2000). Mr Komura and Prime Minister Yoshihiro Mori facilitated the meeting in Tokyo between Prime Minister Howard and President Wahid (James Grubel, 'Funeral in Tokyo brings Pacific family together', *AAP*, 9 June 2000). At the April talks in Jakarta, the idea was raised of a tri-partite meeting or council of Indonesia, Australia and East Timor. President Wahid discussed the idea with Xanana Gusmão in Jakarta on 28 April, proposing that Gusmão raise it with Prime Minister Howard, which Gusmão did during his visit to Australia on 6 May. Mr Howard agreed, in principle, to a tri-partite meeting, but only after a bilateral meeting between himself and President Wahid (Karen Polglaze, 'Wahid calls for meeting with Howard', *AAP*, 28 April 2000; Lindsay Murdoch, 'Jakarta, Canberra and Dili must talk, says Wahid', *The Sydney Morning Herald*, 1 May 2000; Karen Michelmore, 'Howard backs tri-nation East Timor meeting', *AAP*, 6 May 2000).

8 Mr Dupont, *Committee Hansard*, 24 September 1999, p. 620.

8.15 Another witness to comment along similar lines was Mr Aspinall, a lecturer in Indonesian Studies at the University of New South Wales. In November 1999, he said that:

There is no question it is going to be a very challenging time, not only because of the [internal] regional challenges ... which Indonesia faces, but also due to the complexity of Indonesia's new political system, in particular the spectrum of political forces represented in the government. However, my underlying feeling remains that, once the initial transition in East Timor is achieved, there is enough long-term ballast in the relationship, but, even more so, there are underlying interests or motivations for the two countries to restore relations to their previously good level. Matters of geography, economic cooperation and so on will remain and will obviously influence both governments, no matter what particular challenges arose in terms of Indonesia's particular political make-up.⁹

8.16 As close neighbours, the Committee believes, and re-affirms, that it is in the long-term interests of both Australia and Indonesia to develop a strong and enduring relationship. However, there is little point in being precipitate in trying to form a new relationship until there is a readiness on both sides to embrace one. Given Indonesia's loss of East Timor and the enormity of the political changes that have occurred since the downfall of President Soeharto, it is not surprising that there are many uncertainties in Indonesia at the moment. These domestic tensions have not been conducive to rebuilding relations with Australia, particularly as many well-placed Indonesians still harbour grievances against Australia over both the loss of East Timor and the continuing international concern over the militias and displaced East Timorese living in squalid refugee camps in West Timor. However, in time, the mutuality of interests should bring about a rapprochement in relations.

8.17 As DFAT pointed out, not all levels of the relationship have suffered the significant downturn experienced at the political level. DFAT should continue to shore up support at these working levels as a basis for improving political relations in due course. DFAT should also try to maintain trade and people-to-people contacts between the two countries.

Building a constructive relationship

8.18 Dr Maley pointed out that the bilateral relationship had given the appearance of being one-sided in the past, noting that Australian Prime Ministers had visited Indonesia on about 15 occasions in the past 20 years, but an Indonesian President had not visited Australia since 1975. The East Timor crisis and the introduction of a new democratic system in Indonesia have provided an opportunity to develop a more balanced relationship.¹⁰

9 Mr Aspinall, *Committee Hansard*, 4 November 1999. p. 829.

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

8.19 A number of witnesses also expressed the view that equality should be a fundamental plank in the new relationship and that Australia should maintain the moral values on which its society was built.¹¹ Consistent principled policies would also serve Australian interests better in the long term than short-term pragmatic ones.

8.20 Mr Dauth told the Committee that DFAT was confident that, over time, the relationship with Indonesia could be rebuilt. He went on to say: 'But the government's view is very clearly that this will be done on the basis of mutual effort and mutual benefit. In the future that relationship will be stronger, in our view, for the fact that it will not constantly be undermined by East Timor in the way in which it was for the previous 25 years.'¹² Later, Mr Dauth emphasised it 'will be a relationship between equals'.¹³

8.21 Mr Mark Plunkett urged that it was important that Australia now more than ever listen to and form an unconditional, constructive relationship with Indonesia. 'It really is about trying to determine what your enlightened self-interest is but, more importantly, understanding what their enlightened self-interest is. And you are not going to get what you want unless they get what they want. So you have got to engage in role reversal and you have got to actively listen'.¹⁴ Dr Kingsbury emphasised the need for frank communication in the relationship and for each to be confident in being able to express concerns, where necessary, about each other's policies.¹⁵ In other words, each side needs to listen and talk to each other, and try to understand the other's perspective and come to an understanding accordingly.

8.22 Although Australia and Indonesia have mutual interests, each also has its own individual interests and values. The Committee believes that Australia should promote our national interests and uphold our democratic values in relations with Indonesia and other countries. Undoubtedly, Indonesia will do the same. A frank and open relationship will help avoid confusion, ambiguity and marked changes in approach, which will help to develop consistency, reliability and trust.

8.23 Dr Kingsbury added that the occasional minor diplomatic spat or tussle, which would occur from time to time, should not necessarily mean that everything had to fall apart as a consequence: 'It is a question of keeping things in perspective and in context and just being a bit gentle about how we view things, but nonetheless being fairly open and fairly honest and fairly transparent in that process.'¹⁶

11 See Lt Gen. Sanderson, *Committee Hansard*, 15 September 1999, p. 545; Mr Haigh, *Committee Hansard*, 3 November 1999, p. 672; Dr Maley, *Committee Hansard*, 11 November 1999, p. 866.

12 Mr Dauth, *Committee Hansard*, 6 December 1999, p. 991.

13 Mr Dauth, *Committee Hansard*, 6 December 1999, p. 995.

14 Mr Mark Plunkett, *Committee Hansard*, 15 September 1999, p. 529.

15 Dr Kingsbury. *Committee Hansard*, 18 November 1999, p. 942.

16 Dr Kingsbury. *Committee Hansard*, 18 November 1999, p. 942.

Democratic Indonesia

8.24 Dr William Maley noted there were a lot of young, open-minded, educated Indonesians who were appalled by what had happened in East Timor, and whose aspiration for the future of their country was to see it develop as a democratic and much more liberal state than it had been during the Soeharto period. Those sorts of groups should be engaged by the Australian Government, NGOs, and Parliament. The more links that could be built with the liberal and democratic forces in Indonesia and in other countries of the region, the better placed Australia would be to cope with troubles in the future, because partnerships based on shared values were much more robust than alliances based on a sense of transient interest.¹⁷

8.25 Mr Aspinall suggested that, in order to maintain long-term healthy relations with Indonesia, Australia needed to differentiate between the sometimes pressing short-term considerations of fostering good relations at the governmental level and keeping one eye on the long-term developments at the grassroots of Indonesian society and their possible implications for future political change. He regarded this as being a failure of Australian foreign policy in the past. Australian Governments previously had had a fascination with the successes of the Soeharto government, despite considerable evidence concerning its growing unpopularity from at least the early 1990s.¹⁸

8.26 The Australian Government and Parliament need to keep in touch with public opinion across the spectrum of Indonesian society. In the Committee's Interim Report of 30 September 1999, the Committee recommended a visit to Indonesia by an Australian parliamentary delegation to discuss issues of importance to both sides with Indonesian parliamentarians. Such a visit has not yet taken place. The Committee reiterates its call for such a visit and recommends that overtures be made to the Indonesian Parliament to seek their agreement to it.

Further Australian involvement in Indonesia

8.27 One of the speculative criticisms unfairly but frequently levelled at Australia has been that intervention in East Timor represented only the first of a number of intrusions into Indonesian domestic politics. Some Indonesians and Indonesian media have accused Australia of planning further interventions in domestic Indonesian politics to support the breakaway of other parts of Indonesia—such as West Papua, Aceh and Ambon—where there has been domestic conflict.

8.28 Australia has made it clear that it has no intention of involving itself in other Indonesian trouble spots. The Australian Prime Minister emphasised this point during a meeting with President Wahid while in Tokyo for the funeral of the former Japanese Prime Minister. Critics of Interfet and Australia's role in it sometimes conveniently forget that Interfet had a United Nations mandate and that Indonesia formally allowed

17 Dr Maley, *Committee Hansard*, 11 November 1999, p. 864.

18 Mr Aspinall, *Committee Hansard*, 4 November 1999, p. 830.

its intervention in East Timor. In addition, although Australia was the dominant contributor to the force, it included contributions from many other states, including some ASEAN states.

8.29 Dr Crouch pointed out relevant characteristics of Australia's and Indonesia's military structures, which militated against military operations of one against the other. Broadly speaking, Australia has a powerful air force and navy while the army is small. The navy and the air force are quite capable of meeting an hypothetical Indonesian invasion threat. If Australia wanted to intervene in Indonesian affairs militarily, the navy and air force are of limited use; Australia by itself does not have a great capacity to put men on the ground.¹⁹ The Interfet and subsequent deployments of troops to East Timor stretched Australia's capacity almost to the limit.

Northern Territory and eastern Indonesia

8.30 The Committee was told by the Northern Territory Government that the Territory had focussed its relations with eastern Indonesia rather than with Jakarta, although they operated an office in Jakarta with local staff. Eastern Indonesia is part of the BIMP-EAGA region, which is the less-developed areas of Brunei, Indonesia, Malaysia and the Philippines.²⁰ The Territory is an observer on one of its working groups. Strong relationships have been developed between the Northern Territory and provincial administrations in eastern Indonesia, and these relationships have survived 'rocky periods in the past'.²¹ The Territory was confident that it would weather the current difficulties with Indonesia.

Australian defence co-operation with Indonesia

8.31 The 1999-2000 Budget allocated \$7.25 million to defence co-operation with Indonesia. The Defence Department told the Committee, with regard to training opportunities under the Australia-Indonesia defence co-operation program:

Our training focus is shifting to complement the priority areas identified in the Future Directions paper. More in-country training is being conducted by MTTs that employ a train-the-trainer approach, thereby training more personnel and reducing costs. ABRI is keen to take up all ADF training offers and to explore new ways of achieving our objectives. There is considerable potential to increase our cooperation in strategic planning processes and human and financial resource management.²²

8.32 Over the period 1994-95 to 1999-2000, the numbers of Indonesian personnel participating in ADF training programs were:

19 Dr Crouch, *Committee Hansard*, 20 September 1999, p. 581.

20 Mr B. Ely, *Committee Hansard*, 8 September 1999, p. 382.

21 Mr B. Ely, *Committee Hansard*, 8 September 1999, p. 381.

22 Defence Department, submission no. 55, annex A, 30 March 1999.

1999-00	200 (approx.)	na
1998-99	197	137 in Australia; estimated 60 in Indonesia
1997-98	201	111 in Australia; 90 in Indonesia
1996-97	236	125 in Australia; 111 in Indonesia
1995-96	290	129 in Australia; 161 in Indonesia
1994-95	160	128 in Australia; 32 in Indonesia ²³

8.33 Opposition to defence co-operation between Australia and Indonesia, particularly military training, was expressed by a number of witnesses.²⁴ Mr Anthony O'Connor, Amnesty International, said:

when the first exchanges of Kopassus troops for joint training with the SAS occurred, we had just released a report on the events in Aceh from 1989 to 1992 ... We do not believe that there should be a defence cooperation program of the type that existed before. The minister said last year, when he suspended the joint training with Kopassus, that he understood that a process of reform or of improving professional standards and accountability was under way and that he expected that the cooperation would resume when those internal reforms were completed.²⁵

8.34 Dr Damien Kingsbury, Executive Officer, Monash Asia Institute, and Dr David Bouchier, a lecturer in Asian studies at the University of Western Australia, also expressed concern that, in the past, Australia had engaged in training with the Kopassus, described as having 'been at the cutting edge of human rights abuses'.²⁶ Dr Kingsbury gave some weight to the benefits Australia obtained from engagement with the Indonesian military but was doubtful as to whether, on balance, the relationship was beneficial.²⁷ Other witnesses were opposed to any kind of co-operation with the Indonesian military.²⁸

23 Defence Department, submission no. 55, annex A, 30 March 1999.

24 Mr Alcock, *Committee Hansard*, 19 July 1999, p. 45; Ms Van Der Sman, *Committee Hansard*, 19 July 1999, p. 86; Dr Bouchier, *Committee Hansard*, 20 July 1999, p. 170; Ms Lawrence, *Committee Hansard*, 20 July 1999, p. 157; Mr Aubrey, *Committee Hansard*, 27 August 1999, p. 316; Mr O'Connor, *Committee Hansard*, 4 November 1999, pp. 787-8; Mr Haigh, *Committee Hansard*, 3 November 1999, p. 672; Dr Kingsbury, *Committee Hansard*, 18 November 1999, pp. 945-6; Dr Hill, *Committee Hansard*, 18 November 1999, p. 953.

25 Mr O'Connor, *Committee Hansard*, 4 November 1999, pp. 787-8.

26 Dr Bouchier, *Committee Hansard*, 20 July 1999, p. 173; Dr Kingsbury, *Committee Hansard*, 18 November 1999, p. 945.

27 Dr Kingsbury, *Committee Hansard*, 18 November 1999, pp. 945-6.

28 For example, Mr J. Aubrey, *Committee Hansard*, 27 August 1999, p. 322; Mr Alcock, *Committee Hansard*, 19 July 1999, p. 45; and Ms Van Der Sman, *Committee Hansard*, 19 July 1999, p. 86.

8.35 Dr Kingsbury was of the view that if training in Australia was meant to impart certain responsibilities or notions of respect for human rights and civilians, it had been an abject failure.²⁹ Dr Helen Hill said:

you cannot change the culture of an organisation by bringing individuals out of their situation, giving them some training and then sending them back. The change of culture needs to come partly from the top and partly from the bottom and be worked on within the organisation.³⁰

8.36 Dr Harold Crouch said that, when it came time for Australia and Indonesia to restore military relations, the focus should be firmly on defence, and not on contributing to internal security: 'A force like Kopassus is clearly an internal security force. We had no business to be training them. That has backfired now, as we see'.³¹

8.37 Mr Michael Scafton, head, East Timor Policy Unit, Department of Defence told the Committee:

In terms of the Indonesian army and specifically the most contentious element, Kopassus, the training has been very specific. The intention of the training with Kopassus and the Indonesian army has been in two major areas - primarily about basic military skills training. It is nothing to do with insurgency training or managing internal security issues, but primarily in the areas of basic training and infantry skills.³²

8.38 Asked by the Committee what was meant by 'basic military skills and basic infantry skills', Air Commodore Kerry Clarke, replied:

The sorts of skills that we are talking about are basic cleanliness, health, safety, organisation in the sense of discipline and responsibilities of the individual soldiers in the command chain—that sort of basic building block which makes the difference between the average person perhaps out in a hostile environment and a professional soldier. Those are the sorts of skills we are talking about.³³

8.39 Earlier, on 8 June 1999, Mr Hugh White, Deputy Secretary, Department of Defence, told the Senate Foreign Affairs, Defence and Trade Legislation Committee during an estimates hearing that:

More broadly, our SAS cooperation with Kopassus has been limited to two types of activity. The first is counter-terrorism training and that is training in particular in counter-hijack techniques. Successive governments have put a high priority on that for the very direct reason that, as so many Australians

29 Dr Kingsbury, *Committee Hansard*, 18 November 1999, p. 945.

30 Dr Hill, *Committee Hansard*, 18 November 1999, p. 953.

31 Dr Crouch, *Committee Hansard*, 20 September 1999, p. 583.

32 Mr M.J. Scafton, *Committee Hansard*, 11 November 1999, p. 850.

33 Air Commodore K.J. Clarke, *Committee Hansard*, 11 November 1999, p. 850.

travel through Indonesia by air, the chances of Australian lives being at risk in any aircraft hijack situation in Indonesia is quite high. There, therefore, seemed a high strategic interest or a high national interest in Indonesian forces being as competent as possible in performing those very difficult and complex types of operations.

Secondly, there has been interaction between the SAS and Kopassus in normal war roles. This training is not in anyway oriented towards counterinsurgency or internal security operations. There has been no occasion on which SAS forces have in anyway been involved in operations with Kopassus in Indonesia under any circumstances.³⁴

8.40 Some witnesses pressed the desirability of making public the names of Indonesian officers who underwent training in Australia, so that their subsequent performance could be checked.³⁵ The Committee accepts that it has been consistent government policy over decades not reveal the names of participants in international training programs.

8.41 Mr Mark Plunkett was of the opinion that military co-operation between Australia and Indonesia ought to be maintained: 'it is folly if you walk away when the relationship gets a bit rocky ... you have to keep the relationship going at all costs'.³⁶ He also referred to his experience as special prosecutor with the UNTAC in Cambodia in 1992-93 where he observed the close and effective relationship between the Australian military and the Indonesian military, and commented: 'That is a good foundation for relationship building which we ought to maintain ... But part of our assistance and training ought to go across to things like conflict management training to demonstrate that it is possible to get what you want without having to use force'.³⁷

8.42 Mr Robert Lowry said that there was enormous expertise that Australia could make available to the Indonesian military if they decided that it was in their interest to become an effective apparatus of a democratic state: 'they do need to reform the armed forces from the very top to the very bottom. To do that, they will need a lot of assistance, not only in terms of finance, which basically has to come from the Indonesian government, but in terms of the technology and the know-how to frame the policies that are needed and to help with the training, the implementation of the legal reforms and so on'.³⁸

8.43 Lieutenant-General John Sanderson thought there was no foundation whatsoever for believing that the Australian Defence Force had trained Indonesians in

34 Mr H. White, *Senate Foreign Affairs, Defence and Trade Legislation Committee Hansard*, 8 June 1999, p. 216.

35 Dr Bouchier, *Committee Hansard*, 20 July 1999, p. 173; Mr O'Connor, *Committee Hansard*, 4 November 1999, pp. 790-2.

36 Mr Mark Plunkett, *Committee Hansard*, 15 September 1999, p. 546.

37 Mr Mark Plunkett, *Committee Hansard*, 15 September 1999, p. 545.

38 Mr Lowry, *Committee Hansard*, 20 September 1999, p. 566.

techniques and doctrines which had led to human rights abuses in East Timor. He said:

I know that the Australian Defence Force has not engaged with the Indonesian armed forces, ABRI, on internal security operations. They have indeed engaged in counter-terrorist operations, which have been about an international or a regional counter-terrorist regime. But the focus of that activity has essentially been about developing an external regional security perspective. So I think it is wrong to say the techniques that they have picked up they have picked up as a consequence of their dealings with the Australian Defence Force. On the contrary, their activity has displayed a marked lack of professionalism.³⁹

8.44 Air Commodore Kerry Clarke said that, without the co-operation and baseline relationship that Australia had established over the years with the TNI, the introduction of military observers and the evacuation of Australian, United Nations and internally displaced personnel could not have occurred during the crisis in East Timor in September 1999. The TNI had been very co-operative in that activity and the personal relationships on the ground in Dili were 'pivotal' to its success and to the success of the initial footprint of Interfet on the ground. He said:

The relationship between the TNI commander at the time and General Cosgrove was professional and effective, and we are justifiably proud that the TNI cohabited with Interfet and, in fact, that they subsequently withdrew after the MPR [Majelis Permusyawaratan Rakyat] decision without any confrontation between TNI and Interfet personnel. So, the basis of a relationship that has formed over the years stood us in good stead at the time.⁴⁰

8.45 Mr Michael Scrafton drew attention to the wider benefits of the good relationship with the Indonesian armed forces that had been built up as a result of the defence cooperation program, referring to the precautions taken for the safety of Australian citizens in Jakarta when the Soeharto regime fell in 1998 amid public disorder:

it was largely as a consequence of the good relationship we had built up that the Indonesians did something very unusual in terms of international relations through the TNI and gave us blanket clearance for our aircraft and helicopters in preparation for a possible evacuation. So, in our view, there have been very clear benefits to Australia's objectives in the region out of the relationship, not least of which were the ways in which we managed to handle the relationship in East Timor when things got tough there.⁴¹

39 Lt Gen. Sanderson, *Committee Hansard*, 15 September 1999, p. 546.

40 Air Commodore Clarke, *Committee Hansard*, 11 November 1999, p. 843.

41 Mr Scrafton, *Committee Hansard*, 11 November 1999, p. 843.

8.46 On 3 May 2000, Major General Peter Cosgrove said, in Adelaide, that Australia's defence ties with Indonesia had major benefits during the East Timor crisis. He said the ties may have helped keep the casualty count low on both sides:

I believe there was a pay-off there through an understanding, hopefully some level of respect, which defused situations which could have been much more critical. They predisposed protagonists from my level down to talk through issues rather than to shoot through them. Maybe our astonishingly low casualty count on both sides, so to speak, is to some degree testimony to that factor.⁴²

8.47 Speaking at the Brisbane Institute on 17 May, General Cosgrove defended Australia's former military ties with the Indonesian armed forces. He said those who thought the Australian Defence Force's ties with Indonesia's armed forces (TNI) had proved 'useless' were wrong. The military relationship had delivered two benefits that had allowed soldiers to talk through the issues rather than shoot through them in East Timor: 'First, TNI had a clear view of our competence and determination and, secondly, I'm convinced that from time to time personal relationships and mutual respect had pay-offs in minimising and resolving misunderstandings at the level of our troops' interaction'.⁴³

8.48 On 10 September 1999, the Government announced a review of the defence relationship with Indonesia because of events in East Timor, as a result of which there was a significant scaling back across a wide range of activity. The agreement for the framework of activities around which the defence co-operation took place remained in existence, and there continued to be a low level of activity in the relationship, but a number of important elements ceased, including land force exercises and special forces contacts.⁴⁴ Although military skills training has been suspended, staff college level exchanges and educational activities were continuing.⁴⁵

8.49 On 2 May 2000, Prime Minister John Howard said that it was too early to talk about renewing Australia's defence ties with Indonesia.⁴⁶

8.50 The Committee believes that Australia has the capacity to assist the TNI become a professional force but until there is a clear indication that the TNI is prepared to move in that direction, Australia should not countenance renewing the

42 'Indonesian defence ties helped in Timor crisis', *AAP*, 3 May 2000.

43 Lincoln Wright, 'Ties with Indonesian military prevented bloodshed: Cosgrove', *Canberra Times*, 17 May 2000.

44 'Aust cancels military training with Indonesia', *AAP*, 10 September 1999; Mr Scrafton, *Committee Hansard*, 11 November 1999, p. 854; Mr Hugh White, Deputy Secretary (Strategy), Department of Defence, estimates hearings, *Legislation Committee Hansard*, 3 May 2000, p. 88.

45 Mr M.J. Scrafton, *Committee Hansard*, 11 November 1999, p. 853.

46 James Grubel, 'Howard says too early to resume defence ties with Indonesia', *AAP*, 2 May 2000; Michelle Grattan and Lindsay Murdoch, 'Too soon to resume defence ties, says PM', *The Sydney Morning Herald*, 3 May 2000.

defence co-operation program. The Committee does not, however, include military educational exchanges, which have been continuing, in this context.

8.51 The Committee believes that there are at least two criteria, apart from the general state of the relationship between Australia and Indonesia, which should be met before any additional defence co-operation measures are undertaken.

8.52 The first criterion is a resolution of the refugee problem in West Timor and the neutralisation of the East Timorese militias, including prevention of their incursions into East Timor. While the TNI abrogates its responsibilities in West Timor and fails to comply fully with Indonesian Government orders relating to refugees and militias, it is not in the interests of Australia, East Timor or other countries involved in the rebuilding of East Timor after the ravages of the militias and TNI in September 1999, for Australia to provide defence co-operation to Indonesia. It would almost be tantamount to condoning TNI actions during and after the destruction.

8.53 The second criterion is clear evidence that the TNI is dismantling the territorial command structure throughout Indonesia and that it is becoming a professional defence force rather than mainly an internal security force. It has been the territorial command structure that has given the TNI the power to meddle in domestic matters both nationally and right down to village levels, and given rise to gross human rights abuses perpetrated in East Timor and elsewhere in Indonesia. As Indonesia now has a democratic system, albeit in a fragile state, it would be anathema for Australia to support the TNI or any other element in Indonesia not working to strengthen democracy.

APPENDIX 1

SUBMISSIONS AND SUPPLEMENTARY SUBMISSIONS AUTHORISED FOR PUBLICATION BY THE COMMITTEE

Adelaide Justice Coalition (Submission 30)

Ambassador of Portugal, Mr Zozimo Justo da Silva (Submission 40)

Amnesty International Australia (Submission 46)

Professor H W Arndt, Research School, Pacific and Asian Studies, Australia National University (Submission 2)

Attorney-General's Department (Submission 62)

Australia East Timor Association (Submission 49)

Australian Catholic Bishops Committee for Justice, Development and Peace (Submission 85)

Australian Catholic Social Justice Council (Submission 24)

Australian Council for Overseas Aid (Submission 66)

Australia Defence Association (Submission 54)

Dr James Cotton, Head, Australian Defence Studies Centre (Submission 35)

Australian Electoral Commission (Submissions 98 and 98A)

Australian People for Health, Education and Development Abroad Inc. (APHEDA—Union Aid Abroad) (Submission 67)

Australians for a Free East Timor, Victoria (Submission 61)

Mr Steven Thomas Baker (Submission 83)

Dr David Bouchier, School of Asian Studies, University of Western Australia (Submission 77)

Mr L Bray (Submission 14)

Mr Colin Brown, Australian Studies and Languages, Flinders University (Submission 73)

Mr Victor G Brown (Submission 7)

Mr R H Brown (Submission 6)

Campaign for an Independent East Timor (SA) Inc. (Submission 57)

Caritas Australia (Submission 68)

Dr Kenneth Chan (Submission 34)

Charter 89 Society (Submission 56)

Ms Marion Cole (Submission 13)

Community Aid Abroad (Submission 28)

Mr Simon Cook (Submission 1)

Mr Bob Culerbiloon (Submission 100)

Curtain Consulting (Submission 96)

Mr Helder Da Costa and Mr Joao Mariano Saldanha (Submission 70)

Dr Gaynor Dawson (Submission 80)

Mr Simon de Faux (Submission 87)

Department of Defence (Submission 55)

Department of Foreign Affairs and Trade and AusAID (Submission 52)

Department of Industry, Science and Resources (Submission 63)

East Timor Human Rights Centre (Submission 33)

East Timor Justice Lobby (Submission 53)

East Timor Symposium, Trinity College, Oxford (Submission 41)

Hon Gareth Evans, QC, MP (Submission 21)

Ms Grace Finlayson (Submission 19)

Mr Bill Fisher (Submission 69)

Professor James J Fox, Research School of Pacific and Asian Studies, Australian National University (Submission 37)

Friends of East Timor (Western Australia) (Submission 78)

Mr Bob Fung (Submission 32)

Mr J A Glasgow (Submission 26)

Dr James Goodman, Faculty of Humanities and Social Sciences, University of Technology, New South Wales (Submission 6)

Mr Michael Grant (Submission 82)

Group of Scholars from WA (Submission 79)

Mr Bruce Haigh (Submission 39)

Mr Barry C Hebbard (Submission 18)

Professor David Hill, School of Asian Studies, Murdoch University (Submission 76)

Hobart East Timor Committee (Submission 42)

Hobart Quaker Peace and Justice Committee (Submission 38)

Mr Ian George Hodges (Submission 50)

Dr Geoffrey Hull (Submission 84)

Mr Rick Idrus (Submission 4)

Inner-City TEAR Group (Submission 31)

Mr Peter D Jones (Submission 27)

Ms Karen Joyce (Submission 22)

Mr John Patrick Kenneally (Submission 20)

Mr D and Mrs K Kerr (Submission 16)

Mr Tony Kevin (Submission 101)

Dr Damien Kingsbury, Monash Asia Institute, Monash University (Submission 97)

Messrs G E Lambert, W N Gibbs and J A Corte Real (Submission 47)

Mr Roger Lamey (Submission 44)

Mr David Langsam (Submission 99)

Mr Damian and Ms Rachael le Goullon (Submission 29)

Mr Rodney Lewis (Submission 93)

Lismore Friends of East Timor (Submission 64)

Mr W S Malcolm (Submission 3)

Dr William Maley, School of Politics, University of New South Wales, Australian Defence Force Academy (Submission 91)

Mr Sam Maresh (Submission 74)

Mary McKillop Institute of East Timorese Studies (Submission 59)

Mr Jason McLeod and Ms Manon Leifin (Submission 58)

Mercy Hospital for Women (Submission 65)

Mr J B Miller (Submission 23)

Dr Robert Murfet, Paxiquest Consulting Pty Limited (Submission 94)

Northern Territory Government (Submission 89)

Mr B O'Toole (Submission 8)

Ms Jasmin Packer (Submission 51)

Dr Michael Parsons (Submission 43)

Peace Brigades International (Submission 71)

Ms Patricia Peak and Father Roy Richardson (Submission 81)

Mr John Pilger (Submission 86)

Mr Greg J Pitman (Submission 10)

Mr Mark Plunkett, Pax Group (Submission 92)

Mr Arnold Rowlands (Submission 45)

Mr Michael Ryan (Submission 11)

Mr Ivan Sayer (Submission 9)

Second/Second Commando Association of Australia (Submission 72)

Dr Dennis Shoesmith, Northern Territory University (Submission 90)

Mr P G Spillett (Submission 17)

Mr Michael Unger (Submission 15)

Dr Gerry van Klinken, School of Asian and International Studies, Griffith University
(Submission 95)

Victorian Foundation for Survivors of Torture Inc. (Submission 88)

Professor James Warren, School of Asian Studies, Murdoch University
(Submission 75)

Mr W Bede Waterford (Submission 12)

Mr Rob Wesley-Smith and Australians for a Free East Timor, Darwin
(Submission 48)

West End Catholic Worker Community (Submission 25)

The Hon E G Whitlam, QC (Submission 5)

YWCA of Australia (Submission 60)

APPENDIX 2

WITNESSES WHO APPEARED BEFORE THE COMMITTEE AT PUBLIC HEARINGS

Monday, 19 July 1999—Adelaide

Campaign for an Independent East Timor (SA) Inc

Mr Andrew Alcock, Information Officer
Mr Bob Hanney, Secretary
Mr Agostinho Moniz, Member
Dr Michael Parsons, Executive Committee Member
Ms Miriam Tonkin, Treasurer

East Timor Study Group

Mr Helder da Costa, Director, Economy and Technology

Adelaide Justice Coalition

Dr Julie-Ann Ellis, Adherent
Ms Joyce Van Der Sman, Organising Secretary
Ms Susan Shephard, Spokesperson

Catholic Church, Semaphore Parish

Father Roy Richardson, Parish Priest

Noarlunga Downs-Seaford Catholic Church

Ms Patricia Peak, Pastoral Associate

Private capacity

Professor Colin Brown

Tuesday, 20 July 1999—Perth

2nd/2nd Commando Association of Australia

Mr Raymond Aitken, Life Member
Mr John Burridge
Mr John Carey, Secretary

Mr Les Cranfield
Mr Robert Smyth, Life Member

Peace Brigades International

Ms Anne Wayne, Co-convener
Mr Shane Guthrie, Co Convener

Woodside Energy Limited

Dr Daljit Gill, Gas Business Manager
Mr Hans Hirschmanner, Senior Lawyer
Mr Keith Spence, Manager

Private capacity

Mr David Bouchier
Dr Gaynor Dawson
Mr Michael Grant
Professor David Hill
Mr John McCarthy
Professor James Warren

Group of Concerned Western Australian Scholars

Ms Tania Lawrence, Spokesperson

Friends of East Timor (Western Australia)

Dr Frank Legge, Member
Ms Cathy Taylor

Actions in Solidarity with Indonesia and East Timor

Ms Julia Perkins, Western Australia Coordinator

East Timorese Community in Perth

Mr Francisco Soares, Community Leader

Friday, 13 August 1999—Canberra

Department of Foreign Affairs and Trade

Mr John Dauth, Deputy Secretary

Mr Chris Moraitis, East Timor Task Force

Mr Neil Mules, Secretary, Maritime South East Asia Branch

Ms Gillian Bird, First Assistant Secretary, South and South East Asia Division

Ms Carolyn Bull, Executive Officer, East Timor Task Force

AusAID

Mr Gordon Munro, Director, Humanitarian and Emergencies Section

Ms Tracey Newbury, Country Program Manager, East Timor Subsection

Ms Jennifer Rawson, Deputy Director General, Asia and Corporate Division

Australian Council for Overseas Aid

Ms Janet Hunt, Executive Director

Mr Andrew Nette, Policy Officer

Embassy of Portugal

His Excellency Mr Zozimo Justo da Silva, Ambassador

Private capacity

Professor James Cotton

Friday, 27 August 1999—Melbourne

Victorian Foundation for the Survivors of Torture

Ms Lynne Haultain, Acting Chair, Committee of Management

Mr Paris Aristotle, Director

Dr Ida Kaplan, Direct Services Coordinator

Mercy East Timor Health Network

Ms Margaret Halliday, Social Worker and Founding Member

Miss Isabel Guterres, Member

Australians for a Free East Timor

Mr Jim Aubrey, Spokesperson

East Timor Human Rights Centre

Bishop Hilton Deakin, Chair

Ms Ana Noronha, Executive Director

Community Aid Abroad

Mr James Ensor, Advocacy Manager

Ms Lia Kent, Policy Coordinator

Northern Birthing Support Service

Miss Martine Taylor, Founding Member, and Manager

Wednesday, 8 September 1999—Darwin

Philips Oil Company Australia

Mrs Karen Brand, Senior Attorney

Mr James Godlove, Darwin Area Manager

Northern Territory Government

Mr Brian Ely, Secretary, Department of Asian Relations and Trade

Mr Geoffrey Farnell, Deputy Secretary, Department of Mines & Energy

East Timor International Support

Dr Andrew McNaughtan, Spokesperson

Australians for a Free East Timor

Mr Robert Wesley-Smith, Spokesperson

Thursday, 9 September 1999—Darwin

Campaign for an Independent East Timor

Mr William Fisher, Committee Member

International Federation for East Timor

Mr Charles Scheiner, UN Representative

Centre for Southern Asian Studies

Dr Dennis Shoesmith, Senior Lecturer

Private capacity

Mr Peter Spillett

Mr Matthew Coffey

Friday, 10 September 1999—Sydney

Caritas Australia

Mr John Scott-Murphy, Public Policy and Advocacy Adviser

Private capacity

Dr Geoffrey Hull

Dr James Goodman

Wednesday, 15 September 1999—Canberra

Paxiquest

Dr Robert Murfet, Director

Mr Mark Plunkett, Director

Lt General John Sanderson (Retd), Chairman of Directors

Mr Gary Wood, Research Assistant

Monday, 20 September 1999—Canberra

Private capacity

Dr Harold Crouch

Mr Robert Lowry

Friday, 24 September 1999—Canberra

Private capacity

Associate Professor Hugh Smith

Mr James Dunn

Mr Alan Dupont

Wednesday, 3 November 1999—Sydney

Australian Catholic Social Justice Council

Bishop Kevin Manning, Chairman

Sister Suzette Clark, Research and Projects Officer

Bishops Committee for Justice, Development and Peace

Bishop William Brennan, Chairman

Mary MacKillop Institute of East Timorese Studies
Sister Susan Connelly

Key Centre for Ethics, Law, Justice and Governance, Griffith University
Professor Charles Sampford, Director

APHEDA

Ms Alison Tate, Project Officer

Private capacity

Dr Peter Bartu

Mr Bruce Haigh

Thursday, 4 November 1999—Sydney

International Commission of Jurists

Justice John Dowd, Chairman

Mr Nicholas Cowdery, QC

Mr Edward Aspinall

Ms Elizabeth Biok

Mr Rodney Lewis

The Hon Janelle Saffin

Amnesty International Australia

Mr Des Hogan, Refugee Coordinator Team

Mr Anthony O'Connor, Convenor

Private capacity

Dr Michael Van Langenberg

Mr Hamish McDonald

The Hon Thomas Uren

Dr Gerry Van Klinken

Thursday, 11 November 1999—Canberra

Attorney General's Department

Mr William Campbell, First Assistant Secretary, Office of International Law

Mr Mark Jennings, Senior Adviser, Office of International Law

Australian Electoral Commission

Mr Bill Gray, Electoral Commissioner

Mr Michael Maley, Director, Research and International Services

Department of Foreign Affairs and Trade

Mr Michael Potts, First Assistant Secretary, International Organisations and Legal Division

Mr Michael Thwaites, Director, Sea Law, Environmental Law and Antarctic Policy, Legal Branch

Mr Greg French, Executive Officer, Legal Branch

Department of Defence

Air Commodore Kerry Clarke, Director-General of Joint Operations

Mr Michael Scrafton, Head, East Timor Policy Unit

Department of Industry, Science and Resources

Mr Stephen Payne, General Manager, Petroleum Exploration and Development Branch

Dr Patricia Wells, Assistant Manager, Petroleum Exploration and Development Branch

Mr John Kjar, Manager, Petroleum Exploration and Development Branch

Private capacity

Dr William Maley

Dr Kenneth Chan

Thursday, 18 November 1999—Melbourne

East Timor Relief Association

Mr Abel Guterres, Chairman

Australian Council for Overseas Aid

Mr Patrick Walsh, Human Rights Coordinator

Australia Defence Association

Mr Michael O'Connor, Executive Director

Private capacity

Dr Helen Hill

Ms Sue Downie

Dr Damien Kingsbury

Monday, 6 December 1999—Canberra

Department of Foreign Affairs and Trade

Mr John Dauth, Deputy Secretary

Mr Michael Potts, First Assistant Secretary, International Organisations and Legal Division

Mr Neil Mules, Assistant Secretary, Maritime South East Asia Branch

Ms Gillian Bird, First Assistant Secretary, South and South East Asia Division

Mr Chris Moraitis, Director, East Timor Taskforce

AusAID

Mr Anthony Dawson, Assistant Director General, Indonesia, China and Philippines Branch

Mr Steve Darville, Humanitarian and Emergencies Program Manager, East Timor Section

Private capacity

The Hon E G Whitlam, QC

Thursday, 9 December 1999—Canberra

Department of Foreign Affairs and Trade

Mr John Dauth, Deputy Secretary

Gillian Bird, First Assistant Secretary, South and South East Asia Division

Mr Michael Potts, First Assistant Secretary, International Organisations and Legal Division

Mr Neil Mules, Assistant Secretary, Maritime South East Asia Branch

AusAID

Mr Anthony Dawson, Assistant Director General, Indonesia, China and Philippines Branch.