

Accountability for Crimes against Humanity in East Timor in the Global Political Context
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Political conjuncture around the question of East Timor's Independence

Background

The invasion and subsequent illegal occupation of East Timor by Indonesia in 1975 was carried out and supported as the result of the political conjuncture of world economic powers. Since the military coup in 1965 which brought the Suharto regime into power in Indonesia, the country has been the 'darling of west' due to the vital role it plays in the consolidation of western economic and strategic interests in the region. In contrast, the emergence of a popular based communist party (FRETILIN) on the small island of East Timor represented a threat to these very interests. It provided a convenient excuse for Indonesia to carry out its territorial ambition, backed and supported by the US Government and its allies.

At first instance, the invasion of East Timor was manipulately portrayed as a desire of the East Timorese people to be incorporate in Indonesia. When this strategy failed, due to the reports of large-scale massacres of the civilian population, the position taken by the west was to portray Indonesia as solely responsible for the atrocities of the invasion. However, the subsequent failure of UN member states to enforce the UN Resolutions demanding the immediate withdrawal of Indonesian troops from East Timor, revealed the hypocrisy and complicity of key global political players on the question of East Timor.

For 24 years, the question of East Timor's independence was characterized by consistent attempts to remove it from international political debate. The East Timorese struggle to restore their internationally guaranteed right to self-determination was ignored due to strategic significance of Indonesia and to avoid further exposure of international complicity. Four documents recently declassified by the United States Department of State have conclusively confirmed that this was the Ford Administration's position on the invasion and subsequent occupation of East Timor by Indonesia in 1975.

Build up to the referendum in East Timor 1999

With the magnitude of the atrocities occurring in East Timor and its international exposure, the international political powers could no longer continue their strategy of silence on the question of East Timor. Troubled by the persistent demands for independence from the East Timorese and mounting pressure from international solidarity groups, the question of how to resolve the problem of East Timor had to be considered. International political powers therefore responded on the basis of pacifying the voices of protest and sought to ensure any action take would preserve their own interests. The objective was never to truly to address the demands being made by the East Timorese people This concessional approach culminated in the organization of the Popular Consultation under framework of the 5th of May Agreement negotiated by Indonesia, Portugal and the UN. In this agreement, which determined the framework for the settlement the East Timor question, East Timor was not even a party at the negotiating table.

The process of the Popular Consultation was one where the UN Secretary General to sought the opinion of the East Timorese people on the political status of the territory: independence or continued incorporation with Indonesia. It was therefore necessary that the conditions be created to guarantee the free and fair expression of this opinion which would singularly determine the territory and its people's fate. When the 5th of May Agreement assigned security for the Popular Consultation to Indonesia-the very perpetrators of the systematic violence against the East Timorese population-any such guarantee for those necessary conditions was lost. In fact, the Agreement was signed in the midst of widespread killings, terror and intimidation carried out by the Indonesian military and its backed militia groups.

Many raised their concerns on the repercussions of the 5th of May Agreement, especially in regards to the security arrangements. Although it was very clear that Indonesia was using that privilege to conditionalize the result of the Popular Consultation in its own interest, no measure was taken to avoid the East Timorese

having to pay with their lives and physical integrity for their legitimate right to freedom. The process unfolded under such arrangements with predictable consequences, namely the further devastation of East Timor. Thousands of lives lost, 85% of the country's property destroyed, more than 200,000 people forcibly moved to Indonesian territory, systematic rape of women, forced separation of children from their parents. Once again, the interests of powerful political players were prioritized at the expense of the lives the East Timorese.

Post referendum and the involvement of the International Players

The violence occurring in the lead up and aftermath of the Popular Consultation was a direct result of the security arrangement in the May 5th Agreement, as widely predicted. Faced with the consequences of its political bargaining, key international players were faced with two options: to employ their usual tact of silence and secure their interests, or finally hold Indonesia to account.

For the first time, the west agreed to a military intervention to secure the result of the popular consultation. Following the deployment of international military forces, an International Commission of Inquiry for East Timor (ICIET) was sent to investigate those atrocities in East Timor.

The conclusion drawn by the Commission affirmed what the East Timorese people already knew from their day-to-day experience with the Indonesian military, and which observers and scholars have been reporting for many years: that the violence was of a serious, systematic and widespread nature. The Commission recommended that an international human rights tribunal be established to hold those responsible to account. This was drawn partly from the direct voices and demands of the East Timorese people and echoed by various international human rights organization and solidarity groups. The Commission's report and recommendation raised the expectation that justice is possible for East Timor.

While the preliminary actions taken by the UN suggested that the international forces would act to hold Indonesia to account, a decisive moment came when Indonesia requested to prosecute those responsible for the violence in East Timor through their internal legal process. Even in the face of its own Commission's findings, the UN reverted to the well-versed approach of appeasing Indonesia, and granted its request.

Institutional set up to address the violence in 1999

UNTAET-Indonesian MoU

With the blessing of the Security Council, the government of Indonesia pledged to establish legal mechanisms to try its citizens responsible for the atrocities in East Timor. In East Timor, the UN Transitional Administration (UNTAET) established a Special Panel for Serious Crimes in the Dili District Court. Both processes were intended to work in tandem with one another. In order to realize their mutual reciprocity, a Memorandum of Understanding was signed between Indonesian and UNTAET in May 2000.

The framework provided in the MOU for the practical implementation of the process was flawed from the outset. Firstly, it was concluded on an unfounded assumption that both processes were due to be established within concurrent time frames. And secondly, it failed to take into account certain obvious political and diplomatic constraints, such as the fact that the Indonesian AG has no real power to subpoena documents from the military. Therefore, the key practical mechanism for the success of both processes has been absent, with the obvious consequences.

UN Special Panels for Serious Crimes

In East Timor, the Serious Crimes process has faced other serious obstacles to achieving substantive results. For most of its history, the process has been poorly managed and inadequately resourced. For example, the investigation unit was operating separately from the prosecutors' office and therefore there was no prosecution strategy necessary to drive the entire process. Additionally, the Serious Crimes process has lacked critical political support for its success, both from UNTAET and the East Timorese leadership.

Indonesian ad hoc Human Rights Tribunal

In Indonesia, the privilege granted by the UN Security Council to prosecute their own senior military and civilian government officials has been abused. For two years after the initial pledging of the establishment of an ad hoc human rights tribunal, it has yet to materialize its commitment. With the change in political leadership in Indonesia, the original legislation on the establishment of the ad hoc tribunal was amended and watered down to limit the scope of its jurisdiction to three districts in East Timor in two separate months in 1999.

Prospects for Justice for East Timor

The international community therefore must acknowledge that the current mechanisms intended to deliver justice for East Timor are inadequate and justice seems as elusive as in the past.

Prospect for an International Tribunal for East Timor

Considering the unwillingness of the Indonesian government to present a credible process, and the failure of the Serious Crimes Panels in East Timor to produce significant results, the only other viable option is the establishment of an international tribunal for East Timor, as originally recommended by the International Commission of Inquiry for East Timor. However, the demand of the East Timorese people for an international tribunal has been routinely dismissed. The expense of a tribunal and the failures of other tribunals have been cited as conclusive reasoning against the establishment of a tribunal for East Timor.

But, one must be reminded of the history which has always seen certain countries wanting the issue of East Timor to be pushed aside. It is not surprising, then, on the issue of the establishment of an international tribunal for East Timor that these same countries are uneager to push forward a process which would reveal the facts of previous complicity, and even implicate certain figures of criminal responsibility. Further, the precedent which the establishment of an international tribunal for East Timor would set in relation to the invasion and occupation of foreign territories is alarming for other countries engaging in the same pattern of domination elsewhere.

TRRC and political concessions

East Timorese are currently faced with many difficult challenges in rebuilding their devastated nation. With no established economy of its own and pressing needs for basic infrastructure, East Timor is heavily relying on financial assistance from those economic powers which have been acting contrary to its interests for 24 years. East Timorese leaders are therefore subject to the pressures and interests of those donor nations and have little bargaining power of their own. Furthermore, East Timor remains geographically located within the archipelago of Indonesia. In light of the past history of the two countries, it is unrealistic to expect the East Timorese leadership to place strong demands on Indonesia regarding the prosecution of its military commanders.

With the demand for justice presenting further pressures on already strained circumstances, the East Timorese leadership is forced into accepting national priorities that are not necessarily in line with the priorities of East Timorese people. The Truth, Reception and Reconciliation Commission (TRRC) has been promoted as a viable compromise between the needs to deal with the violence of the past and the political need to build a cohesive nation state. With this politically driven process of a reconciliation commission, the demand and need for justice of the East Timorese people is being swept aside.

The East Timorese community have shown their clear commitment to reconcile with the perpetrators of the various types of violations they have been subjected to, but they also have made it clear that justice will not be compromised. Now, with the way the TRRC is devised, there is widespread concern that reconciliation will apply only to those minor perpetrators, while those most responsible are remain untouched.

If justice for East Timor is compromised, it is not only the East Timorese who would suffer the effects of impunity. At this moment, the same military commanders responsible for the planning and implementation

of violence on the East Timorese people are now conducting the same campaigns against other people in Aceh and West Papua. And they are carrying out those actions with the support, military and otherwise, of the same global powers. Also at this moment, peoples elsewhere in the world are being subjected to similar patterns of actions of gross human rights violations. A process of justice which would see those responsible for atrocities in East Timor to be held accountable would set a strong precedent and raise the hope that ANOTHER WORLD WITH JUSTICE IS POSSIBLE.