



NEWSLETTER

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Inside

- 1** **Dr José Ramos Horta**
East Timor and the United Nations.
- 5** **Sarah Joseph**
Book Launch.
- 6** **David Kinley**
Human Rights today and in the Future.
- 7** *China Delegation.*
- 8** *Indonesia-Australia Specialised Training.*

The Rehabilitation Assistance Facility-Iraq.
- 9** **Events**
- 10** **Courses, Internships, Placements & Practice**
- 11** **Publications & Papers**
- 13** **Centre Centre Staff and Law Faculty Members**

East Timor and the United Nations

Dr Jose Ramos Horta is the Senior Minister and Minister for Foreign Affairs and Co-Operation for the Democratic Republic of East Timor. This is an edited version of the lecture he gave on 13 August 2004 for the Castan Centre for Human Rights Law Annual Lecture entitled 'East Timor: A United Nations Success Story in Nation Building'.

As you know at the end of August we will celebrate the 30th anniversary of the popular consultation that resulted in the current independent status of East Timor today. To arrive at 30 August 1999 was a very long process, twenty-four years from when

I first arrived in New York in early December 1975. When I left my country, East Timor, [on] 4th December 1975, Fretilin, today's governing party, had declared independence on the 28th November [1975]. Indonesia had not invaded, but was close to invading. Three days after my departure, and by the time I had arrived in New York, it had invaded.

The Security Council convened a session requested by Portugal, as it was the then legal power of the Territory. The Security Council adopted a unanimous Resolution on 22nd December calling on Indonesia



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to withdraw its forces from the Territory without delay and calling on all States to respect the Territory and integrity of East Timor and the rights of the people of East Timor to self-determination. That was 1975, and it was quite a feat that in the midst of the cold war, post Vietnam, East Timor still managed to secure a unanimous Resolution of the Security Council deploring the invasion, calling on the invading country to withdraw its forces.

This was also my first lesson, I would not say in international hypocrisy, but my first lesson in political perplexity. The Security Council adopted a unanimous Resolution calling on Indonesia to withdraw its troops from the Territory, and what Indonesia did was simply ignore it and [did] the opposite. They increased their military presence in East Timor and some of the countries that voted for the Resolution actually sold even more weapons to Indonesia which in turn enabled Indonesia to challenge the Security Council resolution regarding East Timor.

If I arrived in New York with absolute innocence and tremendous ideas and hope and illusions about the United Nations, maybe they were shattered. They were however, not destroyed. The following two years, from the end of 1975 to about 1977, 200,000 people in East Timor died from executions, strafing killings or from starvation caused by the war and yet the Security Council did nothing to enforce its own Resolution on that particular situation. Explanations vary and each of them may be factual and valid, but nevertheless devastating.

The cold war powers were more concerned with their immediate interests or perceived real interests. The United States was far more preoccupied with preventing further encroachment or expansion of communism in South East Asia following its humiliating retreat from Indochina, particularly Vietnam. The Soviet Union was far more preoccupied in not antagonising a country such as Indonesia, which viewed China as its main enemy and not the Soviet Union There were also other significant or minor players, each with their own agendas, their own interests, real or perceived. The end result for East Timor and for many other communities throughout the past sixty years of the United Nations' existence in international affairs was that they were sacrificed on the altar of pragmatism and reality politics, because of the cold war, because of the perceived interests and challenges of different countries, and a quarter of a million people died in my country.

But then who would have thought it possible that such a small country, by then down to a population of 700,000, as 250,000 or so had already died, could one day become free and independent?

On 30th August this year [2004] we celebrate the fifth anniversary of the results of the popular consultations. So move from 1975 to 2004 and we can see what extraordinary changes have taken place and you begin to see the evolving role of the UN with regard to East

Timor. The 1975 Security Council resolution on East Timor was not the first time that East Timor made it on the UN agenda. It was actually in 1960/61 when the UN adopted the famous Resolution 1541 listing all Portuguese territories in Africa and Asia as non self-governing territories with the right to self-determination. They were however dormant for most of the 60s and because Portugal failed to live up to the responsibilities as defined in those Resolutions, people in Mozambique, Angola, Guinea-Bissau decided to take up arms. By 1974 the Portuguese empire had collapsed and the departing Portuguese authorities transferred power to the national liberation movements that had established themselves in those territories, in Mozambique, Angola, Cape Verde, San Tome and Guinea-Bissau.

East Timor was the exception. The Portuguese tried to hold a referendum there, prepared for the democratisation of the referendum, but different problems emerged such as Indonesian interference, the inability of the East Timorese with wisdom, with intelligence, with maturity, to seize on the historical opportunity to work with Portugal, to work with each other, to move towards independence. Instead we had a brief civil war, there were quarrels, and Indonesia ... was there from the very beginning undermining the process, but we were ... also the foolish ones. It is not good enough just to blame a particular neighbour adversary, you just have to be wiser, to be more mature in not falling into the trap of what you know to be your adversary's game, but we did fall into that trap.

So fast forward to 1999 and the Security Council is again dealing with East Timor, when finally after the [1999] ballot they [the UN] took decisive action to intervene in East Timor under Chapter VII of the UN Charter. This was unprecedented in the history of the UN, particularly in this region of the world, the Asia Pacific, with the exceptional difference of the Security Council action on the Korean War.

...Here I will stop for a moment to pay tribute to the extraordinary civil society movement that in 1999 made possible that swift unanimous Security Council decision to use force to intervene in East Timor to end violence. I do not know whether without that civil society that went to the streets, to the Internet, by the hundreds of thousands in 1999, that the Security Council would have acted the way it did. Never before had the Security Council acted in such an expeditious manner. The referendum took place 30th August, the violence broke out [on the] 3rd or 4th of September, and by [the] 20th of September the first Hercules plane from Australia began to role over the mountains of East Timor. It caused an extraordinary kind of happiness [for] thousands of people hiding up in the hills above Dili who no longer had hope that they would [survive]. That was an extraordinary moment and thanks to Australia's leadership at the time, and thanks to the many hundreds of thousands of Australians from different walks of life, ... that inspired, compelled, the government of the day to take the leadership.

But of course it was not only Australia or New Zealand, [other] countries in the region, Malaysia, in Indonesia itself, the Philippines, Thailand, Japan, South Korea, in Europe, [people also] took to the streets and the internet. In Portugal half a million people lined the streets in Lisbon alone, [in Spain] thousands of them took buses and trains to protest at the Indonesian Embassy in Madrid. In South Africa, in poor countries like Guinea-Bissau, all over Africa, Latin America, it was a really extraordinary chain of human solidarity. From all countries, all religions, the issue of East Timor was not viewed by anyone as a religious issue, that the poor East Timorese Catholics were being killed by some other people of another religion. There were also Muslims going into the streets in Indonesia itself. I think in the recent history of humanity there have been such few cases that brought so many people together.



Dr Jose Ramos Horta

It ended the violence, but Sergio de Mello [Secretary General's Special Representative of the United Nations to East Timor] on arriving in East Timor, and all of us who returned from exile, found a country destroyed. Seventy-five to eighty per cent of infrastructure was gone, about 300,000 people out of a population of less than 800,000 had been displaced, most of them in West Timor. Some fled the violence but others were forced at gunpoint to leave. There was no civil service to speak of, no judiciary, no hospitals, clinics, schools, and no economy. The fields had been abandoned. Cattle had been slaughtered. East Timor [was] a ghost country. The Dili I returned to in December 1999 was a ghost town. This is what Sergio de Mello received and the UN received.

There were two urgent priorities. One [was] the emergency humanitarian situation and the other rebuilding an administration. All indications were that there was going to be a major humanitarian catastrophe. Thousands of people could be dying in the next few days and weeks. However the Security Council's swift intervention combined with the extraordinary leadership and partnership involving NGOs [and] UN Agencies with full support from governments with logistics, like Australia in particular, prevented the death of thousands of people from starvation and a humanitarian catastrophe was averted. For several months the UN had to take care of feeding the people, [of] finding them, or bringing

them, in negotiation with the Indonesians, from West Timor back to East Timor...

...The second phase after the emergency was trying to put together an administration, bringing the Timorese into that administration, training them so that for the first time in so many years the East Timorese would be empowered to manage their own country. There was never an independent judiciary [and] very few lawyers, many of them poorly trained with basic law degrees from basic universities, who were brought into East Timor's fledgling judiciary.

The UN could not, and no one could, in the short period of the UN transitional administration of two years, create out of nothing a strong independent judiciary. As of May 2002 when we inherited self-government, we received a very incomplete legacy in this sector, [just] as we also received an incomplete legacy in the security forces and in the police service.

...For the UN, nation building, running a whole country, such as it did in East Timor, was a first experience. Never before had Sergio de Mello had government experience. He worked all his life in humanitarian agencies... He also had to learn and he learnt first by making mistakes, but one extraordinary quality of Sergio's was that he knew how to listen; he knew how to create, how to generate trust and develop a partnership between the UN and the people.

The people of East Timor, with their own modest leaders, modest in terms of knowledge and experience, were able to work together with the UN, because without leaders of the country concerned and the people taking their own responsibilities in ensuring conciliation, in ensuring peace and stability, the UN cannot perform miracles. The UN cannot be effective where the people on the ground in a given situation do not have a wise leadership, strong national leadership who are able to give guidance to the people to co-operate with the UN and vice versa.

Sergio would always rely on us even on many seemingly trivial things. How many times I would receive phone calls from him 'please Jose come and talk to the demonstrators' as the people demonstrated for all manner of things. They would demonstrate because they perceived the UN was deceiving them, or the UN failed to deliver ... There were many demonstrations, sometimes because of language barriers [created] through the numerous translations, from Portuguese to Tatum, or English to Portuguese to Tatum. I often stood near Sergio and listened to him speak in English or Portuguese, and then I heard the Tatum interpreter saying something slightly different with different nuances ... The message was lost in the translation or the interpreter thought he [Sergio] should have said it in a more positive way and he did his own translation. This happened a few times and I was witness to it.

In New York at the UN they had a very skeleton mission to recruit people. There were some wonderful people

who came to East Timor, but some arrived without actually knowing what to do or where to go. On one occasion when I visited Los Palos, in the far east of East Timor, I found there was some unhappiness with the people. I found a lovely lady from California, who was there to manage the Los Palos District and I asked her 'what did you do before' and she replied 'I worked in the Yosemite National Park'. I actually visited Yosemite National Park many years ago and I said 'well that is a wonderful park but obviously there are slightly different problems running Los Palos'. So we had all of these problems.

We had a poor young man, I think he was from Uganda, trained in agriculture, and they sent him to a remote village on the south coast, with which I am very familiar and where I met him. He was totally lost, didn't know what to do. The UN simply put him there; no logistical support, no budget and the people were expecting immediate results. Not that the young man was not qualified, if anything coming from Uganda or another developing country would be more than suitable, but I say this to highlight the human resource problems and still the recruitment process stayed in New York not in Dili.

... [From October 1999 until about July 2000] the East Timorese people were mostly marginalised in the decision making. It wasn't until July [2000] that there was a dramatic decision by the UN, ... long overdue for the Timorese, to set up a sort of transition cabinet. Up until then full legislative, executive and even judicial power was in the hands of Sergio de Mello and his immediate entourage. A charismatic person like Xanana Gusmao, a legitimate leader, and a few others were not part of that cabinet.

It was only when some of our friends in Washington in the US Congress, real supporters of the UN, phoned the Secretary General and questioned the policies in East Timor that things began to change ... These changes were ones we Timorese had proposed to the UN way back in October 1999 in a meeting in Darwin with the UN officials. We had advised that there should be a power sharing arrangement from the very beginning, with the Timorese and the UN. I am not saying this in criticism, but to tell the story of the UN in nation building. The UN really was confronted with some dilemmas, and it was our view that they should bring in the shared decision making process at that very early stage. ...

In retrospect I still don't know whether it was good or not, that we didn't share in the leadership from the beginning, as opportunistically it is maybe better that we didn't because it was Sergio and the UN who took all the blame for anything that went wrong until June/July 2000, when Sergio finally announced the mixed cabinet and said characteristically, 'Well now we are all going to be in the punching bag'.

Slowly the UN improved, consolidated its presence in the country, organised elections, civic education, and we went to a constitutional assembly and finally to presidential elections. Two years later Sergio departed, he handed over to us, and I would say a success story, not one hundred per cent because nation building is not [possible] in one or two years.

Way back in New York in September 1999 I was arguing with a senior UN official in charge of the pre-planning for Timor that we would need a minimum of five years of strong UN engagement. He said [it was] impossible, [that] the most we can get the Security Council to agree with is two years... But then we managed to persuade the Security Council after that to create a [successor] mission called UNMISSET, to act as a support team for the next two years from 2002 to 2004. Its mission was to provide back-up support in most sectors particularly the Ministry of Finance, Treasury, the security sector, police, defence forces and judiciary and so on.

Equally as important as the support to these vital sectors is the mere presence of the UN in East Timor. [That presence] has been an important psychological [and] political factor to give breathing space and room for the government in its very first few months of managing ... as an independent country.



Dr Jose Ramos Horta and Sarah Joseph

Two years after UNMISSET we still felt the need for a one-year extension, and up to May 2005, it becomes five years. One Security Council member in New York who recalled my conversation in New York said 'Jose you once again got away with what you wanted, don't try for another extension.' He didn't trust me and he said 'Are you going to ask for another extension after 2005?' I didn't answer and he said, 'Jose I guarantee you we will not support it this time', to which I replied 'We will see.'

I hope by May 2005 that we will have consolidated what was fragile before, our police force. We have had problems with the training of our police force, to a large degree borne out of one of the ridiculous policies that the UN has. For the UN you have to have all nationalities more or less equally [proportionately] represented so if you have a police force to be trained you can't have only Australians [or] New Zealanders or Norway [training the forces], you have to bring in some thirty nationalities. Well I exaggerate a bit but to demonstrate some of our people salute with their right hand and some with their left hand This is just to illustrate some of the difficulties, but of course this has now been corrected. The UN did realize that to train the police force you have to bring in those who really understand and have experience in what the role of a police force in a modern democratic country is.

We also have serious problems in the judiciary ... and a lack of judges. I don't wish to say anything negative about our judges, they are very sensitive and understandably so, but the fact is there are allegations of our judges having extremely low productivity. We hear that in Portugal a judge handles some 800 cases a month, [whilst] in East Timor something like two or three cases per month [are handled], either because of a lack of enthusiasm in the workplace, or lack of experience, fear, and lack of self confidence. But that creates problems in dispensing justice and with the investors' climate. How can investors come to East Timor to create jobs, to address our problems of unemployment, if they don't trust our judiciary?

Overall we have made remarkable progress. The country is largely peaceful. When I travel around the country, which I have done in recent times, unannounced and un-programmed, I was pleased to see the progress we have made. So many more acres of land cultivated, thousands of new heads of cattle, buffalo, cows, chickens, pigs, goats, and I noticed many, many more people, and thousands of children going to schools, than two years ago. There is much more trade in the rural areas than two years ago, you see many areas that were empty of any trade now building markets. I was pleasantly surprised to find near the border area two or three weeks ago on an unannounced trip ... quality housing emerging and I asked where the money came from for this housing. More than \$40m had been loaned by the Portuguese bank based in East Timor to thousands of East Timorese. According to the Portuguese Bank Manager the repayment rate is better than in Portugal itself. Savings in Timor is more than \$100,000m in two years, from of course businesses to individuals, and the government begins to have a significant surplus, so much so that the UN told me the other day that my government was too conservative and that it should be spending the money, but the government does not wish to spend money for the sake of it. We need to improve, to strengthen our implementation capacity.

Our thanks to Mallesons Stephen Jaques for their support and assistance in organising our 2004 Annual Lecture.

Book Launch

The launch of the book 'Corporations and Transnational Human Rights Litigation' (Hart Publishing, 2004) authored by Centre Director Professor Sarah Joseph was held on 23 November 2004. The book was launched by Chief Justice Michael Black and Michael McGarvie, Partner, Holding Redlich. Here is an extract from the text below†.

...None of the salient [domestic transnational corporate litigation] cases has yet been decided on the merits. Therefore, a number of issues have not been comprehensively addressed in any of the cases in any of the jurisdictions. The most important outstanding issue relates to the circumstances in which a parent company will be held liable for the actions of its subsidiaries. The issue is critical as most of the alleged human rights abuses in these cases have been perpetrated in a developing country by a subsidiary corporation in that country which may lack sufficient capital to provide adequate redress, and/or which may not be amenable to personal jurisdiction in the TNC's 'home' country. To what extent can a human rights litigant pierce the corporate veil, or, alternatively, directly target the parent company for its actions or omissions regarding supervision of its subsidiary?

This book details and analyses the developments in recent civil cases, to serve as a guide to the new ways in which corporations may be liable in domestic courts for human rights abuses. Even though there are no final merits judgments, the interim decisions to date give important clues as to the possible extent of modern transnational corporate human rights liability. This analysis is thus important for transnational human rights victims in order to know the boundaries of possible available legal redress. It is also important for TNCs which must now take human rights into account in managing the legal risks (as well as moral and reputation risks) associated with offshore projects.

†Extract excludes footnotes.



Chief Justice Michael Black, Sarah Joseph, Michael McGarvie