

Washington International Law Journal

Volume 11 | Number 3

6-1-2002

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Recommended Citation

Dianne M. Criswell, Comment, *Durable Consent and a Strong Transitional Peacekeeping Plan: The Successes of UNTAET in Light of the Lessons Learned in Cambodia*, 11 Pac. Rim L & Pol'y J. 577 (2002). Available at: <https://digitalcommons.law.uw.edu/wilj/vol11/iss3/5>

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DURABLE CONSENT AND A STRONG TRANSITIONAL PEACEKEEPING PLAN: THE SUCCESS OF UNTAET IN LIGHT OF THE LESSONS LEARNED IN CAMBODIA

Dianne M. Criswell[†]

Abstract: In 1999, East Timor voted for independence from Indonesia. That same year the United Nations Security Council created the United Nations Transitional Authority in East Timor (“UNTAET”) to help East Timor transition to democracy, self-governance, and sustainable development. Seven years earlier, the United Nations launched a similar mission in Cambodia called the United Nations Transitional Authority in Cambodia (“UNTAC”). There are many similarities between East Timor and Cambodia, and both UNTAET and UNTAC are second-generation United Nations peacekeeping missions. UNTAC and UNTAET had similar mandates, including security, civil administration, and elections. UNTAC encountered opposition from the Cambodian parties, and consent for its mandate eroded. UNTAET fulfilled its mandate, because it had broad consent bases for its mission. UNTAET also had a comprehensive transitional plan that integrated the East Timorese and organized its components, United Nations agencies, and external organizations. Given UNTAET’s success, it is evident that designing peacekeeping missions to ensure intricate coordination between various constituencies and organizations improves the outcome. Gathering and maintaining broad consent is thus a necessary condition for successful UN peacekeeping missions, especially missions designed to rebuild governments, infrastructure, and civil society.

I. INTRODUCTION

The United Nations (“UN”) has entered a new phase, characterized by political solutions to interstate or internal conflicts with the consent of the parties, which experts label second-generation peacekeeping.¹ This illustrates the new function that the UN can play in stabilization and

[†] The author would like to thank Professor Dan Bodansky for his comments and advice. The author would also like to thank the *Pacific Rim Law & Policy Journal* Editorial Staff for their help and support. Any errors or omissions are the author’s own.

¹ STEVEN R. RATNER, *THE NEW UN PEACEKEEPING: BUILDING PEACE IN LANDS OF CONFLICT AFTER THE COLD WAR* 17 (1995); John MacKinlay and Jarat Chopra, *Second Generation Multinational Operations*, 15 WASH. Q. 113, 113-31 (1992); see also MICHAEL M. DOYLE, *UN PEACEKEEPING IN CAMBODIA: UNTAC’S CIVIL MANDATE* 76-80 (1995) (listing three categories of peacekeeping: first-generation or “traditional” peacekeeping, in which unarmed or lightly armed UN forces are stationed to monitor a truce, troop withdrawal, or to act as a buffer zone; second-generation peacekeeping, in which the UN creates a consensual basis for a restoration of law and order in domestic crises and tries to implement its global humanitarian agenda; and, third-generation peacekeeping in which low-level military operations protect the delivery of humanitarian assistance, enforce cease-fires, and assist in the rebuilding of failed states without a state’s consent).

democratization of states.² The United Nations Transitional Authority in East Timor (“UNTAET”) and the United Nations Transitional Authority in Cambodia (“UNTAC”) represent the emergence of this new generation of peacekeeping. UNTAET was established seven years after UNTAC and demonstrates how the UN has changed its approach in order to better fulfill its peacekeeping mandate. UNTAET has benefited from two factors that were absent from UNTAC: durable consent and a comprehensive transitional plan. This Comment explores the similarities and differences in the UNTAET and UNTAC cases to illuminate the transformations in second-generation UN peacekeeping.

This Comment discusses the background of UNTAC and UNTAET in Parts II and III. Part IV notes the overall differences and similarities of UNTAC and UNTAET. Part V provides an overview of international law and the role of consent in UN peacekeeping. This section examines the differing qualities of consent in the UNTAC and UNTAET cases, and observes the disintegration of consent in Cambodia and the durability of consent in East Timor. Part VI explores the scope and strength of these transitional plans. Part VII suggests that the cases of UNTAC and UNTAET demonstrate that the UN must vigorously pursue broad consent for its actions, and that transitional missions are valid and worthwhile. This Comment concludes that the successes and failures of UNTAET and UNTAC can help guide future UN peacekeeping missions. The two missions demonstrate that durable consent and a strong transitional plan are necessary preconditions for a successful UN transitional authority.

II. BACKGROUND OF UNTAC

A. Cambodia

Cambodia’s twentieth century history begins in the era of post-colonialism. In 1863, France established a protectorate over Cambodia, which lasted until Cambodia was granted independence in 1953.³ In 1970, General Lon Nol led a coup d’etat and overthrew Prince Sihanouk.⁴ The new government, led by military and civilian conservatives, renamed the

² Hansjorg Strohmeyer, *Collapse and Reconstruction of a Judicial System: The United Nations Missions in Kosovo and East Timor*, 95 A.J.I.L. 46, 46-47 (2001) (discussing the unprecedented UN role in East Timor and Kosovo, in which peacekeeping missions were given a comprehensive mandate that empowered the mission to exercise all legislative and executive authority).

³ DAVID P. CHANDLER, *THE TRAGEDY OF CAMBODIAN HISTORY: POLITICS, WAR, AND REVOLUTION SINCE 1945*, at 67-72 (1991).

⁴ *Id.* at 197-99.

country the Khmer Republic and allied itself with the United States in the Vietnam War.⁵ In 1975, the opposition communists (Khmer Rouge) gained power after a five-year civil war and established Democratic Kampuchea ("DK").⁶ Over the next three to four years, the Khmer Rouge attempted to restructure Cambodia into a communal agrarian society, a process that produced more than a million deaths through political executions, starvation, and disease.⁷

In 1978, Vietnam invaded Cambodia in response to Democratic Kampuchea's savage border raids into Vietnamese territory.⁸ Within a year, Vietnam occupied the capitol, Phnom Penh and set up a puppet regime, the People's Republic of Kampuchea ("PRK").⁹ Following the PRK's takeover, control over Cambodian territory was divided and the Vietnamese army had control over most of the country.¹⁰ The Khmer Rouge and two other resistance groups, the *Front Uni Nationale Pour Un Camodge Indépendant, Neutre, Pacifique, et Coopératif* ("FUNCINPEC") and the Khmer People's National Liberation Front ("KPNLF"), controlled small areas and created a united opposition front called the Coalition Government of Democratic Kampuchea ("CGDK").¹¹

During the 1980s, pressure was increasing on Cambodian factions to reach a peace agreement. Cold War animosities broke down, and states that supported different Cambodian factions cut off military aid, expressing an interest in resolving the ongoing conflict.¹² UN General Assembly resolutions on Cambodia passed with ever larger majorities, reiterating the need for settlement and restoration of Cambodian independence and territorial integrity.¹³ Several attempts were made to find a diplomatic resolution of the conflict in the 1980s. For example, Indonesia and other Association of Southeast Asian Nations ("ASEAN") member states convened the Jakarta Informal Meetings to bring together the four Cambodian factions for talks.¹⁴ However, peace negotiations at these meetings, as well as others, stalled.¹⁵

⁵ RATNER, *supra* note 1, at 140.

⁶ CHANDLER, *supra* note 3, at 192-235.

⁷ Karl D. Jackson, *Introduction: The Khmer Rouge in Context, in CAMBODIA 1975-1978: RENDEZVOUS WITH DEATH 3* (Karl D. Jackson ed., 1989).

⁸ RATNER, *supra* note 1, at 140.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.* at 142.

¹² TREVOR FINDLAY, *CAMBODIA: THE LEGACY AND LESSONS OF UNTAC 3-4* (1995).

¹³ RATNER, *supra* note 1, at 141 (citing M. R. Sakhumbhand Paribatra, *Can ASEAN Break the Stalemate?*, 3 *WORLD POL'Y J.* 85 (1985)).

¹⁴ FINDLAY, *supra* note 12, at 4-10.

¹⁵ *Id.*

Australia proposed an enhanced role for the UN in the peace settlement as a strategy to overcome the stalemate.¹⁶ The five permanent members of the Security Council agreed that this was necessary and drafted a compromise plan in which the UN would exercise direct supervision or control over the civilian administration for five years—a critical step to create the preconditions for free and fair elections.¹⁷ In Paris on October 23, 1991, the parties signed the Agreement on a Comprehensive Political Settlement of the Cambodia Conflict (“Paris Agreement”).¹⁸ The four Cambodian factions agreed to form the Supreme National Council (“SNC”) with six representatives from the PRK, or the State of Cambodia (“SOC”) as it had renamed itself, and two from each of the three resistance parties.¹⁹ The agreement also provided that Prince Sihanouk would act as president of the SNC.²⁰

The Paris Agreements invited the UN to establish UNTAC under the direct responsibility of the Secretary-General to keep the peace, oversee the civil administration, monitor human rights, and organize elections.²¹ Although the different Cambodian factions would continue to exercise governmental functions in the areas they controlled, the UN would ensure that they acted in a manner sufficiently neutral for elections.²² In fact, the UN would embark upon a new approach to elections, both by organizing and by conducting them.²³ In February 1992, the Security Council adopted Resolution 745, establishing UNTAC in accordance with the mandate of the Paris Agreement.²⁴

¹⁶ See *The Situation in Cambodia: Report of the Secretary General*, U.N. GAOR, 45th Sess., Agenda Item 3, U.N. Doc. A/45/605 (1990). For detailed discussion of the United Nation’s role in the peace process, see also THE UNITED NATIONS TRANSITIONAL AUTHORITY IN CAMBODIA (UNTAC): DEBRIEFING AND LESSONS 3-8 (Nassrine Azimi ed., 1995).

¹⁷ *Letter dated 30 August 1990 from the Permanent Representatives of China, France, the Union of Soviet Socialist Republics, the United Kingdom of Great Britain and Northern Ireland and the United States of America to the United Nations addressed to the Secretary-General*, U.N. GAOR, 45th Sess., U.N. Doc. A/45/472-S/21689 (1990).

¹⁸ *Agreement on a Comprehensive Political Settlement of the Cambodia Conflict*, U.N. GAOR, 46th Sess., Annex, U.N. Doc. A/46/608-S/23177 (1991).

¹⁹ RATNER, *supra* note 1, at 146. See *Agreement on a Comprehensive Political Settlement of the Cambodia Conflict*, *supra* note 18, at 11-12.

²⁰ *Agreement on a Comprehensive Political Settlement of the Cambodia Conflict*, *supra* note 18, at 9.

²¹ *Id.* at 10.

²² RATNER, *supra* note 1, at 145.

²³ *Agreement on a Comprehensive Political Settlement of the Cambodia Conflict*, *supra* note 18, at 25-27.

²⁴ S.C. Res. 745, U.N. SCOR, 47th Sess., U.N. Doc. S/RES/745 (1992).

B. UNTAC

UNTAC's powers were grounded in the Paris Agreement and expanded the UN's peacekeeping role. "UNTAC was a landmark mission that clearly symbolized a new generation of peacekeeping operations in its scope of mandate and size of deployment. The civilian components of UNTAC took on very ambitious functions of state-building unprecedented in the history of UN peacekeeping."²⁵ The UN was committed to the largest field operation in its history, with a mandate to produce a "just and durable settlement to the Cambodia conflict" on the basis of free and fair elections in a neutral political environment within a "period not to exceed eighteen months."²⁶

The UNTAC mandate included both military and civil functions.²⁷ Under the military mandate, UNTAC was charged with the responsibility of verifying the withdrawal of foreign forces, controlling and reducing arms, and assisting with the release of all prisoners of war and civilian internees.²⁸ Under the general category of the civil mandate, UNTAC had responsibility for the civil administration, elections, human rights, civilian police, rehabilitation, and information.²⁹ Thus, all administrative agencies were under UNTAC's direct control. This administrative plan differed from previous UN peacekeeping missions, in which the UN inserted personnel into the state's own bureaucracy to improve the administrative machinery as "technical assistance."³⁰ In contrast, UNTAC was authorized to take partial control over the civil administration of a member state.³¹

Two aspects of the Paris Agreements were problematic for UNTAC in fulfilling its mandate. The first was the power-sharing relationship between the SNC and UNTAC in civil administration. The settlement was designed to balance the need to respect Cambodian wishes with the urgency of implementing the settlement; thus, the SNC retained legal authority under UNTAC administrative oversight if its views were unanimous and its advice

²⁵ DOYLE, *supra* note 1, at 36.

²⁶ Mats Berdal & Michael Leifer, *Cambodia*, in *THE NEW INTERVENTIONISM 1991-1994: THE UNITED NATIONS EXPERIENCE IN CAMBODIA, FORMER YUGOSLAVIA AND SOMALIA* 25, 36 (James Mayall ed., 1996); see also S.C. Res. 745, *supra* note 24.

²⁷ *Report of the Secretary-General on Cambodia*, U.N. SCOR, 47th Sess., U.N. Doc. S/23613 (1992).

²⁸ *Agreement on a Comprehensive Political Settlement of the Cambodia Conflict*, *supra* note 18, at 24-25.

²⁹ *Id.* See also DOYLE, *supra* note 1, at 36.

³⁰ RATNER, *supra* note 1, at 149.

³¹ *Id.*

was consistent with the governing agreement.³² While this relationship gave UNTAC a large amount of administrative power, the Cambodian factions later used it to block UNTAC reforms.³³ The second problem was the disconnect between UNTAC's mandate to organize and conduct fair and free elections and its other mandate to verify the cease-fire of armed factions. Although elections proceeded somewhat smoothly, UNTAC was unable to demilitarize and demobilize the armed factions, to protect human rights or to create a genuine "neutral political environment" before conducting elections.³⁴

III. BACKGROUND OF UNTAET

A. *East Timor*³⁵

East Timor was a colonial holding of Portugal until 1974, when Portugal announced its intention to decolonize.³⁶ Portugal planned to participate in East Timor's transition to independence with a Portuguese High Commissioner and a transitional government until 1978.³⁷ Three major East Timorese political parties emerged in this context, each with a different vision for post-colonial East Timor: the Revolutionary Front for an Independent East Timor ("FRETILIN"); the Democratic Union of East Timor ("UDT"); and the Timorese Democratic People's Union ("APODETI").³⁸ The parties disagreed on whether independence from Portugal should be immediate or gradual, and whether East Timor should integrate with Indonesia.³⁹ They initially agreed on a self-determination

³² *Id.*

³³ MACALISTER BROWN & JOSEPH J. ZASLOFF, *CAMBODIA CONFOUNDS THE PEACEMAKERS*, 1979-1998, at 107-08 (1998) (assessing that UNTAC's administrative control was never more than partial); RATNER, *supra* note 1, at 158-60 (explaining that two major parties in the SNC—the SOC and the Khmer Rouge—refused to cooperate with UNTAC); *Id.* at 185-86 (reporting on the deteriorating relationship between UNTAC and the SNC).

³⁴ Berdal & Leifer, *supra* note 26, at 36.

³⁵ See generally East Timor—UNTAET Background (United Nations 2001) at <http://www.un.org/peace/timor/untaetB.htm> (providing background information on UNTAET).

³⁶ EAST TIMOR AND THE INTERNATIONAL COMMUNITY: BASIC DOCUMENTS xix (Heike Krieger, ed., Cambridge University Press 1997) [hereinafter BASIC DOCUMENTS]. For a more detailed discussion of the colonial history of East Timor, see generally JAMES DUNN, *TIMOR: A PEOPLE BETRAYED* (1983).

³⁷ BASIC DOCUMENTS, *supra* note 36, at xix (citing *Summary of Outcome of Macao Talks between Portugal, APODETI and UDT*, June 26-28, 1975, 46 AUSTL. FOREIGN AFF. REC. 413 (1975)).

³⁸ See generally John G. Taylor, *Decolonisation, Independence and Invasion*, in INTERNATIONAL LAW AND THE QUESTION OF EAST TIMOR 21 (1995) (laying out the different political parties in post-colonial East Timor).

³⁹ IAN MARTIN, *SELF-DETERMINATION IN EAST TIMOR: THE UNITED NATIONS, THE BALLOT AND INTERNATIONAL INTERVENTION* 15-16 (2001).

process, aided by the Portuguese, to hold elections and institute a popular assembly.⁴⁰ However, this plan was never implemented because the Portuguese withdrew after civil war broke out between the parties in August 1975.⁴¹ FRETILIN gained control of most of the territory and declared the independence of East Timor.⁴² The other two parties, the UDT and APODETI, declared independence from Portugal and sought integration with Indonesia.⁴³ The UDT and APODETI coalition asked for Indonesian intervention to “protect the lives and property of the people of Portuguese Timor who regarded themselves as Indonesian citizens.”⁴⁴ Indonesia answered this call on December 7, 1975 and invaded East Timor.⁴⁵ Indonesia gained control over East Timor and the pro-Indonesian parties declared the Provisional Government of East Timor and established a Regional Popular Assembly.⁴⁶ When the assembly petitioned Indonesia to formally integrate East Timor, Indonesia accepted, and East Timor became a province on July 17, 1976.⁴⁷

FRETILIN condemned the integration and claimed that the process was illegitimate.⁴⁸ As Indonesia struggled to maintain control over East Timor, mounting violence, along with famine and disease, claimed hundreds of thousands of lives as FRETILIN’s armed wing resisted the integration of

⁴⁰ BASIC DOCUMENTS, *supra* note 36, at xix.

⁴¹ *Id.*

⁴² *Id.* at xx, 39-40 (citing *Letter from the Chargé d'affaires a.i. of the Permanent Mission of Portugal to the United Nations*, U.N. GAOR, 30th Sess., U.N. Doc. A/10402 (1975); *Communiqué Issued by the Portuguese National Decolonization Commission*, U.N. GAOR, 30th Sess., Annex, U.N. Doc. A/10403-S/11890 (1975)).

⁴³ MARTIN, *supra* note 39, at 16.

⁴⁴ BASIC DOCUMENTS, *supra* note 36, at 40-41 (providing the text of the document: *Joint Proclamation by APODETI, UDT, KOTA and the Partido Trabalhista, Issued at Batugade*, U.N. GAOR, 30th Sess., Annex, U.N. Doc. A/C.4/808 (1975)).

⁴⁵ MARTIN, *supra* note 39, at 16.

⁴⁶ *Id.*; see BASIC DOCUMENTS, *supra* note 36, at 46 (providing the text of the document: *Statement Made by Mr. Arnaldo dos Reis Araujo, Chief Executive of the Provisional Government of East Timor on the Occasion of Presenting to President Suharto the Petition of the People of East Timor Addressed to the Government and the People of the Republic of Indonesia*, U.N. GAOR, 31st Sess., Annex IV, U.N. Doc. A/31/109-S/12097 (1976)).

⁴⁷ BASIC DOCUMENTS, *supra* note 36, at xx. For a full account of Indonesia’s invasion and its impact on East Timor, see JOHN G. TAYLOR, *INDONESIA’S FORGOTTEN WAR: THE HIDDEN HISTORY OF EAST TIMOR* (1991).

⁴⁸ BASIC DOCUMENTS, *supra* note 36, at xxi-xxiii. For a discussion comparing the East Timorese claim to self-determination versus the Indonesian assertion that it did not violate that right, see *id.*; see also Gerry J. Simpson, *The Politics of Self-Determination in the Case Concerning East Timor*, in *INTERNATIONAL LAW AND THE QUESTION OF EAST TIMOR*, *supra* note 38, at 251-68; see also Paula Escarameia, *The Meaning of Self-Determination and the Case of East Timor*, in *INTERNATIONAL LAW AND THE QUESTIONS OF EAST TIMOR*, *supra* note 38, at 119-50.

East Timor and the Indonesian military suppressed supporters of independence.⁴⁹

The continuing repression and violence in East Timor gained international attention in 1991 when Portugal, which never formally abandoned its formal responsibilities in East Timor, brought a case to the International Court of Justice, claiming that Australia violated East Timorese rights by signing the Timor Gap Treaty with Indonesia.⁵⁰ The second major event was the massacre at Santa Cruz Cemetery. Following a crackdown on independence supporters, a mass was held on November 12, 1991 for a young student killed by Indonesian soldiers.⁵¹ A large crowd assembled outside the church and walked to the cemetery, shouting pro-independence slogans, and gathering more participants along the way.⁵² As the participants gathered in the walled cemetery, Indonesian troops arrived and opened fire on them.⁵³ Estimated numbers of those killed and missing range from 85 to 600.⁵⁴

In response to Indonesia's actions, the Security Council adopted two resolutions. The first, Resolution 384, recognized East Timor's territorial integrity and its right to self-determination and called upon Indonesia to withdraw from the territory.⁵⁵ The Council echoed these sentiments in Resolution 389, passed a year later.⁵⁶ Despite these and other resolutions

⁴⁹ MARTIN, *supra* note 39, at 16-17. For a more detailed discussion of the continuing violence between the Indonesian military and pro-independence forces, and for a history of human rights abuses in East Timor under Indonesian control, see JOHN G. TAYLOR, *EAST TIMOR: THE PRICE OF FREEDOM* 79-91 (1999). Estimated East Timorese deaths under Indonesian rule are 200,000 out of a population of 700,000. Lauri Hannikainen, *The Case of East Timor from the Perspective of Jus Cogens*, in *INTERNATIONAL LAW AND THE QUESTION OF EAST TIMOR*, *supra* note 38, at 107-08. For an analysis of Indonesia's violations of international law on human rights, see Daniel Machover, *International Humanitarian Law and the Indonesian Occupation of East Timor*, in *INTERNATIONAL LAW AND THE QUESTION OF EAST TIMOR*, *supra* note 38, at 205-22.

⁵⁰ BASIC DOCUMENTS, *supra* note 36, at xx. Also in 1991, Indonesian authorities sentenced Xanana Gusmão, the East Timor resistance leader, to life in prison. *Id.* See Roger S. Clark, *The Substance of the East Timor Case in the ICJ*, in *INTERNATIONAL LAW AND THE QUESTION OF EAST TIMOR*, *supra* note 38, at 243-50.

⁵¹ TAYLOR, *EAST TIMOR: THE PRICE OF FREEDOM*, *supra* note 49, at xiii.

⁵² *Id.*

⁵³ *Id.* See BASIC DOCUMENTS, *supra* note 36, at 259-61 (providing the text of the following documents: *Report by the Special Rapporteur, Mr. Amos Wako, Pursuant to Commission on Human Rights Resolution 1991/71*, U.N. GAOR, 47th Sess., Agenda Item 12, U.N. Doc. E/CN.4/1992/30 (1992); *UN Sub-Commission on Prevention of Discrimination and Protection of Minorities, Resolution 1992/20: Situation in East Timor*, U.N. GAOR, 47th Sess., U.N. Doc. E/CN.4/1993/2 (1992)).

⁵⁴ BASIC DOCUMENTS, *supra* note 36, at xx (explaining that 85 deaths were acknowledged by Indonesian authorities, but that non-governmental organizations reported up to 600 deaths).

⁵⁵ *Id.* at 53 (providing the text for the document: S.C. Res. 384, U.N. SCOR, 34th Sess., U.N. Doc. S/RES/384 (1979)).

⁵⁶ *Id.* at 93 (providing the text for the document: S.C. Res. 389, U.N. SCOR, 31st Sess., U.N. Doc. S/RES/389 (1976)). In addition, the General Assembly adopted its first resolution opposing Indonesia's

upholding their principles, neither the Security Council nor the General Assembly characterized Indonesia's actions as expressly illegal or a violation of the use of force.⁵⁷ Further, the Security Council failed to recommend sanctions against Indonesia.⁵⁸ Nevertheless, the majority view in the UN was that there was no valid act of self-determination by the East Timorese to legitimize Indonesia's authority.⁵⁹ "In general, UN practice supports the view that the Indonesian invasion of East Timor was illegal, although State practice was not uniform and the strong condemnation one finds in other cases of intervention is lacking."⁶⁰ The General Assembly passed Resolution 37/30, charging the Secretary-General with the mandate to find diplomatic solutions to the self-determination debate over East Timor.⁶¹ However, this mandate yielded little progress.⁶²

In the mid 1990s, problems in East Timor attracted even more international attention and unfolding events suggested growing pressure for settlement. For example, Indonesia reached an agreement with the UN that human rights and humanitarian organizations could have access to East Timor.⁶³ In 1995, the UN arranged the first meeting of the All-Inclusive Intra-East Timorese Dialogue ("AIETD").⁶⁴ The 1996 Nobel Peace Prize awarded to two East Timorese from very different spheres of public life—Bishop Belo and the chief foreign representative of the resistance, José Ramos-Horta—also raised East Timor's profile internationally.⁶⁵ In 1997, the new UN Secretary-General Kofi Annan revitalized his role by appointing a Personal Representative ("PRSG") to East Timor.⁶⁶ As one commentator

actions: Resolution 3485. *Id.* at 123 (providing the text of the document: U.N. GAOR, 30th Sess., U.N. Doc. A/10023/Rev.1 (1975)).

⁵⁷ *Id.* at xxiii. See Roger S. Clark, *The 'Decolonisation' of East Timor and the United Nations Norms on Self-Determination and Aggression*, in INTERNATIONAL LAW AND THE QUESTION OF EAST TIMOR, *supra* note 38, at 65-102.

⁵⁸ BASIC DOCUMENTS, *supra* note 36, at xxiii.

⁵⁹ *Id.*

⁶⁰ *Id.* An even stronger view criticizing the absence of UN action: "Although no country save Australia had ever recognized the legitimacy of Indonesia's annexation of East Timor, the U.N. Security Council had always treated it as an internal Indonesian problem." James Traub, *Inventing East Timor (The Need to Completely Rebuild the Economy in East Timor)*, 79 FOREIGN AFF. 74, 75 (2000).

⁶¹ MARTIN, *supra* note 39, at 18.

⁶² *Id.*

⁶³ *Id.*

⁶⁴ *Id.* For background on the AIETD, see Tessa Piper, East Timor: Prospects for Resolution 16-22 (WRITENET for the United Nations Human Rights Committee Centre for Documentation and Research 1995) at <http://www.unhcr.ch/refworld/country/writenet/wriidn.htm> (last visited Oct. 1, 2001).

⁶⁵ Anthony Goldstone, East Timor: A Difficult Transition 4 (WRITENET for the United Nations Human Rights Committee Centre for Documentation and Research 1999) at <http://www.unhcr.ch/cgi-bin/texis/vtx/rsd/4+2wwBmerFJ69wwwMwwwwwwwtFqA0w5BaRoMdGcFqo-uPPyER0MFmqDFqm7y-dFqt2lygZf3zmbwwwwwwGFqmRT7BFqtElg207/rsddocview.pdf>.

⁶⁶ MARTIN, *supra* note 39, at 18.

has noted, "The UN role became increasingly proactive, with visits to Indonesia, Portugal, and East Timor itself."⁶⁷ In addition, the violence of Indonesia's 1997 parliamentary elections led to a strong upsurge in guerrilla activity in East Timor.⁶⁸

The fall of President Suharto on May 21, 1998, and the East Asian economic crisis heralded great change for East Timor. The new President of Indonesia, B. J. Habibie, offered East Timor "wide ranging" autonomy.⁶⁹ "On 27 January 1999, the Indonesian Government went further and announced that it was prepared to 'let go' of East Timor if its people rejected the autonomy package, effectively opening up the possibility of independence for the territory."⁷⁰ However, the government's preference was for East Timor to opt for wide-ranging autonomy.⁷¹ Moreover, Indonesia was unwilling to administer a transition to independence should the East Timorese choose autonomy.⁷² If the East Timorese voted for independence, then the process of separation was to be completed by January 1, 2000.⁷³

On May 5, 1999, the UN helped broker the peace settlement by sponsoring talks between the occupying power, Indonesia, and Portugal, which was still regarded as East Timor's administering power. The talks concluded with an election plan to determine whether the East Timorese wanted autonomy or independence from Indonesia.⁷⁴ On May 5, 1999, they signed the Agreement between the Republic of Indonesia and the Portuguese

⁶⁷ *Id.*

⁶⁸ Goldstone, *supra* note 65, at 4 (citing *East Timor Working Paper Prepared by the Secretariat for the Special Committee on the Situation with Regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples*, U.N. GAOR, 53rd Sess., U.N. Doc. A/AC.109/2111 (1998)).

⁶⁹ *Id.* at 1. "President Habibie made his decision to bring an end to the question of East Timor out of his own view of the interests of Indonesia (and in the belief that a vote for autonomy could be secured) rather than in the interests of the East Timorese." MARTIN, *supra* note 39, at 130.

⁷⁰ Goldstone, *supra* note 65, at 1.

[T]he new President seems to have calculated that with the economy in a severe crisis from which it would recover only with international support and with the military apparently powerless to halt continuing social unrest throughout Indonesia itself, the costs to Indonesia in terms of international standing, the diversion of military resources and financial outlay outweighed the benefits of holding on to [East Timor].

Id. at 5.

⁷¹ *Id.* at 8.

⁷² *Id.*

⁷³ *Id.* "[I]t also insisted that if the East Timorese voted for separation from Indonesia, their choice would still have to be validated by Indonesia's highest constitutional body, the People's Consultative Assembly." *Id.*

⁷⁴ *Id.* at 1. See *Agreement Between Indonesia and Portugal on the Question of East Timor*, U.N. SCOR, 53rd Sess., U.N. Doc. S/1999/513 (1999).

Republic on the question of East Timor ("Overall Agreement"), in which they formally requested UN assistance in conducting elections.⁷⁵ In response, the UN signed the Agreement between the United Nations and the Governments of Indonesia and Portugal Regarding the Modalities for the Popular Consultation Through a Direct Ballot⁷⁶ and the Agreement Between the United Nations and the Governments of Indonesia and Portugal Regarding Security Arrangements.⁷⁷ In these agreements, the UN pledged to organize and conduct elections in East Timor. Despite the positive developments, violence committed by "pro-integrationist" militias delayed progress.⁷⁸ Evidence suggests that these militias were armed and backed by the Indonesian military in the territory.⁷⁹ Nonetheless, the violence had mostly subsided by May 5, 1999 when a peace agreement was forged between pro-independence and pro-integration forces.⁸⁰

On July 11, 1999, the Security Council established the United Nations Mission in East Timor ("UNAMET") to organize the popular consultation on independence.⁸¹ On August 30, 1999, 98% of the East Timorese population went to the polls and 78.5% voted for independence by rejecting the proposed autonomy.⁸² Following the announcement of the results, pro-integration militias launched a campaign of violence.⁸³ According to the

⁷⁵ *Agreement Between Indonesia and Portugal on the Question of East Timor*, *supra* note 74.

⁷⁶ *Agreement Regarding the Modalities for the Popular Consultation of the East Timorese Through a Direct Ballot*, U.N. SCOR, 53rd Sess., Annex II, at 24, U.N. Doc. S/1999/513 (1999).

⁷⁷ *East Timor Popular Consultation*, U.N. SCOR, 53rd Sess., Annex III at 29, U.N. Doc. S/1999/513 (1999).

A secure environment devoid of violence or other forms of intimidation is a prerequisite for the holding of a free and fair ballot in East Timor. Responsibility to ensure such an environment as well as for the general maintenance of law and order rests with the appropriate Indonesian security authorities. The absolute neutrality of the TNI (Indonesian Armed Forces) and the Indonesian Police is essential in this regard.

Id.

⁷⁸ Goldstone, *supra* note 65, at 1.

⁷⁹ *Id.* "The evidence for the Indonesian military's complicity with the militias is overwhelming." *Id.* at 10. "There is considerable evidence that at least some of them not only owe their existence to the armed forces but have been fully integrated into the armed forces' structure." *Id.*

⁸⁰ *Id.*

⁸¹ S.C. Res. 1246, U.N. SCOR, 53rd Sess., U.N. Doc. S/RES/1246 (1999).

⁸² Strohmeier, *supra* note 2, at 63 n.2; see *Secretary-General Informs the Security Council: People of East Timor Rejected Special Autonomy Proposed by Indonesia* (Sept. 3, 1999) at <http://www.un.org/News/Press/docs/1999/19990903.sc6721.html>.

⁸³ *The Report of the Secretary-General on the Situation in East Timor*, U.N. SCOR, 54th Sess., ¶ 3-5, U.N. Doc. S/1999/1024 (1999). Toole criticizes the UN for failing to negotiate the most basic element of their role in conducting and monitoring elections: security. Jennifer Toole, *Notes and Comments: A False Sense of Security: Lessons Learned From the United Nations Organization and Conduct Mission in East Timor*, 16 Am. U. Int'l L. Rev. 199 (2000). Compare MARTIN, *supra* note 39, at 130 ("[I]f the international

Overall Agreement, Indonesia was responsible for maintaining peace and security during the elections.⁸⁴ However, the Indonesian authorities did not respond effectively to the violence, and many East Timorese were killed or displaced from their homes after the elections.⁸⁵ Countries like Portugal and Australia called for swift action by the UN to establish an international force if the situation deteriorated.⁸⁶ Australia placed its troops on formal alert to be ready to evacuate UNAMET or to lead a multilateral force on September 8th.⁸⁷ One week later, the Security Council authorized a multinational force under Chapter VII, named "International Force, East Timor" ("INTERFET"), to restore order.⁸⁸

On October 25, 1999, the Security Council established the UNTAET with a broad mandate: to provide security and maintain law and order; to establish an effective administration; to assist in the development of civil and social services; to coordinate and deliver humanitarian, rehabilitation and development assistance; to support capacity-building for self-government; and to assist in the establishment of conditions for sustainable development.⁸⁹

B. UNTAET

The groundwork for UNTAET was laid in the Overall Agreement between Indonesia and Portugal of May 5, 1999.⁹⁰ The Secretary-General's

community had been able to foresee the full scale of the violence after the ballot, it could not have embarked upon the popular consultation.").

⁸⁴ *Agreement Between Indonesia and Portugal on the Question of East Timor*, *supra* note 74, at 6.

⁸⁵ For a detailed discussion of the violence surrounding the August 1999 election and the role of UNAMET, see GUNS AND BALLOT BOXES: EAST TIMOR'S VOTE FOR INDEPENDENCE 117-34 (Damien Kingsbury ed., Monash Asia Institute 2000); see also *The Report on the Secretary-General on the Situation in East Timor*, *supra* note 83.

⁸⁶ MARTIN, *supra* note 39, at 103.

⁸⁷ *Id.* at 114-15.

⁸⁸ S.C. Res. 1264, U.N. SCOR, 54th Sess., ¶ 3, U.N. Doc. S/RES/1264 (1999) (authorizing the establishment of a multinational force with the following tasks: "to restore peace and security in East Timor, to protect and support the United Nations Mission in East Timor in carrying out its tasks and, within force capabilities, to facilitate humanitarian assistance operations . . ."). See also *The Report on the Secretary-General on the Situation in East Timor*, *supra* note 83, at ¶ 6-8; *Letter Dated 15 October 1999 from the Secretary-General Addressed to the President of the Security Council*, U.N. SCOR, 54th Sess., U.N. Doc. S/1999/1072 (1999) (reporting the INTERFET's operations to the Security Council); *Letter Dated 29 October 1999 from the Secretary-General Addressed to the President of the Security Council*, U.N. SCOR, 54th Sess., U.N. Doc. S/1999/1106 (1999) (reporting the INTERFET's operations to the Security Council); *Letter Dated 12 November 1999 from the Secretary-General Addressed to the President of the Security Council*, U.N. SCOR, 54th Sess., U.N. Doc. S/1999/1169 (1999) (reporting the INTERFET's operations to the Security Council).

⁸⁹ S.C. Res. 1272, U.N. SCOR, 54th Sess., U.N. Doc. S/RES/1272 (1999).

⁹⁰ *Agreement Between Indonesia and Portugal on the Question of East Timor*, *supra* note 74.

office was deeply involved in this process, and drafted proposals for elections and the transition.⁹¹ Three aspects of the Overall Agreement set the preconditions for a durable peace plan. First, the Overall Agreement requested the Secretary-General to implement elections in which East Timorese would achieve self-determination by voting either to be independent from Indonesia or to remain a part of Indonesia with a more autonomous relationship.⁹² Second, the parties agreed to abide by the outcome of the elections, even though they disagreed on the best final status for East Timor.⁹³ Third, the appendixes to the Overall Agreement set out frameworks for implementing East Timor's status change following the elections for both of the possible outcomes.⁹⁴

UNTAET followed other UN missions in East Timor with more restricted mandates. The UN established UNAMET to conduct the elections, but did not charge it with maintaining peace and security.⁹⁵ After Indonesia failed to stop the violence surrounding the 1999 elections,⁹⁶ the Security Council authorized the multinational force, INTERFET, to take all necessary measures to protect and support UNAMET in its tasks.⁹⁷ The same Security Council resolution authorizing INTERFET also contemplated a larger role for the UN in East Timor than that of UNAMET, namely one of transitional administrator in a UN Peacekeeping operation to implement the popular election.⁹⁸ "In the wake of post-ballot violence [of the 1999 elections], the civil administration in East Timor was no longer functioning, the judiciary and court systems had ceased to exist and essential services were on the brink of collapse."⁹⁹ Following this reality, the Secretary-General suggested in a report that UNTAET should be established under the authority of the Security Council, vested in the Secretary-General, and exercised by the Special Representative.¹⁰⁰ This report set out a comprehensive plan for a UN transitional authority, listing seventy parts and

⁹¹ *Agreement Regarding the Modalities for the Popular Consultation of the East Timorese Through a Direct Ballot*, *supra* note 76.

⁹² *Agreement Between Indonesia and Portugal on the Question of East Timor*, *supra* note 74, at 5.

⁹³ *Id.*

⁹⁴ *Agreement Regarding the Modalities for the Popular Consultation of the East Timorese Through a Direct Ballot*, *supra* note 76.

⁹⁵ S.C. Res. 1246, *supra* note 81.

⁹⁶ *See, e.g.*, Jarat Chopra, Introductory Note to UNTAET Regulation 13, 39 I.L.M. 936 (2000) (describing Indonesia's role in the violence of the 1999 elections).

⁹⁷ S.C. Res. 1264, *supra* note 88.

⁹⁸ *Id.* at ¶ 11 (inviting the Secretary-General to "plan and prepare for a United Nations transitional administration in East Timor, incorporating a United Nations peacekeeping operation . . .").

⁹⁹ *Question of East Timor: Progress Report of the Secretary-General*, U.N. GAOR, 54th Sess., Agenda Item 96, at 7, ¶ 37, U.N. Doc. A/54/654 (1999).

¹⁰⁰ *The Report of the Secretary-General on the Situation in East Timor*, *supra* note 83.

sub-parts of UNTAET's potential mandate.¹⁰¹ This report proposed that UNTAET would be empowered to exercise all legislative and executive authority in East Timor.¹⁰² From its inception, policy makers envisioned UNTAET with a broad mandate to fulfill a mission of unparalleled dimensions.

The Security Council acted upon the report and established UNTAET pursuant to its powers under Chapter VII of the UN Charter.¹⁰³ The Council set out broad powers and responsibilities for UNTAET that closely followed the mandate proposed in the Secretary-General's report.¹⁰⁴ UNTAET's mandate was set out in its founding instrument, Security Council Resolution 1272.¹⁰⁵ The main components of its structure were: (1) a governance and public administration component, including an international police force; (2) a humanitarian assistance and emergency rehabilitation component; and (3) a military component.¹⁰⁶ UNTAET regulations are highly detailed and evince a comprehensive plan to reconstruct the political, legal, financial, military, and civil components of East Timor.¹⁰⁷

UNTAET was charged with establishing an effective administration in East Timor—a great challenge considering East Timor's state of devastation.¹⁰⁸ For example, UNTAET faced rebuilding a physical infrastructure that had been mostly destroyed by civil war.¹⁰⁹ Another aspect of restoration was the rebuilding of the judicial system in the absence of basic essentials, like the lack of qualified professionals and law books.¹¹⁰

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ S.C. Res. 1272, *supra* note 89.

¹⁰⁴ *Id.*

¹⁰⁵ UNTAET was created by the Security Council in October 1999. S.C. Res. 1272, *supra* note 89.

¹⁰⁶ *Id.* at ¶ 3.

¹⁰⁷ UNTAET promulgated an incredibly detailed and comprehensive set of regulations addressing every aspect of rebuilding East Timor. The regulation topics include legal reforms (civil and criminal), economic reforms (budget and financial management, currency, appropriations), political reforms (establishing the council of ministers, electoral offenses, electing a constituent assembly), police and military reforms (prisons, police service, code of military discipline, East Timor defense force), and judicial reforms (legal aid service, commission for reception, truth, and reconciliation). *Report of the Secretary-General on the United Nations Transitional Administration in East Timor*, U.N. SCOR, 55th Sess., U.N. Doc. S/2000/53 (2000). See UNTAET Regulations UNTAET/REG/2001/1-28, at <http://www.un.org/peace/timor/untactR/r-2001.htm> (last visited Apr. 27, 2002).

¹⁰⁸ The challenge of establishing an administrative framework in East Timor was so great because every level of infrastructure had to be reconstructed from scratch. Traub, *supra* note 60, at 77.

¹⁰⁹ *The Report on the Secretary-General on the Situation in East Timor*, *supra* note 83, at ¶ 11-13.

¹¹⁰ On the administration of the law in East Timor under the UNTAET plan, see generally Strohmeier, *supra* note 2:

The United Nations, which traditionally promotes international law, was actually mandated, both in Kosovo and in East Timor, to legislate and create new law in areas that normally fall within the competence of a national legislature. By promulgating UN

UNTAET was also instructed to develop social services, as well as ensure coordination and delivery of humanitarian assistance, rehabilitation and development assistance.¹¹¹ However, while endowed with administrative authority, the ultimate goal of UNTAET was to support capacity-building for self-government.¹¹² UNTAET also was charged to assist in laying the groundwork for sustainable development, a job that is just beginning, as the economic viability of independent East Timor is only now becoming a reality.¹¹³

UNTAET's mandate was remarkable for many reasons. First, the breadth of the mandate contemplated a peacekeeping mission that went far beyond the limits of past missions. The first generation of UN peacekeeping had focused on running elections, promoting security, and helping to implement peace agreements.¹¹⁴ In addition to these traditional roles, UNTAET was empowered to exercise all legislative and executive powers and authorized to take all necessary measures to fulfill its mandate.¹¹⁵ UNTAET's mandate established a wide-ranging plan to rebuild government and civil society.

regulations that have the status of laws and supersede any other law on the regulated matter at issue, the head of the UN mission, in effect, becomes the exclusive legislator of the administered territory. . . . As the experience in Cambodia has shown, many of these regulations remain in force even after the completion of the UN transitional administration, or serve as a blueprint for subsequent national legislation.

Id. at 63 n.4. See also S.C. Res. 1272, *supra* note 89, at ¶ 6 (stating that the Transitional Administrator will have the power to enact new laws and regulations and to amend, suspend or repeal existing ones).

¹¹¹ Daniel Fitzpatrick, *Land Policy in Post-Conflict Circumstances: Some Lessons from East Timor*, in NEW ISSUES IN REFUGEE RESEARCH, WORKING PAPER NO. 58, 6 (WRITENET for the United Nations Human Rights Committee Centre for Documentation and Research 2002) at <http://www.unhcr.org> (estimating that 75% of the population was displaced—450,000 people were internally displaced and 300,000 fled or were forcibly transported across the border to West Timor); JAMES DUNN, CRIMES AGAINST HUMANITY IN EAST TIMOR, JANUARY TO OCTOBER 1999: THEIR NATURE AND CAUSES 11 (1999), at <http://www.etan.org/etanpdf/pdf1/dunn.pdf> (reporting that more than 500,000 Timorese, or more than 60% of the entire population of East Timor, were displaced); Strohmeyer, *supra* note 2, at 63 n.19 (estimating that more than one-third of East Timor's pre-September 1999 population were temporarily dislocated and that tens of thousands of people left their homes and escaped to safer locations in the mountainous regions of East Timor).

¹¹² The Security Council "[s]tresses the need for the Transitional Administration to consult and cooperate closely with the East Timorese people in order to carry out its mandate effectively with a view to the development of local democratic institutions, including an independent East Timorese human rights institution, and the transfer to these institutions of its administrative and public service functions." S.C. Res. 1272, *supra* note 89.

¹¹³ Goldstone, *supra* note 65, at 13. "East Timor lacks the most basic necessities: not just doctors, dentists, accountants, lawyers, and police, but also tables, chairs, pots, and pans. . . . It would not be far from the truth to say that East Timor has no economy." Traub, *supra* note 60, at 74.

¹¹⁴ See generally PAUL F. DIEHL, INTERNATIONAL PEACEKEEPING 21-28 (1994).

¹¹⁵ S.C. Res. 1272, *supra* note 89.

The scope of UNTAET's authority was necessary for two reasons. In the absence of local democratic institutions, UNTAET needed to be able to fill the political void left by Indonesia. Second, East Timor was in such a state of devastation and chaos that there was no infrastructure on which to append a traditional peacekeeping mission.¹¹⁶

IV. COMPARING AND CONTRASTING UNTAC AND UNTAET

Cambodia and East Timor both have colonial legacies and have undergone upheaval in the latter half of the twentieth century. Both have been ravaged by civil war for over twenty years and, at the time UN peacekeeping missions were initiated, lacked basic infrastructure, civil servants, or economic systems.¹¹⁷ However, there are significant differences in their histories and their political and social contexts that affected the prospect for success of UN peacekeeping and nation-building efforts.¹¹⁸ Internal differences and historical context are salient, because regional historical developments impacted East Timor and Cambodia differently. Unlike East Timor, Cambodia became a focus of twentieth century geopolitical struggles in Asia.¹¹⁹ Thus, Cold War political polarization had an impact on the efficacy of the UN in Cambodia.

Also, the political situations in these countries were very different at the time that peace settlements were proposed. There was broad support in East Timor for the peace plan.¹²⁰ In contrast, although there was also support among Cambodians for a peace plan, the provisions of the settlement were contentious and the peace process was inadequate.¹²¹ Based on the premise of good faith, the Paris Agreements did not specifically

¹¹⁶ UNTAET staff members will never be able to forget the panorama of devastation that awaited them upon their arrival in East Timor: most public and many private buildings ruined and smoldering in the midst of what had once been towns and villages, now all but abandoned by their former inhabitants, cut off from transport and communication, and lacking a governmental superstructure. Strohmeyer, *supra* note 2, at 50. "[I]t was estimated that between sixty and eighty percent of all public and private buildings had been destroyed in the violence of September 1999." *Id.* at 57.

¹¹⁷ RATNER, *supra* note 1, at 160.

¹¹⁸ *Id.* at 4 (cautioning that the predilection to label a UN mission, like UNTAC, either a success or failure will not render a productive analysis because there may be exogenous factors beyond the control of the mission that are unique to the country in which the mission takes place).

¹¹⁹ "At least for the last 200 or so years, . . . Cambodia has, to its detriment, been of interest to other states not because of the aspirations of its people, but because of its position in the power struggles over Indochina and Southeast Asia." RATNER, *supra* note 1, at 154.

¹²⁰ See *supra* notes 74 to 82 and accompanying text.

¹²¹ FINDLAY, *supra* note 12, at 8.

provide for enforcement or sanctions in the event of non-compliance by the parties.¹²²

V. CONSENT

In 1992, then Secretary-General Boutros Boutros-Ghali defined peacekeeping as:

the deployment of a United Nations presence in the field, hitherto with the consent of all the parties concerned, normally involving United Nations military and/or police personnel and frequently civilians as well. Peace-keeping is a technique that expands the possibilities for both the prevention of conflict and the making of peace.¹²³

The competence of the UN to undertake peacekeeping operations lies in its Charter. Because the UN Charter does not explicitly address peacekeeping,¹²⁴ the peacekeeping powers of the UN are implied. Under Article 1 of the UN Charter, one of the primary purposes of the UN is to maintain international peace and security.¹²⁵ The UN actions to maintain peace and security are limited by Article 2, which cautions that nothing in the Charter authorizes the UN to intervene into domestic matters.¹²⁶ Many

¹²² *Id.* at 15.

¹²³ RATNER, *supra* note 1, at 16 (citing *An Agenda for Peace: Preventative Diplomacy, Peacemaking and Peacekeeping, Report of the Secretary-General Pursuant to the Statement Adopted by the Summit Meeting of the Security Council on 31 January 1992*, U.N. SCOR, 47th Sess., Agenda Item 20, U.N. Doc. A/47/277-S/24111 (1992)).

¹²⁴ RATNER, *supra* note 1, at 30.

¹²⁵ U.N. CHARTER art. 1, para. 1 provides:

To maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace.

Id.

¹²⁶ U.N. CHARTER art.2, para. 1 provides:

Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter; but this principle shall not prejudice the application of enforcement measures under Chapter VII.

Id.

UN peacekeeping operations have been anchored in Chapter VI, which describes the role of the UN in the peaceful settlement of disputes.¹²⁷ In order to engage in efforts to create settlements and keep the peace between disputing parties within a state, the UN requires the parties' consent, unless acting pursuant to its Chapter VII enforcement powers.¹²⁸ Under Chapter VII, the Security Council can authorize a peace enforcement plan without the consent of the parties to the dispute when the situation is a threat to international peace and security, and Article 2 does not limit UN actions taken under this chapter. Although Chapter VII allows the Security Council to authorize peace enforcement plans, there are many political and logistical impediments to such endeavors.¹²⁹ While consent might not be legally necessary for the UN to be competent to undertake peace enforcement actions under Chapter VII, the parties' consent acts as an assurance that peace settlements will be durable.¹³⁰ In addition, consent to UN peacekeeping maintains the principles of non-interference and sovereignty set out in Article 2.¹³¹

Peacekeeping was only marginally effective before the Soviet Union dissolved.¹³² Before that, UN peacekeeping missions did not engender much hope for the resolution of conflicts,¹³³ because the Cold War polarized the membership of the Security Council and members often used their veto power to prevent any UN peace enforcement or peacekeeping actions.¹³⁴ While the efficacy of UN peacekeeping was in doubt during the Cold War, new efforts in the late 1980s and early 1990s demonstrated that UN

¹²⁷ "It has generally been assumed that peacekeeping falls under Chapter VI. . . They also depended on the consent of the conflicting parties—thus reinforcing state sovereignty as the legal linchpin of international society—and the circumstances where a ceasefire had been agreed, and there was therefore a peace to keep." JAMES MAYALL, *Introduction, THE NEW INTERVENTIONISM, 1991-1994*, at 7 (James Mayall, ed., Cambridge University Press 1996). See generally RATNER, *supra* note 1, at 56-60.

¹²⁸ [T]he principle of consent, first stated by Dag Hammarskjöld in his 1956 report to the General Assembly on the Sinai operation, serves to differentiate peacekeeping from the emplacement of UN personnel in conflict situations without the parties' consent under Chapter VII of the UN Charter, what is best termed peace enforcement. RATNER, *supra* note 1, at 17. For a more detailed discussion of consent bases for UN peacekeeping missions, see *id.* at 25-41.

¹²⁹ See, e.g., *id.* at 147-48 (explaining that the Security Council, which could have approved a peace enforcement plan for Cambodia, did not want to impose a settlement upon unwilling parties; rather, the UN presence was based on consent of the Cambodian government and the opposition parties, as it had been in other second generation missions involving conflicts with an internal dimension).

¹³⁰ See generally *id.* at 28-29.

¹³¹ See generally *id.* at 31-37.

¹³² Some argue that UN peacekeeping in this era was mere observation and possibly extended the conflicts by removing incentives to settle the dispute. *Id.* at 10.

¹³³ *Id.*

¹³⁴ See generally DIEHL, *supra* note 114, at 21-28.

peacekeeping efforts could be effective.¹³⁵ In addition to the de-escalation of Cold War politics, trends emerged that increased the need for UN peacemaking and peacekeeping. Rising ethnic violence in Africa and the Balkans required a collective response from UN members.¹³⁶ Responding to large-scale ethnic violence, the UN dispatched missions to areas including Somalia, Rwanda, and Yugoslavia.¹³⁷ Another factor affecting the development of UN peacekeeping was the number of states in transition to independence or democracy in this period. To meet these needs, the UN sent missions to Namibia, Haiti, South Africa, and eventually to Cambodia and East Timor.¹³⁸

The UN established UNTAC and UNTAET under different chapters of its charter. The Security Council authorized UNTAC under Chapter VI of its charter¹³⁹ and UNTAET under Chapter VII.¹⁴⁰ Consent was essential to the role of the UN in East Timor, even though it was not legally required under Chapter VII. Notwithstanding these different legal bases, the UN peacekeeping missions in East Timor and Cambodia have similar consensual bases. In both cases, the mission was based on the parties' initial consent to a UN presence. Both settlement treaties provided very specific language authorizing a UN transitional authority.¹⁴¹ In Cambodia and East Timor, the character of the consent that the UN sought to use as its basis for authority was broad because both the UNTAET and the UNTAC arose out of peace settlements between interstate and intrastate parties.¹⁴²

What distinguishes the UNTAET from UNTAC is the quality of the consent underpinning these missions. Durable, lasting consent is more likely when all parties representing effective sources of power in the conflict negotiate peace settlements out of a genuine spirit of reconciliation.¹⁴³ In the

¹³⁵ JANET E. HEININGER, *PEACEKEEPING IN TRANSITION: THE UNITED NATIONS IN CAMBODIA* 3 (1994) (explaining the expansion of the UN's peacekeeping efforts from 1988 to 1993, in which it created eighteen new peacekeeping operations, in comparison with thirteen during its first forty-three years).

¹³⁶ RATNER, *supra* note 1, at 14-15.

¹³⁷ RATNER, *supra* note 1, at 13; *see generally* David J. Scheffer, *U.N. Engagement in Ethnic Conflicts*, in *INTERNATIONAL LAW AND ETHNIC CONFLICT* 147-77 (David Wippman ed., 1998).

¹³⁸ *See generally* RATNER, *supra* note 1, at 13-16.

¹³⁹ HEININGER, *supra* note 135, at 66.

¹⁴⁰ S.C. Res. 1272, *supra* note 89.

¹⁴¹ *Agreement Regarding the Modalities for the Popular Consultation of the East Timorese Through a Direct Ballot*, *supra* note 76.

¹⁴² Traditional treaty law focuses on the consent of states, but this may not be an adequate basis for consent. "Clearly, consent demands a settlement with the concurrence of the principal holders of effective power in the affected state or states." RATNER, *supra* note 1, at 28-29.

¹⁴³ Ratner notes that different settlement plans and the related peacekeeping operations will evince more or less firm, durable consent: "[I]t would seem that those negotiated directly by all the parties representing effective sources of power in the conflict, out of a genuine spirit of reconciliation, are most

Cambodian case, consent was never withdrawn, but it did erode. Cambodian factions agreed to a UN-led transition to democracy, but their consent disintegrated as various parties refused to disarm or meaningfully participate. In contrast, the East Timorese collaborated closely with UNTAET and the political personalities and parties remained committed to the transitional plan.

A. *Consent in Cambodia*

One of the problems in the Cambodian case was the fluidity of consent to the UNTAC mission.¹⁴⁴ As UNTAC worked to implement its mandate, the quality of parties' consent affected its ability to be effective.¹⁴⁵ From the beginning of the peace process, consent within Cambodia on the settlement was fragmented.¹⁴⁶ The parties' consent to the Overall Agreement was due in part to pressure by their external sponsors, such as the former Soviet Union, Vietnam, and China, rather than to true reconciliation.¹⁴⁷ The factions' competing visions of the accord undermined

likely to lay the groundwork for smooth, though hardly incident-free, second-generation peacekeeping missions." RATNER, *supra* note 1, at 29.

¹⁴⁴ Commenting on the unprecedented degree of authority that UNTAC assumed, Doyle noted that, "In Cambodia, . . . this authority was exercised with the formal consent of the four parties to Cambodia's long civil strife under terms negotiated in a comprehensive framework and embodied in the Paris Agreements of 1991. But this consent proved to be fluid; all the parties resisted, and one, the Khmer Rouge, withdrew altogether and attacked UNTAC itself." DOYLE, *supra* note 1, at 13. "[A]uthentic and firm consent in the aftermath of severe civil strife such as that Cambodia endured is rare." *Id.* at 87.

¹⁴⁵ DOYLE, *supra* note 1, at 66, 68-70.

[T]he non-cooperation of parties to the October 1991 Paris Agreement—principally the Khmer Rouge and the State of Cambodia—made key provisions of the peace plan virtually impossible to implement. Although the power-sharing problem in the transitional period was only set aside by enshrining the 'sovereignty, independence and unity of Cambodia in the SNC, UNTAC's timetable was still predicated on the assumption that all four factions would be committed to the peace process. The UNTAC operation was thus based firmly on traditional principles of peacekeeping without provision being made for enforcing any aspect of the plan submitted by Secretary-General, Boutros Boutros-Ghali, for approval by the Security Council on 19 February 1992. As the Secretary-General himself put it shortly before the elections, UNTAC could only solve problems "through dialogue, persuasion, negotiation and diplomacy."

Berdal & Leifer, *supra* note 26, at 37.

¹⁴⁶ "The [internal] factions only unwillingly succumbed to the pressure of their outside supporters, who had tired of the Cambodia conflict." RATNER, *supra* note 1, at 158.

¹⁴⁷ DOYLE, *supra* note 1, at 16-18 (setting out the Cambodian factions and their external sponsors). "The agreements between the Cambodians which the Paris Accords embodied were extremely fragile, not only because of the bitterness and the animosities aroused by decades of civil war but also because fundamentally they were the product of efforts made by the international community rather than by Cambodians themselves." FINDLAY, *supra* note 12, at 16.

the consensual foundation of the UN peacekeeping mission.¹⁴⁸ As one commentator has observed, "With such tenuous consent, the smallest action by the UN against the interests of a party would be met with entrenched resistance, accusations of bias or violations of the accord, and impasse."¹⁴⁹

An unexpected problem was the figure of Prince Sihanouk, who had been expected to play a unifying role. Instead, Sihanouk alternately avoided responsibilities and demanded that UNTAC defer to his decisions—eventually opting out of the process altogether.¹⁵⁰ A great factor in the fragility of the consent underpinning UNTAC was the volatility of the internal parties. Far from cooperating with UNTAC as promised, the Khmer Rouge actively resisted UNTAC's authority, fearing loss of control over its territory.¹⁵¹ In addition, SOC cooperation was limited if not superficial.¹⁵² Furthermore, in 1992, these two groups became embroiled in violence: the Khmer Rouge massacred ethnic Vietnamese, and the SOC retaliated by killing Khmer Rouge officials.¹⁵³ The violence spread when the Khmer Rouge attacked UNTAC personnel, killing twenty-four people.¹⁵⁴ When the results of the UNTAC organized elections were announced, SOC alleged that the vote was unfair and initially withheld its recognition of the results.¹⁵⁵

UNTAC's consent basis began to dissolve. "[I]n terms of resources, planning and execution, the UN operation suffered from major limitations which were not conducive to a lasting settlement."¹⁵⁶ The consequence of these developments was that UNTAC had to fulfill its charge in war-like

¹⁴⁸ RATNER, *supra* note 1, at 158.

¹⁴⁹ *Id.*

¹⁵⁰ "Further complicating the UN's task of bringing stability to Cambodia was the erratic attitude and behavior of Norodom Sihanouk throughout the transitional period." Berdal & Leifer, *supra* note 26, at 37. See also RATNER, *supra* note 1, at 159-60.

¹⁵¹ RATNER, *supra* note 1, at 158.

¹⁵² *Id.*

¹⁵³ *Id.* at 158-59.

¹⁵⁴ *Id.* at 159.

¹⁵⁵ *Report of the Secretary-General Pursuant to Paragraph 7 of Resolution 840 (1993)*, U.N. SCOR, 47th Sess., at 1-2, U.N. Doc. S/26090 (1993).

¹⁵⁶ Berdal & Leifer, *supra* note 26, at 37:

With the notable exceptions of its electoral and repatriation components, as well as that part of the civil administration responsible for information, the UN operation in Cambodia demonstrated that the Organisation was ill equipped to initiate and sustain large-scale multi-component missions. UNTAC's operational efficiency was adversely affected by weakness in areas of logistics organization and of command, control and communications. The quality of some of the troops and civilian personnel serving with the authority was also open to question.

Id.

conditions.¹⁵⁷ In addition, the SNC never developed into a body for national reconciliation, which required UNTAC to undertake more responsibilities, eroding the consent basis of the council.¹⁵⁸

The interaction of these two adverse factors, non-cooperation by the parties concerned and structural weaknesses in the UN peacekeeping machinery, resulted in a situation that, by the time the operation was completed in September 1993, differed markedly from that envisaged by the eighteen signatories to the Paris Agreement in October 1991.¹⁵⁹

B. *UNTAET and Consent*

In East Timor the peace settlement gained a great deal of external and internal momentum. Although Indonesia and Portugal were the only parties to the Agreement, there was widespread acceptance of the peace settlement. Many factors coincided to place pressure on Indonesia to allow the East Timorese to vote on self-determination, including international pressure in support of a political settlement.¹⁶⁰

Under international law, the UN requires the consent of host states for peacekeeping missions if the Security Council does not invoke its Chapter VII peace enforcement powers, but does not require consent from non-state actors.¹⁶¹ However, the consent bases of a peacekeeping mission are stronger if there is clear support for the UN's presence by the non-state actors in effective power.¹⁶² In addition to external pressure to resolve the question of East Timor's status, there was growing support within East Timor in the late 1990s for a UN role in the settlement.¹⁶³ The support for

¹⁵⁷ RATNER, *supra* note 1, at 159.

¹⁵⁸ *Id.*

¹⁵⁹ Berdal & Leifer, *supra* note 26, at 37.

¹⁶⁰ See *supra* notes 55 to 73 and accompanying text. See generally Taylor, *supra* note 38, at 20-34 (describing the peacemaking process in which Indonesia was compelled to accept a settlement including election options of both autonomy or independence for East Timor).

¹⁶¹ See *supra* note 142 and accompanying text.

¹⁶² RATNER, *supra* note 1, at 28-29.

¹⁶³ Louise Williams, *Students Meet MPs, Push For Referendum*, SYDNEY MORNING HERALD, June 16, 1998, at 8 (describing a pro-independence protest where students demanded UN intervention and rejected Habibie's suggestion of a special autonomous status for East Timor); *East Timor's Gusmão Calls for UN Peacekeeping Force*, AFX NEWS (AP), Apr. 6, 1999 (reporting that pro-independence leader Xanana Gusmão called for a UN peacekeeping force to be sent to East Timor to halt factional violence); *Leaders Call To Arms*, SYDNEY MORNING HERALD, Apr. 8, 1999, at 14 (recounting the call to arms of by Xanana Gusmão in the absence of a UN peacekeeping mission, as well as a Bishop Carlos Belo's proposal for the UN to send a team of human rights monitors).

the UN was not universal. There were reports of East Timorese public officials using their offices and public funds to campaign for autonomy and exerting pressure on civil servants to vote for their position.¹⁶⁴ Also, some commentators believed the violent clashes between pro-Indonesian and pro-independence groups surrounding the peace settlement indicated that the goals of the election plan were not realizable.¹⁶⁵ However, the results of the August 30, 1999 elections demonstrated that an overwhelming majority of East Timorese supported independence from Indonesia.¹⁶⁶ The 78.5% vote for independence from Indonesia solidified the East Timorese support for UNTAET.

The effect of the election in strengthening consent differentiates the East Timor case from Cambodia. In Cambodia, the factious history of the parties and the external funding of the various factions created an atmosphere of non-cooperation and politicking. In contrast, no parties opted out of the election process in East Timor.¹⁶⁷ High voter turnout and large majorities produced elections that reinforced consent, rather than eroding it, as had occurred in Cambodia.

UNTAET's administrative structure also safeguarded against the erosion of consent.¹⁶⁸ UNTAET's administrative control meant that its mandate to help East Timor transition to an independent government could be implemented by UNTAET directly, rather than through the kind of domestic council that slowed UNTAC's process in Cambodia. While UNTAET's mandate was to establish a working administration with East Timorese, it worked to implement the 2001 elections with a National Council whose members were appointed by the Transitional Administrator.¹⁶⁹ East Timorese participation in the administration was a top priority from the beginning.¹⁷⁰ However, unlike some of the Cambodian

¹⁶⁴ *Question of East Timor: Report of the Secretary-General*, U.N. SCOR, 54th Sess., ¶ 16, U.N. Doc. S/1999/803 (1999).

¹⁶⁵ Seth Mydans, *With Peace Accord at Hand, East Timor's War Deepens*, N.Y. TIMES, Apr. 26, 1999, at A3 (reporting that many analysts feared that settlement would ignite worse conflict); Seth Mydans, *Violence as East Timor Awaits Vote Count*, N.Y. TIMES, Sept. 2, 1999, at A8.

¹⁶⁶ *Secretary-General Informs Security Council People of East Timor Rejected Special Autonomy Proposed by Indonesia*, U.N. SCOR, 54th Sess., Press Release, U.N. Doc. SC/6721 (1999).

¹⁶⁷ Seth Mydans, *The Timor Enigma*, N.Y. TIMES, Sept. 8, 1999, at A12 (reporting that pro-Indonesia militias inexplicably backed off, and that the August 30, 1999 elections were peaceful).

¹⁶⁸ Compare Joel Beauvais, *Benevolent Despotism: A Critique of U.N. State-Building in East Timor*, 33 N.Y.U. J. INT'L L. & POL. 1101 (2001) (arguing that there were tensions between UNTAET's mandate to govern East Timor and to build capacity for self-governance at the same time).

¹⁶⁹ *Financing of the United Nations Transitional Administration in East Timor: Report of the Secretary-General*, U.N. GAOR, 55th Sess., at 6, ¶ 14, U.N. Doc. A/55/443 (2000).

¹⁷⁰ *Question of East Timor: Progress Report of the Secretary-General*, *supra* note 99, at 8, ¶ 41.

parties that had been in de facto control over portions of Cambodia, East Timor did not have any party that had been officially governing the country. Although the UNTAET's mandate did not include the integration of any official East Timorese parties into the process, it called upon different East Timorese leaders to participate.¹⁷¹

The governing structure between the 1999 and 2001 elections also helped to reinforce a broad East Timorese consent. Pursuant to the authority vested in the Secretary-General's Special Representative ("Transitional Administrator") under Security Council Resolution 1272, Sergio Vieira de Mello promulgated a series of regulations establishing the interim law-making structure.¹⁷² Under these regulations, the Transitional Administrator created the National Consultative Council (later the "National Council") to "be the primary mechanism through which the representatives of the people of East Timor shall actively participate in the decision making process during the period of the [UNTAET], and through which the views, concerns, traditions and interests of the East Timorese people will be represented."¹⁷³ The membership of the National Council was to include seven

A top priority of UNTAET is the establishment of a close consultation and liaison with the East Timorese. Working with Alexandre Gusmão of CNRT and other East Timorese leaders, the Special Representative of the Secretary-General has reached agreement on a National Consultative Commission. UNTAET will ensure that through this consultative mechanism, and by close liaison throughout all sectors of the administration, the needs and wishes of the East Timorese people are fully represented in the implementation of the transitional administration.

Id.

¹⁷¹ *The Report on the Secretary-General on the Situation in East Timor*, *supra* note 83, at ¶ 47:

In all elements of the functioning of the governance and public administration elements of UNTAET, the United Nations will work on the basis of the principles of participation and capacity-building. This will involve assigning East Timorese to positions within the transitional administrative structures to be established, where qualified individuals are available and can be identified. Where such persons are not available, UNTAET will nevertheless assign East Timorese to serve in positions inside the administrative structures together with international counterparts, and deliver sufficient training and capacity-building to enable these persons gradually to replace international staff. This will allow for the development throughout the duration of UNTAET, of a cadre of well-trained East Timorese capable of performing the administrative and public service functions necessary to support an independent East Timor.

Id.

¹⁷² *Report of the Secretary-General on the United Nations Transitional Administration in East Timor*, U.N. SCOR, 55th Sess., U.N. Doc. S/2000/53 (2000); *Report of the Secretary-General on the United Nations Transitional Administration in East Timor: Addendum*, U.N. SCOR, 55th Sess., at 5-8, U.N. Doc. S/2000/53/Add.1 (2000) (setting out Regulations No. 1999/2: On the Establishment of a National Consultative Council).

¹⁷³ *Report of the Secretary-General on the United Nations Transitional Administration in East Timor: Addendum*, *supra* note 172, at 5, §1, item 1.2.

representatives from the largest political group in East Timor, the National Council of East Timorese Resistance (“CNRT”), three representatives from other political groups existing prior to the 1999 elections, one representative from the Roman Catholic Church in East Timor, three UNTAET members to be selected by the Transitional Administrator, and the Transitional Administrator himself.¹⁷⁴ This makeup reflected the results of the 1999 popular elections.¹⁷⁵ The National Council was charged with the responsibility to make policy recommendations, and to strive for consensus in its decisions.¹⁷⁶ In addition to its policy-making role, the National Council was assigned to consult with East Timorese civil society, including religious groups, women, and youth.¹⁷⁷ Through these mechanisms, the Transitional Authority created a quasi-governmental council, roughly representative of the political alliances of the 1999 elections, that was to consult with civil society in creating policy for the newly-independent East Timor.

The civic education component of UNTAET further fortified East Timorese consent. In 1999, UNAMET fulfilled the education part of its mandate with a public education plan to disseminate information about the independence vote.¹⁷⁸ UNTAET continued this mandate, and worked to rebuild public information and communication networks.¹⁷⁹ As part of this effort, UNTAET conducted an information campaign to clarify its role and to explain the decision making process during the transition period.¹⁸⁰ UNTAET also encouraged public participation in the constitutional development process, providing civic education through training, mass information, and multiple civil society initiatives.¹⁸¹

¹⁷⁴ *Id.* at 6, § 2.

¹⁷⁵ *Id.* at 6, § 2, item 2.3.

¹⁷⁶ *Id.* at 6, § 3.

¹⁷⁷ *Id.* at 6, § 4.

¹⁷⁸ *Question of East Timor: Report of the Secretary-General*, U.N. SCOR, 54th Sess., p. 4, ¶ 19-21, U.N. Doc. S/1999/595 (1999) (explaining the information component of the elections, including radio, television, and print media); see also Civic Education Materials from the United Nations Mission in East Timor (UNAMET), at http://www.un.org/peace/etimor99/index_body.htm (last visited Apr. 29, 2002).

¹⁷⁹ *Report of the Secretary-General on the United Nations Transitional Administration in East Timor*, U.N. SCOR, 55th Sess., p. 14-15, ¶ 64-66, U.N. Doc. S/2000/53 (2000); *Report of the Secretary-General on the United Nations Transitional Administration in East Timor (for the period 27 July 2000 to 16 January 2001)*, U.N. SCOR, 55th Sess., p. 8, ¶ 41-42, U.N. Doc. S/2001/42 (2001).

¹⁸⁰ *Report of the Secretary-General on the United Nations Transitional Administration in East Timor*, U.N. SCOR, *supra* note 172, at 15, ¶ 65.

¹⁸¹ *Interim Report of the Secretary-General on the United Nations Transitional Administration in East Timor*, U.N. SCOR, 56th Sess., at 1, ¶ 4, U.N. Doc. S/2001/436 (2001).

VI. SCOPE AND STRENGTH OF THE UN PEACEKEEPING MANDATE

Many authors studying second-generation peacekeeping have created analytic frameworks in which to assess transitional authorities.¹⁸² This Comment analyzes the scope and strength of the UN transitional schemes in East Timor and Cambodia in a simplified framework for an introductory comparison of UNTAC and UNTAET.

A. *Scope of Authority*

UNTAET's scope of the authority was much greater than UNTAC's. In the case of UNTAC, the scope of authority was not sufficient to carry out its mandate.¹⁸³ In comparison, UNTAET had greater authority over the administration of East Timor.¹⁸⁴ Three key areas demonstrate the different authority granted to UNTAC and UNTAET: policing, administration and elections.

1. *Military and Civilian Policing*

First, UNTAC and UNTAET had different military and civilian policing authority. UNTAET had broad policing authority while the authority of UNTAC was limited. In Cambodia, the cease-fire set out in the Paris Agreement reduced the level of fighting, but did not eliminate it.¹⁸⁵ Therefore, there was a great need for UNTAC to monitor and ensure the peace. However, UNTAC was empowered only to verify the withdrawal of foreign forces and arms reduction.¹⁸⁶ While there are differing perspectives on UNTAC's success in fulfilling its disarmament mandate,¹⁸⁷ the Khmer Rouge's withdrawal from the process created a huge barrier to

¹⁸² See, e.g., THE UNITED NATIONS TRANSITIONAL AUTHORITY IN CAMBODIA (UNTAC): DEBRIEFING AND LESSONS 9-39 (Nassrine Azimi ed., 1995) (analyzing UNTAC in terms of its various components); DOYLE, *supra* note 1, at 32-71 (breaking down different categories on which to assess UNTAC's successes and failures); RATNER, *supra* note 1, at 41-50, 138-39.

¹⁸³ Berdal & Leifer, *supra* note 26, at 57-58 (arguing that UNTAC's responsibilities were not underpinned by the authority or capability to ensure that the Cambodian parties complied with the Paris Agreement).

¹⁸⁴ Strohmeyer, *supra* note 2, at 46-47.

¹⁸⁵ Berdal & Leifer, *supra* note 26, at 41.

¹⁸⁶ *Agreement on a Comprehensive Political Settlement of the Cambodia Conflict*, *supra* note 18, at 24-25.

¹⁸⁷ HEININGER, *supra* note 135, at 66-72 (arguing that UNTAC administrators refused to use force to ensure compliance with disarmament, that UNTAC's military and security deployment was slow, and that UNTAC lacked the power to enforce the cease-fire); see also RATNER, *supra* note 1, at 169-72 (arguing that UNTAC did impressive preparatory work for the disarmament phase, but that UNTAC was unable to fulfill its disarmament mandate due to Khmer Rouge's withdrawal from the process).

disarmament.¹⁸⁸ “UNTAET’s mandate contained no mechanism to enforce the cease-fire agreement. As a result, when disarmament did not take place, cease-fire violations increased.”¹⁸⁹

UNTAC had similar difficulties enacting its civilian policing powers. Experts identified different causes for the ineffectiveness of the civilian police power. One view was that UNTAC took an overly conservative approach when implementing the policing powers it did possess.¹⁹⁰ For example, after several politically motivated assassinations, UNTAC did not deploy a UN police force to counteract the breakdown of law and order.¹⁹¹ A second view was that UNTAC’s civilian police program was poorly conceived and implemented.¹⁹² Regardless of the cause, UNTAC’s civilian police component was ineffective at preventing or responding to violence¹⁹³ and was not even able to ensure the safety of its own personnel.¹⁹⁴ UNTAC’s military and civilian policing authority was not sufficient to fulfill the scale of the mandates with which it was charged.

The implementation of UNTAET’s military and civilian policing mandate differed on several counts. First, although both Cambodia and East Timor experienced violence as a result of the elections, the violence in East Timor did not occur during the elections of 1999, but afterwards, once the outcome was announced.¹⁹⁵ This meant that the East Timor election environment was more politically neutral than that in Cambodia. Another difference is that UNTAET had missions that preceded it. UNTAET’s policing powers came about as a result of the successes and failures of those earlier missions. The UN organization administering the elections, UNAMET, did not have a strong peacekeeping mandate,¹⁹⁶ and experts

¹⁸⁸ HEININGER, *supra* note 135, at 70-72.

¹⁸⁹ *Id.* at 70.

¹⁹⁰ *Cf.* DOYLE, *supra* note 1, at 67 (noting that although the Paris Agreement seemingly endorsed the use of force against one or more opposing factions, UNTAC administrators followed a policy of avoiding the use of force, despite outside criticism of their inaction).

¹⁹¹ Berdal & Leifer, *supra* note 26, at 44.

¹⁹² HEININGER, *supra* note 135, at 78-81 (explaining that deficiencies in the civil police component (“CIVPOL”) made it ineffective); *see also* RATNER, *supra* note 1, at 172 (arguing that CIVPOL was plagued by internal and logistical problems).

¹⁹³ “The civil police were charged with ensuring that law and order was maintained effectively and impartially, and that human rights and fundamental freedoms were fully protected. It quickly became apparent that this was an impossible task given the small number of police officers available.” HEININGER, *supra* note 135, at 79.

¹⁹⁴ Berdal & Leifer, *supra* note 26, at 41 (reporting that UNTAC lost fifty-six members of its forces in an attack, its personnel were kidnapped, and their equipment was frequently stolen).

¹⁹⁵ *See supra* notes 83 to 88 and accompanying text.

¹⁹⁶ S.C. Res. 1246, *supra* note 81, at ¶ 3, 10 (establishing UNAMET to conduct the 1999 elections and welcoming Indonesia’s decision to monitor and ensure the security of the election).

argue over whether the post-election violence in 1999 was foreseeable.¹⁹⁷ Either way, INTERFET re-established peace and security in East Timor,¹⁹⁸ and UNTAET has been successful in maintaining the peace since 1999, including during the 2001 constituent elections.¹⁹⁹

Two major security concerns existed as UNTAET took administrative control over East Timor: border security and on-going militia activity.²⁰⁰ As the UN began to develop UNTAET's security mandate, INTERFET administrators cautioned that "[g]iven the continuing volatile security situation in East Timor, the successor force to INTERFET should have a robust operational mandate."²⁰¹ When the Security Council adopted Resolution 1272, establishing UNTAET, it based the mission's mandate on Chapter VII of the UN Charter in order to authorize the transitional mission to take all "necessary measures to fulfill its mandate."²⁰² Resolution 1272 also set out clear guidelines for the transition from INTERFET to UNTAET.²⁰³

2. *Civil Administration Mandate*

The difference between the authority of UNTAC and that of UNTAET is also illustrated by their civil administration mandates. Creating an effective civil administration, unprejudiced by corruption or politics, is

¹⁹⁷ Compare Toole, *supra* note 83 (criticizing the UN for failing to negotiate the most basic element of their role in conducting and monitoring elections: security), with MARTIN, *supra* note 39, at 121-22 (arguing that the violence following the 1999 independence election was not foreseeable).

¹⁹⁸ See *supra* note 88 and accompanying text.

¹⁹⁹ *Id.*; see also *Report of the Secretary-General on the United Nations Transitional Administration in East Timor*, *supra* note 172, at p. 4-6, ¶ 14-24 (reporting on the security situation after UNTAET took over the administration of East Timor); *Report of the Secretary-General on the United Nations Transitional Administration in East Timor (for the period 27 July 2000 to 16 January 2001)*, *supra* note 179, at 2, ¶ 10-11 (reporting on security situation as militia activity continued); *Interim Report of the Secretary-General on the United Nations Transitional Administration in East Timor*, *supra* note 181, at 4, ¶ 19-24 (2001) (reporting that the security situation was good); *Report of the Secretary-General on the United Nations Transitional Administration in East Timor (for the period 25 July to 15 October 2001)*, U.N. SCOR, 56th Sess., at 1, ¶ 5, U.N. Doc. S/2001/983 (2001) (reporting that the amount of militia activity continued to decline).

²⁰⁰ See *supra* note 88 and accompanying text (reporting INTERFET's activities).

²⁰¹ *Letter Dated 15 October from the Secretary-General Address to the President of the Security Council*, *supra* note 88, at 6, ¶ 23.

²⁰² S.C. Res. 1272, *supra* note 89, at ¶ 4.

²⁰³ *Id.* at ¶ 9 (requesting that the Transitional Administration and the multinational force cooperate closely with each other, and with a view to replace the multinational force with the military component of the Transitional Administration).

necessary for a politically neutral environment in which to conduct free and fair elections.²⁰⁴

The Paris Agreements set out a transitional administration for Cambodia to fulfill this purpose, placing all administrative agencies in the fields of foreign affairs, national defense, finance, public security, and information under the direct control of UNTAC.²⁰⁵ Yet, UNTAC did not have enough actual authority to enact administrative reforms to carry out this mandate. The Paris Agreements also provided that UNTAC would work with the SNC in its administrative capacity.²⁰⁶ Although the SNC consisted of the four Cambodian parties, only the SOC had governmental structures.²⁰⁷ When UNTAC tried to exert its administrative authority, it found that it was unable to control the SOC administration.²⁰⁸ SOC officials were obstructionist and UNTAC was unable to monitor or control governmental agencies.²⁰⁹ "UNTAC tried hard to institute a neutral administration and an active SNC, but the SOC was determined to maintain its authority, placing the UNTAC beyond realization."²¹⁰ UNTAC had sufficient authority in the abstract, but within the actual context of Cambodian politics, its civil administration mandate was not feasible.

In contrast, UNTAET had both the authority to create rules to reform East Timor and the ability to implement them. UNTAET did not face the political challenges that UNTAC had in Cambodia, because the administrative government, Indonesia, pulled out of East Timor after the 1999 elections.²¹¹ Unlike UNTAC's vague administrative authority,²¹² UNTAET was granted specific powers that vested it with broad

²⁰⁴ The Paris Agreement Article 6 provides: "In order to ensure a neutral political environment conducive to free and fair general elections, administrative agencies, bodies and offices which could directly influence the outcome of elections will be placed under direct United Nations supervision or control." *Agreement on a Comprehensive Political Settlement of the Cambodia Conflict*, *supra* note 18, at 11-12.

²⁰⁵ *Id.* at 22-24.

²⁰⁶ "[T]he Secretary-General's Special Representative, in consultation with the SNC, will identify which administrative agencies, bodies, and offices could continue to operate in order to ensure normal day-to-day life in Cambodia, if necessary, under such supervision by UNTAC as it considers necessary." *Id.* at 23, ¶ 3.

²⁰⁷ FINDLAY, *supra* note 12, at 59.

²⁰⁸ *Id.* at 60; see also HEININGER, *supra* note 135, at 88.

²⁰⁹ Berdal & Leifer, *supra* note 26, at 44; see generally FINDLAY, *supra* note 12, at 59-63.

²¹⁰ BROWN & ZASLOFF, *supra* note 33, at 282 (describing in detail the events surrounding the election).

²¹¹ *Question of East Timor: Report of the Secretary-General*, U.N. SCOR, 54th Sess., at 1, ¶ 3, U.N. Doc. S/1999/862 (1999) (providing that if East Timor rejects autonomy in the 1999 election, Indonesia, Portugal, and the Secretary-General will arrange for a transfer of authority over East Timor to the UN).

²¹² "While the mandate clearly stated that [UNTAC] should be controlling, there were no guidelines as to how we should exercise control." FINDLAY, *supra* note 12, at 61 (quoting the comments of Lyndall McLean, Deputy Director of the Civil Administration Component).

administrative authority. In Security Council Resolution 1272, UNTAET was endowed with “overall responsibility for the administration of East Timor and [was] empowered to exercise all legislative and executive authority, including the administration of justice.”²¹³ Resolution 1272 also empowered UNTAET to “enact new laws and regulations and to amend, suspend or repeal existing ones.”²¹⁴ Pursuant to these powers, the UNTAET Transitional Administrator promulgated a series of regulations to implement elections, establish a National Council, reconstitute the judiciary, encourage economic development, establish free media, create a public service commission, and ensure peace and security.²¹⁵

The initial priorities for UNTAET’s civil administration were “the restoration of essential infrastructure, the provision of basic social services, the recruitment of civil servants and the revival of trade and commerce.”²¹⁶ After establishing the basic elements of a public administration, UNTAET was expected to begin implementing policy; the embryonic professional civil service was to begin functioning; and public and social services were expected to improve.²¹⁷ Further, a key objective was to “ensure that the East Timorese themselves [became] major stakeholders in their own system of governance and public administration”²¹⁸ An examination of mission reports demonstrates that UNTAET successfully implemented its administrative priorities.²¹⁹ UNTAET had broad authority to implement reforms and to rebuild East Timor’s civil administration.

²¹³ S.C. Res. 1272, *supra* note 89, at ¶ 1.

²¹⁴ *Id.* at ¶ 6.

²¹⁵ *Report of the Secretary-General on the United Nations Transitional Administration in East Timor: Addendum, supra* note 172, at 5-8 (setting out Regulations No. 1999/2: On the Establishment of a National Consultative Council).

²¹⁶ *Report of the Secretary-General on the United Nations Transitional Administration in East Timor, supra* note 172, at 9, ¶ 40.

²¹⁷ *Id.* at 9, ¶ 40.

²¹⁸ *Id.* at 10, ¶ 41.

²¹⁹ *Report of the Secretary-General on the United Nations Transitional Administration in East Timor (for the period 27 July 2000 to 16 January 2001)*, U.N. SCOR, 55th Sess., at 5-6, U.N. Doc. S/2001/42 (2001) (reporting on the significant progress made in repairing infrastructure, reopening of primary and secondary schools, and reconstruction of hospitals); *see also Interim Report of the Secretary-General on the United Nations Transitional Administration in East Timor, supra* note 181, at 4-5 (reporting that although East Timor will not yet have a fully functional civil administration when it attains independence, advances have been made in training civil servants); *Report of the Secretary-General on the United Nations Transitional Administration in East Timor (for the period 25 July to 15 October 2001)*, *supra* note 199, at 2, 6-3 (reporting that major advances have been made in the past two years in building a civil service and its institutions from the ground up; reporting infrastructure progress, reporting that much progress has been achieved in the education sector; and reporting that in the health sector progress has been made in restoring access to basic services and establishing the policies, systems, and human resources necessary for a sustainable health system); *Report of the Secretary-General on the United Nations Transitional Administration in East Timor (for the period 16 October 2001 to 18 January 2002)*, U.N. SCOR, 57th Sess., at 1, ¶ 2-9, U.N. Doc. S/2002/80 (2002) (reporting on the development in the following fields:

3. Election Mandates

A final comparison of Cambodian and East Timorese elections focuses on the effectiveness of UNTAC and UNTAET in fulfilling their elections mandates.²²⁰ UNTAC was unable to ensure a neutral political environment for the elections.²²¹ Some observers attributed this to the inability of UNTAC to disarm the factions and to establish law and order.²²² Others believe that the mandate to create a neutral political environment for the elections proved more complex to enact than was anticipated.²²³ In any event, the situation worsened as the elections approached.²²⁴ Nevertheless, despite the violence, the elections were relatively peaceful; nearly ninety percent of registered voters cast ballots, and the Security Council endorsed the election in which the FUNCINPEC won the majority.²²⁵

Many experts praise UNTAC for its role in successfully conducting elections while facing many political and security challenges.²²⁶ This victory was short-lived, despite the apparent success of the democratic process in the elections. The plan in the Paris Agreements to establish a democratic government in Cambodia did not extend to the post-election period.²²⁷ Immediately after the elections, the Cambodian People's Party ("CCP"), the party of the Khmer Rouge, which failed to win the majority in the assembly, contested the results.²²⁸ Prince Sihanouk, who was acting as the president of the SNC, made a deal with the CCP and declared himself head of state in charge of an interim coalition government of the CCP and

professional administration, justice, foreign affairs East Timor Defense Force, East Timor Police Service, public information, security, refugee returns, economic and social progress, education, infrastructure, development of natural resources, agriculture, and fisheries).

²²⁰ See Sue Downie, *The United Nations in East Timor: Comparisons with Cambodia*, in GUNS AND BALLOT BOXES: EAST TIMOR'S VOTE FOR INDEPENDENCE 117-34 (Damien Kingsbury ed., 2000).

²²¹ HEININGER, *supra* note 135, at 100 (reporting that the factions were not disarmed before the elections and that violence increased as the elections approached); see generally BROWN & ZASLOFF, *supra* note 33, at 131-61 (describing in detail the events surrounding the election).

²²² Berdal & Leifer, *supra* note 26, at 54; see also DOYLE, *supra* note 1, at 34 (arguing that UNTAC's inability to achieve a cease-fire and disarmament had devastating effects on the politically neutral environment that was necessary for the elections).

²²³ RATNER, *supra* note 1, at 173; cf. HEININGER, *supra* note 135, at 100-06 (arguing that the implementation of UNTAC's elections mandate suffered from poor logistics).

²²⁴ Berdal & Leifer, *supra* note 26, at 54.

²²⁵ *Id.* at 55; HEININGER, *supra* note 135, at 113-14.

²²⁶ DOYLE, *supra* note 1, at 32-34; HEININGER, *supra* note 135, at 115-16; RATNER, *supra* note 1, at 180-81.

²²⁷ "According to the Paris Agreements, the new Cambodian government was to be a 'liberal democracy.'" BROWN & ZASLOFF, *supra* note 33, at 286; *id.* at 165-89 (describing the months following the elections and the political tumult that erupted).

²²⁸ HEININGER, *supra* note 135, at 113.

the FUNCINPEC.²²⁹ Eventually, the political hotbed cooled and the constituent assembly passed a new democratic constitution and reinstated the monarchy, enthroning Norodom Sihanouk again.²³⁰ The political coalition remained vulnerable, because the CPP remained dominant in the administration, armed forces and police.²³¹ Additionally, the Khmer Rouge continued to exploit the internal tensions in an attempt to regain political power.²³² A year after the elections, “Cambodia had reverted to civil conflict despite the evident achievements of United Nations peacekeeping.”²³³

In contrast, UNTAET successfully implemented its mandates following the 1999 and 2001 elections. Following the 1999 election, UNTAET worked to establish the National Consultative Council (later the “National Council”) to “create a proper framework for involving the East Timorese in the administration of the Territory.”²³⁴ A growing consensus arose among the East Timorese to begin the political transition to independence, and so UNTAET began planning the 2001 constituent elections.²³⁵ The UNTAET conducted peaceful elections on August 30, 2001.²³⁶ Over ninety percent of the eligible voters participated.²³⁷ The Independent Electoral Commission certified the results on September 10, and the Security Council’s Special Representative, Sergio Vieira de Mello, swore in eighty-eight members of the Constituent Assembly.²³⁸ The Constituent Assembly proposed that East Timor declare its independence on May 20, 2002, which the Security Council endorsed.²³⁹ On March 22, 2002, after considering suggestions made by the public on its content, the Constituent Assembly adopted a constitution, which provides for a division of powers between the executive, legislative, and judiciary branches of

²²⁹ *Id.*

²³⁰ Berdal & Leifer, *supra* note 26, at 56.

²³¹ *Id.*

²³² *Id.*

²³³ *Id.* at 56-57.

²³⁴ *Report of the Secretary-General on the United Nations Transitional Administration in East Timor*, *supra* note 172, at 2, ¶ 4; *Report of the Secretary-General on the United Nations Transitional Administration in East Timor: Addendum*, *supra* note 172, at 5-8 (setting out Regulations No. 1999/2: On the Establishment of a National Consultative Council).

²³⁵ *Report of the Secretary-General on the United Nations Transitional Administration in East Timor (for the period 27 July 2000 to 16 January 2001)*, *supra* note 219.

²³⁶ *Report of the Secretary-General on the United Nations Transitional Administration in East Timor (for the period 25 July to 15 October 2001)*, *supra* note 199, at 1, ¶ 5.

²³⁷ *See id.* at 1, ¶ 5.

²³⁸ *See id.*

²³⁹ *Report of the Secretary-General on the United Nations Transitional Administration in East Timor (for the period 16 October 2001 to 18 January 2002)*, *supra* note 219, at 1, ¶ 3. For further information on the Constituent Assembly and drafting the constitution, see *id.* ¶ 5-10.

government.²⁴⁰ The assembly conducted presidential elections on April 14, 2002 in which Xanana Gusmão won the majority.²⁴¹

B. *Strength of the Transitional Plans*

Transitional peacekeeping missions require an enormous level of planning, logistics, and coordination. Most experts agree that there were weaknesses in the design of UNTAC.²⁴² Significantly, the UNTAC plan was *ad hoc* in the sense that it had no central authority organizing its many parts.²⁴³ “Each component of UNTAC [was] planned separately, rather than as a part of an overall mission.”²⁴⁴ Decision-making was organized only on a “component-by-component” basis, because there were insufficient procedures for sharing information and coordinating responses.²⁴⁵ The *ad hoc* character of UNTAC had a great impact on its implementation. It meant frequent slow-starts and system breakdowns. For example, UNTAC was not deployed until five months after the Paris Agreements were signed.²⁴⁶ Staffing problems also resulted from poor planning. Personnel deployment was sluggish and the hiring system was cumbersome.²⁴⁷ The training and quality of UNTAC personnel also suffered in the absence of coordination.²⁴⁸ Frequently, personnel had no previous peacekeeping experience or relevant language skills.²⁴⁹ As a result, it would not have been logistically possible to

²⁴⁰ Joanna Jolly, *East Timor Approves Its Constitution*, ASSOCIATED PRESS, Mar 22, 2002, at http://story.news.yahoo.com/news?tmpl=story&u=/ap/20020322/ap_on_re_as/east_timor_constitution_6 (last visited Mar. 22, 2002); *Report of the Secretary-General on the United Nations Transitional Administration in East Timor*, U.N. SCOR, 57th Sess., at 1, ¶¶ 4-5, U.N. Doc. S/2002/432 (reporting the Mar. 22, 2002 adoption of the East Timor Constitution, which provides for a unitary democratic state based on the rule of law and the principle of separation of powers).

²⁴¹ *Landslide Win in East Timor Vote*, BBC NEWS, Apr. 17, 2002, at http://news.bbc.co.uk/1/hi/english/world/asia-pacific/newsid_1934000/1934379.stm (last visited Apr. 28, 2002); *Report of the Secretary-General on the United Nations Transitional Administration in East Timor*, *supra* note 240, at 2, ¶¶ 7-8.

²⁴² “It is clear in retrospect that [UNTAC’s] implementation plan, unprecedented in scope and complexity, contained some major weaknesses.” Berdal & Leifer, *supra* note 26, at 39.

²⁴³ FINDLAY, *supra* note 12, at 122.

²⁴⁴ HEININGER, *supra* note 135, at 124; *see also* FINDLAY, *supra* note 12, at 123-27 (discussion the deficiencies in UNTAC’s management and administrative structure, specifically the need for better strategic coordination).

²⁴⁵ RATNER, *supra* note 1, at 196.

²⁴⁶ BROWN & ZASLOFF, *supra* note 33, at 279.

²⁴⁷ HEININGER, *supra* note 135, at 124.

²⁴⁸ Berdal & Leifer, *supra* note 26, at 52-54; *see also* DOYLE, *supra* note 1, at 59-64 (outlining administrative, planning, and staffing problems); HEININGER, *supra* note 135, at 126-27 (explaining UNTAC’s coordination problems and the effect this lack of coordination on staff and staffing).

²⁴⁹ BROWN & ZASLOFF, *supra* note 33, at 279-80.

implement the UNTAC mandate within the assigned time frame of eighteen months, even if conditions had been perfect.²⁵⁰

In contrast, UNTAET had good coordination between its organizational units and synchronization with the UNAMET and INTERFET missions that preceded it in East Timor. A lot of planning preceded the transition as UNTAET took over the administration of East Timor. In Resolution 1272, which created UNTAET, the Security Council explicitly directed that UNTAET cooperate with the earlier missions to create a smooth transition.²⁵¹ UNTAET sufficiently staffed all departments, including the peacekeepers.²⁵² In addition, the East Timor Transitional Administration, established to "integrate East Timorese into all major decision-making areas within the Administration," hired thousands of East Timorese as civil servants.²⁵³ UNTAET also made significant progress in rebuilding the infrastructure: rehabilitating ports, the airport, telephone and power networks, and water systems.²⁵⁴ The Security Council extended UNTAET's mission when the timeline demanded it, making the work more feasible.²⁵⁵ UNTAET planned that when control shifted back to the East Timorese a fully functional civil administration would be in place.²⁵⁶ Besides coordinating transitions, UNTAET was to coordinate with other international organizations. "Given UNTAET's comprehensive mandate for humanitarian relief, governance and development, an effort was made to coordinate and integrate from the start the different activities and actors to ensure that their efforts were mutually supporting and reflected the same set of priorities."²⁵⁷ Consideration was also given to coordination among UN

²⁵⁰ Berdal & Leifer, *supra* note 26, at 39-40. "The experience of UNTAC clearly suggests, therefore, that a greater degree of financial, administrative and operational authority should be delegated to the field in future operations." *Id.* at 51.

²⁵¹ S.C. Res. 1272, *supra* note 89, at ¶ 9; see also *Letter Dated 15 October from the Secretary-General Address to the President of the Security Council*, *supra* note 88, at 6 (reporting that in order to achieve a timely transition to UNTAET, the planning process should be accelerated; noting that early appointments of senior leadership will facilitate the transition).

²⁵² *Report of the Secretary-General on the United Nations Transitional Administration in East Timor (for the period 27 July 2000 and 16 January 2001)*, *supra* note 219, at 8-9, ¶ 43-45 (breaking down the personnel statistics of the military observers, civilian police, and staff).

²⁵³ See *id.* at 3, ¶ 16-17.

²⁵⁴ See *id.* at 5-6, ¶ 28-30; see also *Report of the Secretary-General on the United Nations Transitional Administration in East Timor (for the period 16 October 2001 to 18 January 2002)*, *supra* note 219, at 8, ¶ 55-60.

²⁵⁵ S.C. Res. 1392, U.N. SCOR, 57th Sess., at 1, U.N. Doc. S/RES/1392 (2002).

²⁵⁶ *Interim Report of the Secretary-General on the United Nations Transitional Administration in East Timor*, *supra* note 181 at 4-5, ¶ 25; *Report of the Secretary-General on the United Nations Transitional Administration in East Timor*, *supra* note 199 (setting out the transition to independence after UNTAET pulls out of East Timor).

²⁵⁷ *Report of the Secretary-General on the United Nations Transitional Administration in East Timor*, *supra* note 172, at 3-4, ¶ 11 (describing the coordination efforts between UNTAET, the United Nations

agencies. The UN established a Task Force on East Timor to ensure coordination among the Secretariat departments, agencies, funds, and programs concerned.²⁵⁸

VII. IMPACT OF UNTAC AND UNTAET ON UN PEACEKEEPING

UNTAC and UNTAET have been hailed as ambitious efforts in the new era of UN peacekeeping.²⁵⁹ Both marked a change in UN peacekeeping, in which peacekeeping missions assumed administrative authority.²⁶⁰ UNTAC has been viewed by some as a qualified success,²⁶¹ and by others as a failure,²⁶² while experts are only just beginning to analyze UNTAET. However, their strengths and weaknesses illustrate the direction the UN should pursue when aiding in peacemaking and peacekeeping.

Contrasting the apparent shortfalls of UNTAC with the successes of UNTAET simplifies the complex situations in which these missions took place. In many ways, UNTAET benefited from the lessons the UN learned from prior missions. When UNTAC was conceived, the United Nations had no experience planning a mission as large and complex as the one it envisioned in Cambodia.²⁶³ A comparison between UNTAC and UNTAET indicates that UN transitional peacekeeping missions are becoming more effective as they evolve.

New trends in peacekeeping challenge older notions of sovereignty and consent in international law. Critics argue that new peacekeeping is coercive, imperialistic, or constitutes an undesirable policy shift away from traditional notions of sovereignty and international law.²⁶⁴ The transitional

Consolidated Inter-Agency Appeal, the World Bank, and the International Monetary Fund). "UNTAET has established a structure to ensure the overall coordination of externally funded programs." *Id.* at 4, ¶ 13.

²⁵⁸ *Id.* at 4, ¶ 13.

²⁵⁹ "The United Nations operation in Cambodia during 1992-93 was, at the time, the most ambitious and expensive undertaking in the peacekeeping experience of the Organisation." Berdal & Leifer, *supra* note 26, at 25.

²⁶⁰ "There simply was no prior equivalent in which the UN took over an existing governmental structure as part of the peace settlement process." DOYLE, *supra* note 1, at 36.

²⁶¹ Michael W. Doyle, Ian Johnston, & Robert C. Orr, *Strategies for Peace: Conclusions and Lessons, in KEEPING THE PEACE: MULTIDIMENSIONAL UN OPERATIONS IN CAMBODIA AND EL SALVADOR* 369, 374 (Michael W. Doyle, Ian Johnston, and Robert C. Orr eds., 1997).

²⁶² See generally, PIERRE P. LIZÉE, *PEACE, POWER AND RESISTANCE IN CAMBODIA: GLOBAL GOVERNANCE AND FAILURE OF INTERNATIONAL CONFLICT RESOLUTION* (2000).

²⁶³ HEININGER, *supra* note 135, at 123.

²⁶⁴ Traub, *supra* note 60, at 79-80 (arguing that the UN's nation-building endeavors are in danger of intruding on sovereignty); Mark Weisburg, *International Law and the Problem of Evil*, 34 VAND. J. TRANSNAT'L L. 225 (2001) (arguing that international humanitarian intervention imposed by international law amounts to alien domination based on international consent, but ignores the consent of the governed, and conflicts with other fundamental principles of international law).

authority model might not be appropriate for every situation, and peacekeeping strategies might not be replicable.²⁶⁵ Nevertheless, these criticisms do not negate the benefits of peacekeeping. The UN should be responsive to critics, but the growing call for international involvement and aid to struggling regions will place on going pressure to use the peacekeeping authority of the UN.²⁶⁶ The peacekeeping role is one of the core purposes of the UN, and the UN is in the best position to organize resources for peacekeeping ventures.²⁶⁷

UNTAC and UNTAET show that broad consent helps create a solid foundation for UN peacekeeping, while the lack of consent undermines the efforts of the UN.²⁶⁸ The UN can build consent by planning a strategy to win and keep popular support and promote the backing of local forces of order.²⁶⁹ The UN can also create broad bases for consent by including non-governmental actors in the dialogue.²⁷⁰ UNTAET used both of these strategies, expanding the notion of consent to include local politicians, as well as ordinary citizens and grassroots organizations. The durable consent in the East Timor case made UNTAET stronger and ultimately more effective than UNTAC.

UN missions in Cambodia and East Timor indicate that peacekeeping can be a valid international response to intrastate disputes. UNTAC and UNTAET also show that the UN can play a more active role in nation-building exercises to ensure greater success for regions in transition. UNTAET demonstrates that the UN has the capacity to plan and execute peacekeeping missions with a broad mandate to create the pre-conditions for a successful independent state.

²⁶⁵ "[G]iven the conventions and limitations of peacekeeping, democratic multiparty elections within a short and finite time period are not necessarily a replicable means with which to secure so-called comprehensive political settlements." Berdal & Leifer, *supra* note 26, at 58.

²⁶⁶ RATNER, *supra* note 1, at 4 (suggesting that there will be more situations in the future that suggest UN involvement through its peacekeeping auspices).

²⁶⁷ *Id.* at 5.

²⁶⁸ Doyle, Johnston, & Orr, *supra* note 261, at 369-91, 374-75, 386-87.

²⁶⁹ DOYLE, *supra* note 1, at 83-84.

²⁷⁰ *See id.* at 85.