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Reading Humanitarian Intervention

Human Rights and the Use of Force in
International Law



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East from the West, partly by displacing meanings. The border between East and West separates them off, so that the West can be sure that the other is somewhere else, outside. Nevertheless, the border joins as it divides. East and West lie side by side, simultaneously (too) close and far (away).²¹⁰

Humanitarian intervention narratives work in this way – to reassure the ‘international community’ that there is a differentiated other, and to locate this other ‘somewhere else, outside’. Here, I have explored the conditions of that sense of separateness. It requires internationalist literature to ignore the presence of the international community in countries prior to violence erupting. The notion that the suffering or chaotic other is located elsewhere is reinforced through the act of intervention – we use force to maintain ‘safe havens’ or to protect (local) civilians at home, while at the same time evacuating foreigners.²¹¹ As I will argue in Chapter 6, the refugee is the figure that unsettles this separation – through the claims or demands of the refugee from violence we are confronted with the spectre of a suffering other who does not stay at home, who seeks to unsettle our sense of safety and separateness.

This distancing of the other appears particularly necessary in the age of globalisation, when the kinds of crises to which humanitarian intervention is a response threaten to bring the other (too) close. Many accounts of the need for intervention discuss the role of televised images of suffering in creating a sense of the global village. So, for example, the quote from Shashi Tharoor in the introduction to this chapter suggests that it is ‘television images of suffering broadcast as they occur’ which gives rise to ‘the public clamour to “do something”’.²¹² Geoffrey Robertson agrees that the call for international and UN responses to human rights violations is inspired by a ‘revulsion against atrocities brought into...homes through a billion television sets and twice as many radios, creating a vast audience beginning to think like global citizens’.²¹³ For Robertson, ‘modern media coverage of human rights hotspots’ and ‘television pictures of corpses in Racak, Kosovo, put such obscure places on the map of everyone’s mind and galvanize the West to war’.²¹⁴

²¹⁰ *Ibid.*, p. 233. ²¹¹ See the discussion of this practice in Chapter 6.

²¹² Tharoor, ‘The Changing Face’, 413.

²¹³ Geoffrey Robertson QC, *Crimes against Humanity: the Struggle for Global Justice* (Ringwood, 2000), p. 438.

²¹⁴ *Ibid.*

In these ways, suffering in distant lands is made immediate through technology. Commentators like Robertson treat this as increasing a sense of common humanity, and as leading to the desire to ‘do something’ to respond to human rights abuses. But at the same time, the call made in response to these images is not to admit those suffering abuses as refugees, but rather to intervene militarily and prevent exodus.²¹⁵ The effect of military intervention is to keep a distance between those we wish to save and our own community. In other words, perhaps the idea that we are now one with the rest of humanity, that we are close to these suffering masses, inspires our fear as much as our compassion. Technology brings the other too close, the other threatens to invade our civilised world. As I argue in Chapter 6, this poses a threat to the sense of self of the international community, inherited from the identity created during the European encounter with the ‘New World’ and based on a faith that violence and barbarism are outside the developed, capitalist, civilised order of Western Europe and its colonial outposts.²¹⁶ Intervention narratives serve, both materially and ideologically, to maintain that separation. Intervention texts can thus be read as a response to this threat, an attempt simultaneously to locate and thus distance the colonised from the coloniser. Perhaps more importantly, as I explore in Chapter 6, this distancing is never final or successful – as we shall see, the space of dreams can never completely be controlled by the dreamer.

²¹⁵ See the discussion in James C. Hathaway, ‘The Single Superpower and the Future of International Law’ (2000) 94 *American Society of International Law Proceedings* 67, and further in Chapter 6 below.

²¹⁶ See generally Antony Anghie, ‘Finding the Peripheries: Sovereignty and Colonialism in Nineteenth-Century International Law’ (1999) 40 *Harvard International Law Journal* 1; Jennifer Beard, ‘The Art of Development: Law and Ordering in the First World’ (2002, unpublished doctoral thesis, on file with author).

4 Self-determination after intervention: the international community and post-conflict reconstruction

This chapter is concerned with the representation of the role of the international community in the wake of humanitarian intervention. In the cases of Bosnia-Herzegovina and East Timor, the challenges to be addressed by the international community are seen to include the design of new constitutional, legal and administrative arrangements, nation-building, and economic management through the creation of a stable environment in which foreign aid and investment can take place. This chapter explores the way in which legal texts about the administration of territories by the international community attempt to manage and narrate the consequences of humanitarian intervention.

The first part of the chapter outlines the role of territorial administrator that international actors have adopted in Bosnia-Herzegovina and East Timor. It explores the ways in which international reconstruction constitutes the international community – both materially in terms of the economic liberalisation facilitated by reconstruction, and symbolically through the notions of charity, pedagogy and functionalism that underpin representations of the role of international administration. The second part explores the ways in which the project of post-conflict reconstruction mirrors the support by the international community for colonialism in earlier periods. From its authorisation of the acquisition of territory belonging to uncivilised peoples through to the operation of the mandate system, the international community has systematically facilitated the enterprise of colonialism. Central to this support has been the limited meaning given to the concept of self-determination. As the cases of Bosnia-Herzegovina and East Timor illustrate, international administration following humanitarian intervention has a similar effect. As a result, there appears to be little opportunity for those in whose

name intervention is conducted to participate fully in determining the conditions that will shape their lives. The final part of the chapter considers the possibilities, and limits, of self-determination as a foundation for challenging the legitimacy of the processes of intervention and reconstruction.

Self-determination in an age of intervention – a tale of two territories

The right of self-determination is one of the most compelling and contested ideas in international law. In legal debates about the status and meaning of this right, we see expressed modernist fantasies about the desirability, and the dangerousness, of national identity, territory, political community and autonomy. In the two cases of Bosnia-Herzegovina and East Timor, military intervention by the international community was hailed by at least some international commentators as contributing to the realisation of this right. For example, in 1996 then US Secretary of State Warren Christopher applauded the democratic outcome that he saw as resulting from the intervention in Bosnia and the Dayton peace process. 'Now the Bosnian people will have their own democratic say. This is a worthy goal in and of itself, because the only peace that can last in Bosnia is the peace that the people of the country freely choose.'¹

Similarly, Australia's Foreign Minister Alexander Downer has lauded the role played by Australian troops as part of the UN-authorised International Force in East Timor (INTERFET) in supporting self-determination and relieving suffering in the territory. 'Australia has played a very constructive, and wholly creditable, role in the process that has led to self-determination for the people of East Timor... We saw an opportunity to allow East Timorese to decide their own future, and we helped them realise that chance.'² Geoffrey Robertson also sees the UN intervention in East Timor as a case where the international community acted to protect the right of people to determine their own governance.³ He argues

¹ *Statement by Secretary of State Warren Christopher on Bosnian Elections*, United States Department of State, Office of the Spokesman, 18 September 1996, <http://dosfan.lib.uic.edu/ERC/briefing/dossec/1996/9609/960918dossec.html> (accessed 22 February 2002).

² Alexander Downer, Minister for Foreign Affairs, 'East Timor: the Way Ahead', speech given to the Rotary Club of Sydney, 30 November 1999.

³ Geoffrey Robertson, *Crimes against Humanity: The Struggle for Global Justice* (Ringwood, 1999), p. 434.

that the protection of the 'post-plebiscite right to self-determination was the acknowledged reason for the intervention' in East Timor.⁴

Other international lawyers reject the argument that intervention in support of self-determination or democratic governance became lawful during the 1990s, arguing that there is little in the way of post-Cold War state practice or international texts to support that notion. For legal scholars who oppose resort to humanitarian intervention on the basis that it undermines the UN Charter, it is the progressive development of legal norms such as sovereign equality or non-intervention that offer the best protection for the right of self-determination.⁵ Yet whether or not we accept the emergence of a principle supporting the legality of intervention in support of self-determination, we can adopt the suggestion by James Crawford that 'self-determination remains relevant in judging situations where intervention has occurred, and especially in dealing with their aftermath'.⁶

In both Bosnia-Herzegovina and East Timor, the international community has adopted the role of territorial administrator in the aftermath of its military intervention. The idea that the international community has a legitimate role as administrator of post-conflict territories and manager of the reconstruction process has gained increasing acceptance at the international level. These developments in international relations flow from a new faith in the international community as a benign, even civilising, administrator. Indeed, in light of this trend, it seemed almost unremarkable to be told in November 2001, in the aftermath of a war on terror, that the government of Afghanistan was being 'freely determined' by its people in Bonn, while the World Bank, the United Nations Development Program and the Asian Development Bank co-hosted a meeting in Islamabad to decide how to transform Afghanistan into a market economy.⁷ Yet the role played by the international community in states subject to international administration would appear to be at

⁴ *Ibid.*

⁵ See, for example, Simon Chesterman, *Just War or Just Peace? Humanitarian Intervention and International Law* (Oxford, 2001), pp. 232–6.

⁶ James Crawford, 'The Right of Self-Determination in International Law: Its Development and Future' in Philip Alston (ed.), *Peoples' Rights* (Oxford, 2001), pp. 7–67 at p. 46.

⁷ See *Preparing for Afghanistan's Reconstruction*, Conference co-hosted by the United Nations Development Program, the World Bank and the Asian Development Bank, 27–9 November 2001, <http://lnweb18.worldbank.org/sar/sa.nsf/91e66bec154b73d5852567e6007090ae/72342fd95bbf24f085256b0a007b3f86?OpenDocument> (accessed 22 February 2002).

odds with the realisation of the right of self-determination as one of the stated aims of humanitarian intervention. It is this tension, and the way in which it is managed by international lawyers and administrators in the context of Bosnia-Herzegovina and East Timor, that this part examines.

Staging democracy in Bosnia-Herzegovina

I want to begin by sketching the role of the international community in the implementation of the Dayton Peace Agreement in Bosnia-Herzegovina.⁸ The Parties to the Dayton Agreement provided that military implementation of the agreement was to be overseen by an Implementation Force (later the Stabilization Force),⁹ while implementation of the civilian aspects of the agreement was to be in the hands of the newly created Office of the High Representative (OHR).¹⁰ Oversight of many aspects of civilian administration was allocated to other international actors.¹¹ For example, the Organization for Security and Cooperation in Europe (OSCE) was to supervise the conduct of free, fair and democratic elections;¹² the President of the European Court of Human Rights was to select three members of the Constitutional Court;¹³ and the International Monetary Fund was to appoint the Governor of the Central Bank.¹⁴

Perhaps the most significant international body involved in the reconstruction process in Bosnia-Herzegovina is the Peace Implementation Council (PIC), an ad hoc group of fifty-five countries and organisations that was formed in 1995 to sponsor and direct the peace implementation process. The Steering Board of the PIC nominates the High Representative, who is then endorsed by the Security Council. The Office of the High Representative is funded by the PIC, and the Steering Board

⁸ The General Framework Agreement for Peace in Bosnia and Herzegovina with Annexes, 1995 (1996) 35 ILM 75 (Dayton Agreement).

⁹ *Ibid.*, Annex 1A, inviting the Security Council to adopt a resolution which will authorise a military implementation force. The Security Council established such a force by Resolution 1031 of 1995: S/1995/1031.

¹⁰ *Ibid.*, Annex 10.

¹¹ Ralph Wilde, 'From Bosnia to Kosovo and East Timor: the Changing Role of the United Nations in the Administration of Territory' (2000) 6 *ILSA Journal of International and Comparative Law* 467.

¹² Dayton Agreement, Annex 3.

¹³ *Ibid.*, Article VI of Annex 4.

¹⁴ *Ibid.*, Article VII of Annex 4.

of the PIC provides the High Representative with 'political guidance'.¹⁵ The PIC effectively decides policy for Bosnia-Herzegovina, and then directs the High Representative and other international institutions to facilitate the implementation of that policy.¹⁶ The ongoing priorities for the PIC are 'deepening economic reform and creating the conditions for self-sustaining market-driven economic growth', accelerating the return of refugees and internally displaced persons, and 'fostering functional and democratically accountable common institutions supported by an effective, merit-based civil service and a sound financial basis'.¹⁷

The mandate of the High Representative has been interpreted extremely broadly. Under the Dayton Agreement, the 'High Representative is the final authority in theater regarding interpretation of this Agreement on the civilian implementation of the peace settlement'.¹⁸ The High Representative has used this authority to impose legislation drafted by international actors but rejected by democratically elected state and entity bodies, to ban political parties, and to dismiss 'obstructive' elected and appointed officials. That interpretation has since been welcomed by the PIC.¹⁹

The former High Representative, Wolfgang Petritsch, made clear that this capacity to dismiss officials, ban parties and impose legislation extends to situations where parliamentarians refuse to pass legislation drafted by the international community implementing far-reaching economic reforms.²⁰ The language in which Petritsch discussed this stalemate is instructive in terms of the limits it suggests to a commitment to respect for the right of self-determination. In an interview with *Slobodna Bosna* in November 2001, Petritsch stated:

¹⁵ Office of the High Representative, General Information, <http://www.ohr.int/ohr-info/gen-info/> (accessed 12 November 2001).

¹⁶ David Chandler, 'Bosnia: Prototype of a NATO Protectorate' in Tariq Ali (ed.), *Masters of the Universe? NATO's Balkan Crusade* (London, 2000), pp. 271–84 at pp. 271, 272.

¹⁷ Declaration of the PIC, 24 May 2000, <http://www.ohr.int/pic/archive.asp?sa=on> (accessed 13 November 2001).

¹⁸ Dayton Agreement, Article V of Annex 10.

¹⁹ In Paragraph XI.2 of the Conclusions of the Peace Implementation Conference held in Bonn, 9–10 December 1997, the Peace Implementation Council 'welcomes the High Representative's intention to use his final authority in theatre' by taking measures including 'actions against persons holding public office or officials ... who are found by the High Representative to be in violation of legal commitments made under the Peace Agreement or the terms for its implementation': <http://www.ohr.int/pic/archive.asp?sa=on> (accessed 13 November 2001).

²⁰ 'Interview: Wolfgang Petritsch, the High Representative in BiH: "What Message I Got across to the SDS"', 9 November 2001, <http://www.ohr.int/ohr-dept/presso/pres/i/> (accessed 13 November 2001).

It has been several months since the new authorities came to power in the Republika Srpska. Over this period we have been ‘pressuring’ the RS Government and the Parliament including the SDS [Serb Democratic Party] in particular, to be cooperative... I asked the representatives of the PIC to support me in taking more severe measures against the top RS officials because we have not seen the expected results. After this meeting, I went to Banja Luka and reiterated this to the politicians there. I think that such type of communication is really necessary – not some ambiguous political quibbling but very direct, open and intensive discussions with the relevant political actors in the RS.²¹

In a striking explanation of the ways in which the international community understands the meaning of democracy in a territory under administration, Petritsch explained that elected politicians do not have the right to reject legislation imposing radical economic reform:

I want to see the immediate adoption of the laws which are pending before the State Parliament. That is the first thing they have to do. If some representatives are concerned about the content of some laws, from the professional point of view, they can discuss it. However, it will not be acceptable whatsoever to reject the laws with the argument that they are unacceptable or that they do not want to deal with these laws at all. The laws concerning economic reform and development are essential, and they simply have to be passed. In case this does not happen, you can be sure that I will not hesitate to exercise my powers.²²

Asked what kind of sanctions would be imposed because elected politicians had failed to produce ‘the expected results’ and had questioned international economic policy, Petritsch replied:

I will not hesitate whatsoever to exercise all the powers, as I did when I was compelled to do so in the past. I would like to remind you that to date I have removed about seventy local politicians. If the SDS compels me to do so, I will not hesitate to resort to such a measure in their case either. That is one of the options, but you know that I never mention any name in advance.²³

Petritsch explains his motivation for treating elected representatives in these terms: ‘investors, particularly those from abroad, look for security, the rule of law, and respect for human rights’.²⁴

This mode of discourse has been taken up by the current High Representative, Paddy Ashdown. In an address to the BiH (Bosnia-Herzegovina) Parliament on 16 July 2002, Ashdown shifted between scolding and threatening the assembled parliamentarians as he explained that if they

²¹ *Ibid.*

²² *Ibid.*

²³ *Ibid.*

²⁴ *Ibid.*

did not conform to international policy prescriptions regarding fiscal priorities and services privatisation, the IMF, World Bank and EU 'would simply walk away from here'.²⁵ Ashdown made clear that the goal of international administration is to ensure that Bosnia-Herzegovina takes its proper place in the global market as a source of labour and a site for foreign investment:

Governments and Parliaments... can create the conditions in which private enterprise can flourish and generate employment. Inward investment is the key to this. But investment only flows to places where it is made welcome. Our aim must be nothing less than to make Bosnia and Herzegovina the most business friendly country in the region... That is why the various pieces of economic reform legislation that must pass through this Parliament are so important. Because together, they will help to create a business friendly environment, and a single economic space...²⁶

The High Representative has explained that his vision for the future of the 'single economic space' of Bosnia-Herzegovina involves replacing the international community's military presence with its business representatives.

My goal here is to wind down the interventionist peace-building process of the postwar years, with its major North Atlantic Treaty Organization military component, and to help bring about a more normal presence based on extensive engagement by the European Union and private investors. In a few years' time there will be no more need for soldiers and international bureaucrats like me. Instead, I hope Sarajevo will be full of bankers and businessmen, the sort of people we increasingly see in all the other capitals of southeastern and central Europe.²⁷

A formal commitment to democracy and the concept of local 'ownership' of the reconstruction process continue to be the stated aims of international administration in Bosnia-Herzegovina.²⁸ Yet there has been little concern expressed by the international community about the hollow nature of the democracy created under this administration. According

²⁵ 'Speech by the High Representative Paddy Ashdown to the BiH Parliament', 16 July 2002, <http://www.ohr.int/ohr-dept/presso/presssp/default.asp?contentid=27319> (accessed 5 August, 2002).

²⁶ *Ibid.*, 3.

²⁷ Paddy Ashdown, 'Collateral Costs in Fighting a New Court', *The New York Times on the Web*, 2 July 2002, <http://www.nytimes.com/2002/07/02/opinion/02ASHD.html?todayshdlines=&pagewanted> (accessed 3 July 2002).

²⁸ See Dayton Agreement, Articles I and II of Annex 4. On the commitment to 'ownership' as a governing principle, see OHR General Information; Report by the High Representative to the Secretary-General of the UN, 1 November 1999.

to David Chandler, this should not be a surprise, given that most international institutions involved in the 'transitional' administration of the state have expressed views about the 'incapacity of Balkan people to cope with democracy'.²⁹ The OSCE has stated that 'the "political level" of Bosnian voters is "not very high"'.³⁰ OHR representatives allege that 'Bosnia is a deeply sick society, ill at ease with even the most basic principles of democracy'.³¹ Perhaps most strikingly, the Senior Coordinator of the Democratisation Branch of the OSCE Mission in Bosnia has argued that 'Bosnian people are incapable of handling electoral competition'.³² As Chandler argues 'once the capacity of Bosnian people as rational political actors is negated, there is no reason, in principle, for international administration to be seen as merely temporary or transitional, nor for democracy to be seen as preferable'.³³

The international community's mistrust of the Bosnian people as rational political actors does not only flow from the fact that they can not be relied upon to support legislation aimed at achieving non-negotiable economic and institutional goals set by the international community. In addition, it is due to a fear that minorities could again be persecuted if majoritarian rule is not in some way constrained by minority rights protections. This fear does appear to motivate some of those international actors who make a virtue of the political dispossession of the people of Bosnia-Herzegovina. This sense that the international community should be hostile towards nationalist politicians and organisations finds some support in the argument that nationalist identity is always dependent on belligerent othering, exclusion and violence. Let us then, one response might be, make a virtue of uncertain or fluid identities, of exile, of unbounded communities. The international community should reject any forms of political ordering based on exclusionary politics. However, as Jacqueline Rose has said:

If certainty is belligerent and panicked, you cannot in this political context just make a virtue of its opposite, not in a world where the trauma of national indelimitation – lack of a nation, yearning to be a nation – is what seems historically, and so dramatically, to engender the most ruthless of psychic and political states...

You might say that the problem is the false securing of identity; or you might argue that it is only when you lose the minimal conditions for identity that the drive begins for an identity which is falsely and dangerously secure.³⁴

²⁹ Chandler, 'Bosnia', p. 279. ³⁰ *Ibid.*, p. 278. ³¹ *Ibid.* ³² *Ibid.* ³³ *Ibid.*

³⁴ Jacqueline Rose, *States of Fantasy* (Oxford, 1996), pp. 30–1.

David Chandler argues that this is precisely what is at stake in Bosnia-Herzegovina. In his view, 'the lack of cohering political structures has meant that Bosnian people are forced to rely on more narrow and parochial survival mechanisms, which has meant that ethnicity has maintained its wartime relevance as a political resource'.³⁵ The way in which international rule is being conducted is 'inevitably institutionalizing inter-communal divisions, setting back any long-term settlement for the region'.³⁶

Charity and pedagogy – the reconstruction of East Timor

The complexity of issues raised by a commitment to the right of a people to control over their territory and resources can be seen in the case of East Timor. There, a deeply traumatised and divided society is confronting extraordinarily complex issues relating to ownership of land.³⁷ The East Timorese have experienced multiple waves of dispossession, beginning with Portuguese colonisation in the eighteenth century, through Japanese occupation during World War II, to the Indonesian invasion of 1975.³⁸ The period of Indonesian occupation was characterised by famine, displacement, transmigration and loss of lands for purposes of public interest and private development (read development by military interests or government cronies).³⁹ Most of the population were again displaced in the militia violence of 1999 which followed the UN-sponsored autonomy consultation. As the work of Daniel Fitzpatrick has shown, the resulting competing claims to land and questions of justice are extremely complex, and have to be resolved in an institutional context in which all land title offices in East Timor were destroyed by the

³⁵ Chandler, 'Bosnia', p. 277. ³⁶ *Ibid.*, p. 282.

³⁷ Daniel Fitzpatrick, 'Land Claims in East Timor: a Preliminary Assessment' (2001) 3 *Australian Journal of Asian Law* 135. Fitzpatrick analyses the extensive social and political conflict in East Timor caused by many competing claims to land and resources. He maps four sets of interests: those whose land claims are based on traditional or indigenous ownership; those with Portuguese-era titles; those with Indonesian-era titles, and those who have occupied land since the 1999 referendum. See also George Aditjondro, 'Mapping the Political Terrain' (2000) 46 *Arena Magazine* 27 (describing political division in post-referendum East Timor, including a generation gap between the 1975 resistance leaders plus the diaspora elite and those young Timorese who grew up under Indonesian occupation, and a gender gap); Hilary Charlesworth and Mary Wood, "'Mainstreaming Gender" in International Peace and Security: the Case of East Timor' (2001) 26 *Yale Journal of International Law* 313 (discussing the exclusion of women from political and nation-building activities in East Timor).

³⁸ Fitzpatrick, 'Land Claims'. ³⁹ *Ibid.*, 159.

militia violence in 1999. This resulted in the destruction, and possibly in some cases the removal, of all land title records.⁴⁰

There will be no simple solution to resolving the enormous problems and dislocation caused by these waves of dispossession.⁴¹ There is clearly a role in such a situation for sustained assistance from the international community. Self-determination here does not mean disengaging from the process of reconstruction. However, I want to compare the kind of subtle and careful analysis of its role that the international community needs to undertake in such a situation, with the language used by administrators at the UN and the World Bank to describe their function.

In order to understand the international community's activities in East Timor, it is useful to begin by considering the major role played by the World Bank. The World Bank, together with the Asian Development Bank, manages the Trust Fund for East Timor, established by the World Bank's Board of Governors following the December 1999 Tokyo Donor's Meeting. It has worked in consultation with the East Timorese and representatives of the former United Nations Transitional Administration in East Timor (UNTAET) to facilitate economic development. In the context of East Timor, the World Bank is departing from its structural adjustment model to provide funding for the building of health, education and public sector infrastructure. Yet it nonetheless still adheres to many of the features of its boilerplate blueprint for reform.⁴² The Bank has made clear that certain familiar Bank programmes and priorities are to be implemented in the management of East Timor.⁴³ Its plans have focused on ensuring that East Timor has limited public sector employment, openness to foreign direct investment and is quickly inserted into the global market economy, albeit as one of the poorest countries in the region. The World Bank determined as early as 1999 that East Timor is to have a small state, with a concomitant contracting out of many areas of service provision to the private sector, and particularly to foreign investors. According to critics, East Timor under UN and World Bank management is becoming 'a paradise for market-driven foreign investors, without considering the real need for foreign investment'.⁴⁴ As Aditjondro has argued, in the short term East Timor

⁴⁰ *Ibid.*, 135. ⁴¹ *Ibid.*, 164. ⁴² See generally Chapter 3 above.

⁴³ See, for example, World Bank, *Report of the Joint Assessment Mission to East Timor*, 8 December 1999, pp. 3–5, 8; World Bank East Asia and Pacific Region, *Background Paper Prepared for the Information Meeting on East Timor*, 29 September 1999, p. 2.

⁴⁴ George Aditjondro, 'From Colony to Global Prize' (2000) 47 *Arena Magazine* 22 at 32.

has been overrun by foreign, mainly Australian, companies making large profits out of contracts negotiated with INTERFET or UNTAET.⁴⁵

To give just one example, the hotel and tourism sector is one of the priority areas of the World Bank, and is the sector that is most ‘“crowded” with investors and their Timorese or Timor-based partners’.⁴⁶ An early priority of development in this sector was to create accommodation for civilian UN and World Bank staff.⁴⁷ The expatriate business community operating in the tourism and services sector, including the UNTAET cafeteria, pay extremely low wages to East Timorese workers, while charging reasonably high rates for accommodation and meals.⁴⁸ Thus, says Aditjondro, ‘Timorese workers are subsidising the Australian tourism business and the... United Nations and foreign NGO community in their country. So, who is helping whom, one could ask.’⁴⁹

Of this situation, Xanana Gusmao said in December 1999:

It’s an insult to the misery, the suffering of our people. Our people need soap, they need food. They have primary needs... Sometimes we felt that the Indonesian generals had no human feeling. Some businessmen also exploit the situation. It’s very sad, because I cannot do anything about it. If I have a little power I can tell them to go, but I have no power.⁵⁰

Aditjondro suggests that the East Timorese will be forced into honouring longer-term contracts which they had little say in negotiating, such as those made between INTERFET and Telstra, and the extremely lucrative construction contracts being awarded to Australian companies such as Multiplex Constructions Pty Ltd.⁵¹

Despite these concerns, international donors and international economic organisations portray their role in East Timor as essentially charitable. For example, the IMF’s Head of Mission and Special Representative to East Timor, Luis Valdivieso, has been reported as saying, ‘They [the people of East Timor] don’t want to live on charity longer than they have to.’⁵² Similarly, Peter Galbraith, Chief of UNTAET’s Office of Political, Constitutional and Electoral Affairs, has commented that international donors are ‘prepared to be generous over the short term’, but do not

⁴⁵ *Ibid.* ⁴⁶ *Ibid.*, 25. ⁴⁷ Personal communication with UN staff member.

⁴⁸ Aditjondro, ‘From Colony’, 24. ⁴⁹ *Ibid.*

⁵⁰ Xanana Gusmao, *Socialist Worker*, 19 December 1999, cited in Aditjondro, ‘From Colony’, 25.

⁵¹ Aditjondro, ‘From Colony’, 24–6.

⁵² ‘The International Monetary Fund in East Timor’, 2(3) *The La’o Hamutuk Bulletin*, June 2001, <http://www.etan.org/lh/bulletinv2n3.html> (accessed 20 February 2002).

want East Timor 'to be a permanent charity case'.⁵³ This portrayal of the role of international actors as charitable prefigures a careful analysis of the extent to which the political and economic relationship between East Timor and its donors is exploitative. As the authors of the *La'o Hamutuk Bulletin* comment:

'Charity' is a very problematic term by which to characterize international funding for East Timor. As many, if not most of the major donors to East Timor provided Indonesia with significant amounts of weaponry, funding, and diplomatic cover for its invasion and occupation of East Timor, such 'charity' is better seen as a very modest start to reparations.⁵⁴

While the economic management of East Timor is in the hands of the World Bank, the UN has adopted a major 'trusteeship' role, taking over responsibility for administration in East Timor during the period of transition to independence. On 25 October 1999, the Security Council established UNTAET as a peace-keeping operation 'endowed with overall responsibility for the administration of East Timor and...empowered to exercise all legislative and executive authority, including the administration of justice'.⁵⁵ The UN granted itself a broad mandate, including the provision of security and maintenance of law and order, the establishment of an effective administration, assistance in the development of civil and social services, support for capacity-building for self-government and assistance in the establishment of conditions for sustainable development.⁵⁶ The Secretary-General's Special-Representative and Transitional Administrator Sergio Vieira de Mello was made 'responsible for all aspects of the United Nations work in East Timor', with 'the power to enact new laws and regulations and to amend, suspend or repeal existing ones'.⁵⁷

UNTAET achievements in East Timor include the registration of most of the resident population to vote, the holding of free and fair elections for the Constituent Assembly in August 2001, establishing an East Timorese civil service and judicial and legal system, reopening schools and technical colleges throughout the country, reconstructing over thirty major public buildings, and the re-establishment of basic infrastructure and services, including constructing roads and supplying electricity and water to urban areas. Yet as one journalist has noted:

⁵³ 'LH Editorial: Charity or Justice?', 1(2) *The La'o Hamutuk Bulletin*, July 2000, <http://www.etan.org/lh/bulletin02.html> (accessed 20 February 2002).

⁵⁴ 'The International Monetary Fund in East Timor'.

⁵⁵ Clause 1, SC Res. 1272 (1999), adopted on 25 October 1999.

⁵⁶ *Ibid.*, clause 2. ⁵⁷ *Ibid.*, clause 6.

Scratch the surface of East Timor's 'reconstruction' and the picture that emerges is a profoundly worrying one – there are serious questions about the bureaucracy, expense and paternalism of the UN presence and the appropriateness of the models of development being proposed and implemented by the UN in tandem with the World Bank and Asian Development Bank... The influx of foreign investors and comparatively wealthy UN and aid workers has led to the creation of a double economy and the perception of the UN as the new colonialists in East Timor.⁵⁸

Many East Timorese and foreign activists reiterate this point. Groups such as East Timor's La'o Hamutuk and Australia's Aidwatch argue that the combination of UN paternalism, World Bank development models and unrestrained foreign investment is creating a new form of colonialism, and deepening divisions within the East Timorese community.⁵⁹

While international donors and international economic organisations portray their role in East Timor as charitable, comments by UN administrators reveal that they see their relationship with the people of East Timor in terms of another colonial concept, that of pedagogy. The UN's role is understood in the pedagogical terms that marked colonial discourse – the international community brings its tutees in East Timor to political and economic maturity through the creation and transfer of the bureaucratic machinery of the modern nation-state, and the training of the functionaries required to operate that machinery. This view of the UN's role in East Timor is well illustrated by the comments of Jean-Christian Cady, then Deputy Transitional Administrator of East Timor.⁶⁰ For Cady, 'the United Nations found themselves in a situation without precedent in their history: to rebuild a country entirely'.⁶¹ The UN had to 'create a State, with a constitution, administrative, judicial and

⁵⁸ Jenny Denton, 'Whose Agendas? East Timor Suffers under Weight of World Plans', *Canberra Times*, 14 April 2001.

⁵⁹ 'The World Bank in East Timor', 1(4) *The La'o Hamutuk Bulletin*, December 2000, <http://www.etan.org/lh/bulletin04.html> (accessed 20 February 2002); *Aidwatch Briefing Note: the World Bank in East Timor*, June 2001, <http://www.aidwatch.org.au/timor/wb/et.html> (accessed 20 February 2002). See also Jorge Trindade Neves de Camoes, 'East Timor Today: Perspectives from the Grassroots', paper presented at a seminar on UNAMET, INTERFET, UNTAET, International NGOs, World Bank, and 'Paraquedistas': *Are They Helping or Obstructing the Nation-Building Process in East Timor?*, The Australian National University, 2 March 2000.

⁶⁰ Jean-Christian Cady was replaced by Dennis McNamara as Deputy Transitional Administrator in June 2001.

⁶¹ Jean-Christian Cady, Deputy Transitional Administrator of East Timor, 'Building the New State of East Timor', lecture given at the Centre for International and Public Law, Australian National University, Canberra, 18 May 2000.