

POLICING THE PEACE: POST-CONFLICT JUDICIAL SYSTEM RECONSTRUCTION IN EAST TIMOR

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I INTRODUCTION

In view of the emphasis placed by the *Report of the Panel on United Nations Peace Operations* (the 'Brahimi Report'),¹ on the importance of the United Nations' efforts in strengthening rule of law institutions in post-conflict environments, a discussion of the post-conflict reconstruction of East Timor's judicial system is timely. The experiences of virtually all of the major United Nations ('UN') missions of the past decade have proven that the challenge of maintaining law and order in a post-conflict situation is at the core of any meaningful and sustainable peace-building effort. At the same time, the UN has had to realise that it cannot sufficiently live up to this task by focusing primarily on the deployment of international civilian police forces and their responsibilities in monitoring, training and reforming local police.

Maintaining law and order is a multi-dimensional effort that not only comprises the police but also the prosecution service, judiciary and correctional systems. In this brief article, I will argue that UN civilian police operations must therefore be complemented, from the outset of a mission, by adequate judicial and correctional reform and reconstruction efforts that are more than simply adjunct police activities. After describing the immediate post-conflict situation in East Timor in Part II of the article, I outline the main challenges the UN faced in rebuilding East

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1 See Secretary-General of the United Nations and the Panel on United Nations Peace Operations, *Report of the Panel on United Nations Peace Operations*, UN Doc A/55/305-S/2000/809 (2000) [39], [40], [47](b).

Timor's judicial system in Part III. I then provide some brief suggestions in Part IV that could prove useful for the future management of post-conflict situations.

II BACKGROUND

Following the tragic events in East Timor in the aftermath of the popular consultation on 30 August 1999, the Security Council, by Resolution 1272 of 25 October 1999, established the United Nations Transitional Administration in East Timor ('UNTAET').² UNTAET is entrusted with overall responsibility for the administration of the territory of East Timor, and is specifically empowered to exercise all legislative and executive authority in East Timor, including the administration of justice.

But despite this sweeping mandate, administering a justice system is no easy task when there is no system left to be administered, when the personnel needed to carry out judicial tasks have left or are tainted due to the perception of affiliation with the previous regime, when the court houses and related facilities have been looted and destroyed, and when the laws to be applied are politically charged and no longer acceptable to the population and its new political leadership.

A panorama of devastation awaited the UN staff upon their return to East Timor. Most towns and villages were all but destroyed and abandoned by their former inhabitants, cut off from transport and communication and without any governmental superstructure. The pre-existing judicial infrastructure in East Timor was almost entirely destroyed. Most court buildings were burned and looted,³ all court equipment, furniture, registers, records and archives, and – indispensable to the practice of the legal profession – law books, case files and other legal resources were lost or burned. In addition, all judges, prosecutors and lawyers, and many judicial support staff who had been publicly sympathetic to the Indonesian regime or, as members of the privileged class, were perceived as being sympathetic, had fled East Timor following the announcement of the results of the popular consultation.

III CHALLENGES

Against this backdrop, the judicial system in East Timor had to be newly built, literally from scratch, rather than simply reformed or reconstructed. The

2 See SC Res 1272, UN Doc S/Res/1272 (1999). Prior to the establishment of UNTAET, Indonesia and Portugal had, on 28 September 1999, reiterated their agreement for the transfer of authority in East Timor to the UN. Also, on 19 October 1999, the Indonesian People's Consultative Assembly formally recognised the result of the popular consultation of 30 August 1999.

3 According to the *Report of the World Bank Sponsored Joint Assessment Mission to East Timor*, (December 1999) 4, over 70 per cent of all administrative (ie, government) buildings had been partially or completely destroyed, and almost all office equipment and consumable materials had been destroyed; see also Secretary-General of the United Nations, *Report of the Secretary-General on the Situation in East Timor*, UN Doc S/1999/1024 (1999) [11] ff.

challenges involved in this exercise were daunting. They included, inter alia: the identification and selection of judges and prosecutors; the provision of judicial training and mentoring programs; the creation of a legal aid scheme, including the cultivation of an expert pool of public defenders; the development of a mechanism to address crimes against humanity and other serious crimes committed in East Timor; the establishment of a mechanism to address land and property disputes; the identification and training of a sufficient number of law clerks and secretaries; the creation of an independent Jurists Association; the construction of a central law library for the benefit of the new judiciary, the legal profession, and the government; the establishment of a law school in East Timor and provision of assistance for East Timorese law students to complete their disrupted law studies at universities in neighboring countries; the establishment of a Bar Association which was independent of governmental, political, and commercial influence; the establishment of a judicial police and installation of bailiffs to enforce court decisions and orders in civil law cases; the establishment of a pool of translators to ensure due process for the many linguistic minorities of East Timor; the integration of various traditional indigenous forms of dispute resolution into the (new) legal system; and most urgently, though least appealing, the creation of a penitentiary system conforming with international standards, including the appointment of international and East Timorese prison guards.

All of these projects were aimed at establishing institutions that are indispensable to the effective functioning of a judicial system and would make possible the effective maintenance of law and order in East Timor. I will now briefly describe UNTAET's main tasks in this area.

A Creating a Legal Framework

As a priority, UNTAET first had to create the legal framework within which law enforcement and judicial institutions could operate.⁴ Judicial appointments, legal training, and the carrying out of judicial, prosecutorial and other legal functions were all dependent on the existence of a clear body of applicable law. In addition, the United Nations Civil Police ('CIVPOL'), who were entrusted with executive powers, needed legal certainty in their law enforcement activities.

By Regulation No 1999/1, UNTAET had, in effect, decided that the laws which applied in East Timor prior to the adoption of Security Council Resolution 1272 (ie, the Indonesian laws) would apply *mutatis mutandis*, in so far as they were consistent with internationally recognised human rights standards, and in so far as they did not conflict with the mandate given to the mission by the Security

4 The UN, which traditionally promotes international law, was actually mandated to legislate and to create new law in areas that normally fall within the competence of a national legislature. By promulgating UN 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 in East Timor. (See also SC Res 1272, above n 2, [6]: 'the Transitional Administrator, will ... have the power to enact new laws and regulations and to amend, suspend or repeal existing ones'.) As the experience in Cambodia has shown, many of these regulations remain in force even after the completion of the UN's transitional administration, or serve as a blueprint for subsequent national legislation.

Council, or with any other subsequent regulation promulgated by the mission.⁵ This decision was made solely for practical reasons: first, to avoid a legal vacuum in the initial phase of the transitional administration, and second, to avoid a situation in which local lawyers, virtually all of whom had obtained their law degrees at domestic universities, had to be introduced to an entirely foreign legal system.

In practice, however, this formula proved rather difficult to apply, because it did not actually spell out the laws or specifically identify the elements that were inconsistent with internationally recognised human rights standards. Rather, it required lawyers, many of whom were inexperienced, to engage in the complex task of interpreting the Penal Code or the Criminal Procedure Code through the lens of international human rights instruments: applying those provisions that met international standards, while disregarding those that did not and substituting the appropriate standard under international law. The potential difficulties are obvious. For example, whereas it is relatively easy to determine that a provision allowing for 20 or more days of detention without a judicial hearing⁶ is in violation of international human rights standards, it is significantly more difficult for lawyers applying such a provision to define, in a consistent manner, the standard that should apply instead. The situation was further aggravated by the fact that only a few local lawyers were even familiar with the practical application of international human rights norms.

Yet another challenge was the need to obtain, from the government that had just withdrawn, all the legislation comprising the applicable body of law, and translate all these laws in order to enable international experts to assist their local colleagues in the practical application of the formula contained in UNTAET Regulation No 1999/1.

Finally, parts of the East Timorese community objected to the very idea of continuing the application of the same laws that had been used for more than two decades by the Indonesian regime, and which were, therefore, widely perceived as being tools of the Indonesian occupation of East Timor.

Hence, despite the formula of UNTAET Regulation No 1999/1, the UN mission had to conduct a comprehensive review of all the legislation that was pivotal to the establishment of an independent and impartial judiciary, and the law and order sector more generally, and amend or supersede these laws through subsequent UN regulations.⁷ In the meantime, however, CIVPOL and the judiciary had to apply the existing legislation on a daily basis, trying their best but

5 See UNTAET Regulation No 1999/1 on the Authority of the Transitional Administration in East Timor, ss 2, 3. The wording of s 3.1 (the factual statement 'the laws applied' is used rather than 'the applicable laws') carefully avoids the retroactive legitimisation of the Indonesian occupation as a lawful legal regime in East Timor. (UNTAET Regulations are available at <<http://www.un.org/peace/etimor/untaetR/UntaetR.htm>> at 27 May 2001.)

6 See the Indonesian *Code of Criminal Procedure* (1981) arts 20, 24.

7 See UNTAET Regulation No 2000/11 on the Organisation of Courts in East Timor, Regulation No 2000/15 on the Establishment of Panels with Exclusive Jurisdiction over Serious Criminal Offences, Regulation No 2000/16 on the Organisation of the Public Prosecution Service in East Timor, and Regulation No 2000/30 on Transitional Rules of Criminal Procedure.

struggling to do so in accordance with the requirements of UNTAET Regulation No 1999/1.

B Selection of Judicial Personnel

Besides a credible legal framework, the establishment of a judicial system requires, above all, the availability of skilled personnel. Mindful of the objective expressed by the Secretary-General of the United Nations in his report to the Security Council that members of the justice system be 'professionals recruited from among the East Timorese, to the largest extent possible',⁸ UNTAET began, on 25 October 1999, an intensive search for qualified East Timorese legal personnel to build a new judiciary for East Timor.

As mentioned earlier, the exodus from East Timor of all Indonesian and pro-Indonesian lawyers, judges and prosecutors, as well as many law clerks and secretaries, had left the country with a huge void in experienced legal personnel. Under Indonesian rule, no East Timorese lawyers were appointed to judicial or prosecutorial office. As a result, there were no jurists in East Timor with any relevant experience in the administration of justice or the practical application of law. Not knowing how many trained jurists actually remained in the deserted towns and villages of East Timor, UNTAET, supported by its local staff and civil society groups, began to identify lawyers, law graduates and law students by word of mouth. The Australian-led International Force for East Timor ('INTERFET')⁹ volunteered its services by dropping leaflets from aeroplanes throughout the territory, calling for qualified Timorese to contact any UNTAET or INTERFET office or outpost. Only a week later, this effort had led to a remarkable response: an initial meeting was held behind the Governor's Building in Dili with a group of 17 jurists sitting on the floor (as the departing Indonesian security forces and pro-integration militias had left behind no chairs), discussing a possibility which, at the time, seemed unreal to them – their appointment as East Timor's first judges and prosecutors.

Two months later, more than 60 East Timorese jurists had formally applied for judicial or prosecutorial office. All applicants had completed law school – mostly in Indonesian universities – and were enthusiastic about the opportunity to play a historic role in the first criminal and civil trials of a free East Timor. However, only a few of these jurists had any practical legal experience, some in law firms and legal aid organisations in Java and other parts of the Indonesian archipelago, and others in para-legal positions with Timorese human rights organisations and resistance groups; none had ever served as a judge or prosecutor.

As a next step, UNTAET then had to select from among this group the most capable candidates for judicial and prosecutorial office. Bearing in mind the political and symbolic significance that such appointments would have in a post-crisis situation, and the fact that the UN wished to act in sharp contrast to the practice of highly politicised judicial appointments that had been characteristic of the previous regime, it was essential for the UN to proceed in a transparent and

8 See Secretary-General of the United Nations, above n 3, [51].

9 INTERFET was created by SC Res 1264, UN Doc S/Res/1264 (1999).

professional manner that would give legitimacy to the process. UNTAET thus created a Transitional Judicial Service Commission ('the Commission'),¹⁰ which became the primary mechanism for the selection of judges and prosecutors and served as an important safeguard for the establishment of an independent and impartial judiciary. The Commission was designed as an autonomous body that received applications from jurists who were required to have, at a minimum, a law degree. It would select candidates for judicial or prosecutorial office based on merit and, eventually, make recommendations on appointments to the head of the UN mission. The Commission was also entrusted with drawing up codes of ethics for judges and prosecutors and serving as a disciplinary body reviewing complaints of misconduct.

The Commission was set up as a five-member body, comprising three East Timorese and two international experts, and chaired by an East Timorese of 'high moral standing'.¹¹ In order to build a strong sense of ownership over their new judiciary, and to inject as much domestic expertise as possible into the process, it was deemed essential that the majority of the Commission members be recruited from among local experts and that they be empowered to overrule the international members. It was anticipated that, over time, the international membership of the Commission would be phased out, but that a suitable mechanism would have taken root through which future local governments could carry out non-partisan judicial appointments.

Following a rigorous interview and selection process conducted by the Commission, the Transitional Administrator of East Timor appointed the first ever East Timorese judges and prosecutors to office on 7 January 2000.¹² Further appointments have followed since.

The rapid appointment of local judges and prosecutors was based on a multitude of considerations. Most pressing was the fact that East Timor urgently needed, within the first weeks of the establishment of the mission, a judicial review mechanism for those who had already been arrested and detained by INTERFET or would in the future be arrested by CIVPOL. Neither the UN nor the international community at large was prepared to deploy, upon such short notice, an adequate number of international lawyers for this purpose, not to

10 See UNTAET Regulation No 1999/3 on the Establishment of a Transitional Judicial Service Commission.

11 The current Chairman of the Commission is His Excellency Bishop Dom Basilio de Nascimento from the diocese of Baucau.

12 The appointments made on 7 January 2000 included eight judges and two prosecutors. Their swearing-in ceremony in the still devastated shell of the courthouse in Dili was an emotional experience both for the East Timorese and the internationals involved. Before some 100 members of the general East Timorese public, and numerous representatives of the international community, the UNTAET Transitional Administrator, Sergio Vieira de Mello, took the oath from each appointee and handed each of them a black robe.

mention lawyers who were familiar enough with the legal traditions of the administered territories.¹³

In addition, political sensitivity to the euphoria and excitement that had followed the international community's intervention in East Timor required that the general expectation that the international community would demonstrate an immediate commitment to domestic involvement in democratic institution building, especially in the legal sector, be accommodated. Hopes for self-determination and self-government meant that the appointment of local judges, which was an unprecedented move, unknown even under Portuguese colonial rule, took on enormous symbolic significance. Moreover, the immediate involvement of local lawyers would avoid, or at least minimise, the disruptive effect on the judiciary once the limited international funds that were being earmarked for the financing of international lawyers inevitably dwindled and forced the withdrawal of those lawyers.

Finally, experience gained from other UN missions has shown that the appointment of international lawyers leads to a myriad of practical concerns that can place a huge burden on missions in their set-up phases, such as the costly requirements of translating laws, files, transcripts and even the daily conversations between local and international lawyers, as well as the enormous time and expense incurred in familiarising international lawyers with local and regional legal systems.

C Prosecution of Crimes Against Humanity

It soon became clear to UNTAET that one of the primary tasks of the new East Timorese judiciary was the urgent prosecution and trial of individuals involved in the atrocities and violence committed in East Timor. There were, and still are, high expectations among the East Timorese population of accountability for the serious crimes committed in East Timor during and prior to the violence related to the popular consultation of 30 August 1999. In this respect, the UN-sponsored International Commission of Inquiry on East Timor concluded that 'it is fundamental for the future social and political stability of East Timor, that the truth be established and those responsible for the crimes committed brought to justice'.¹⁴

13 Since the legal system in East Timor was based on civil law, potential international judges and prosecutors were required to have sufficient practical experience in the administration of justice in a civil law system. In addition, they had to be proficient in English – the working language of the mission – and

able to make a long-term commitment to the process (between six months and one year). For further discussion of the relative merits of the appointment of international versus local judges, see Hansjoerg Strohmeyer, 'Collapse and Reconstruction of a Judicial System: The United Nations Missions in Kosovo and East Timor' (2001) 95 *American Journal of International Law* 46, 51-5; Hansjoerg Strohmeyer, 'Making Multilateral Interventions Work: The United Nations and the Creation of Transitional Justice Systems in Kosovo and East Timor' (2001) *The Fletcher Forum of World Affairs* forthcoming.

14 See International Commission of Inquiry on East Timor, *Report of the International Commission of Inquiry on East Timor to the Secretary-General*, UN Doc A/54/726-S/2000/59 (2000) [155], [148] ff.

In the absence of an international tribunal, the prosecution of suspected perpetrators of the September 1999 violence is, in large part, a matter for the domestic East Timorese judiciary and the parallel process in the Indonesian courts.¹⁵ Given the potential impact on the reconciliation process both within East Timorese society and with Indonesia, it is essential that these trials be conducted expeditiously and, more importantly, in a professional and impartial manner, relying on credible and properly conducted investigatory and prosecutorial processes. Despite the high level of anticipation, it is the responsibility of the international community and its relevant counterparts within the East Timorese political leadership to resist rushing the newly-appointed judges and prosecutors into speedy trials of the accused who are currently in detention in East Timor.¹⁶ The prosecution and trial of legally and factually complex criminal offences such as crimes against humanity needs careful preparation and should not be left solely to largely inexperienced lawyers, however committed they may be. In this context it is worth recalling that it took several years before trials began in the prosecution of similarly complex cases by the international ad hoc tribunals for the former Yugoslavia and for Rwanda, despite the high level of experience of the personnel of those tribunals.

To reconcile the need for expeditious prosecution and trial of serious crimes with the requirement of ensuring experience and expertise in this process, UNTAET is currently establishing mixed panels comprised of both international and East Timorese judges at the District Court in Dili and at the Court of Appeal in Dili.¹⁷ In addition, UNTAET has established a prosecution service comprising a special department for the prosecution of serious crimes, which is headed by an experienced international prosecutor¹⁸ working alongside East Timorese and other international experts. In this respect, the Memorandum of Understanding between UNTAET and the Republic of Indonesia regarding cooperation in legal, judicial and human rights related matters will facilitate practical cooperation between courts and authorities in East Timor and Indonesia on such issues as sharing relevant information, obtaining evidence from witnesses, witness protection,

15 See 'Indonesia says Timor trials to start soon', *Reuters*, 10 May 2000: Indonesian Attorney-General Marzuki Darusman announced that if Indonesian generals were convicted 'compensation will have to be addressed subsequently on a very specific case-by-case basis'.

16 Currently, there are approximately 70 former militia members in detention in East Timor, arrested on suspicion of serious criminal offences as defined in s 10.1 of UNTAET Regulation No 2000/11 on the Organisation of Courts in East Timor.

17 See s 10 of UNTAET Regulation No 2000/11 on the Organisation of Courts in East Timor, by which exclusive jurisdiction throughout East Timor in relation to most serious crimes including genocide, war crimes, and crimes against humanity, has been vested in the Dili District Court. Regulation No 2000/11 is further supported by Regulation No 2000/15 on the Establishment of Panels with Exclusive Jurisdiction over Serious Criminal Offences, which was promulgated on 6 June 2000. This Regulation contains, inter alia, the relevant penal provisions for war crimes, crimes against humanity and torture, and spells out internationally recognised principles of criminal law, taking into consideration the statutes of the International Criminal Tribunal for the former Yugoslavia and of the International Criminal Court.

18 On 4 August 2000, Mohamed Othman, a Tanzanian who previously served as Chief of Prosecutions at the Office of the Prosecutor of the International Criminal Tribunal for Rwanda, was sworn in as the General Prosecutor for East Timor.

forensic examinations, and, most important, the transfer of suspects to the jurisdiction of authorities and courts in East Timor.¹⁹

Ultimately, however, the challenge for UNTAET and the East Timorese in this area will be to find the right balance between justice and reconciliation in a society that holds the principle of forgiveness at the core of its culture. The prosecution and trial of serious violations of international humanitarian and human rights law must be accompanied by a comprehensive discussion on truth and reconciliation, and even amnesty for the perpetrators of less serious offences. The current efforts of UNTAET and East Timorese civil society to establish an East Timorese Return and Reconciliation Commission is an important step in this direction.

D Customary Law

Finally, it is indispensable for UNTAET to ensure that the new legal and judicial system of East Timor takes into account the important discussions within the East Timorese communities regarding the role of the notoriously variable and complex, but frequently significant, traditional or customary law, including traditional dispute resolution mechanisms and 'native title'. It is a reality that the further one moves away from Dili into the villages and hamlets of East Timor's countryside, the more traditional and customary law takes precedence over codified law. This issue poses formidable challenges: for example, there has been, in many regions of East Timor, a radical departure from customary forms of justice administration, and in many regions it is difficult to distinguish customary law from other, more recent, structures for resolving disputes outside the formal court system (including Indonesian, National Council of East Timorese Resistance ('CNRT'), and National Liberation Armed Forces of East Timor ('FALINTIL') structures). Thus, the identification of 'traditional leaders' is by no means an easy task. More problematic still are the possible effects of traditional justice on 'marginalised' groups such as women, children, and minorities.

The scope of jurisdiction of such mechanisms must be carefully examined and an effort made to determine whether they should simply complement the newly established judicial system in East Timor or, in some instances, be substituted for it.²⁰ It is clear that, given the financial constraints that will be faced by a future government, East Timor will not be able to afford to sustain a costly judicial system that penetrates the entire island. Alternative methods and traditional dispute resolution mechanisms are indispensable. On the other hand, traditional or alternative forms of dispute settlement should not simply become a means of covering up for a lack of access to the ordinary justice system. To this end,

19 The Memorandum was signed on 6 April 2000 by the Indonesian Attorney-General Marzuki Darusman and the UNTAET Transitional Administrator Sergio Vieira de Mello and allows, *inter alia*, for the enforcement of court decisions in Indonesia and the transfer of individuals from Indonesia to the jurisdiction and custody of the competent East Timorese judicial authorities.

20 It has even been suggested that traditional mechanisms be used to deal with perpetrators of the September 1999 violence in East Timor. Other questions concern the limits of jurisdiction, including the forms and gravity of punishment imposed by traditional or alternative arrangements.

UNTAET must further explore the use of mobile courts, regular out-of-court days, and the establishment of ‘justices of the peace’ in remote communities.

IV CONCLUSIONS

The experience of the UN in East Timor has shown that the re-establishment of basic judicial functions – comprising all segments of the justice sector – must be among a mission’s top priorities from the earliest stages of deployment. Indeed, the absence of a functioning judicial system can adversely affect both the short and the long-term objectives of the peace building effort, including the political stability necessary for the development of democratic institutions, the establishment of an atmosphere of confidence necessary for the return of refugees, the unimpeded provision of humanitarian assistance, the successful implementation of development and re-construction programs, and the creation of an environment friendly to foreign investment and economic development. Finally, a functioning judicial system can positively affect reconciliation and confidence building efforts within often highly traumatised, post-crisis societies, not least because it can bring to justice those responsible for grave violations of international humanitarian and human rights law.

The following observations may serve as thought-provoking food for further discussion and guidance in this endeavour:

- (a) The UN’s experiences in East Timor demonstrate that justice, and law enforcement more broadly, must be seen to be effective from the first days of an operation. The inability to react swiftly to crime and public unrest, particularly in post-conflict situations in which criminal activity tends to increase, and the failure to detain and convict suspected criminals promptly and fairly, can quickly erode the public’s confidence in the UN. The absence of adequate law enforcement and the failure to remove criminal offenders can affect both the authority of the mission and the local population’s willingness to respect the rule of law. In the worst of cases, this can push self-proclaimed vigilante forces to take law enforcement into their own hands and resort to illegal detention, which can threaten the safety and security of the local population and the international staff. It is thus mandatory for the UN, and the international community at large, to improve its *rapid response capacity* in this area. New, creative and open-minded approaches are required in this respect to reach across traditional lines of responsibility and bring about closer cooperation among international organisations, non-governmental organisations, academia, and military actors.
- (b) It is mandatory to develop a *stand-by (not standing) network* of experienced and qualified international jurists, which can be activated at any given time. In view of the significant practical differences between common law and civil law systems, these experts should be recruited in sufficient numbers from among jurists of both systems to ensure that they

can adequately respond to the specific needs of the territory to be administered. Since quick deployment is crucial to the effectiveness and credibility of an operation at its early stages, the UN should create a network based on stand-by agreements with Member States, agencies, and academic institutions to facilitate the mobilisation of these jurists on short notice, within a few days if required.

- (c) In order to avoid a law enforcement vacuum in the early days of a mission, it is crucial to establish *ad hoc judicial arrangements* facilitating the detention and subsequent judicial hearing of individuals who are apprehended on criminal charges. Whereas intuitively one would hesitate to involve military actors in this sensitive area of civil administration, there may be situations where there has been a complete breakdown of the judicial sector and civilian arrangements cannot be deployed rapidly enough. The quick deployment of units of military lawyers in such situations, either as part of a UN peacekeeping force or a regional military arrangement such as the security force in Kosovo ('KFOR') or INTERFET in East Timor, could fill the vacuum until the UN mission is staffed and able to take over what is ultimately a civilian responsibility.²¹ In a parallel process, local personnel could be identified and trained gradually to take charge of the area. It would be understood that any such *ad hoc* arrangements would have to be in strict compliance with internationally recognised human rights and other relevant legal standards and should apply, once established, a set of UN-sponsored interim rules on criminal procedure.²²
- (d) It is necessary that legislation related to law enforcement be developed as part of a '*quick start package*' for UN-administered territories. The need for a readily applicable set of minimum rules of criminal procedure (ie, on arrest and detention) and substantive criminal law, as well as rules governing the activities of the police, which are consistent with recognised international standards, has proven to be essential to the unimpeded functioning of the CIVPOL component in peace-building missions. First, CIVPOL need to act with legal certainty and in accordance with clearly spelt out legal provisions, in order to ensure that they can carry out their daily law enforcement activities effectively and without fear of breaching the law. Second, CIVPOL need a clear legal framework in order to train the future local police force in democratic policing. Third, newly appointed judges, prosecutors, and lawyers must have immediate clarity as to what the applicable law is in order to carry out their functions. In areas other

21 The existence of the INTERFET-sponsored Detention Management Unit until early January 2000 allowed UNTAET more time to proceed with in-depth planning of East Timor's future judicial system and to carry out the difficult search for East Timorese jurists.

22 See Secretary-General of the United Nations, *Report of the Secretary-General on the Implementation of the Report of the Panel on United Nations Peace Operations*, UN Doc A/55/502 (2000) [30]-[35].

than criminal law, UN regulations from previous missions could, where applicable, serve as model regulations.

- (e) Judicial and legal training is not a 'soft' issue. *Professional legal training* in complex post-crisis situations such as East Timor extends beyond technical assistance. It is a pivotal element of capacity building and empowerment for the creation of a stable legal system. For example, given the lack of East Timorese experience in the administration of justice, the UN, in concert with its implementing partners, should ideally have been in a position to provide, immediately upon deployment, quick impact training and mentoring programs on core issues such as pre-trial standards, courtroom management, or drafting of detention orders. The initial establishment of a comprehensive database, including reference to potential providers of judicial training and their programs, would help to ensure a quicker response in this area.
- (f) A *functioning correctional system* from the outset of an operation should be viewed not as a complementary effort but as inextricably linked to the creation of a functioning law enforcement mechanism. Despite the reluctance of many donors to finance correctional facilities, such a system cannot be established unless sufficient and quickly disbursable funding exists for immediate reconstruction efforts. Thus, the UN must make a concerted effort to convince donor countries of the need to fund this crucial task from the outset in the consolidated budget for the activities of a transitional administration, based on assessed rather than voluntary contributions. In this connection, it is indispensable for the UN to include a sufficient number of professional international prison guards and wardens in its mission planning and budgeting.
- (g) Finally, the need to establish adequate arrangements for the prosecution and trial of individuals involved in *serious violations of international humanitarian and human rights law* must be given due consideration in the planning and set-up phase of an operation. In particular, in post-conflict situations where the international community's initial involvement was governed by human rights concerns and the establishment of international tribunals is not a possibility, it is essential to provide the necessary resources for domestic arrangements from the outset. Adequate funding for these pivotal activities cannot be left to occasional voluntary contributions, but needs to be included in the regular mission budget. Any such efforts must be complemented by an open-minded approach to amnesties for lower-level perpetrators, truth and reconciliation processes, and, where applicable, the integration of traditional indigenous forms of justice.