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Regional Hegemon ?*

Dr. Katsumi Ishizuka*

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Dr Katsumi Ishizuka

**Department of International Business Management
University of Kyoei, Japan**

Introduction

On 20 May 2002, East Timor became a newly independent state following on from the 24 years of Indonesia's illegal occupation, the referendum of 30 August 1999, and the UN's Transitional Administration in East Timor. The pattern of East Timor's process towards independence has been peculiar; it did not follow the decolonisation process of that in many Asian and African states in the 1960s and 1970s, nor the cases of states, which became independent shortly after the demise of the Cold War. In other words, it can be said that the independence of East Timor was achieved not as a result of trends in the international political climate but because of "some unpredicted events". Some claimed that such events were the Asian Economic Crisis of 1997 and the following fall of the Suharto regime. Another identified the optimistic or brave decision of Suharto's successor Habibie to hold the referendum as the precursor to independence. Or another might give the 1991 Santa Cruise massacre, which raised the international awareness of the human rights abuses in East Timor as the reason. However, it is also absolutely true that the history of East Timor and the process to its independence was considerably influenced by the policy of Australia, the regional power in the region.

Australia's strong ties with Indonesia diminished the consistency of its policy in East Timor, which can be recognised by the shift in its vote in the UN General Assembly. The first part of this paper deals with the historical description of Australia's policy in East Timor based on its political interests especially in relation to its diplomacy with Indonesia.

It is well-known that Australia currently plays a major role as a contributor to the UN peacekeeping force in East Timor. However, it is also noted that during the same period Australia and East Timor have been negotiating seabed boundaries in the Timor Sea, which contains rich natural resources such as petroleum and natural gas. The second part of this paper describes how Australia's political strength has been utilised to pursue its economic interests with newly independent East Timor.

In terms of international political theory, Australia's role as a regional hegemony has been doubted in the case of its policy towards East Timor. According to Gilpin and Keohane, a "hegemon" fulfils five defining criteria:

- (1) The leading state must have a preponderance of economic and military power (superior power base).
- (2) A hegemon must be a liberal state, because only liberal states have the will to pursue hegemony: authoritarian states prefer imperialism; moreover, only liberal states are concerned to create an open and liberal world order.
- (3) There must be a rudimentary consensus among the major states for hegemony.
- (4) A hegemon has the necessary “far-sightedness” to set up regimes, which can enhance long-term global welfare.
- (5) A hegemon must be willing to make short-term sacrifices in order to secure long-term collective/global benefits.¹

This paper applies the hegemonic theory to Australia’s case with its policy towards East Timor

Australia’s policy towards East Timor during the era of Indonesia’s occupation: the political dimensions

As it is universally stated in describing international studies, “while politics change, geography remains fixed.” Australia cannot avoid the reality that Indonesia is its neighbour and that Indonesia’s tight control of the archipelago, where ethnic and religious factors are diverse, is significant for Australia’s own territorial security. In this context, John Fuhrman, the former officer of the Australian Department of Foreign Affairs, stated as follows in 1993:

Australia still has a responsibility towards Papua New Guinea. The resistance within West Irian is alive and well through the activities of the OPM, and border incursions by the Indonesian military are by no means an unknown phenomenon. It is not in Australia’s interests to become involved in a Bougainville style scenario with Indonesia.²

This reality was reflected in Australia’s policy in East Timor. In fact, the policy of Australia’s Government towards East Timor was not monolithic. When the Government anticipated political turmoil in East Timor following the coup in Lisbon in 1974, opinions on Australia’s policy to it were divided between the Department of Foreign Affairs and Prime Minister, Gough Whitlam. The former supported the self-determination of East Timor, and the latter viewed integration with Indonesia as desirable.³ Eventually, the latter sidelined the former. When Suharto met with Whitlam in September 1974, he received a significant endorsement from the Prime Minister for his

¹ Hobson J. M. *The State and International Relations* (Cambridge: Cambridge University Press, 2000), pp. 39-40. See also Gilpin R. *Political Economy of International Relations* (Princeton: Princeton University Press, 1987), pp. 72-73, Keohane R. O. *After Hegemony* (Princeton: Princeton University Press, 1984), pp. 146, 180-181

² Fuhrman J. “East Timor: an Intractable Problem”, *New York International Review*, January/February 1993, p. 29

³ Fuhrman J. p. 27

integrationist policy in East Timor. Whitlam said, "An independent Timor would be an unviable state and a political threat to the area."⁴

However, the reality in East Timor differed from Whitlam's perspective. This can be recognised by a letter from Australian Senator Arthur Geitzelt to Whitlam on April 2, 1975, sent from Dili where he was a member of the Labour Party parliamentary delegation. He reported that the delegation had no doubt that East Timor would choose independence. In fact, they found no evidence of communist influence and therefore no grounds for Indonesian intervention on these grounds. Geitzelt strongly urged Whitlam to establish an Australian Consulate in Dili as a matter of urgency to ensure that there was no threat to Australian or Indonesian security. The letter concluded "The strong impression was conveyed to us that the people of Timor are prepared to pay any price for independence. We hope that Australia can ensure that the price is not too high."⁵ This view was also shared by James Dunn, who was a leader of a fact-finding mission to East Timor for the Australian Council for Overseas Aid in 1975. As a witness of the security situation in East Timor before the Indonesian invasion in 1975, he strongly asserted that there was no threat of communist confront in East Timor.⁶ However, from the Australian Government, not one word was offered warning the Indonesians not to invade, despite numerous pleas from Senator Geitzel and other Labour backbenchers to establish a peacekeeping force in East Timor. Whitlam even refused repeated requests by Jose Ramos Horta on behalf of FRETILIN to send a mediating team to East Timor to end the fighting.⁷

In August 1975, four months before the invasion, Australian Ambassador to Jakarta, Richard Woolcott, cabled his government to say that Indonesia had assured him that when Indonesia decided to launch an invasion in East Timor, Australia would be told in advance. He proposed in the cable sent to Canberra:

...We leave events to take their course... and act in a way, which would be designed to minimise the public impact in Australia and show private understanding to Indonesia of their problems. ...We do not want to become apologists for Indonesia. I know I am recommending a pragmatic rather than a principled stand but that is what national interest and foreign policy is all about
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...

At this point, however, the approach of the Department of Foreign Affairs was still to encourage East Timor's voluntary union with Indonesia through an

⁴ Cary P. "East Timor: Third World Colonialism and the Struggle for National Identity", *Conflict Studies* 293/294, *Research Institute for the Study of Conflict and Terrorism*, October and November 1996, p. 3

⁵ Freney D. *Timor: Freedom caught between the Powers* (Nottingham: The Russell Press, 1975), pp. 50-51

⁶ Interview with James Dunn, in Canberra, Australia, 21 September, 2003

⁷ Freney D. pp. 52-53

⁸ Pilger J. "The West's Dirty Wink", *The Guardian Weekend*, 12 February, 1994, p. 8

internationally recognised act of self-determination. Australia's response to Indonesia was to warn Indonesia that Australia would not condone the use of military force in East Timor by Indonesia, since it would damage the relationship between the two countries. This approach was endorsed by both Prime Minister and Foreign Minister.⁹

It was not only the Department of Foreign Affairs, which suggested self-determination for the East Timorese. The Department of Defence claimed that any action by any outside power to frustrate Timorese independence would be totally without justification.¹⁰ In his October 1975 Defence Department memorandum to Whitlam, Secretary W. B. Pritchett noted that "the weight of evidence from the outset has been that any act of self-determination would oppose integration ... the status and attitude of FRETILIN appear basic realities to which Indonesian policy, and our own, must adjust."¹¹ Pritchett advocated Australia's acceptance of an independent state in East Timor on the grounds of the perception of Indonesia as a potential threat to Australia, and the lack of confidence in a strong US response to a localised regional conflict between Australia and Indonesia.¹²

Meanwhile, Canberra indicated a tremendous extent of unwillingness to play a diplomatic role on East Timor. Australia refused to allow talks to be held in Australia between Portugal and East Timorese factions, and it refused to allow a Portuguese warship to take on supplies in Darwin.¹³

When Indonesian soldiers killed five journalists including three Australians at Balibo in October 1975,¹⁴ the Indonesian Government took Australian silence as an indication of Canberra's support for the invasion of East Timor. Furthermore, the Indonesian military had allegedly been involved in clandestine discussions with the Liberal party concerning their position on Indonesia's intentions towards East Timor.¹⁵ When he was asked on ABC television 4 December 1975 what Australia would do if Indonesia invaded East Timor, Whitlam answered, "We would do absolutely nothing."¹⁶

Meanwhile, in the paper delivered on 30 November 1979 in the seminar series "The Indonesian Connection" conducted in the Australian National University,

⁹ Fuhrman J. p. 27

¹⁰ Dunn J. *Timor, A People Betrayed* (Milton, Queensland: Jacaranda Press, 1983), p. 154

¹¹ Quoted from Nichterlein S. "Australia: courtier or courtesan?" in Cotton J. (ed.) *East Timor and Australia* (Canberra: Australian Defence Studies Centre, 1999), p. 152

¹² *Ibid.* p. 150

¹³ Gunn G. C. *East Timor and the United Nations: the Case for Intervention* (Lawrenceville, New Jersey: The Red Sea Press, 1997), p. 61

¹⁴ Five journalists witnessed a firefight in mid-October at Balibo in the western sector of East Timor between Indonesian forces building up on the border and FRETILIN fighters. They were executed by command of the Indonesian general in charge of the creeping incursion of East Timor.

¹⁵ Aubrey J. "Canberra: Jakarta's Trojan Horse in East Timor" in Hainsworth P. And McCloskey S. (eds.) *The East Timor Question: The Struggle for Independence from Indonesia* (New York: I.B.Tauris, 2000), p. 136

¹⁶ *Ibid.* p. 133

Whitlam claimed that the Indonesian invasion of East Timor in 1975 was the inevitable result of political a vacuum in the area:

President Suharto and I [Whitlam] agreed Portugal should be encouraged to maintain her authority in Timor for some time longer, probably five years, in order to give the population some experience in managing its affairs. We were to be frustrated in this irresponsibility of the Portuguese and the intransigence of the parties [in East Timor]. ... I myself can testify that President Soeharto placed great stress on legality and legitimacy and in his conversations with me always used the term Timor Portuguese. For that reason he seems to have been most reluctant to sanction military action in East Timor and only to have done so ... when he felt he had no alternative.¹⁷

Whitlam's imperial prime ministership and his close relationship with Suharto encouraged him to adopt the "Woolcott Doctrine" rather than support the advocates from the Departments of Foreign Affairs and Defence. This is confirmed by the fact that no member of the Whitlam cabinet was indeed informed of the shooting of the journalists at Balibo.

The Whitlam Government was replaced by the Fraser Government several weeks before Indonesia's invasion of East Timor on 7 December 1975. On the subject of the invasion the Australia Foreign Minister Andrew Peacock said he "deeply regretted" the course of events in Timor, although he made it clear that Australia would play no major role in the situation and his criticism of Jakarta was predictably mild.¹⁸ However, he was initially highly critical of the Whitlam Government's dealing with the entire East Timor issue and acquiescence to Indonesian policy. While he comprehended the difficulties faced by Indonesia, he blamed both Portugal and FRETILIN for their action. However, the Fraser Government took a more assertive stance towards Indonesia and a more neutral one towards the international community. For example, on 12 December 1975, the UN General Assembly confirmed a resolution passed by the Fourth Committee, which deplored Indonesia's intervention in East Timor and called for the withdrawal of its troops without delay. On this occasion, Australia indeed voted for the resolution, with the result in committee of 69 to 11, with 38 abstentions. In his speech in the Parliament on March 4, 1976, Peacock said he regretted that East Timor had become a matter of almost ideological dispute, generating some unreasonable demands and some unrealistic proposals, rather than as it should be a matter demanding a constructive and humanitarian approach directed towards solving the problem of Timorese suffering.¹⁹

¹⁷ The paper, "Australia, Indonesia and Europe's Empires", delivered by Edward Gough Whillam, in the seminar series "The Indonesian Connection" conducted by the Research School of Pacific Studies in the Australian National University, Canberra, on 30 November 1979.

¹⁸ *The Guardian*, 8 December 1975

¹⁹ Foreign Policy Speech by the Minister for Foreign Affairs, Mr. A. S. Peacock in Parliament, 4 March 1976

Peacock told Indonesia that the UN representative should go to Timor without delay or prevarication. When he had a meeting with his Indonesian counterpart, Mr. Marik, he told him that although Australia was not prepared to jeopardise the long-term relationship between Australia and Indonesia, he had an official assurance that an act of self-determination would ultimately prevail.²⁰ However, Mr Malik announced at the conclusion of the Security Council debate in April 1976 that East Timor could be part of Indonesia by August 1976 and that the decision would be taken by regional councils. Peacock was still adamant. He met with FRETILIN's Jose Ramos-Horta three times. In June 1976, the Popular Assembly of East Timor, consisting of local leaders and chiefs, unanimously approved the integration of the territory with Indonesia. Peacock refused to send a representative as a witness when the Assembly decide to send a delegation to Jakarta to request delegation, since he claimed that the UN was not involved in this Assembly.²¹

However, President Suharto signed a bill integrating East Timor into Indonesia in July 1976. Furthermore, the Australian policy towards East Timor had to be reconsidered in the light of unexpected US intervention. In August 1976, high-ranking US officials warned Australia not to weaken its relations with Indonesia over Timor, since control of Timor by Indonesia was a matter of direct strategic significance to US interests.²² The Australian Government confiscated a transmitter used to receive messages from East Timor in September 1976.²³ Furthermore, as Viviani described:

...on 26 August 1976 Mr Peacock announced that the Government would commit \$250,000 in aid to Timor to be channelled through the "Indonesian" Red Cross. This was a significant shift from the previous policy which was that Australian aid should be channelled though the "International" Red Cross The shift was a tacit recognition of Indonesia's control of the territory.²⁴

In October 1976, Australian Prime Minister Fraser told Parliament that he did not wish to retrace the history of the East Timor conflict and it was important to look to the future instead. He also told a press conference that there was no question of de facto recognition of the merger.²⁵ Therefore, it was accepted that the Australian Government would gradually shift to a strong pro-Jakarta policy and recognise Indonesia's *de jure* sovereignty in East Timor. In November 1976, the Fourth Committee of the UN General Assembly, which criticised Indonesia's stationary troops in East Timor, witnessed Australia's abstention. In short, Peacock's pro-independence policy in the early stages was not consistent, and became more ambiguous, partly because his view was not

²⁰ Viviani N. "Australians and the East Timor Issue: the Policy of the Fraser Government" in Cotton J. (ed.) *East Timor and Australia* (Canberra: Australian Defence Studies Centre, 1999), p. 116

²¹ Ibid. pp. 121-122

²² *Sydney Morning Herald*, 3 August 1976

²³ Taylor J. G. p. 202

²⁴ Viviani N. p. 123

²⁵ *The Times*, 12 October 1976

shared by Fraser, many in Cabinet, nor senior Foreign Affairs officials.²⁶ The warning from the US Government was decisive enough for Australia to change its 1975 position.

From 1976 the focus of East Timor in the Australian Government shifted from sovereignty to humanitarian and human rights issues in East Timor where international assistance was desperately needed. According to the 1977 Report of James Dunn, the Director of the Department of Foreign Affairs advisory body, the Foreign Affairs Group of Legislative Research Service:

The military seizure of East Timor has been a bloody operation, in which atrocities of a disturbing nature have been committed against the civilian population. Indeed, these accounts of Indonesian behaviour in East Timor suggest that the plight of these people may well constitute, relatively speaking, the most serious case of contravention of human rights facing the world at this time.²⁷

In 1978, a significant but premature decision was made by the Fraser Government. On January 20, 1978, the Australian Government announced:

Accordingly, the Government has decided that although it remains critical of the means by which integration was brought about it would be unrealistic to continue to refuse to recognize *de facto* that East Timor is a part of Indonesia.²⁸

Australia's announcement of its *de facto* recognition of Indonesia's sovereignty in East Timor was totally premature since just a few weeks before the announcement the UN General Assembly adopted a resolution, which Australia abstained upon, rejecting Indonesia's claim that East Timor was a part of Indonesia. Australia was the first state to express a view contrary to a clear expression of UN opinion.²⁹ It was not surprising that the governmental *de facto* recognition received stormy criticism from the Australian public and the opposition party. The non-acceptance of the Opposition Labour Party was expressed by the party leader in Senate, Wriedt, on 24 January 1978:

An act of military aggression cannot be classed as integration. The right of conquest exists no longer. It is clearly established by the consensus of civilised communities that military conquest is not a ground of acquisition of territory. The Australian Labour Party stands by its policy that the people of East Timor have a right to self determination. Until such time that this is permitted, East

²⁶ Salla M. E. "Australian Foreign Policy and East Timor", in Cotton J. (ed.) *East Timor and Australia* (Canberra: Australian Defence Studies Centre, 1999), p. 165

²⁷ Quoted from Dunn J. *The East Timor Situation: A Report on Talks with Timorese Refugees in Portugal* (Canberra: Legislative Research Service, Australian Parliament, 1977), p. 12

²⁸ Press Release, Department of Foreign Affairs, January 20, 1978

²⁹ Sulter K. D. "International Law and East Timor" in Cotton J (ed.) *East Timor and Australia* (Canberra: Australian Defence Studies Centre, 1999), p. 193

Timor cannot become part of Indonesia. Indonesia has no valid claim to sovereignty over the area.³⁰

In responding to much criticism, Peacock, in his statement, gave four reasons for *de facto* recognition; firstly that Indonesian control is effective and covers all major administrative centres; secondly, that it is necessary to press on *expeditiously* with the question of family reunion; thirdly, that it is necessary to do the same with the rehabilitation of Timor; and fourthly, that to carry out the last two matters in particular we need to have more extensive direct dealings with the Indonesian Government as the authority in effective control.³¹ Australia finally voted against General Assembly resolution 34/40, 21 November 1979, reaffirming the inalienable right of the people of East Timor to self-determination and independence. Peacock asserted that in Australia's view the resolution was unrealistic and impractical, and that its main thrust was directed towards the pursuit of what Australia see as pointless goals in the area of decolonisation. He clearly concluded, "Indeed, Australia has recognised that East Timor has been integrated into Indonesia."³²

The 1982 Australian Labour Party Platform on East Timor still "recognised the inalienable right of the East Timorese to self-determination and independence and condemned and rejected the Australian Government's recognition of the Indonesian annexation of East Timor."³³ This Platform also opposed all defence aid to Indonesia until there was a complete withdrawal of Indonesian occupation forces from East Timor.³⁴

However, when the Labour leader Bob Hawke took over from Fraser as prime minister in 1983, this platform became apparently problematic since his government had to maintain close diplomatic ties with Indonesia. In fact, the 1986 ALP Platform stated that the Australian Government has recognised *de jure* the incorporation of East Timor into Indonesia and while it accepted this reality it nonetheless expressed its concern at the way in which that incorporation proceeded.³⁵ As Kent asserted:

Once the [Indonesian] takeover [in East Timor] had been formally recognised by Australia, succeeding governments became hostage to the decisions and activities of the Indonesian military in East Timor, and were bound to respond

³⁰ Statement by the Leader of the Opposition in the Senate and Opposition Spokesman on Foreign Affairs, Senator Wriedt, 24 January 1978

³¹ Statement by the Minister for Foreign Affairs, Mr A. S. Peacock, Debate in the House of Representatives, 23 February 1978

³² Answer to a question by the Minister of Foreign Affairs, Mr. A. S. Peacock, in the Senate Debate, 23 April 1980

³³ Australian Labour Party *Australian Labour Party Platform, Constitution and Rules as approved by the 35th National Conference* (Canberra: ALP, 1982), p. 81

³⁴ *Ibid.*

³⁵ Australian Labour Party *Australian Labour Party Platform, Resolutions and Rules as approved by the 37th National Conference* (Canberra: ALP, 1986), p. 143

*in an ad hoc way to continuing human rights abuses and atrocities to which no final conclusion could ever be anticipated.*³⁶

Therefore, the Foreign Minister in the Howke Government, Bill Hayden considered that Australian human rights policy should be channelled through multilateral diplomacy rather than bilateral. This can be recognised by the fact that Australia actually voted in favour of a General Assembly resolution on East Timor in the 41st session for Human Rights in 1985. The Suharto regime protested strongly against this resolution. However, when in 1988 Gareth Evans replaced Hayden, the new foreign minister tried to recover relations with Indonesia, taking a more realistic and pragmatic approach to the human rights issue in East Timor.

We have taken the point that the human rights situation in East Timor can be much better advanced and much more usefully advocated in an environment where Australia does have a working relationship with Indonesia, and one that accepts the reality and the inevitable.³⁷

Thus, Australia's East Timor policy during Indonesia's occupation era was both inconsistent and ambiguous. Several foreign ministers in the 1970s and 1980s expressed sympathy with the East Timorese for their sovereignty and humanity. However, their sympathy was not enough to persuade their prime ministers who valued the wider framework of their diplomacy, especially the maintenance of strong ties with Indonesia. The inevitability of the maintenance of a positive relationship with Indonesia can be recognised by the fact that the new Government, which had supported East Timor's self-determination when it was in Opposition, changed its policy using the terms "reality", "inevitability", "expediency" or "circumstances" instead of "legitimacy" and "legality." Australian human rights diplomacy was not significant enough to influence the issue of self-determination. It might be concluded that Australia's positive shift on the humanitarian issue was an excuse for its connivance at Indonesia's illegal annexation of East Timor. As Salla put it, this phase in Australian foreign diplomacy "amounted to little more than the proverbial pebble in Indonesia's shoe."³⁸

Australia's policy towards East Timor in the context of the Timor Gap Treaty: the economic dimensions

In addition to the geographic, Australia's policy in East Timor was profoundly related to its economic interests. The Timor Sea between East Timor and northern Australia is estimated to contain the world's 23rd largest oil field with reserves of five billion barrels of oil and 50 trillion feet of liquid natural gas.

³⁶ Kent A. "Human Rights" in Mediansky F. A. (ed) *Australian Foreign Policy* (South Yarra, Australia: Macmillan, 1977), p. 172

³⁷ Quoted from *The Monthly Record* (December 1990), p. 879

³⁸ Salla M. E, p. 171

Therefore, Indonesia understandably made use of the economic benefit of this “Gap” in its diplomacy on the annexation of East Timor.

In 1972, Australia and Indonesia signed a seabed boundary treaty based on the now outdated continental shelf principle, establishing a seabed boundary much closer to Indonesia than to Australia. In 1975, with full knowledge of Indonesia’s intention to invade East Timor, the Australian Ambassador to Jakarta Richard Woolcott sent a confidential memo to his government, stating that “closing the present gap in the agreed sea border could be much more readily negotiated with Indonesia ... than with Portugal or an independent Portuguese Timor.”³⁹ Therefore, the informal negotiations between Australia and Indonesia on the sharing of natural resources in the Timor Gap commenced as early as February 1976. This coincided with a change in Australia’s vote at the UN, from support for the resolution condemning Indonesia, to abstention. However, for Australia, its endorsement of Indonesia’s sovereign right in East Timor was a prerequisite for the successful conclusion of the treaty on the Timor Gap.

Indeed, as James Dunn stated, the real motivation behind Canberra’s move to legally recognise the annexation of East Timor was to facilitate negotiation with the Indonesia Government on seabed rights and oil exploration in the Timor Gap.⁴⁰ Back in May 1978, Foreign Minister Peacock stated as follows the terms of negotiations on the seabed resources in the Timor Gap:

Australia and Indonesia have not yet entered into negotiations on a seabed boundary between the south of East Timor and Australia. The question of whether negotiations and the conclusion of any arrangement with Indonesia on this issue will amount to a de jure recognition of Indonesia’s incorporation of East Timor will depend on all the circumstances existing at the time.⁴¹

Australian formal recognition of Indonesia’s sovereignty in East Timor occurred in February 1979, when negotiations were formally commenced over the Timor Gap. However, of course, Indonesia had no legal right to negotiate East Timor’s resources in the first place, given that its occupation of the territory was illegal and recognised by no nation except Australia.⁴² Foreign Minister Gareth Evance described the legality of Indonesia’s acquisition in the Senate on 1 November 1989:

³⁹ La’o Hamutuk, The East Timor Institute for Reconstruction Monitoring and Analysis, "With Independence, What Changes for the Timor Gap?: Boeders and Oil Deals between Australia and East Timor", *The La’o Hamutuk Bulletin*, Vol. 3, No. 4, May 2002, p. 3

⁴⁰ Aubery J. p. 142

⁴¹ Written answer provided by the Minister for Foreign Affairs, Mr. A. S. Peacock, at the Senate Debate, 11 May 1978

⁴² Tanker R., Selden M., and Shalom S. R. "East Timor Faces the Future" in Tanker R., Selden M., and Shalom S. R. (eds.) *Bitter Flowers, Sweet Flowers* (Sydney: Pluto Press, 2001), p. 258

... We have taken the view since 1979 that whatever the unhappy circumstances and indeed, possible illegality, surrounding Indonesia's acquisition of East Timor in the mid-1970s, Indonesian sovereignty over that territory should be accepted not only on a de facto but on a de jure basis. There is no binding legal obligation not to recognise the acquisition of a territory that was acquired by force... In international law the legality of the original acquisition of territory by a state has to be distinguished in subsequent dealings between the state acquiring that new territory and other states – in this instance, Australia.⁴³

However, more importantly, one month after Evans's comment in the Senate, "The Treaty on the Zone of Cooperation in an Area between the Indonesian Province of East Timor and Northern Australia", the so-called "Timor Gap Treaty", was signed between Australia and Indonesia in December 1989. Australia's commitment to this treaty resulting from its strong relationship with Indonesia can be recognised in several speeches given by Evans. In his address to a 1989 conference on "Indonesia's New Order: Past, Present and Future", Evans stated, "The Treaty is ... not just an important agreement in itself; it is a symbol of a more sophisticated approach to the security concerns between us which springs naturally from our geographical proximity."⁴⁴ In the statement to the Timor Gap Forum in Darwin on 3 November 1990, Evans also commented: "Australia has been able to work together constructively and effectively with the Indonesian authorities in improving the economic situation of the people of East Timor."⁴⁵

The Timor Gap Treaty was based on a sea boundary which was negotiated between Australia and Indonesia in 1972 as mentioned before. This sea boundary was much closer to Indonesia than Australia, which means Australia could enjoy more economic benefits from the natural resources than Indonesia. The underlining principle to this boundary is the principle of law that a state is entitled to a seabed reflecting the natural prolongation of its continental shelf. However, in terms of the new law of maritime boundaries, the United Nations Convention on the Law of the Sea (UNCLOS) had been ratified in 1982. The UNCLOS redefined international maritime law stating that for countries with less than 400 nautical miles of sea between them, the international boundary would be the mid-points. The adoption of the UNCLOS would have been more advantageous to Indonesia than to Australia in terms of revenues from the gas and oil in the Timor Sea. At this stage, one question can be raised, "why didn't Indonesia ask the International Court of Justice to define a maritime boundary between Australia and Indonesia in accordance with the 1982 UNCLOS? Firstly, this claim would encourage Portugal and international society to assert the illegality of Indonesia's occupation of East Timor more vigorously.

⁴³ Quoted from Clark R. S. "Timor Gap" in Cary P. and Bentley G. C. (eds.) *East Timor at the Crossroads*, pp. 76-77

⁴⁴ Evans G. "Australia and Indonesia – A develop relationship", *Australian Foreign Affairs and Trade*, Vol. 60, 1989, p. 703

⁴⁵ Clark R. S. p. 83

Secondly, Indonesia was vulnerable to the issue of maritime boundary with Australia since the latter was an only state who officially recognised the former's sovereignty in East Timor. In other words, anxious to retain Australian diplomatic support, the Suharto regime accepted Australian sovereignty over nearly all of the north-western continental shelf.

This political stance of the Australian Government towards Indonesia and East Timor, however, lost diplomatic consistency after the Timor Gap Treaty. This can be recognised especially in its response to the Santa Cruz massacre in November 1991. Bob Hawke, the Australian Prime Minister, responded to the massacre by calling on the Indonesian Government to abandon the use of military force and to begin negotiations with the people of East Timor to reach a settlement. This response was quite mild compared with that from many other likeminded states, and with his own response to China's Communist leaders' smashing the country's pro-democracy movement in the same year.⁴⁶ It is also significant that just after the 1991 Santa Cruz massacre, international oil companies began signing contracts with Australia and Indonesia to explore under the Timor Sea. Furthermore, Canberra signed a new agreement with Indonesia regulating their "Joint Authority" in the Timor Gap in the month after the massacre, implying that the Timor Gap's oil business with Jakarta would continue as normal.⁴⁷ In this context, Professor Clark argued:

If Australia were to enter into an arrangement with Indonesia to jointly invade and take over the territory of East Timor, that arrangement would clearly be void under the preemptory norm doctrine. I think the logic of the argument is that the same result follows if the territory [Timor Gap] is shared out after the invasion, even Australia had completely clean hands at the point of conquest.⁴⁸

The Australian Government was reluctant to take any action which would imperil the Timor Gap Treaty. This Treaty was regarded as illegal by Portugal, which challenged Indonesian sovereignty over East Timor in the International Court of Justice (ICJ) at The Hague. In the ICJ, the Portuguese Government claimed that the Timor Gap Treaty infringed the right of the people of East Timor to self-determination, to territorial integrity and unity and its permanent sovereignty over its natural wealth and resources. Lisbon also maintained that the Treaty contravened Security Council resolutions 384 and 389 and, as a consequence, was in breach of the obligation to accept and carry out Security Council resolutions laid down by Article 25 of the UN Charter.⁴⁹ The Portuguese claim was rejected by Australia and Indonesia.⁵⁰ Furthermore, in 1995 the ICJ ruled that it could not invalidate the Treaty because Indonesia did

⁴⁶ *The Financial Times*, 20 November 1991

⁴⁷ Cary P. p. 21

⁴⁸ Clark R. S. p. 85

⁴⁹ International Court of Justice, Case Concerning East Timor Portugal v. Australia), Application Instituting Proceeding of the Government of the Portuguese Republic, filed in the Registry of the Court, on 22 February 1991, para. 34

⁵⁰ *The Financial Times*, 6 December 1991

not accept ICJ jurisdiction, but that East Timor had an undeniable right to self-determination. However, in its judgement the ICJ found that Lisbon's claims were irrefragable. The former UN Secretary General Perez de Cuellar had also commented in the interview in September 1993 that Australia's entry into the Timor Gap Treaty with Indonesia severely clouded a possible solution to the East Timor question.⁵¹

This Treaty divided the Timor Gap region into three sections in which petroleum production in the largest area, Area A, was to be equally shared by the two countries. In Area C, closest to East Timor, 90% of the production would go to Indonesia and 10% to Australia. Under this division, contracts were signed with multinational oil companies such as US-based Phillips Petroleum, British and Dutch-owned Shell, and Australian-based Woodside and Broken Hill Propriety (BHP).

The National Council of Timorese Resistance (CNRT), formed as an umbrella organisation in July 1998, stated in the period immediately preceding the commencement of oil production:

This oil is a natural resource from which the people of East Timor have a right to benefit under international law... CNRT demands that until an internationally acceptable resolution of the East Timor conflict is achieved, the funds currently destined for Indonesia be placed in a special trust fund for the people of East Timor by the Timor Gap Joint Authority.⁵²

"International law" in this context meant the UNCLOS, mentioned previously. According to the UNCLOS, East Timor should receive the major part of the natural gas and petroleum in the Gap on its independence.

After the referendum in September 1999 in which the majority of East Timorese people opted for independence, Indonesia virtually relinquished its claim to East Timor as well as the natural resources in the Timor Sea. In October 1999, The United Nations Transitional Administration in East Timor (UNTAET) officially replaced Indonesia as Australia's partner in exploiting these reserves, valued at US\$11 billion and \$19 billion.

In December 1999, Mari Alkatiri, the CNRT's representative on oil affairs announced the CNRT's rejection of simply taking Indonesia's place in the Timor Gap Treaty and their desire to resolve the issue of the maritime boundaries. In February 2000, however, UNTAET agreed upon a temporary "Exchange of Notes" with Australia over the Timor Gap. This "Exchange of Notes" continued the terms of the 1989 Timor Gap Treaty, simply replacing Indonesia with East Timor to deal with current oil investments until East

⁵¹ Gunn G. C. p. 44

⁵² CNRT, "CNRT Statement on Timor Gap Oil", *Timor Gap Oil and Gas Resources*, 21 July 1998

Timor's independence.⁵³ In fact, although UNTAET hoped to negotiate with Australia on future maritime boundaries, Australia refused to discuss boundaries, agreeing only to discussion of how production revenues in Area A of the Timor Gap Treaty would be shared. In July 2001, a Memorandum of Understanding was signed by UNTAET and the Australian Government. This memorandum proposed the ratification of "the Timor Sea Arrangement" on the independence of East Timor. However, this Arrangement would jeopardise the settlement of East Timor's maritime boundaries under international law. Indeed, in March 2002, two months before independence, the Australian Government did withdraw from the legal process of resolving maritime boundaries within the ICJ and from the dispute settlement under UNCLOS. The Australian Government stated that "Australia's strong view is that any maritime boundary dispute is best settled by negotiation rather than litigation."⁵⁴

On the independence of East Timor, 30 May 2002, the Timor Sea Treaty, replacing the Timor Gap Treaty, was signed between Australia and East Timor. This treaty would allow East Timor to receive 90% of all oil and gas royalties from Area A in the Timor Gap Treaty, which was now called Joint Petroleum Development Area (JPDA). This was a clear improvement on the 50% split in the Timor Gap Treaty. However, Australia delayed ratifying the Timor Sea Treaty to force East Timor to sign another agreement, namely, the Sunrise International Unitization Agreement (IUA). The IUA would allow Australia to receive about 80% of all petroleum royalties although according to UNCLOS all royalties should go to East Timor. According to the sources of La'o Hamutuk, an NGO group promoting the economic and social reconstruction and development of East Timor, in one IUA negotiating session in Dili in November 2002, Australian Foreign Minister Alexander Downer lectured East Timor's Prime Minister Mari Alkatiri:

To call us a big bully is a grotesque simplification of Australia. We had a cosy economic agreement with Indonesia; we bailed East Timor out with no economic benefits. Our relationship is crucially important, particularly for you, East Timor. The two countries you can count on the most are Portugal and Australia. ... On principle we are surprisingly inflexible. ... We are very tough. We will not care if you give information to the media. Let me give you a tutorial in politics – not a chance.⁵⁵

⁵³ La'o Hamutuk, The East Timor Institute for Reconstruction Monitoring and Analysis, "With Independence, What Changes for the Timor Gap?: Boeders and Oil Deals between Australia and East Timor", *The La'o Hamutuk Bulletin*, Vol. 3, No. 4, May 2002, p. 4

⁵⁴ *Ibid.* p. 5

⁵⁵ La'o Hamutuk, The East Timor Institute for Reconstruction Monitoring and Analysis, "Boundaries and Petroleum Fields", *The La'o Hamutuk Bulletin*, Vol. 4, Nos. 3-4, August 2003, p. 5

On 5 March 2003, East Timor's Government eventually agreed to sign the IUA. The following day, Alexander Downer visited Dili to sign the IUA; on the same day, the Parliament in Canberra ratified the Timor Sea Treaty.⁵⁶

Indeed, Australia would have a greater variety of benefits from the petroleum development project in the Timor Sea. It has been reported that the Australian Government – especially the Northern Territory Government – expects the gas pipeline to run to Darwin. This will provide employment opportunities and increase investment, business, and technological innovations in Australia. In fact, the largest private sector investment in the Northern Territory is to go ahead with the construction of a US\$ 1.5 billion gas pipeline and liquefaction plant in Darwin. The investment will create more than 1,000 jobs over the three-year construction period and 100 permanent jobs at the plant, and make Darwin the base for supply and service to the Bayu-Undan offshore gas and oil field.⁵⁷ The number of jobs created in Australia by the projects, including the "Greater Sunrise Field", such as new business and training programmes would be more than 20,000. This will enhance the Northern Territory government's ability to support its own social and development programmes. According to the report of an NGO, Australia is using its economic strength to offer a lower tax rate to oil companies exploring for petroleum in the Timor Gap. The petroleum companies will likely side with Australia, which is offering them a better deal than East Timor.⁵⁸ Meanwhile, for East Timor, it will reap only a few benefits through employment opportunities as a result of the processing in East Timor from the Timor Sea project; less than 100 jobs in total at most will be created.

As mentioned earlier, the current maritime boundary between Australia and East Timor is still based on the one agreed by Australia and Indonesia in 1972. This is because UNTAET, as a transitional administration, accepted that East Timor was simply replaced by Indonesia with the content of the treaty unchanged despite the fact that the seabed boundary was more advantageous to Australia because of its official recognition of Indonesia's sovereignty in East Timor during the occupation era. However, why is it that a newly-independent state of East Timor cannot claim that the boundary should be reconsidered in accordance with UNCLOS? There are several explanations.

Firstly, East Timor is still virtually in a state of emergency from the social and economical perspectives. The state has only a 40% literacy rate, a GNP per capita of less than US\$340, life expectancy of 48 years and an infant mortality rate of 135 per thousand live births.⁵⁹ Therefore, the East Timor Government

⁵⁶ Ibid.

⁵⁷ *The Australian*, 16 June, 2003

⁵⁸ La'o Hamutuk, The East Timor Institute for Reconstruction Monitoring and Analysis, "Report on Petroleum Conference in Darwin, Australia", *The La'o Hamutuk Bulletin*, Vol. 3, No. 6, August 2002, p. 13

⁵⁹ Uniting Church in Australia, *Submission to the Joint Standing Committee on the Timor Sea Treaty No. 34.1*, p. 2

desperately needs additional financial resources. Even if the boundary claim of East Timor is considered to be logically more legitimate than that of Australia, the procrastination of negotiations was not advantageous to East Timor. In fact, Australian Foreign Minister Alexander Downer has clearly confirmed that Australia will not negotiate its seabed boundaries with East Timor. This proves that Australia's position is to resist any legal determination of its maritime boundaries with East Timor.⁶⁰ Furthermore, a pessimistic perspective on international aid to East Timor is prevalent due to the advent of the Timor Sea Treaty:

International donors ... may well carry [East Timor] through to 2004-05, but beyond that it is very unlikely they will get [current levels] of budgetary support. Donors are expecting that an agreement will be reached and their exit strategy, if you like, is the revenue stream that will come from the Timor Gap.⁶¹

The above realities, such as economic emergency, political inevitability and international perspective on aid forced the East Timor Government to compromise.

Secondly, and more significantly, East Timor still owes Australia from the viewpoints of finance and security. Australia is one of the largest donors to East Timor. According to an announcement by the Australian Government in May 2000, A\$40 million per annum was allocated to East Timor as aid for 2000-01 and 2001-02, and A\$35 million per annum allocated for 2002-03 and 2003-04. This aid package follows Australian assistance of A\$81 million in 1999-2000,⁶² when East Timor was devastated by Indonesia-led militias and its infrastructure was totally demolished. The Australian contribution to the United Nations Mission in East Timor (UNAMET: May 1999-) was substantial, including a contingent of civilian police (among them the UNAMET police commander) and the resources of the Electoral Commission in assembling the electoral roll and completing the ballot, along with supplies and logistics.⁶³ Following Interfet, as part of the two United Nations peacekeeping forces in East Timor, namely, the United Nations Transitional Administrations in East Timor (UNTAET: October 1999-May 2002) and the United Nations Mission of Support in East Timor (UNMISSET: May 2002-present), Australia has consistently contributed the largest number of troops to a nation-building process and the maintenance of security in East Timor. As a response to East Timor's Foreign Minister, Jose Ramos Horta's passionate

⁶⁰ National NGO Forum, Timor Lorosa'e (East Timor), "NGO Coalition for Timor Gap Monitoring", a letter sent from East Timor civil society leaders to Members of Parliament, 13 June 2002

⁶¹ Chamberlain P. *Transcript of Evidence, Report 49*, Joint Standing Committee on Treaties, the Parliament of the Commonwealth of Australia, 4 October 2002, p. 176

⁶² The Parliament of the Commonwealth of Australia, *Report 49*, Joint Standing Committee on Treaties, November 2002, p. 32

⁶³ Cotton J. "The Emergence of an Independent East Timor: National and Regional Challenges", *Contemporary Southeast Asia*, Volume 22, Number 1, April 2000, p. 15

plea,⁶⁴ Australia also pledged support for East Timor's security after the withdrawal of UNMISET with its A\$40 million initiative to provide training and management for the country's new police force.⁶⁵ In June 2003, the Australian Ministry of Immigration also decided to allow 379 East Timorese asylum-seekers to stay in Australia.

Thirdly, in the regional context, East Timor, as a newly independent state, is vulnerable to the principle of regional cooperation. Its ambition to fully be a member of ASEAN and expand its trade capacity would require the commitment and understanding of its neighbouring states. In the security context, the Asia-Pacific region is still the most volatile area in the world. The terrorist bombing in Bali in October 2002 convinced East Timorese Government that its own territory has the potential to be an ideal base for terrorists. Meanwhile, the continuing importance of Australian security policy towards its neighbours was made clear in the Defence White Paper published in December 2000:

We would be concerned about major internal challenges that threatened the stability and cohesion of any of these countries. We would also be concerned about any threat of outside aggression against them. We have a key interest in helping to prevent the positioning in neighbouring states of foreign forces that might be used to attack Australia.⁶⁶

Therefore, it is obvious that East Timor will have to put itself within the framework of the security policy of the regional power of Australia. The power of politics and "free-riding" on regional security will require East Timor to indirectly pay a price in the negotiation of the Timor Sea Treaty with Australia.

Thus, East Timor will inevitably continue taking its current position in terms of the Timor Sea Treaty. It is because of a recognition that any attempt to renegotiate the treaty would be long and difficult. East Timor would be in the position of asking Australia for increased economic aid and "visible" and "invisible" security assistance and guarantees.

Australia as regional hegemon?

Australia's policy towards East Timor can be applied to an international political theory, especially five defining criteria of a hegemon provided by Keohane and Gilpin, mentioned previously. The following argument can

⁶⁴ Jose Ramos Horta asked the Australian Government not to withdraw its troops from East Timor in May 2004, saying "We need some time to consolidate our institutions. Our own police and soldiers are not really ready to be deployed yet in terms of training, equipment and logistics." (*The Australian*, 12 July 2003)

⁶⁵ *Agence France-Presse (AFP)*, 19 November 2003

⁶⁶ Australian Strategic Policy Institute (ASPI), *New Neighbour, New Challenge: Australia and the Security of East Timor* (Canberra: ASPI, 2002), p. 9

exemplify difficulty to conclude that Australia has been qualified to be a regional hegemon especially in the light of its policy towards East Timor.

(1) The leading state must have a preponderance of economic and military power .

Australia's consistent contribution to UN and non-UN peacekeeping forces in East Timor indicates its military commitment to regional stability. However, its reputation as a regional power had been significantly tarnished by Australia's connivance and non-military involvement in Indonesia's invasion of East Timor in 1975 and the following human rights abuses and the crimes against humanity perpetrated by Indonesian troops for two decades. In terms of the economic factors, opinions are divided. On the one hand it is true that Australia has provided significant amounts of economic and financial aid to East Timor. On the other hand, the issue of the Timor Sea Treaty convinced that Australia exploited its economic preponderance over East Timor in order to gain more natural resources in the Timor Sea .

(2) A hegemon must be a liberal state, because only liberal states have the will to pursue hegemony.

The fact that only Australia officially recognised Indonesia's sovereignty in East Timor, by-passing UN resolutions, was considered totally outside the liberal and democratic framework . Furthermore, the policies and decisions made by the Australian Government towards East Timor had not been reflected by public opinions and observer and research groups which had consistently supported self-determination and democratisation and opposed Indonesia's illegal invasion of East Timor. Although Australia's position towards Indonesia and East Timor was significantly shifted by a certain degree towards liberalism, it was mainly due to an external influence, namely, the internationalisation of the East Timor issue following the end of the Cold-War and the Santa Cruise Massacre.

(3) There must be a rudimentary consensus among the major states for hegemony.

The fact that the appointment of Australian police commander and force commander in UNAMET and Interfet, respectively, might indicate that Australia received a rudimentary consensus for the status of regional hegemon among the international community. However, among major powers, Portugal, which had colonised East Timor before 1975, had not accepted Australia as a regional leader. Furthermore, Australia's departure from the international frameworks such as the ICJ and UNCLOS for economic purposes embarrassed other major states.

(4) A hegemon has the necessary "far-sightedness" to set up regimes which can enhance long-term global welfare.

It is highly doubtful that Australia had the necessary far-sightedness. If Australia had had this quality, the two-decade instability in East Timor could

have been avoided. In retrospect, Australia excessively valued strong relations with Indonesia, and its concern about regional welfare was too little too late. Especially, Australia adhering to economic benefits with Indonesia had underestimated the negative potential of Suharto's undemocratic politics which would eventually cause severe domestic instability in Indonesia. A regional hegemon would be expected to have such far-sightedness. Many other regional conflicts such as ones in Papua New Guinea, Aceh, the Solomon Islands and Bougainville might have been prevented by the presence of a true regional hegemon.

(5) A hegemon must be willing to make short-term sacrifices in order to secure long-term collective/global benefits.

Despite negative views from political realists, these altruistic sacrifices by hegemonic powers are essential as a role of "world policeman." The Australia Defence Forces have been dispatched to 56 UN and non-UN peacemaking and peacekeeping missions since 1947, with the total involvement of approximately 46,000 military personnel. There are 10 fatalities from such duties. However, these sacrifices had not been identified in the East Timorese issues in the early stages. According to Hobson, there are two phases of hegemony which are benign (altruistic) and predatory (selfish); the former comes first as an initial phase of hegemony, and the latter followed with its own selfish national interests.⁶⁷ Australia's case in East Timor goes adversely. This means that Australia's involvement in East Timor was not conducted by a hegemonic theory but by some other external factors.

Conclusion

On the whole, Australia's policy towards East Timor has been based on the principle of power politics, and the country should take responsibility for its inconsistency which had a negative influence on East Timor's independence process. When East Timor was under Indonesian rule in the early stages, Australia's policy was influenced by the intimate relationship of the leaders of Indonesia (Suharto) and Australia (Whitlam). However, it should be noted that the Departments of Foreign Affairs and Defence showed a reluctance to support Indonesia's annexation with East Timor and did in fact recommend self-determination for East Timor. Several observer groups concluded that there were very few communist activities in East Timor in the 1970s and 1980s. Furthermore, the warning from the US to the Australian Government not to jeopardise the relations with Indonesia over East Timor was also a significant factor in encouraging a pro-Indonesia policy in Australia. From the 1980s, Australian policy towards East Timor was more ambiguous. The Government ostensibly focused more on humanitarian issues and the terms "reality" and "inevitability" were utilised to persuade the opposition party who claimed a sense of right over issues around East Timor.

⁶⁷ Hobson J. M. p. 40

However, Australia's significant shift from a pro-Indonesia to a pro-UN policy does not mean a pro-East Timor one. This can be seen diplomatic policy towards East Timor in negotiations over the Timor Sea. For the Australian government, the Timor Sea is an opportunity that must be pursued using all political, economic and technological strength available. Australia opted for a legal framework to enhance employment opportunities, national revenue and regional investment. Australia's political strength was relatively dominant enough to withdraw from the ICJ and UNCLOS and was used to blackmail East Timorese political leaders. To a considerable extent a lack of legitimacy can be seen by the fact that the seabed boundaries between Australia and East Timor are still based on the 1972 treaty between Australia and Indonesia, whose occupation in East Timor had never been recognised by the UN. However, the continuing dependence of East Timor on Australia in economic and security terms, and the balance of power politics involved in regional hegemony in the area encourage the status quo.

Meanwhile, this case study made it difficult to mention that Australia has played a role as a regional hegemon. Australia's policy in its region was put in practice not by a hegemonic theory but by some other external factors.

The unbalance of powers or asymmetrical interdependence is problematic. As Keohane and Nye stated that a less independent actor in a relationship often has a significant political resources, because changes in the relationship will be less costly to that actor than to its partner.⁶⁸ This paper supported their views.

This case study also convinced that moral strength is required to balance the disparity of advantages between small and big powers. It has completely been absent in debates and dealings with East Timor for more than two decades; such moral strength can be generated by international understanding mediated by international organisations such as the United Nations.

⁶⁸ Keohane R. O. and Nye J. S. *Power and Interdependence* (New York: Harper Collins, 1989), p. 11