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BY

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THE DECOLONIZATION OF EAST TIMOR IN THE CONTEXT OF CASE-BY-CASE APPROACH OF THE SPECIAL COMMITTEE OF 24^{*1}

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INTRODUCTION

The role of the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples (Special Committee of 24) in the process of decolonization for the past six decades is undeniable. Being the only United Nations body specifically tasked with monitoring the implementation of resolution 1514 (XV), widely known as the Declaration on the Granting of Independence to Colonial Countries and Peoples, the Committee made a vital contribution to the universality of the Organization as many former colonies in Africa, Asia and the Pacific within the Committee's purview, joined the membership of the United Nations, one-by-one.

However, after Namibia's independence in 1990, the Committee faced serious challenges, not the least of which was the way to advance the decolonization process, in a situation where most of the non-self-governing territories were small islands or territories subject to territorial disputes.

DEVELOPMENT OF THE CASE-BY-CASE APPROACH

In February 1997, the then Chairman of the Special Committee, Ambassador **Utula Utuoc Samana** of Papua New Guinea requested the United Nations Legal Counsel to provide a legal opinion on the question:

"What are the internationally acceptable mechanisms of the exercise of the right of self-determination by the Non-Self-Governing Territories and of the internationally acceptable means of ascertaining the wishes of their populations regarding their future political status?"

In his response to that question, the Legal Counsel, **Hans Corell**, specifically noted that the General Assembly had pursued the realization of the principle of self-determination mainly in the context of the process of decolonization, and had expanded and elaborated the framework provided in the Charter within the context of the Fourth Committee initially, and since 1961 within the framework of the Committee of 24. A number of declarations and resolutions adopted by the General Assembly were of particular importance in this context and contain relevant provisions. In particular, **Hans Corell** referred to the following instruments:

- resolution 742 (VIII) of 27 November 1953, entitled "Factors which should be taken into account in deciding whether a Territory is or is not a Territory whose peoples have not yet attained a full measure of self-government";
- resolution 1514 (XV) of 14 December 1960, entitled "Declaration on the Granting of Independence to Colonial Countries and Peoples";

* This paper explores the role and actions of the Special Committee with regard to the accession of East Timor to independence, and within the context of discussions in the Committee of the case-by-case approach to the non-self-governing territories. It is not intended as an academic treatise, but rather a reflection on one of the most notable achievements of the Special Committee, from the perspective of an insider. The author served the Committee between 1991 and 2012 as a member of the United Nations Secretariat team managing the Committee's meetings, and as the Committee Secretary for 9 years (2003 to 2012), witnessing first hand many of its deliberations and actions.

- resolution 1541 (XV) of 15 December 1960, entitled "Principles which should guide Member States in determining whether or not an obligation exists to transmit the information called for under Article 73 of the Charter";
- resolution 2625 (XXV) of 24 October 1970, entitled "Declaration on principles of international law concerning friendly relations and co-operation among States in accordance with the Charter of the United Nations";
- Advisory Opinion on Western Sahara, rendered by the International Court of Justice on 16 October 1975, in which the Court reviewed the development of the principle of self-determination in the practice of the United Nations (paras. 54-59).

The legal opinion contained an important conclusion that the General Assembly did not set out specific modalities or mechanisms, which would apply on a general basis to all Non-Self-Governing Territories for the exercise of their right of self-determination. However, those resolutions clearly emphasize as a general principle that the process of self-determination should be based on the exercise of an informed, free and voluntary choice by the peoples concerned.

The Special Committee itself held several informal consultations to articulate its own understanding of the modalities of the decolonization process. However, due to various reasons, these discussions have not resulted in any decisions or recommendations.

In 1999, political developments in the Pacific and, specifically, in East Timor provided a fresh impetus for in-depth discussions on the development of the self-determination process, and on the role of the Special Committee in that regard.

AGREEMENT BETWEEN PORTUGAL AND INDONESIA ON EAST TIMOR AND DISCUSSIONS IN THE SPECIAL COMMITTEE

Since 1983, under the good offices of the Secretary-General, the Governments of Portugal and Indonesia held negotiations in the search for a just, comprehensive and internationally acceptable solution to the question of East Timor. Those efforts culminated in the signing, on 5 May 1999, of an overall Agreement between the two Governments entrusting the Secretary-General with the organization and conduct of a popular consultation for the purpose of ascertaining whether the East Timorese people, both inside and outside the Territory, accept or reject a proposed constitutional framework providing for a special autonomy for East Timor within the unitary Republic of Indonesia, which was attached to the Agreement. The Agreement requested the Secretary-General to establish immediately a United Nations mission in East Timor for the purpose of conducting the popular consultations.² The referendum took place on August 30, 1999, with the participation of more than 90% of the population, of which up to 78,5% favored independence.

In this framework, while the Special Committee was keeping a watchful eye on developments in East Timor, its members intensified discussion of the modalities for decolonization of the non-self-governing territories with a new vigor. During its summer session in 1999, the Committee had before it two working papers submitted by Chile and St. Lucia, which explored various aspects of the case-by-case approach and certain guiding principles to be followed by the Special Committee.

The paper by Chile, authored by a talented young diplomat **Juan Eduardo Eguiguren**, who is currently Chile's Ambassador to the Russian Federation, made some recommendations, which, *inter alia*, called for working closely with the administering Powers in order to proceed to the examination and, when appropriate, to decide on the status of those Territories that remain on its agenda, in particular the 12 small Non-Self-Governing Territories; to work on a case-by-case basis, as had been the practice of the

²) A/53/951-S/1999/513.

Special Committee and the General Assembly in determining the modalities for the attainment of the right to self-determination of each Non-Self-Governing Territory; the need for the Special Committee and the respective administering Powers to decide on the procedure to follow with respect to the process and certification of self-determination of each of the Non-Self-Governing Territories. In this context, it must be determined if it is convenient to send a visiting mission; to send an observer mission to a referendum or electoral act; or to decide on any other formal action that the United Nations could undertake. Finally, the paper by Chile noted that in practical terms, the main obligation of the administering Powers to the United Nations and to the Special Committee, in particular, was the transmission of information called for under Article 73 e of the Charter. In principle, when a Territory had achieved independence, integration or free association with a sovereign State, the Special Committee had recommended to the General Assembly that information on that Territory should cease to be transmitted by the Administering Power, and to that end, that Territory should be removed from the list of NSGTs before on the Committee's agenda.³

These ideas were further developed in the working paper by St. Lucia, presented by its Ambassador, **Julian Hunte**, with its main emphasis on the full political equality of peoples seeking self-determination. He states, for example, that:

"In regard to the small island Territories, it should be emphasized that only those modalities that are consistent with the full participation of the people concerned, through their democratic institutions are applicable, and only those political options that would give full political equality would grant the full measure of self-government consistently called for by the General Assembly in its relevant resolutions on this matter."⁴

In follow-up to the discussions, the then Chair of the Special Committee, Ambassador **Peter Donigi** (Papua New Guinea), produced a non-paper entitled "Decolonization and the 21st Century",⁵ which contained a set of interesting and fresh ideas on how to take the decolonization process forward, albeit not without certain controversy among the members of the Special Committee, especially with regard to the Falkland Islands (Malvinas) and Gibraltar.

Intense discussions on the input from Chile, St. Lucia and Papua New Guinea resulted in a tabulated 10 steps, which could lead to the de-listing of a territory from the United Nations list of non-self-governing territories. The most important part of the paper was the list of procedural steps to be taken, especially at the final stages of the decolonization process.

These included, *inter alia*, actions by the Special Committee itself and subsequent action by the General Assembly.

ACTION ON EAST TIMOR BY THE SPECIAL COMMITTEE AND THE GENERAL ASSEMBLY

In the summer of 2001, the world community witnessed three phenomenal developments in East Timor: the election of a Constituent Assembly; the start of a 90-day Constitution-drafting process; and the formation of an all-Timorese Council of Ministers. After the peaceful elections for the Constituent Assembly on 30 August 2001, in which 91.3 per cent of eligible voters participated, the Independent Electoral Commission announced the final certified results on 10 September 2001, and assessed that the criteria for a free and fair election had been met. On 15 September 2001, the Special Representative of the Secretary-General, **Sergio Vieira de Mello**, swore in the 88 members of the Constituent Assembly.⁶

³) A/AC.109/1999/20, p.4

⁴) A/AC.109/1999/21, p. 4

⁵) Peter Donigi, *Decolonization in the 21st Century* (Non-Paper)

⁶) S/2001/983

On 31 October, through the statement by its President, the Security Council welcomed the political progress achieved towards establishing an independent East Timorese state and endorsed the recommendation by the Constituent Assembly that independence be declared on 20 May 2002.⁷

East Timor's Constituent Assembly signed into force the Territory's first Constitution on 22 March 2002, and following presidential elections on 14 April 2002, **Xanana Gusmao** was appointed president-elect of East Timor. With both these preconditions for a hand-over of power met, the Constituent Assembly was ready to transform itself into the country's parliament on 20 May 2002.

In the course of those momentous events, the Special Committee intensified its informal discussions of the proper steps to be taken with the imminent de-listing of East Timor. With due regard to the powers by the Security Council in establishing UNTAET by its resolution 1272 (1999) of 25 October 1999 and Council's close monitoring of the political and security situation in East Timor, the Committee was mindful of the need to safeguard the appropriate role of the General Assembly and the Special Committee as its specialized subsidiary body in such an exercise.

Following intense discussions within the Special Committee and consultations with the UN Secretariat in early 2002, initiated by the Committee Chairman **Peter Donigi**, the Committee reached a consensus on the sequence of the proper procedural steps with regard to East Timor. All members agreed that the Committee should take the initiative to recommend to the Assembly the removal of East Timor from the list of non-self-governing territories in the form of a draft resolution. The recommendation in question fit perfectly into the last stages of the 10-point case-by-case schedule envisaged by the Special Committee for each of the territory.

During its 2002 session, the Special Committee, at its 2nd formal meeting of that session, considered a draft resolution entitled "Question of East Timor", submitted by the Committee's Chairman, **Peter Donigi**, on behalf of all members of the Special Committee. At the same meeting, the Special Committee adopted draft resolution A/AC.109/2002/L.3 by consensus operative paragraph 4 of which recommended the removal of East Timor from the list of Non-Self-Governing Territories upon its accession to independence.

The next issue was how to recommend this draft resolution to the Assembly. Normally, the reports of the Special Committee to the General Assembly were channeled through the Fourth Committee. Given, however, that the Fourth Committee was not in session, and in the best case scenario, would be convened only in the fall of that year, the Special Committee decided to take full advantage of its procedural prerogative to report straight to the Assembly and therefore proceeded to submit the report of its Rapporteur (A/56/894) directly to the General Assembly in April 2002.

At the 98th plenary meeting of the Assembly on 1 May 2002, the representative of Papua New Guinea, **Jimmy Ovia**, summarized the legislative intent of the Special Committee draft resolution for the Assembly membership in a powerful way, which appealed to the core of the Committee's mission: He stated:

"The draft resolution is, in large part, procedural in nature, but I would like to point out a number of salient and substantive facts and implications as we, as an active member of the Committee of 24, see them. For my delegation, the draft resolution before us today sends a very clear signal about three very important aspects.

First of all, as all of the members of the Committee of 24 will agree, the draft resolution, after it has been adopted by the General Assembly today, will end the mandate of the Special Committee over one of the remaining 17 Non-Self Governing Territories. All of us

⁷) S/PRST/2001/32

in the Assembly are well aware that the Committee of 24 has been seized of this matter for at least the past two decades, if not longer, although in recent times the Security Council became seized of the matter and arranged for a Special Representative of the Secretary-General to administer the Territory. The Committee's mandate, however, was preserved, and it continued to receive petitions and to arrange participation by representatives of the Territory at its annual meetings and seminars.

Secondly, this draft resolution serves to send a very strong message to all administering Powers that there is a transparent process by which all Territories on the United Nations list under the Special Committee must be dealt with, and that no administering Power may pass its own legislation or do as it pleases with any Territory or group of Territories, whatever its physical size or population, political, economic, social and historical circumstances.

Thirdly, the transparent process involves the development of work programmes on a case-by-case basis for each Territory and involves the Committee in overseeing the proper administration of each Territory up to and including the date of its removal from the United Nations list.

Accordingly, although the draft resolution on East Timor appears to be procedural, it has substantive implications in respect of the mandate of the Special Committee. The implication is that the administering Power cannot bypass the Special Committee by transferring or attempting to deal with the Territory concerned without the involvement of the Committee. It also shows that the Committee is serious and has in place a transparent process for dealing with each Territory".⁸

At the same meeting, on 1 May 2002, the Assembly adopted the draft as its resolution 56/282, laying the ground for de-listing of East Timor.

East Timor became independent on 20 May 2002. Among the honorary guests present at the independence ceremony was the then Chairman of the Special Committee, **Earl Huntley**, St. Lucia's Ambassador to the United Nations.

At its 4542nd meeting, on 23 May 2002, the Security Council adopted its resolution 1414 (2002) recommending the admission of the Democratic Republic of East Timor to the membership of the United Nations.

At the General Assembly's 20th plenary meeting on 27 September 2002, the Prime Minister of the Portuguese Republic, **José Manuel Durão Barroso**, introduced draft resolution A/57/L.3, which was sponsored by 147 member States to admit Timor-Leste to the UN membership. The Assembly adopted the draft as its resolution 57/3.⁹ Thus, the Democratic Republic of Timor-Leste joined the family of the United Nations.

On 10 December 2004, by the decision 56/520 of the Assembly, Timor-Leste became a member of the Special Committee.

RECOMMENDATIONS

1. As the experience with East Timor has clearly demonstrated, it is important for the Special Committee to take an early and proactive initiative in de-listing of a territory.

⁸) A/56/PV.98

⁹) A/57/PV.2

2. The de-listing exercise should follow proper procedural steps, the most important of which is the appropriate and timely action by the Committee in the form of its own resolution on the territory being de-listed.
3. The Special Committee should not shy away from its prerogative to submit its recommendations directly to the General Assembly, when the circumstances and time warrant this, in order to safeguard its role as a specialized subsidiary body of the Assembly dealing with decolonization.
4. While respecting the powers of the other main bodies of the United Nations, especially the Security Council, the General Assembly should vigorously assert its role in the de-listing of a non-self-governing territory in each of the decolonization cases, particularly through appropriate action and recommendation by the Special Committee.

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