

Some Random Remarks on Complaints Regarding the East Timor Popular Consultation

André J.J. de Hoogh*

Keywords: self-determination, referenda, complaints.

Abstract: The referendum of 30 August 1999 constituted a historic exercise of the right to self-determination by the people of East Timor. It rejected autonomy within Indonesia and chose to go forward on the path towards independence. Proponents of autonomy complained that they had been barred from participating in the process, and that Timorese staff had systematically told or forced people to vote for independence. However, there is no evidence that the referendum was corrupted through systematic bias on the part of local staff members. The outcome of the referendum, 78.5% in favour of independence, must be accepted as an accurate reflection of the will of the people of East Timor.

1. INTRODUCTION

In July 1999 Saskia Kouwenberg sent an email message on behalf of the International Platform of Jurists for East Timor (IPJET) to a number of its Dutch members, inviting them to consider acting as an international observer to the popular consultation to be held in East Timor. As a member, and after some serious thought (after all, serious incidents occurred in East Timor in April), I decided to respond and to fill out the application form. After being selected, a two-day training programme was arranged for the Dutch observers. More training followed in East Timor, after which I headed for my field position in Gleno (district of Ermera; south-west of Dili).¹

The consultation was based on agreements concluded on 5 May 1999, between Portugal, Indonesia, and the UN Secretary-General.² The people of East

* André de Hoogh is Lecturer in International Law, University of Groningen, and was accredited as international observer (under the International Federation for East Timor Observer Project (IFET-OP)). I would like to thank A. Smith, E. Koppe, and especially S. Kouwenberg and J. Kriegler, for their critical comments on an earlier draft. Any opinions expressed, or errors made, are mine alone.

1. See map at www.un.org/Depts/Cartographic/map/profile/timoreg.pdf (all websites referred to visited May 2000). Reports from the same region are: A. Smith, *The Popular Consultation in the Ermera district, Free, fair and secret?*, in D. Kingsbury (Ed.), *Guns and ballot boxes, East Timor's vote for independence* 29-41 (2000); and H. van Klinken, *Taking the risk, paying the price: East Timorese vote in Ermera district, id.*, 43-67.
2. Agreement between the Republic of Indonesia and the Portuguese Republic on the Question of East Timor; Appendix, A Constitutional Framework for a Special Autonomy for East Timor; Agreement regarding the Modalities for the Popular Consultation; Agreement regarding Security, all at www.un.org/peace/etimor99/etimor.htm.



Timor would be asked in a referendum, which took place on 30 August 1999, whether they accepted or rejected autonomy within Indonesia (the latter leading to separation from Indonesia). The United Nations Mission in East Timor (UNAMET) was established by the Security Council to administer the consultation.³ With it an 'Electoral Commission',⁴ a body of independent international experts, was created to supervise the process and to verify whether the outcome constituted an accurate reflection of the will of the people of East Timor.

The results announced on 4 September showed that 21.5% of the East Timorese had voted to accept autonomy, while 78.5% had voted for independence.⁵ The Electoral Commission certified the results and considered the outcome an accurate reflection of the will of the people of East Timor.⁶ Similarly, observer organisations found that, while widespread violence and intimidation by pro-autonomy supporters had marred the process, the consultation itself had generally been free and fair.⁷ Then Indonesian President Habibie made a public statement that his government respected and accepted the outcome.⁸

However, complaints were made by the umbrella organisation United Front for East Timor Autonomy (UNIF). They argued that the result had come about by means of inappropriate procedures and undue influencing of voters.⁹ An at-

3. UN Doc. S/RES/1246 (1999), para. 1. *See further* UN Doc. S/Res/384 (1975); UN Doc. S/Res/389 (1976); UN Doc. S/Res/1236 (1999); UN Doc. S/Res/1246 (1999); UN Doc. S/Res/1257 (1999); UN Doc. S/Res/1262 (1999); UN Doc. S/Res/1264 (1999); UN Doc. S/Res/1272 (1999).

4. Direction 2, Directions relating to the Popular Consultation of the People of East Timor through a Direct Ballot, promulgated by I. Martin, 18 June 1999, at www.un.org/peace/etimor99/direct.htm. Members of the Electoral Commission were: P. Bradley (Ireland), J. Kriegler (South Africa), and Bong-Scuk Sohn (South Korea). *See* Report of the Secretary-General, Question of East Timor, 20 July 1999, UN Doc. S/1999/803, para. 3, at www.un.org/peace/etimor99/docs.html.

5. Statement Secretary-General, 4 September 1999, at www.un.org/peace/etimor99/docs.html.

6. *See* Determination, Electoral Commission, East Timor Popular Consultation, Dili, 4 September 1999 (on file with the author; kindly provided by J. Kriegler of the Electoral Commission). On the competence of the Electoral Commission, *see* Direction 42, *supra* note 4.

7. IPJET, Statement 30 August 1999 (on file with the author; kindly provided by P. Pinto Leite of IPJET); Parliamentarians for East Timor (PET), Summary of Observation of UN Ballot in East Timor, Dili, 31 August 1999 (etan.org/et99b/september/1-4/1pet.htm); the Carter Center, Preliminary Statement: Assessment of the East Timor Public Consultation Process, 1 September 1999 (www.cartercenter.org/REPORTS/); Oxfam International Election-Monitoring Delegation, 1 September 1999 (www.oxfam.org/); Komite Independen Pemantau Pemungutan Suara (KIPER), Statement on the Implementation of the Popular Consultation No 026, 1 September 1999 (etan.org/et99b/september/1-4/1statem.htm); IFET-OP, Report #9: Post-Vote Assessment of the Consultation Process, 2 September 1999 (www.etan.org/ifet/); and Asia Pacific Center for Justice and Peace (APCJP): Ecumenical Observer Delegation to East Timor (EOD), Report 21 August – 8 September 1999 (www.apcjp.org/delreport.htm). I have not been able to find reports on the poll by the Asian Network for Free Elections (ANFREL; but *see* Report, note 15 *infra*) and the Australia East Timor International Volunteers Project. The report of Yayasan HAK has been lost in the destruction that followed the referendum.

8. BBC News report, 4 September 1999, Habibie accepts Timor result, at news2.thls.bbc.co.uk/hi/english/world/asia%2Dpacific/newsid%5F438000/438235.stm.

9. *See* Preliminary Report to Electoral Commission on allegations challenging the integrity of UNAMET in the conduct of the poll, Chief Electoral Officer (J. Fisher; represented at the hearings by

tempt was made to show that there had been some bias of foreign UN staff, systematic and widespread influencing of voters by local (Timorese) staff, and, partiality on the part of international observers. Other complaints were made as well. One was that the counting of the votes would take place centrally in Dili, and not in the districts where people actually voted. Another was that proponents of autonomy had been barred from local staff positions, and that they had not been present in the polling stations. In the light of the grievances and representations by UNIF, the Electoral Commission decided to hold unscheduled public hearings on 2 and 3 September to investigate the complaints. As I had been a direct witness to some incidents on polling day, I attended the hearings and gave testimony.

The following will be an account drawn from diverse sources and my experience as an international observer. My object will be to focus on those complaints most relevant for assessing the validity of the result of the ballot, and to put these into perspective. Completeness has not been attempted. It is proposed to discuss the selection of international and local UNAMET-staff and of international observers in Section 2. Section 3 will then address some complaints regarding the actual conduct of the poll and certain incidents that took place. Lastly, Section 4 will present some concluding observations.

2. SELECTION OF UNAMET-STAFF AND INTERNATIONAL OBSERVERS

It seems proper to start with those issues which provided the ammunition for pro-autonomy organisation UNIF to try and torpedo the entire consultation, namely the selection of international and local UNAMET-staff, and, to a more limited degree, of international observers. Obviously any election or referendum process relies on the objectivity and impartiality of those organising the process. Similarly observers must adhere to a policy of impartiality and even-handedness.¹⁰

The report of the Secretary-General on the organisation and staff of UNAMET outlined that it would consist of 241 international staff members, 420 United Nations Volunteers (UNV), up to 280 civilian police, and some 4,000 local staff.¹¹ In its Reasons the Electoral Commission endorsed “[...] the decision

A. Ladley, UNAMET, Dili, 3 September 1999, 6 pp., at 1 (on file with the author; distributed at the hearings of the Electoral Commission). Also APCJP, EOD Report, *supra* note 7, at 11-12. For complaints procedure see Notification 11, at www.un.org/peace/etimor99/notificationstable.htm (all notifications at this site, except 12 and 13).

10. E.g. J. Balch, P. Granstedt, K. Kenny, *Standardisation of Practice in the Selection, Training and Deployment of International Election Observers*, Association of European Parliamentarians for Africa and African-European Institute 19-24 and 34-35 (1997).

11. Report of Secretary-General, Question of East Timor, 22 May 1999, UN Doc. S/1999/595, para. 9. Later on an extra 50 military liaison officers were added. Report of the Secretary-General, Question of East Timor, 22 June 1999, UN Doc. S/1999/705, para. 5.

to rely heavily on local staff for the manning of the voting centres.”¹² This decision seems to have been made by the Secretary-General, but no arguments in support can be found in either the Report of the Secretary-General or the Reasons.¹³ Certainly it would have been difficult to recruit another 4,000 international staff members, especially on such short notice.

No specific problems seem to arise regarding the selection of international or UNV-staff, although one may speculate that among them there had been persons who were engaged earlier in activities related to East Timor. Two complaints were made against specific international staff members, which gave sworn statements denying the allegations. These complaints were investigated, but held unfounded.¹⁴ Considering the prevailing climate during the consultation process, it was highly unlikely that any international staff member would have given in to acting unprofessionally. Being so closely watched by the Indonesian authorities and pro-autonomy supporters, UNAMET staff members must have been determined to make the process run as smoothly as possible and to act in an objective and impartial manner. Independent sources, especially observers, do not corroborate a claim of bias on the part of international UNAMET staff.

However, the complaint was made that supporters of autonomy had been barred from participating in the process as local staff.¹⁵ The main criteria for selection as local staff have been that the applicant could read and write. In view of the functions that local staff was to perform, which included voter registration and scrutiny of identity and registration documents on polling day, these were natural conditions. It may be assumed moreover that, as in the case of party agents,¹⁶ the condition was set that an applicant would not be recruited if he or she was at that time a member of any armed group. As the creation of local militia and recruitment of Timorese in such militia had been actively promoted by the Indonesian military since early in the year,¹⁷ this may have led to a lower number of pro-autonomy Timorese applying.

Furthermore, it is likely that in as small a community as that of East Timor (about 450,000 people registered to vote), many would know of the political in-

12. Reasons for Determination, Electoral Commission, East Timor Popular Consultation, Dili, 4 September 1999, para. 3 (on file with the author; kindly provided by J. Kriegler of the Electoral Commission).

13. *Id.*; and *supra* note 11.

14. See Preliminary Report to Electoral Commission, *supra* note 9, at 4-5.

15. Smith, *supra* note 1, at 38 and 39-40, observes that at least some local staff had been pro-autonomy, as shown by their wear of corresponding baseball caps. In ANFREL, Report on the Situation in East Timor, Pre-consultation Mission, 10-17 July 1999, through www.amn.org.sg, an official of the (Indonesian) Commission for Peace and Stability was reported to have been: “[...] very unhappy that of 200 names he submitted to the UNAMET to be considered to work for them, none was accepted. He said UNAMET recruited only the pro-independence.”

16. Regulation A4, Notification 12 (on file with the author; see *supra* note 9).

17. D. Kingsbury, *The TNI and the militias*, in Kingsbury, *supra* note 1, 69-80, at 70-71; and also D. Emerson, *Voicing and Violence: Indonesia and East Timor in 1999*, in D. Emerson (Ed.), *Indonesia Beyond Suharto: Polity, Economy, Society, Transition*, 344-361, at 353-357 (1999).

clinations of others. This may have deterred pro-autonomy Timorese in applying for positions as local staff.¹⁸ Indeed, general opinion, including many of those in favour of staying within Indonesia, expected the vote to go against autonomy. The Electoral Commission quite rightly pointed out that complaints made against the conduct of the poll came about because “[...] the political parties, especially the losers, lacked a sense of co-ownership of the process.”¹⁹ This lack of co-ownership on the part of the pro-autonomy side, however, resulted not just from losing the poll, but also from the expectation of losing the poll, and from the fact that nobody had ever consulted them in the decision to hold the poll.²⁰ All this of course militated against pro-autonomy Timorese applying for positions as local staff. For them this would amount to co-operating with the enemy, so to speak, in making the referendum a success.²¹

Finally it may be noted that in view of the final result of the referendum, almost 80% in favour of independence, it was only to be expected that at least that percentage of local staff would comprise of people intending to vote for independence. As it is, the percentage will undoubtedly have been considerably higher.

Pro-autonomy UNIF and pro-independence Conselho Nacional de Resistancia Timorese (CNRT) could both nominate party agents. The CNRT refrained from nominating any and did not complain, whereas the former did. It had nominated party agents the day before the consultation (at 4 p.m.), but by then UNAMET refused accreditation. The latter responded to the complaint by pointing out that the time limit for nominations had been postponed twice. The motivation for its refusal to accredit those nominated was that at this late stage they did not have time to verify whether the nominees were not members of any armed group.²²

Provision was made in the Agreement on Modalities for supervision of the process by official observers (from Indonesia and Portugal) and international observers.²³ It may be noted that domestic observers such as those sent by KIPER and Yayasan HAK, although not mentioned, were also granted accreditation by UNAMET. International and domestic observers, and the organisations

18. This effect may have been diluted somewhat by UNAMET's policy that Timorese staff should not be deployed in their home area. Note PET Report, *supra* note 7, though obviously this must have been intended as protection of Timorese staff against violence and intimidation both before and after the referendum. I have not been able to establish any source, though I can verify that our own driver acted as a polling official in Dili (and not in Gleno). See also Directions 3 (1), 5 and 6, *supra* note 4.

19. Electoral Commission, Reasons for Determination, *supra* note 12, para. 4.

20. Note P. Bartu, *The Militia, the Military, and the People of Bobonaro District*, 32 Bulletin of Concerned Asian Scholars (BCAS) 35-42, at 35, 41 and 42 (2000).

21. D. Kingsbury, *Introduction*, in Kingsbury, *supra* note 1, i-viii, at i; and Kingsbury, *supra* note 17.

22. As stipulated by regulation A4, Notification 12; see Preliminary Report to Electoral Commission, *supra* note 9, at 4.

23. Section E(f) Agreement regarding Modalities for the Popular Consultation, *supra* note 2.

that sent them, required accreditation by UNAMET.²⁴ Both accredited observer groups and individual observers were bound by the Code of Conduct for Observers.²⁵ The largest international observer group, IFET-OP with 18 teams and 125 observers present in every district of East Timor,²⁶ additionally required its observers to adhere to a supplementary code of conduct.²⁷ Naturally both codes of conduct contained provisions as to the objectivity and impartiality of observers (regulation 10 (a), (g), and (i) UN Code of Conduct; para. 8 IFET-OP Code of Conduct).

However, a legal maxim observes that “justice must not only be done, it must be seen to be done.”²⁸ From this perspective questions may be raised in relation to the observer groups that were accredited, and therefore also regarding the individual observers accredited through such groups. Thus, the largest international observer group (the International Federation for East Timor Observer Project), recruited from its many member NGOs, most of which had engaged in (human rights) activism for East Timor.²⁹ I myself, for instance, was recruited into this group through my affiliation to the International Platform of Jurists for East Timor. The national selection processes were of course intended to exclude those who would not be able to separate their own views and preferences about the outcome of the consultation from the task at hand, namely to act as objective and impartial observer. However, it cannot be ruled out that some, who could not make this separation, slipped through the net of the selection process.

For a service that to a large extent is dependent on volunteers (monitoring), this was to be expected. Those who have been interested in East Timor were most likely to apply, while others were not. This state of affairs was created to a large extent because the United Nations was itself organising and managing the consultation process. Logically, the UN could not send out observers to observe a United Nations’ run referendum. Furthermore, governments apparently de-

24. Regulations 1-2 and 6-8, United Nations, Code of Conduct for Observers, East Timor Popular Consultation, at www.etan.org/ifet/ under ‘Background Information on the IFET Observer Project’.

25. *Id.*

26. See C. Scheiner, *Grassroots in the Field: Observing the East Timor Consultation*, 18 March 2000, under ‘The Activists’ Dilemma’, at www.etan.org/ifet/ under ‘Special Reports’ (to be published in East Timor, Indonesia and the World Community: Resistance, Repression, and Responsibility (forthcoming)). It may be noted that both Yayasan HAK and KIPER on their own sent more observers than IFET-OP. Some 1,450 domestic observers and 525 international observers were accredited. See Preliminary Report to Electoral Commission, *supra* note 9, at 2.

27. IFET-OP, Code of Conduct, at website *supra* note 24.

28. For an application of this maxim, see Separate Opinion Onyeama, Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), Advisory Opinion, 1971 ICJ Rep. 16, at 140.

29. See www.etan.org/ifet/, under ‘IFET Members’. For the advantages of monitoring by NGOs rather than inter-governmental organisations (IGOs); see Y. Beigbeder, International Monitoring of Plebiscites, Referenda and National Elections, Self-determination and Transition to Democracy 270-273 (1994).

cided not to send out any observers themselves. If the NGOs had not stepped in, a serious lack of observation would have occurred in monitoring the process.

UNAMET's Chief Electoral Officer (J. Fisher) refused accreditation to 24 Indonesian government-linked youth groups that had applied to send observers.³⁰ A challenge of this decision before the Electoral Commission was unsuccessful. The reason for this was rather apparent. A leader of one of the groups was reported to have said "[t]he main purpose of the team is to monitor the process and to give support to those people who are pro-autonomy." Obviously the functions of observers do not include supporting any party to the process.

As it is, only few complaints seem to have been made in relation to the conduct of international observers. This has undoubtedly been due to their professionalism.³¹ Yet, a fleeting reference was made by UNIF at the hearings of the Electoral Commission to a CNRT-priest, seemingly in relation to observers. It is tempting to relate this to an observation by Van Klinken on a flag-raising ceremony of FALANTIL (the East Timorese armed resistance) two days before the vote, that "a Portuguese-speaking Italian priest, who lived in Japan and was in East Timor as an observer, said mass."³² If such is the case, the priest in question was in our team. We had gone to visit the FALINTIL cantonment site in our region after having obtained permission from IFET-OP headquarters in Dili. Unexpectedly, our colleague was asked to say mass for the FALANTIL and the many people assembled there, and, without team consultation and in good conscience, he had acceded to this request. This and another issue – a colleague at this occasion acted seemingly more as a reporter than as an observer – caused a rift in the team that was never quite bridged. Some were of the opinion that this conduct crossed the line, while others were not. Taking the middle ground I argued that although our objectivity and impartiality had not as such been compromised, the appearance of impropriety could be used against us. As it turned out, it was. Yet, I am convinced that incidents on polling day were faithfully reported to our headquarters whenever relevant for assessing compliance with electoral standards.

3. POLLING DAY AND ITS FOLLOW-UP

First of all, the complaint may be addressed that counting of the votes took place centrally in Dili, and not, as the Indonesian government and UNIF had requested,³³ decentralised in the districts. More to the point, and more fundamen-

30. Asian Wall Street Journal report, 22 August 1999, at etan.org/et99b/august/22-28/22unbars.htm.

31. Scheiner, *supra* note 26, under 'The vote – and its aftermath', has written: "The vote was announced [...]. Most IFET observers, now in Dili, watched it on CNN. The group clapped once, an embarrassed lapse of non-partisanship."

32. Van Klinken, *supra* note 1, at 62.

33. Note APCJP, EOD Report, *supra* note 7, at 12.

tally, the complaint was that the ballot forms from any particular district would be brought to Dili and shuffled with forms from other districts. The official motivation for this complaint was concern about the lack of transparency and a claim to democratic legitimacy: people had to know how their district voted. Of course, in hindsight, that is after the referendum took place, how a certain district had voted would not change the outcome of the vote. So why is it that both the Indonesian government, through its official observers, and UNIF made a point of complaining about this?

The Electoral Commission supported the decision to conduct the counting of the votes centrally. It noted that at one centre pro-autonomy elements had for a while prevented the transportation of the ballot boxes.³⁴ The centre concerned was in Gleno where I was stationed. The day after the referendum we in fact noted, from afar, that a UN-helicopter seemed to be trying to land at the football field, but it turned away at least once. As we learned later, it had come to pick up the ballot boxes from our district, but gunshots and rocks prevented this.³⁵ The Electoral Commission further pointed out that “the level of intimidation and threat of violence was such that decentralised counting would have been folly. Indeed, supervening events show it would have been disastrous.”³⁶ If counting had taken place decentralised, in UNAMET’s headquarters in Dili and the 8 regional headquarters,³⁷ this would have opened the door to obstruction, intimidation, and possibly even sieges and violence.³⁸

However, one may wonder whether more far-reaching designs were not in place in insisting on decentralised counting. Specific data on how people voted in which districts could have presented the militias (and the Indonesia military) with an opportunity to influence local politics and events. Such information would have been especially interesting in relation to the East Timor’s westernmost provinces (bordering on Indonesia) and the territorial enclave of Oecussi (within Indonesia), in which the militia had been particularly active. A hostile take-over of these areas along the lines of India’s bid for Portuguese Goa is not unimaginable,³⁹ although an attempt to accomplish this in the aftermath of the referendum would have provoked an extremely serious backlash and response both domestically and internationally. Those who would think a scheme like this is farfetched may be referred to this observation by Kingsbury: “it was also clear that the militias were intent, at a minimum, on breaking away the three western districts, of Cova Lima, Bobonaro and Liquisa, to try to federate them with West

34. Electoral Commission, *Reasons for Determination*, *supra* note 12, para. 9.

35. See APCJP, EOD Report, *supra* note 7, at 8; and Van Klinken, *supra* note 1, at 64-65.

36. Electoral Commission, *Reasons for Determination*, *supra* note 12, para. 9.

37. See factsheet, at www.un.org/peace/etimor99/Fact_frame.htm.

38. There was militia activity around UNAMET Headquarters and the counting centre on 1 September. See APCJP, EOD Report, *supra* note 7, at 13; and UCA Observers in East Timor, Update 2 September 1999, at www.nsw.uca.org.au/secretariat/east_timor/99-09-02.htm.

39. Note D. Harris, *Cases and Materials on International Law* 220-223 (1998); and P. Malanczuk, *Akehurst’s Modern Introduction to International Law* 156-157 (1997).

Timor.⁴⁰ Djajamihardja reported a similar observation, taken directly by him from Eurico Guterres (leader of the notorious Aitarak militia):

[...] whatever the outcome of the referendum, he and his militia group would not leave East Timor. I was a little puzzled by the answer because he stressed that the pro-autonomy groups were going to demand the partition of East Timor. He mentioned that at least 40% of the East Timorese wanted their territory to remain part of Indonesia. He even urged the UN to send a peace-keeping force to areas along the western sector of East Timor which, he said, was going to eventually be claimed by the pro-autonomy side.⁴¹

Of course, a less sinister explanation may simply be that centralised counting and the mixing of ballot forms was contrary to the existing practice within Indonesia. It may further be noted that from a view to detecting potential fraud, something is to be said against this decision. Since centralised counting and mixing of the ballot forms makes it impossible to split up the results per district, this in turn makes it impossible to detect significant deviations in the results of any given district. Consequently, if any fraud had been suspected, it would have been impossible to ascertain this by going back to the source.

As it was, counting took place centrally and forms were shuffled, and this was entirely reasonable. The *people* of East Timor possessed the right to self-determination. Although the word 'people' tends to be used in combination with the plural, it is the people as an entity that has decided the fate of East Timor. As such, the outcome of the referendum was a decision for independence by all the people, whether they voted for, or against.

UNIF's main complaint was by far the more serious: local East Timorese staff were alleged to have systematically told people to vote for independence, to have forced them to do so, or to have marked other peoples' ballot forms. Some 25 or so complainants made the road to Dili for the Electoral Commission's hearings.⁴² Most concerned elderly persons testifying that they had been told or forced to vote for independence, or who had been voted for.⁴³

Two complaints had more substance to it. A woman in her late thirties complained about the fact that ballot forms had been taken from some 50 people waiting to vote outside the polling station. It is not quite clear why people would be in possession of ballot forms when still outside: these are only handed out to each potential voter within the polling station. Perhaps she just made a mistake

40. Kingsbury, *supra* note 17, at 73. Also S. Downie, *The United Nations in East Timor: Comparisons with Cambodia*, in Kingsbury, *supra* note 1, 117-134, at 131.

41. H. Djajamihardja, A reporter's view, in Kingsbury, *supra* note 1, 99-115, at 111.

42. For account see Preliminary Report to Electoral Commission, *supra* note 9, at 4-6; APCJP, EOD Report, *supra* note 7, at 11-12.

43. In the Carter Center's Preliminary Statement, *supra* note 7, it was stated: "[...] observers on two occasions witnessed UNAMET local staff guiding elderly voters into the polling booth and doing the voting for them. When made aware of this serious violation, UNAMET election officials repeatedly instructed local staff to cease such activity." Similarly APCJP, EOD Report, *supra* note 7, at 6.

and wanted to refer to registration forms. That was the gist of a complaint by a man, a pro-autonomy leader of his village of about the same age, claiming that some 50 had been forcibly taken from him and others while waiting outside. He said he had felt angry and cheated. He was then asked what he had done afterwards: had he reported this to anyone? That was not the case. It was rather striking that most elderly persons who complained about their own individual cases had reported the incident to the police.

The complaints remained isolated, and some speculate that they had been fabricated.⁴⁴ While I would not go so far, let me just provide a concrete example from my own experience. Around 9.00 a.m. I noted a disturbance near polling station 7. A man with a hat was shouting to the people waiting to vote. He then started to stroll towards the police at the other end of the school square. I followed him at a distance, and when I drew near another man who spoke English told me that the man complained that a woman with a yellow vest was telling people which way to vote. Having heard this, I decided to return to polling station 7, where I asked the two domestic observers whether they had noted the incident and how they felt about it. One of them answered: that man threatened to kill us. I remembered the woman with the yellow vest from an earlier visit to the same station. She had beckoned me and the domestic observers to come and see how she voted for a blind woman.⁴⁵

Perhaps the reason for the perceived bias on the part of local staff had a basis in the voting procedure. One of the four local polling officials present in any given station had as task explaining people how to vote (not: which way to vote). This meant that the official would indicate that if somebody wanted to vote pro-autonomy he or she would have to mark or punch at the top where the symbol of the red and white (Indonesian) flag was shown. If the choice was to reject autonomy (and one cannot exclude that polling officials would have explained 'pro-independence') to mark or punch the symbol of the CNRT-flag.⁴⁶ While understandable in view of the high rate of illiteracy and the limited time available for voter education, it may be suggested that the use of clear symbols should have sufficed and that explanation would only have been provided on request.

The incident recounted above was not the last we heard of it. At 11.55 a.m. I noted a disturbance near the entrance of the polling centre. A sizeable number of people, identified as pro-autonomy, were shouting inside to those waiting that people were being forced to vote for independence. The man with the hat was among them. UN civilian police and an Indonesian policeman tried to calm them down. At 12.00 o'clock sharp some 15 of them walked in in a determined way

44. *Id.*

45. A violation for the observers, but not for the polling official. See Directions 23, 29, 30 (13), 44 and especially 32, *supra* note 4; Regulation 3, Notification 30, *supra* note 9; and Regulation 10 (j), UN Code of Conduct, *supra* note 24.

46. For the symbols used see 'www.un.org/peace/etimor99/POSTERS/ballots_frame.htm'.

and started shooting in the air with home-made guns and began throwing stones and bricks at the polling stations (which went through the walls). People waiting scattered, one local staff member was seriously hurt, and an international staff member got a nasty knock to his head and got shot in his arm. The Indonesian policeman pulled out his gun and, without any attempt even to aim at the rabble-rousers, took a shot in the air. A detail of policemen, armed with (semi-) automatic weapons, made no attempt whatsoever to intervene during this initial stage. After about 3 or 4 minutes the international staff members and myself were ordered to evacuate from the centre, though none of the militia members gave us a second, or even a first, look. Two of them outside the polling centre, however, pointed their guns at us as we drove by. After about 40 minutes we got the all clear at the police station, and voting resumed after a suspension of about 2 hours. During this time I contacted our headquarters and called in the incident. At the centre precautions were taken, some of which in violation of the rules,⁴⁷ and people returned to vote. Even so, Gleno's polling centre had the lowest number of votes cast in East Timor, but still topped 90%. The number of votes cast over the whole of East Timor and abroad reached the astonishing percentage of 98.6.⁴⁸

This was the most significant incident at a polling centre, though not the most serious on polling day. In the evening a local staff member was stabbed to death in Atsabe (in the south of our district).⁴⁹ This was only the first local staff member to suffer. In Gleno the militia took over and erected roadblocks. The next day UNAMET wanted to evacuate all non-essential staff, observers, and those local staff that wanted to leave, to Dili. Ready to leave at 9.30 in the morning, the militia obstructed, and as the Indonesian police refused to act for almost the entire day, we only got under way at 5.30 in the afternoon.⁵⁰ When the results were announced on 4 September, people were happy but did not celebrate. The night brought interrupted gunfire. The next day reports of killings came in and almost nobody took to the streets. That night the gunfire was continuous. On 6 and 7 September practically all foreigners either left or were evacuated to Darwin, except for a small number trapped in UNAMET's headquarters in Dili determined to stay there to protect the many Timorese who had sought refuge there.

47. Armed policemen (required to keep a 100 metres distance) were positioned at the entrances of the stations. See Notification 8, *supra* note 9 (also Notification 6); and PET Report, *supra* note 7.

48. See BBC News report, 31 August 1999, Violence returns to Timor, at news2.thls.bbc.co.uk/hi/english/world/asia%2Dpacific/newsid%5F434000/434647.stm.

49. See BBC News report, *id.*; and Van Klinken, *supra* note 1, at 64.

50. It was felt that this was intended to prevent local staff from leaving. When we finally left for Dili many cars and minibuses, including ours, carried local staff members. For account, see Smith, *supra* note 1, at 40-41.

4. CONCLUDING OBSERVATIONS

In this contribution I have not discussed whether the consultation process *as a whole* was fair and free. Let me be absolutely clear about this: it was not. This was not, however, due to bias on the part of international and local UNAMET staff, but because of the climate of violence and intimidation during the process. Indonesia had undertaken to ensure an environment devoid of violence and intimidation.⁵¹ It failed at this task. Secretary-General Annan nevertheless decided to allow the consultation to take place, because postponement would only provide a bonus for those attempting to disrupt the whole process. The Electoral Commission noted these far from ideal circumstances:

Next there was to have been a public debate between the supporters of the constitutional framework and its opponents, [...]. To this end the Indonesian Government was to have ensured a secure environment, free of intimidation, violence or interference, while its civilian and security agencies were enjoined to maintain strict neutrality. Regrettably, that was not to be. Murder, arson, terror and mob violence, largely if not wholly committed by pro-autonomy militias, went unchecked. Prominent pro-autonomy leaders threatened a bloodbath should they lose, while pro-independence offices were sacked and a prominent leader assassinated.⁵²

The CNRT and the East Timorese realised the risk they were in, but chose to go forward.⁵³ For all they knew this would be their only opportunity to realise self-determination,⁵⁴ freedom and independence.

The referendum had to be organised in a short time by the United Nations, and this produced some desirable and undesirable side-effects. A process of this kind hinges upon the objectivity and impartiality of those involved in organising it. In this case, fortunately, no reliance was placed on the Indonesian election machinery, as this could have corrupted the process.⁵⁵ Instead, the UN organised it, largely relying on members of the Secretariat, of whom high standards of independence, efficiency, competence and integrity are demanded (articles 100 (1) and 101 (3) UN Charter). These were the people that, together with the UNVs, supervised the 4,000 local staff, which allegedly subverted the poll.

51. Article I Agreement on Security, *supra* note 2. For a discussion whether it was wrong to leave security up to the Indonesian police and military and not have an armed peacekeeping force present, see G. Robinson, *With Unamet in East Timor: A Historian's Personal View*, 32 BCAS 23-26 (2000); and Emerson, *supra* note 17, at 357-359.

52. Electoral Commission, Reasons for determination, *supra* note 12, para. 7.

53. Note S. Niner, *A Long Journey of Resistance: The Origins and Struggle of the CNRT*, 32 BCAS 11-17 (2000), at 15; Kingsbury, *supra* note 17, at 76; and Downie, *supra* note 40, at 130.

54. For a critical pre-referendum discussion of self-determination for the people of East Timor, see C. Drew, *The East Timor Popular Consultation: Self-Determination Denied*, 4 Human Rights Law Review 3-13 (1999).

55. Smith, *supra* note 1, at 30 (footnote 2), noted: "As an aside, this observer saw the voting figures for the Indonesian election for the town of Fatu Bessi that were still on the wall of the village administration centre. Of more than 3,000 votes cast in this town, all but six went to the Golkar party."

Yet, there were some drawbacks to this. Rather than sending observers to monitor the process, the UN had to muster its human resources to get into the field as quickly as possible. As so many were drawn into the service of UNAMET, and governments did not wish to participate in the monitoring business, NGOs filled the gap and sent out observers. Some of these organisations, like the Carter Center and Asian Network for Free Elections, had general competence in the field of election monitoring. Others were more involved in justice and peace, such as Oxfam and APCJP. And, then again, there were those that had been engaged in human rights and Timor advocacy, like PET, IPJET and IFET, the latter of which provided the largest contingent of international observers. Naturally such circumstances would open the door to accusations of bias.

The claim made by pro-autonomy organisation UNIF that local staff either systematically or on a widespread scale corrupted the poll must be rejected. In this contribution I have not discussed all irregularities that I detected, because some were either immaterial to the outcome of the vote,⁵⁶ or resulted from disruptions instigated by pro-autonomy supporters.⁵⁷ All observer organisations found that UNAMET and local staff had acted professionally, efficiently, and in an impartial manner.⁵⁸ The Electoral Commission observed that no election was perfect, and found that “[...] whatever merit there might be in individual complaints regarding alleged misconduct and/or partiality on the part of the electoral staff none of them, singly or collectively, impaired the process as such.”⁵⁹ In effect, if one would assess irregularities and violations of electoral rules over the whole period of the consultation process, the conclusion would no doubt have to be that the percentage for independence was lower than it would have been if the process had been fair and free. Consequently, this observer has no hesitation in accepting the outcome of the consultation as an accurate reflection of the will of the people of East Timor.

56. I noted, for instance, that one of the polling officials responsible for verifying the identity of voters did not check the documents properly. He was already corrected by one of the electoral officers before I could report this. When she had left the room he lapsed into his old behaviour (and I reported this), but there was no indication that he was *selectively* checking documents: he simply did not check at all.

57. In view of the suspension of voting in Gleno, it was decided to close one hour later, at 5.00 p.m. By this time the electoral officers started to put seals on the ballot boxes, but came out short in numbers. At about this time two East Timorese TNI soldiers demanded that they be allowed to vote notwithstanding that voting was over and that they were not registered to vote at this polling centre. They got agitated and there seemed again to be militia activity. In light of this, the soldiers were allowed to vote in violation of regulations, and because of the upcoming darkness it was decided to move the ballot boxes to the regional headquarters down the road despite that some were only partially sealed. For an account, Van Klinken, *supra* note 1, at 64.

58. See reports, *supra* note 7.

59. Electoral Commission, Reasons for Determination, *supra* note 12, para. 4.

5. POSTSCRIPT

I again visited Gleno on Sunday 20 August 2000. Of this town, which had been the administrative centre for Ermera district, well over 90% of all houses had been plundered, destroyed and stood roofless. The woman who rented us the house last year and worked for UNAMET as local staff was forcibly taken to Atambua, West Timor, and killed on 19 September 1999 together with all of her five children. Only her husband survived.