

Security and Sovereignty in the Asia-Pacific

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Security and state sovereignty need to be understood as two sides of the same coin. Without security, state sovereignty cannot be realized and vice versa. Security and state sovereignty are part of the global understandings, institutions, and rules that are continually being negotiated by global actors, including those in the Asia-Pacific region. While some analysts and policy-makers have claimed that state sovereignty is absolute, indivisible, and inalienable, the transitional societies of Cambodia and East Timor have demonstrated that sovereignty can be shared among several entities, including the United Nations. Moreover, developments in the Asia-Pacific region and elsewhere show that states, international organizations, and other global actors continue to redefine the meanings and understandings of security and sovereignty in their interactions with one another.

Introduction

Writing in this journal in 1996, Ramesh Thakur and I argued that there was a need for Asia-Pacific states to make a greater commitment to the United Nations in order to leverage the intrusive effects of Western ideas on human rights, state sovereignty, and international law.¹ On the basis of the relationship between economics and security, we posited that Asia-Pacific countries were at that time developing the economic, military, and political capacity to play a greater role in U.N. activities. We reconceptualized the meanings of representation and concluded that the Asian countries could broaden and deepen the representative base of the Security Council and other U.N. organs. This article extends

the earlier argument, but focuses this time on the relationship between security and state sovereignty.

The article makes three major assumptions. The first is that security and sovereignty have a symbiotic relationship such that one cannot be realized without the other.² This implies that Japan's, China's, or Malaysia's sovereignty and security, for example, are so intertwined that one cannot be enjoyed without the other. The second assumption is that contrary to claims that state sovereignty is absolute, indivisible, and inviolate, in practice sovereignty can be, and has been, split between different entities. As state sovereignty is defined in terms of both legitimacy and control, there have been cases in Asia and elsewhere in which it has been contested by parties which have only one of the two — either legitimacy or control. The third assumption is that states, the United Nations, and other international actors continue to redefine security and sovereignty in their interactions with one another. For example, China may be opposed to any overt reinterpretation of state sovereignty. However, every time the Chinese Government responds to charges of human rights abuses, for example, by non-governmental organizations (NGOs) and the United Nations Commission on Human Rights, it indirectly accords recognition to these organizations as international actors that can legitimately comment on the internal matters of states, and thereby helps to redefine state sovereignty.

These assumptions apply to the Asia-Pacific region and to other parts of the world. The Asia-Pacific region is huge, with over twenty countries that have different historical, cultural, and national traditions. They also experience, or have in the past experienced, different types of security- and sovereignty-related problems. For example, the Korean Peninsula has been divided between the North and the South for more than fifty years over security/sovereignty matters. China, the most populous country in the world, and a nuclear-weapons power, has experimented with a new approach to sovereignty by allowing the Special Administrative Region of Hong Kong to join some international organizations; but its attitude towards Taiwan's sovereignty has partly complicated its security relations with the United States. The second largest economic powerhouse in the world, Japan, has a dispute with Russia relating to sovereignty over the Kurile Islands. The region also has the world's newest country, East Timor, whose projected sovereign statehood has already had repercussions for security and sovereignty in Indonesia, the world's fourth largest, and most populous Muslim, country. Meanwhile, Brunei, China, Malaysia, the Philippines, Taiwan, and Vietnam have disputes relating to sovereignty over parts of the South China Sea. For these reasons, it is

not easy to demonstrate the relationship between security and state sovereignty in the entire region in an article of this size.

This article examines two cases to illustrate the symbiotic relationship between security and sovereignty and show that sovereignty has been split under certain conditions: the Cambodian peace process, and the transition in East Timor. Accordingly, the rest of the article is divided into four parts. The first part reconceptualizes security and sovereignty. The second examines the reinterpretation of sovereignty, and its security dimensions, in Cambodia in the early 1990s. The third analyses the gaining of sovereignty and its implications for security in East Timor since the late 1990s. The fourth concludes that it is important for scholars and policy-makers alike to understand that security and sovereignty, more often than not, exist in a symbiotic relationship, and that state sovereignty has been, and can be, shared by two or more entities.

Security and Sovereignty

Both security and sovereignty are regarded as “contested concepts” because they are not susceptible to single definitions. One institution through which security and sovereignty are linked is anarchy. Realists regard anarchy as the defining feature of the international system. Anarchy refers not to chaos, but to the absence of a world government. This absence of a global government is a function of state sovereignty. Therefore, realists claim that state sovereignty gives rise to anarchy, which, in turn, produces conditions for self-help. Under conditions of self-help, states are required to provide their own security, and this may lead to a security dilemma. Thus, Kenneth Waltz claims that to “achieve their objectives and maintain their security, units in a condition of anarchy”, including states, “must rely on the means they can generate and the arrangements they can make for themselves”.³ Realists posit that anarchy, self-help, and sovereignty are permanent conditions of international life, but constructivists, who claim that these institutions are social constructs, contest this view. From the constructivist perspective, anarchy, self-help and sovereignty are consequences of interactions among international actors. Hence, Alexander Wendt’s claim that “anarchy is what states make of it”.⁴ In this respect, the debate on the causal relationship between security and state sovereignty is unresolved. The next subsection will reconceptualize security, followed by an explanation of sovereignty.

Reconceptualizing Security

The attack on the U.S. defence headquarters and the World Trade Centre in New York by hijackers on 11 September 2001 exemplifies how global

transformations have changed the nature of security threats. Within a few minutes, hijackers flew two airliners, with all their passengers, into the World Trade Centre and another group of hijackers crashed the third airliner into the Pentagon. At the time of writing, the death toll was about 4,000. By any measure, this was a human tragedy of great proportions, which was widely condemned. The first point to note is that this action, against the most powerful country in the world, was undertaken by “freelance” individuals, not other states. Secondly, the attackers did not use firearms, bombs, missiles, or any sophisticated weaponry; they were armed with knives and other simple non-lethal implements. Thirdly, the attack, which aimed at the main symbols of U.S. financial, military and political power, was launched from within the United States itself, not from outside. Fourthly, some of the hijackers had been trained in U.S. civilian and military facilities.

The nature of this attack calls for deep reflection on what kind of political, social, and economic conditions motivated the hijackers. However, subsequent comments have illustrated how reluctant analysts and policy-makers are to alter their strategic thinking. For instance, the Western alliance, NATO (North Atlantic Treaty Organization), invoked its principle that an attack on one of them is an attack on all. The Australian Government invoked a similar clause in its treaty with the United States. Indeed, many commentators and decision-makers examined the tragedy in terms of old-fashioned responses to security threats: how to build a coalition of like-minded states to take *military* action against an *external* enemy. How such strategies can provide security against similar incidents in the future is an open question.

Security implies boundaries, both real and metaphorical, but these boundaries vary in space and time. Analysts differ over what objects are to be secured: individuals, nations, states, or ethnic communities. They also disagree on how much emphasis is to be attached to external as opposed to internal threats to security. Others differ over the terms “national”, “international”, and “global” security.⁵ The differences over the meanings, interpretations, and boundaries of security are not new. Arnold Wolfers concluded in 1962 that security was “an ambiguous symbol”.⁶ Security has traditionally been associated with protecting against violence, war, and the use of force, but a growing number of analysts now argue that these are not its only defining characteristics. Analysts from competing intellectual traditions define security differently. Some literature refer to common, comprehensive, co-operative, critical, human, Third World, and traditional security perspectives.⁷ There are also references to economic, environmental, military, political, and societal security.⁸ However, when examined critically, the

boundaries and meanings of these security perspectives appear tentative, fluid, and sometimes overlap. Space constraints do not allow a detailed discussion of these different approaches to security. The following paragraphs will examine briefly the traditional security perspective before providing a new definition of security centred on people, but incorporating other perspectives.

The term “traditional” security was coined by revisionists who sought to distance themselves from the security perspective that was dominant during the Cold War. Those regarded as traditional security theorists do not use this term. The weakness of employing such a term is that it makes traditional security the benchmark and thereby inadvertently helps to legitimize the paradigm that the revisionists seek to undermine. There is no clear definition of traditional security. Some have described it as state-centric, external-oriented and military-based. Traditional security aims at protecting the ruling élites and state boundaries. It is explained in terms of state survival, territorial integrity, and self-help in an anarchic environment. In short, traditional security is *predicated on egoism* of the state and of the ruling élite, which suggests that it is closely connected with state sovereignty.

In contrast to the traditional security perspective, security ought to be viewed as people-centred. Whether states achieve, undermine, or are irrelevant to security is an open question, depending on time and place. Accordingly, security can be defined as the protection of people, as well as the preservation of their norms, rules, interests, institutions, values and resources, in the face of military and non-military threats. The latter may include natural disasters, ecological, and environmental degradation, poverty, severe economic problems, human rights abuses, and the erosion of democratic institutions. This definition is broad enough to include the preservation of states, as well as the structures, principles, and institutions on which they are anchored, but only to the extent that protection of state boundaries and the governing structures and élites is not privileged over the people.

This people-centred definition is predicated on the assumption that people are the foundations of political communities and states. Indeed, states are states only because they are organized around people. Therefore, the security of states derives from that of the people. Moreover, in an era in which human rights and democracy have become recognized as global entitlements,⁹ no definition of security should ignore these values. As people’s values, rules, norms and institutions evolve, the definition of security has also to evolve. People-centred security is achievable only in conditions where sovereignty is also defined in terms of the people’s needs, rights, interests, values, and hopes.

Explaining Sovereignty

The term “sovereignty” is used frequently by analysts, international civil servants, policy-makers, and NGO workers, but it is rarely defined. Even the United Nations Charter mentions the “concept” of sovereignty, but it does not define it. Some writers argue that sovereignty is absolute, indivisible, and inalienable. For example, F.H. Hinsley describes sovereignty as “a final and absolute political authority in the political community”.¹⁰ Others define it in terms of democratic rule and popular consent. Harold Laski, for example, following John Locke and Jean Jacques Rousseau, defines sovereignty in terms of the consent of the people.¹¹ Some of the literature claim that state sovereignty is a principle that legitimizes internal political organization while providing a framework for enhancing security.¹²

The assumptions on which sovereignty is based date back to the Peace of Westphalia in 1648. The Westphalian regime is best remembered for making the territorial state the cornerstone of the modern international system. Since then, the development and reinterpretation of sovereignty has closely mirrored the evolution of the state. However, sovereignty has not always been honoured. This is why Stephen Krasner claims that breaches “to the Westphalian model have been an enduring characteristic of the international environment”.¹³ Krasner describes sovereignty as “organized hypocrisy”.¹⁴

This article delineates three types of sovereignty. The first, *juridical* or external sovereignty, is based on the notion that the state has no other authority over it except that of international law. Ramesh Thakur defines this form of sovereignty as “the legal identity of the state in international law, an equality of status with all other states, and the claim to be the sole official agent acting in international relations on behalf of a society”.¹⁵ Asia-Pacific states are members of the United Nations and other international organizations by virtue of their juridical sovereignty. Juridical sovereignty is conferred on the states by international society. If, for any reason, international society decides that a particular state should not remain sovereign, it can take away that state’s juridical sovereignty. Taiwan lost its juridical sovereignty in 1971 because hegemonic powers decided it was not in the interest of global security to have Taiwan as a member of the United Nations while China remained outside the organization. Juridical sovereignty is not without irony. For example, Taiwan is not a member of the United Nations, while a country like Somalia, without the ability to govern itself, retains its juridical sovereignty and a seat in the United Nations, which it has not occupied for a decade. State practice shows that only agents of states can enjoy juridical sovereignty on behalf of the states they claim to represent.

The second type of sovereignty, *empirical* or internal sovereignty, is based on the understanding that states have the right and ability to control the people, resources, and institutions within their borders. Empirical sovereignty is not conferred on states by international society. It is demonstrated through a country's capacity to manage its affairs. Taiwan may not have juridical sovereignty, but it is empirically sovereign because it has its own government that controls all institutions, resources, and the people within its territory. Whenever states talk of their "state sovereignty", they refer to juridical or empirical sovereignty, or both. The traditional security perspective also revolves around state sovereignty.¹⁶ A militarily and economically powerful state would be in a better position to exercise its internal and global responsibilities than a weaker one. This is why the Asian states that experienced severe financial crises in the late 1990s found their state sovereignty diminished. International practice suggests that agents of states as well as those of international organizations, like the United Nations, can exercise empirical sovereignty.

The third type of sovereignty, *popular* or individual sovereignty, is predicated on the claim that all people are equal and entitled to fundamental freedoms, and that governments control people only with their consent.¹⁷ United Nations Secretary-General, Kofi Annan, told the U.N. General Assembly in September 1999 that by popular sovereignty he meant "the fundamental freedom of each individual, enshrined in the Charter of the UN and subsequent international treaties".¹⁸ Thus, "popular sovereignty" rests on the recognition of human rights. This suggests that human rights and state sovereignty need not be in antagonism; they are two sides of the same coin. In this respect, the clash between the pro-democracy demonstrators and government forces in Beijing in June 1989 can be seen as having been primarily a struggle between popular sovereignty and state sovereignty. As popular sovereignty is exercised only by citizens in their relationship with their rulers, it is dependent on the level of civil society and the nature of governmental structure that exists in a particular state. Popular sovereignty is about the ability of citizens to hold their governments accountable. It means that the people have the rights and the structures through which they limit the power and arbitrariness of governments, and governments that foster such structures can themselves be said to be based on popular sovereignty.

On the surface, most Asian states have no room for popular sovereignty because of their attitudes towards universal human rights. However, as they have interacted internationally, especially through the United Nations, they have increasingly come to accept the reality of popular sovereignty. States often redefine the "self" and the "other"

through international interactions. As Alexander Wendt postulates, agents “are on-going effects of interaction”.¹⁹ Even a country like China, which takes its state sovereignty seriously, has had to sign international human rights conventions, which have, in turn, made it modify its behaviour and interests through compliance measures. Indeed, China has worked harder than most Asian states to respond to charges of human rights violations raised at the United Nations Commission on Human Rights (UNCHR).²⁰ China’s behaviour in the UNCHR is the clearest evidence that it recognizes the reality of popular sovereignty. Popular sovereignty, in part, implies that civic associations and NGOs have legitimate international roles to perform. A people-centred approach to security would privilege popular sovereignty, recognize NGO participation in global governance, and respect state sovereignty as long as it does not derogate popular sovereignty.

As has been suggested, sovereignty has undergone various transformations in accordance with the prevailing norms of global governance.²¹ Whenever serious crises undermine the legitimizing principles of sovereignty, new norms are negotiated, and these norms often reflect the preferences of hegemonic states. With the end of the Cold War, Western powers have emphasized normative values and empirical sovereignty, and this has given the impression that sovereignty is increasingly being associated with the democratic norm. It is for this reason that Thomas Franck argues that democracy “is on the way to becoming a global entitlement, one that increasingly will be promoted and protected by collective international processes”.²² However, the emphasis that Western states have occasionally placed on liberal democracy and popular legitimacy appears to be geared towards consolidating Western hegemony. Therefore, it is not surprising that this trend has been resisted in some parts of Asia. One country where the United Nations recast state sovereignty in the 1990s with a view to enhancing internal and regional security was Cambodia.

Cambodia: Recasting Sovereignty

The majority of publications on Cambodia since the United Nations intervention in the early 1990s have been concerned mainly with the mechanics, difficulties, successes, and failings of the United Nations mission.²³ Here, the existing literature is expanded to examine the symbiosis between security and state sovereignty during that period. The relationship between state sovereignty and security comes out clearly in the Cambodian peace process, partly as a result of the compromises made by the political factions, and partly because of the roles played by regional and global actors. It is also explained how the United Nations

assumed part of Cambodia's empirical sovereignty and started the process of enhancing popular sovereignty during the transitional period.

Cambodia's civil conflict began with North Vietnam's support of the Khmer Rouge and the United States' subsequent bombing of Cambodia from 1968, which continued through the Lon Nol period (1970-75), the Khmer Rouge regime (1975-79) during which an estimated 1.7 million Cambodians died, and even after Vietnamese and Heng Samrin troops drove out the Khmer Rouge in January 1979. For about a decade following the formation of the exiled Coalition Government of Democratic Kampuchea (CGDK) in 1982, Cambodia's state sovereignty, as defined above, was split between two competing groups: the CGDK and the Heng Samrin government. This division in Cambodia's state sovereignty undermines the claim that state sovereignty is absolute, inalienable, and indivisible. China and the member-states of the Association of Southeast Asian Nations (ASEAN) played important roles in the decade-long contest between the CGDK and the Heng Samrin government. The CGDK comprised the royalist FUNCINPEC party, led by Prince Norodom Sihanouk and his son Ranariddh; Son Sann's Khmer People's National Liberation Front (KPNLF); and the Khmer Rouge or the Party of Democratic Kampuchea (PDK), nominally led by Khieu Samphan, but in reality controlled by Pol Pot. This coalition was recognized as the Cambodian government in exile by the Western world, China, ASEAN, and their friends. It was the CGDK that filled the Cambodian seat in the United Nations. This meant that the Khmer Rouge and their allies in the CGDK exercised Cambodia's juridical sovereignty.

On the other hand, the Heng Samrin regime, installed and maintained in power by Vietnam and its Soviet bloc allies from 1979 to 1989, controlled about 80 per cent of the country, including the capital Phnom Penh, and therefore possessed empirical sovereignty in that it was able to manage its affairs within that area. It can be argued that neither party was based on popular sovereignty, as the Heng Samrin government did not respect the fundamental freedom of individuals, nor had the Khmer Rouge in the preceding five years. The split in Cambodia's state sovereignty was representative of the war between the CGDK and the Phnom Penh government, and therefore was matched by the enormous security problems Cambodians endured from 1979 to the 1991 Paris Peace Agreements and the subsequent United Nations intervention.

In September 1990, the four Cambodian factions agreed to establish the Supreme National Council (SNC), with six representatives from the State of Cambodia (SOC), run by the Cambodian People's Party (CPP), with Hun Sen as Prime Minister and Heng Samrin as President; and two

representatives each from FUNCINPEC, the KPNLF, and the Khmer Rouge. The SNC President was Sihanouk who, since 1941, had been Cambodia's king, prime minister, chief of state, and exiled political leader. It was the twelve members of the SNC who signed the 23 October 1991 Paris Peace Agreements that declared the SNC the "unique legitimate body and source of authority in which, throughout the transitional period, the sovereignty, independence and unity of Cambodia are enshrined". The SNC would represent Cambodia externally, occupy Cambodia's seat at the United Nations and in specialized agencies, and participate in other international institutions. However, by signing the Paris Peace Agreements, the SNC delegated to the United Nations "all powers necessary" to ensure security and the implementation of the agreements. This was the first time in the history of the United Nations that a member state had surrendered such authority to the world body. As Michael Doyle comments: "Not since the colonial era and the post-World War II Allied occupations of Germany and Japan had a foreign presence held so much formal administrative jurisdiction over the civilian functions of an independent country."²⁴

The Paris Peace Agreements consisted of three instruments that reflected the close relationship between security and state sovereignty. The first, and most fundamental for Cambodia's security, was the agreement on a comprehensive political settlement of the conflict. This agreement, which allowed the external players to extricate themselves from the Cambodian conflict, was implemented with great difficulty because of the intransigence and obstructionist tactics of the Khmer Rouge. The second was the agreement relating to the sovereignty, independence, territorial integrity, and national unity of the country. This addressed aspects of juridical and empirical sovereignty (Articles 1, 2, 4 and 5) and popular sovereignty (Article 3). For example, Article 3(1) required the post-election Cambodian government "to ensure respect for and observance of human rights and fundamental freedoms". The final instrument was the declaration on the rehabilitation and reconstruction of Cambodia. This largely related to empirical and popular sovereignty. For example, Article 2 stated that it was the Cambodian people themselves and the post-election government that carried the main responsibility for determining the "reconstruction needs and plans" of the country. In order to implement these agreements, the United Nations Security Council established the United Nations Transitional Authority in Cambodia (UNTAC), which operated from March 1992 to September 1993.

United Nations Security Council Resolution 745 of 28 February 1992 refers to the desire "to contribute to the restoration and maintenance of peace in Cambodia, to the protection of human rights and to

the assurance of the right to self-determination of the Cambodian people through free and fair elections". It is argued that in the process of making these contributions, the United Nations not only provided security to the Cambodians, but also managed to recast state sovereignty. State sovereignty, in particular empirical sovereignty, was recast by interpreting it in a manner in which the organization had not done before. Moreover, by establishing an electoral roll, administering the elections and building the structures for the protection of human rights, the United Nations Transitional Authority in Cambodia (UNTAC) also politically empowered Cambodians and helped to advance the cause of popular sovereignty. It undertook all these tasks with a view to establishing security in Cambodia.

In terms of the three types of sovereignty delineated earlier, there is no evidence that UNTAC's activities affected Cambodia's juridical sovereignty, which was held by the SNC. However, the UNTAC presence in Cambodia had a considerable effect on empirical and popular sovereignty. It was akin to a trusteeship, but a formal trusteeship would have breached Article 78 of the United Nations Charter, which states: "The trusteeship system shall not apply to territories which have become members of the United Nations, relationship among which shall be based on respect for the principle of sovereign equality." To avoid the prohibition in Article 78, an innovative formula was designed, through which the SNC partially delegated to the organization the country's empirical sovereignty. Doyle claims that the peace process in Cambodia employed an "ad hoc semisovereign" entity, the SNC, "to legitimate UNTAC's direct implementation of its *striking* civil mandate to reconstruct the Cambodian polity as a democracy".²⁵

The assumption of part of Cambodia's empirical sovereignty by the United Nations was enshrined in the Paris Peace Agreements, which aimed to avoid a resumption of civil war, and therefore a situation where sovereignty would be split again. In other words, the agreements were, in part, based on the understanding that UNTAC needed to exercise a certain level of empirical sovereignty in order to provide security. The agreement on a comprehensive political settlement, for example, was signed in order to "maintain, preserve and defend the sovereignty, independence, territorial integrity and inviolability, neutrality and national unity of Cambodia". It was Article 3 of this agreement that described the SNC as the "source of authority in which" Cambodia's sovereignty would be enshrined. However, as mentioned earlier, Article 6 required the SNC to delegate "all powers necessary" to the United Nations "to ensure the implementation" of the agreements. The operative words were "all powers necessary", and the ambiguity inherent in them, coupled with the UNTAC mandate in Annex 1, enabled UNTAC

to assume enormous power. For example, Section B(1) of Annex 1 says that “all administrative agencies, bodies and offices acting in the field of foreign affairs, national defence, finance, public security and information” were to be “placed under the direct control of UNTAC”. The U.N. Secretary-General’s Special Representative, in consultation with the SNC, would also “determine which other administrative agencies, bodies and offices could directly influence the outcome of elections” and place them under his “direct supervision or control of UNTAC” (Section B[2]). Moreover, all civil police were to operate under UNTAC’s control or supervision (Section B[5]b).

UNTAC’s principal purpose was to end the civil war, stabilize the country, and help establish a democratically elected government. It was mandated to disarm the soldiers, repatriate the refugees and, as already shown, control the administration. UNTAC had to disarm more than 200,000 soldiers of the four factions and 250,000 SOC/ CPP militia members, and demobilize at least 70 per cent of them. At the same time, UNTAC was to repatriate an estimated 360,000 refugees from camps in Thailand and to help resettle 700,000 refugees, internally displaced persons, and demobilized soldiers. UNTAC was then to run a human rights and civic education programme, register an estimated four million voters and conduct the general election. In performing these tasks, UNTAC was discharging empirical sovereignty in Cambodia.

UNTAC’s exercise of empirical sovereignty was only partial largely because the SOC continued to run the administration, including the civil service, and to pass budgets and laws through its parliament. Hence, during the transitional period, empirical sovereignty in Cambodia was exercised by two entities simultaneously, although not equally: UNTAC and the SOC. It is important also that the uniqueness of UNTAC’s mandate is not overstated. The United Nations and its specialized agencies in other peacekeeping and electoral missions have carried out tasks, such as disarming, repatriation, and balloting. However, the main difference between UNTAC and these other U.N. missions is that UNTAC had a generous civil mandate and was the first ever mission to organize, not just supervise, an election.

Some parts of the Paris Peace Agreements provided space for the emergence, or re-emergence, of civil society, thereby consolidating popular sovereignty. One purpose of civil society is to serve as a counterweight to the power of the government. UNTAC’s Human Rights Component noted that on its arrival in Cambodia, there were no “basic institutions and structures upon which the safeguarding of fundamental rights depends”, such as an independent judiciary, a free press, and NGOs. In addition to organizing and conducting the elections, UNTAC had the mandate to create “an environment in which respect for human

rights [would] be ensured.” Therefore, UNTAC had the mandate to establish structures that would limit the power of future Cambodian governments to abuse the rights of the Cambodian people. As Caroline Hughes notes, the “peace process gave independent newspapers, human rights groups and political parties a foot in the door in the Cambodian polity”.²⁶ UNTAC’s Human Rights Component says the “strengthening of civil society is the most essential guarantee against the recurrence of the state repression of the past.”²⁷ The Paris Peace Agreements implied that without popular sovereignty, of the type which the Human Rights Component helped to foster, there would be no lasting foundation for peace and security in Cambodia. Seven years after UNTAC left Cambodia, Sue Downie and Damien Kingsbury concluded that UNTAC succeeded in this objective, in that it laid the ground work for the re-emergence of civil institutions, although not all were sustainable, and that despite some serious setbacks, “the process of political development in Cambodia [had] taken root”.²⁸ Some of the lessons learnt in Cambodia were later applied in East Timor.

East Timor: Towards Sovereign Statehood

The U.N. presence in Cambodia has similarities with its intervention in East Timor from September 1999. In both cases, the purpose of the United Nations was to end atrocities and to help begin the process of rebuilding war-torn societies. The missions in both cases were given mandates that included extensive administrative control of these states.²⁹ This section will argue that the events of 1999, especially the U.N.-supervised referendum, the subsequent atrocities by the pro-Indonesian militia and the U.N. intervention, encapsulated East Timor’s identity crisis, which, in turn, was a consequence of the split in its sovereignty. At the time, East Timor was neither a Portuguese colony, nor a fully integrated Indonesian province, nor a U.N. trust territory. The chance for East Timor to assume its state sovereignty and a clear identity in world politics, came only with the U.N. intervention that started in 1999. Thus, the United Nations not only established security for the territory, but it also laid the foundation for the institutions and structures that would enable the East Timorese people to exercise their popular sovereignty.

East Timor’s present security- and sovereignty-related problems emanate from Indonesia’s twenty-four-year occupation. Indonesia invaded East Timor, a former Portuguese colony, in late 1975, shortly after the colonial authorities had departed. The atrocities that occurred in East Timor in subsequent years were largely a result of Indonesia’s brutal rule and clashes between Indonesian forces and East Timorese

liberation fighters. Unlike Cambodia, where the various wars from 1970 were largely among indigenous political groups, East Timor's war was of liberation from foreign occupation. For more than two decades, the United Nations maintained that the East Timor problem was an issue of decolonization in which Portugal had a role. This was why the process, which led to the 30 August 1999 referendum, involved three parties: Indonesia, Portugal, and the United Nations.

For the twenty-four years that Indonesia ruled East Timor, it did not have juridical sovereignty over the territory because the United Nations and the majority of countries did not recognize its rule in East Timor. The ASEAN countries, Australia, and a few other states accepted Indonesian rule in East Timor as legitimate, but this rule was continually being contested in international fora and raised in the U.N. General Assembly annually. In one sense, the Indonesian administration in East Timor was comparable to the Heng Samrin government in Cambodia: it controlled the territory, but the United Nations did not recognize its legitimacy. Owing to their anti-communist stance, the ASEAN countries campaigned for the denial of international recognition for the Heng Samrin government; but because Indonesia was the dominant member of ASEAN, the same states stood steadfast behind Indonesia's occupation of East Timor in defiance of the United Nations and international opinion.³⁰ Indonesia, Portugal, and the United Nations signed the 5 May 1999 agreements that allowed the United Nations to conduct a referendum in East Timor. The fact that Portugal was a third party was further proof that while Indonesia had empirical sovereignty, it did not enjoy juridical sovereignty over East Timor.

The U.N. intervention in East Timor from 1999 occurred in three phases. The first, from June to September 1999, was the U.N. Mission in East Timor (UNAMET), an electoral assistance group that did not have a peacekeeping mandate. UNAMET's responsibility was to organize the 30 August 1999 referendum. The second, from September 1999 to February 2000, was the Australian-led International Force in East Timor (INTERFET). This was a peace enforcement operation that was deployed temporarily to end atrocities committed by the pro-Jakarta militia and Indonesian troops. The third phase, which started in February 2000, was the U.N. Transitional Administration in East Timor (UNTAET), a peacekeeping operation that has administration, electoral, rehabilitation, and repatriation responsibilities.

As already mentioned, the events of 1999 illustrated a crisis in East Timor's identity. Indonesia, the occupying power, had empirical sovereignty over East Timor because it had an effective administration from 1975 until the 30 August 1999 ballot, but the East Timorese rejected its rule. It had control over the territory, its people, and its resources.

However, Indonesia lost that empirical sovereignty following the referendum, because it was unable or unwilling to stop the carnage. This was when INTERFET entered the scene and helped to restore law and order. INTERFET was sanctioned by the U.N. Security Council and recognized internationally as the legitimate body (albeit a temporary one) to bring peace and security to East Timor; it also had the support of the East Timorese people. In its short tenure, INTERFET exercised empirical sovereignty over East Timor. It is, therefore, plausible to argue that INTERFET and UNTAET, which were established under Chapter 7 of the United Nations Charter because of their security tasks, started the process of helping East Timor acquire state sovereignty. UNTAET, in particular, started the reconstruction process through which the East Timorese people could exercise their popular sovereignty.

If the United Nations did not recognize Indonesian rule over East Timor, why did it require Indonesian consent before sending in INTERFET? By seeking Indonesian permission, it might appear that the United Nations accepted Indonesia's authority in the territory as legitimate. However, U.N. member states would not have agreed to send troops to confront Indonesian troops in East Timor. Therefore, seeking Indonesia's consent was a matter of prudence, not recognition of Indonesia's legitimacy over East Timor. As Robert Jackson argues, the "core ethics for anybody who wields great power is that of judgement and prudence: full awareness that, whatever one decides to do with one's power, significant consequences are likely to result".³¹ Unfortunately, as the negotiations between the United Nations and Jakarta dragged on during the second week of September 1999, more atrocities were committed against the East Timorese for exercising their rights to vote for independence.³²

The beginning of the processes that would enhance popular sovereignty in East Timor can be explained in terms of the August 1999 poll, which was organized and conducted by UNAMET. Under U.N. Security Council Resolution 1246 of 11 June 1999, UNAMET was to "ascertain whether the East Timorese people" would accept a special autonomy within Indonesia or choose separation from Indonesia. On 30 August 1999, more than 78 per cent of the 450,000 East Timorese voters rejected Indonesian autonomy, and, therefore, by default expressed their desire for independence. Hence, it was clear that Indonesian rule in East Timor was not based on popular sovereignty.

Within hours of the referendum result being announced, the pro-Jakarta militias, supported by Indonesian troops, rampaged through cities, towns, and villages, shooting, raping, burning, and looting. Internal security broke down, and law and order evaporated. The systematic, widespread, and flagrant violations of human rights and international

humanitarian law were obvious. Security Council Resolution 1264 of 15 September 1999, which authorized INTERFET, expressed deep concern about “the deterioration in the security situation” and was appalled “by the worsening humanitarian situation”. The intervention by INTERFET was designed to end the killings, protect UNAMET, restore order, facilitate humanitarian assistance, and help to establish an environment in which people-centred security could be realized. INTERFET effectively helped the East Timorese move towards the realization of their popular sovereignty.

INTERFET was a peace enforcement operation that had the mandate to restore order and maintain security until a peace mission could be established. Security Council Resolution 1272 of 25 October 1999 established UNTAET, which had overall responsibility for the administration of East Timor and was “empowered to exercise all legislative and executive authority, including the administration of justice”. Among its many responsibilities, UNTAET was mandated to maintain peace and security, “support capacity-building for self-government” and “assist in the establishment of conditions for sustainable development”. Above all, as a mission established under Chapter 7 of the United Nations Charter, UNTAET was authorized “to take all necessary measures” to fulfil its mandate. It can be concluded that, unlike UNTAC in Cambodia, which had exercised partial empirical sovereignty, UNTAET temporarily assumed full empirical sovereignty over East Timor.

UNTAET has only limited tenure in the territory, but it has established conditions under which the East Timorese people will enjoy security and exercise their popular sovereignty. The efforts of INTERFET and UNTAET to privilege popular sovereignty in East Timor also opened up greater possibilities for the pursuit of people-centred security.

Conclusions

The foregoing analysis leads to several conclusions. First, political and security developments in Cambodia and East Timor have demonstrated that state sovereignty is not always absolute, indivisible, and inviolate. It has been, and can be, shared by two or more entities. This means that the indivisibility of state sovereignty should not always be taken for granted. It needs to be negotiated and maintained by the major stakeholders in a state: the government, civil society and, where necessary, the corporate sector.

Secondly, the rules of state sovereignty and non-intervention are not fixed, as they always evolve in response to circumstances and the changing norms of global governance. This means that the practice of

sovereignty in one era, for example, during the Cold War, may not continue in subsequent periods. It was for this reason that, following the Asian financial crisis in the late 1990s, the then Thai Foreign Minister Surin Pitsuwan suggested “that ASEAN’s cherished principle of non-intervention [needed to be] modified to allow it to play a constructive role in preventing or resolving domestic issues with regional implications”.³³ State sovereignty is part of the rules and understandings that are continually being negotiated by global actors, including the Asia-Pacific countries. Its character is a product of history and interactions among global agents. For example, when the United Nations emphasized the principle of non-intervention after World War II, it was because juridical sovereignty was considered to be the pillar of global security. However, since the Cold War ended, the United Nations has emphasized the sanctity of both individuals and states. It was in this context that the U.N. Secretary-General, Kofi Annan, told the General Assembly in September 1999 that “no legal principle, not even sovereignty, can shield crimes against humanity”.³⁴ These shifts in norms and practices have coincided with calls for democratic reforms, responsible and accountable governments, and respect for human rights around the world.

Thirdly, the meanings of security are historically contingent. While during the Cold War security basically meant the protection of ruling regimes and state boundaries, in the post-Cold War period it has been associated with sustainable development, environmental protection, democracy, and human rights. The beginning of the reconstruction process in Cambodia in the early 1990s and in East Timor since 1999 might be said to have elements of development and democratic reform. It is also a process of providing security to the people, and from that security can come democratic reform and other aspects of development. Hence, attempts to universalize human rights and the emergence of progressive ideas on international law and diplomacy, have been cause for new thinking about security. While juridical sovereignty, associated with traditional security, remains important, popular sovereignty has also been recognized as a platform on which people-centred security can be constructed.

NOTES

An earlier version of this article was presented at a Ford Foundation-funded workshop on “Non-traditional Security in Northeast Asia: The Institutional Dimension”, organized jointly by the United Nations University and the University of Hong Kong. I would like to thank these institutions for making it possible for me to write this article. I would also like to thank Sue Downie and the two anonymous referees of *Contemporary Southeast Asia* for detailed comments on earlier drafts of the article.

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