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The exception becomes the norm in Timor-Leste: the draft national security laws and the continuing role of the Joint Command

Bu V.E. Wilson*

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I. Introduction

A year and a half ago two carloads of armed men came out of the hills surrounding Dili and attacked the President and Prime Minister of Timor-Leste.¹ These events, extraordinary in themselves, also triggered a declaration of a state of siege in Timor-Leste. Six days later the government created a joint military police command (hereafter the “Joint Command”) which placed the East Timorese Police (the PNTL) under the command of the East Timorese military (the F-FDTL). This was done at a time when PNTL was theoretically under the command of the UN police (UNPOL)² and yet was done without consulting the UN.³ The Joint Command was tasked with implementing the state of siege, and subsequent states of exception.⁴

In Part II of this paper I provide an account of the events of 11 February 2008. Part III examines the ensuing states of exception and the Joint Command. In Part IV I discuss their immediate effects on human rights and the rule of law in Timor-Leste. Part V examines the reluctance of the political leadership to wind up the Joint Command. I document a number of ways in which the ‘exception’ endured after it was formally

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¹ The trial of twenty eight people charged with a range of offences in relation to the 11 February 2008 attacks commenced in the Dili District Court on 13 July 2009 under heavy security. Charges include attempted murder, conspiring to kill the President, carrying weapons in public, attempted homicide and conspiracy to murder.

² Commencing in April/May 2006 Timor-Leste experienced a crisis that saw widespread fighting between, and within, the East Timorese police (PNTL) and the East Timorese military (F-FDTL); regionally based divisions, and the displacement of 150 000 people. Following the commencement of a new UN mission, UNMIT, in August 2006 a Supplemental Agreement was signed between the Government of Timor-Leste and UNMIT which gave executive policing authority to the United Nations Police.

³ In an interview in July 2009 with UNPOL Police Commissioner Luis Carillho he expressed both concern and mystification about how this could have happened.

⁴ In this paper I use the collective term ‘states of exception’ to include a variety of exceptions to the legal and constitutional norm such as ‘states of emergency’, ‘states of siege’ or ‘martial law’ which may have specific legal meanings in particular national jurisdictions. “State of exception” is also a term employed in the theoretical work of authors such as Schmitt, Benjamin and Agamben. (Schmitt 1985; Agamben 2005; Benjamin 1969). Other authors such as Gross and Ní Aoláin use the term emergency as their collective term (Gross and Ní Aoláin 2006).

concluded. Part VI examines a suite of recent defence, internal security and national security bills being considered by Committee B⁵ of the Timor-Leste National Parliament that blur the areas of Defence and Security. In Part VII I examine the longer term significance of states of exception. I draw on the work of theorists of the “state of exception” such as Carl Schmitt and Giorgio Agamben to argue that these events have served not only to rearrange the power relationships between international and national security actors, but also to create a trajectory of change regarding the respective responsibilities and roles of the national police and military in Timor-Leste.. In particular I argue that the draft security legislation is evidence of ‘the exception having become the norm’ Timor-Leste, with significant consequences for the development of their security sector.

II. The events of February 11 or “who is in charge around here?”

On 11 February 2008 the President of Timor-Leste, José Ramos Horta, was taking his customary early morning walk along the beach near his house in Areia Branca, a sparsely populated area a couple of kilometres to the east of the capital Dili. He was accompanied by two F-FDTL soldiers as he did not want to wake up the PNTL officers allocated to his close protection (UNMIT 2008:7)A group of armed men, led by Major Alfredo Reinado,⁶ arrived at the President’s house at approximately 6.15 am and attacked the house. All but four of the thirteen F-FDTL on duty that day and guarding the perimeter of the Presidents compound promptly abandoned their posts (UNMIT 2008:8). Around 7 am Reinado was shot dead by a military police officer along with one of his lieutenants; Leopoldino Exposto (UNMIT 2008; LUSA 2008; Toohey 2008b).

Upon hearing gunfire Horta hurried back to his house where he received shots to the stomach and chest critically injuring him. One of his guards was killed. Horta subsequently underwent surgery at an Australian military base and was then evacuated to Darwin for further surgery. He remained there for nine weeks (LUSA 2008; Toohey 2008b)

About an hour and a half after the first attack another armed group, led by Lieutenant Gastão Salsinha,⁷ attacked the convoy of the Prime Minister Xanana Gusmão who was heading into town from his home in Balibar in the hills outside Dili. The Prime Minister and his entourage managed to escape but Salsinha and his men proceeded to the Prime Minister’s house, apparently searching for weapons (LUSA 2008). The terrified wife and children of the Prime Minister were forced to hide under a bed.

⁵ The Timor-Leste national parliament includes a committee system that considers legislation following approval by the Council of Ministers and before being considered in plenary session in Parliament. Committee B is responsible for the area of defence and security.

⁶ Reinado was the head of the military police of F-FDTL. Following orders to hunt down deserting members of the F-FDTL (“the petitioners”) headed by Gastão Salsinha during the crisis of 2006, Reinado deserted on 3 May 2006, joining the petitioners. He was subsequently involved in fatal clashes with F-FDTL and PNTL on 23 May, captured by Portuguese and Australian troops in July, and led a prison breakout in August 2006. The government, and more particularly individuals within the government, conducted an “on again, off again” process of alternately pursuing and negotiating with Reinado over the following almost two years. For an insightful account of the life and death of Reinado see Niner 2008.

⁷ Lieutenant Gastão Salsinha led the group of 571 disaffected F-FDTL members which became known as “the petitioners”, principally from the west of the country. Following the petitioners’ allegations of discrimination within F-FDTL they were sacked from the organisation. This was a major contributing factor to the “crisis” of 2006.

Later that day a state of siege was declared by the Acting President, Fernando de Araújo (“Lasama”)⁸ following authorisation from the Parliament. The state of siege was renewed four times. On the third occasion it was extended in seven Western districts but was downgraded to a state of emergency in five districts and one district was returned to normalcy.⁹ On the fourth and final occasion it was extended solely for the District of Ermera until expiring on 22 May 2008.¹⁰ The President ended the states of exception on 23 April in all other districts.

Immediately following the 11 February 2008 attacks there was an outpouring of finger-pointing, claim and counterclaim regarding perceived shortcomings in security provision. It was alleged that UNPOL and the International Security Forces (ISF) refused to assist the wounded President and were generally unavailable for the protection of the Prime Minister (ABC 2008a). The Commander of F-FDTL, Brigadier Taur Matan Ruak, called into question the capacity of ISF, UNPOL and the PNTL to prevent the attacks. The UN responded that the F-FDTL, and not the UN, was responsible for perimeter security of the leaders’ residences (Williamson 2008). Additionally, the UN has claimed in a confidential report into the attacks that UNPOL had come to the aid of the President in minutes, and fought off the Prime Minister’s attackers (UNMIT 2008).

The confusion is instructive. It illustrates both the real and perceived lack of clarity inherent in the security arrangements that had been put in place between the UN Police, the ISF and the indigenous security forces. The language of the debate about responsibility for security provision not only illustrated the complex and ambiguous arrangements in place but also highlighted that the relationship between international and national security actors was already under considerable strain.

III. The implementation of the states of exception and the Joint Command

The Joint Command was formally created on 17 February 2008, by a resolution of the Council of Ministers, although by this time it had already been in operation for several days. The formation of the Joint Command caught UNMIT by surprise but they quickly endorsed it, making note of Timor-Leste’s status as a sovereign nation.

By late February 2008 the Joint Command claimed to have 1305 PNTL/F-FDTL members involved in operations and that it could increase this number to 3000 if required (Joint NGO Safety Office 2008a). The period of time covered by the states of exception and the operation of the Joint Command was notable for an escalation of human rights abuses, abuses of authority by security personnel and an increased disregard for the rule of law. During this time the relationship between international and national security forces also deteriorated. Conversely, and somewhat unexpectedly, the previously poor relationship between the PNTL and the F-FDTL appeared to improve.

The *modus operandi* of the Joint Command was not entirely new, recalling some of the dubious methods employed by the Dili PNTL Task Force from its inception in December 2007. This Task Force was established as a mobile police unit to respond to policing situations that required a specialised response. The Dili Task Force, like the Joint Command had been formed without prior consultation with UNPOL, in contravention of the Supplemental Agreement between the UN and the Timor-Leste government. A lot of

⁸ de Araújo’s substantive position is as President of the Timor-Leste National Parliament.

⁹ Presidential Decree 48/2008.

¹⁰ Presidential Decree 49/2008.

people have noted that the Dili Task Force and the Indonesian “Brimob”¹¹ or mobile brigade is very similar in appearance and demeanor. Most of the Task Force members joined the Joint Command once it was formed.

Allegations of human rights abuses and abuses of authority implicated members of the Task Force, but were also specifically attributed to the Joint Command, the PNTL (including the Rapid Intervention Unit or UIR) and the F-FDTL (including military police). These allegations included ill-treatment of civilians, pointing of weapons and death threats, in addition to failure to comply with legal procedures when carrying out arrests and home searches. Research by the Provedor’s¹² office indicated that approximately forty percent of those arrested alleged they had suffered ill-treatment by the police at the time of arrest. Quite quickly a sense that the armed forces could now do anything, including settling old scores and singling out people for political purposes, started to pervade Dili. Specific incidents included threats to shoot an MP and judges who were on the way back to Dili from a funeral in Bobonaro, the arrest of FRETILIN MP Jose Teixeira without warrant, apparently on the personal initiative of the Deputy Police Commander PNTL (FRETILIN 2008), and the arrest and beating of a layout editor from the Timor Post newspaper (Mckenna 2008). The armed forces engaged in numerous displays of authority and acts of intimidation unrelated to catching rebels. People were taken off buses or stopped on their motor bikes and forced to do pushups in the street. Tinting was removed from the windows of private cars and an F-FDTL unit met with the community in Zumalai in Covalima and demanded that men with long hair must cut it off (Joint NGO Safety Office 2008b).

The economic effects of the state of siege were also significant, with the Provedor noting particular difficulties arising from the imposed curfew for people who undertook economic activities at night. The ability to take part in family rituals surrounding death and funerals was also affected. The district of Ermera in particular felt the effects of the state of siege, with residents frequently targeted and accused of having provided material support such as food to Salsinha and his supporters. There were reports that farmers were too scared to harvest their coffee for fear of encountering a Joint Command patrol (Democratic Republic of Timor-Leste - Provedor for Human Rights and Justice 2008).

IV. Further unraveling of the rule of law - parties, parades and pardons

The rule of law in Timor-Leste is frequently noted as suffering from a lack of technical development. The inconsistent political will associated with the application of the law is also sometimes commented upon, often in connection with concerns about an increasing culture of impunity in Timor-Leste (International Crisis Group 2009). During the period of the states of exception and the Joint Command there were significant deviations from the rule of law, as well as an apparent increase in impunity. This was evident in inadequate official responses to claims of human rights violations and abuses of authority, as well as the tendency to deal with abuses by security personnel in informal ways including *ex gratia* payments for affected individuals and communities. It was also manifest in the irregular,

11 An ETAN report notes that Brimob- an abbreviation of “Brigade Mobil” or Mobile Brigade is the ‘anti-riot’ branch of the Indonesian National Police which deals with special operations. It is a paramilitary organisation that conventionally operates under a Joint military command in places such as Papua, until 2005 in Aceh and until 1999 in East Timor. Brimob’s training and equipment is almost identical to that of the Indonesian military (TNI) (ETAN 2008).

12 The Office of the Provedor for Human Rights and Justice is established by Parliamentary Law 7/2004. A Provedor fulfills the same role as an Ombudsman.

some would say bizarre, processes related to surrender, arrest and detention of rebels involved in the attacks. Finally, it was apparent in the announcement by the President of Timor-Leste of pardons for people convicted of serious crimes from violence that occurred in 1999 and 2006, right at the time that those accused of trying to kill him on 11 February were preparing to surrender. The culture of impunity in Timor-Leste thus provided a receptive environment for the conduct of the Joint Command and also facilitated the creation of an enduring emergency.

As allegations arose concerning violations and abuses of authority associated with the states of exception, the respective authorities repeatedly stated their wish that those accused would be held accountable. These public statements were not followed by action. The Office of the High Commissioner for Human Rights (OHCHR) and UNMIT Report on Human Rights Developments from August 2008 notes that the Commander of F-FDTL appeared before Parliament on 24 April 2008 and stated that twenty eight complaints of human rights abuses by the Joint Command had been received, fourteen soldiers had been reprimanded and serious allegations would be referred to the Prosecutor-General for investigation (Office of the High Commissioner for Human Rights and UNMIT 2008: 3). However as of August 2009 none of those allegedly responsible for the violence had been brought to justice.

Although the Joint Command commenced investigation into some of the cases submitted by UNMIT's Human Rights and Transitional Justice Section (HRTJS) there were some cases the Joint Command determined to be 'false' when in reality they needed further information. Once the Joint Command was disbanded it appears most cases were not followed up.¹³ Similarly, the Special Representative of the Secretary-General (SRSG) in his report of 29 July 2008 noted that:

little progress has been evident in investigating or assigning accountability for the violations committed during the early phase of the state of siege, and the team established by the Joint Command responsible for such investigations has been disbanded along with the Joint Command (United Nations 2008:2).

The SRSG went on to stress the risk that "those incidents will further entrench inappropriate modes of behaviour and the already widespread perception that the security and defence forces enjoy impunity" (United Nations 2008: 2).

It appears that few cases came into any contact with the formal legal system. However, in the majority of cases the authorities decided to resolve abuses 'traditionally', with compensation of money or foodstuffs to individuals or affected families, including in the case of a mentally ill man shot dead. One of the most disturbing examples of this practice was in response to communities in Ermera who had alleged beatings and aggressive interrogations by military personnel. The Timor-Leste government acknowledged that "inappropriate tactics" had been used and proceeded to allocate \$US 600 to each of 52 communities that had complained to hold belated Easter parties, on the condition that military and police officials be invited (ABC 2008b).

¹³ Interview with UNMIT official July 2008.

On 2 March 2008 “Susar” (Amaro da Costa),¹⁴ one of the chief suspects in the shooting of the President, surrendered and was brought by helicopter to Dili where he was immediately paraded before journalists and made potentially incriminating statements, before being presented to the Prime Minister and chief of F-FDTL. A flyer (See Appendix A) was later distributed by the Joint Command, showing “Susar” hugging the chief of the F-FDTL, Brigadier Taur Matan Ruak and Interim General Police Commander Afonso de Jesus, as well as being accompanied by attractive women. Reportedly, this kind of orchestrated surrender, which was intended to imply a reintegration with the state, was a common practice during the Indonesian occupation, when it would often be referred to with the Indonesian term “*sandiwara*” or “play” (Jolliffe 2008).¹⁵

During this period there was an announcement of a large number of pardons by the President, without due process,¹⁶ for people convicted of violent crimes carried out in 1999 and 2006. Bizarrely, these pardons were announced on 23 April at the same time that those accused of trying to kill the President were on the point of being apprehended, creating an impression that the accused, his attackers, were also unlikely to face justice. By 26 April Salsinha was formally negotiating his surrender with F-FDTL. At the time of the announcement of the pardons International Crisis Group South East Asia Project Director, John Virgoe, speculated that the pardon announcement could be a tactic to lure Salsinha to surrender, with an implicit promise of a future pardon or amnesty (Michelmores 2008).

There were also significant irregularities related to the surrender and arrest of those alleged to have been involved in the attacks of 11 February. A HQ for the Joint Command was established opposite the lighthouse in Memorial Hall in the beachside suburb of Farol. This complex contained an ad-hoc detention and interrogation centre controlled by the Joint Command and F-FDTL. No legal authorisation of this detention centre was ever made and F-FDTL, rather than prison officials, undertook guard duties. An unofficial detention center violates international human rights law and increases the danger of ‘disappearances’. There are conflicting reports as to the procedures that were followed with those men who surrendered during April, but it is clear that these were not in accordance with the law. Several men were held for periods between 11 days and a month. Some of these men were released without ever being brought before a judge whereas others were brought before a judge after a month, considerably longer than the 72 hours allowed by law. In response to a question from journalist Jill Jolliffe, the UN Police Commissioner, Rodolfo Tor, denied that suspects were being interrogated by the Timorese army and police without the presence of lawyers, stating that the UN has “full confidence in PNTL and FDTL”. The same journalist, however, reported that a UN legal source had contradicted the statement, claiming that

¹⁴ “Susar” was a former Falintil leader who joined the PNTL in 2001, becoming a body guard for the former PNTL Police Commander Paulo Martins. He deserted from the PNTL in 2006 and joined Alfredo Reinado in Maubisse. Following Reinado’s incarceration he helped organise the jailbreak in which Reinado and others escaped and was involved in an incident in which border police were relieved of their weapons by Reinado’s group. (Toohey 2008a).

¹⁵ Also Pers. Com Aderito de Jesus Soares 241008.

¹⁶ Presidential Decree no 53/2008. Presidential Pardon of 20 May. A group of eleven East Timorese citizens launched an unsuccessful legal challenge to the decision of President of the Republic to grant executive clemency to 94 prisoners on 20 May 2008. On 27 June 2008, the citizens delivered a petition to the Provedor for Human Rights and Justice (PDHJ) asking him to use his powers according to Section 150 of the Constitution to request that the Court of Appeals examine the constitutionality of the law. Included in the list, that ultimately numbered 94 were Tim Alfa militia leader Joni Marques convicted of Crimes Against Humanity in 2001 and former Minister of the Interior, Rogerio Lobato, convicted in 2007 of arming civilians during the 2006 crisis.

suspects were routinely questioned without the presence of lawyers, in contravention of the law (Jolliffe 2008).

When the largest group of rebels surrendered on 29 April 2008 the party theme that had commenced with the use of the Easter parties continued. Gastão Salsinha and his group were accompanied by a military and police convoy to Dili in order to surrender formally. A ceremony was held at the Palacio Governo. Following a press conference at the headquarters of the Joint Command a party was thrown with the rebels as guests of honour. The men accused of having tried to kill the President and Prime Minister less than three months previously danced the night away, together with the police and military that had been pursuing them through the mountains. Apparently the issue of arrest warrants was not attended to until the following day (AAP 2008).

V. The continued role of the Joint Command

Although the final state of siege, upon which the Joint Command ostensibly relied for its legitimacy finished on 22 May 2008 there were no immediate moves to disband it. On the contrary, the weeks leading up to this point had been characterised by a search among the political leadership for new things to do with the Joint Command.

On 29 April 2008 Gastão Salsinha finally surrendered along with twelve of his supporters. The previous two months had seen smaller numbers of ‘rebels’ hand themselves in. From the time of the surrender there was no suggestion that other rebels were still at large. It was at this point that President Ramos Horta started to speculate on the future of the Joint Command. In a Radio Australia interview on 30 April, the President stated that “The Joint Command will continue indefinitely until I decide upon consultation with the PM, parliament and others that conditions exist to finish the joint command activities. We are going to continue to search for weapons in Dili, we are going to get rid of illegal weapons in the hands of people”. In the same radio story it was announced that “The president also confirmed the state of siege in Ermera district will remain in place until May 22, as the joint command take up their new mandate to search for illegal weapons” (ABC 2008c). Several days later the new mandate of the Joint Command was confirmed by the Secretary of State for Security, Francisco Guterres in the Timor Post newspaper: "If there is information about weapons carried by people, then there will be an investigation into those weapons to know their serial numbers, regardless of whether the weapons are those that are missing or not". Despite an ever diminishing supply of weapons being handed in, and no industrial weapons being found, a series of extensions to the weapons collection program was announced, including on 15 August, 30 August, and 3 September 2008. On 6 May 2008 the Joint International NGO (JINGO) Safety Advisor noted in his weekly report that “The Government has sent mixed messages regarding the future of the Joint Command”, going on to detail the varied and sometimes contradictory stories regarding the future of the Joint Command (Joint NGO Safety Office 2008c).

On 8 May 2008 the President declared that the state of siege in Ermera had finished but there was no move to wind up the Joint Command and the JINGO office noted that the declaration ending the state of siege appeared not to have been implemented (Joint NGO Safety Office 2008d). However, during May and June military and police elements of the Joint Command remained stationed around the country, in particular in Ermera, Covalima and Bobonaro as well as in Dili which had 22 police posts and 5 check posts under the supervision of the Joint Command (Joint NGO Safety Office 2008f, 2008d, 2008e).

When the Joint Command was formally disbanded, the Council of Ministers announced in the same decree that the Joint Command had been so successful in restoring

“constitutional normalcy” that they had decided to create a “coordination structure within the Ministry of Defence and Security which can plan and respond effectively in case of natural disasters or political and social crises that threaten the national stability”, and that this new structure would be called the Centre for Integrated Management of Crisis.

A parade and closing ceremony to mark the end of the Joint Command was held on 19 June 2008 at the Dili Stadium. The President congratulated the Joint Command on its work, but stated that the PNTL and F-FDTL would continue to work closely together. Observers of the ceremony noted that there was actually no official declaration of the closing of the command during the ceremony (Joint NGO Safety Office 2008g).

Notwithstanding the legal disbanding of the Joint Command and the accompanying ceremonies, the Joint Command continued to operate - notably in Ermera where 100 troops were stationed, and house searches continued in Maliana and in Suai. Reports of F-FDTL (rather than Joint Command) activity was also reported in Dili with the conduct of patrols around the western side of Dili purportedly because of an increase in Martial Arts Group (MAG) activity, and the attendance of F-FDTL (together with UNPOL and PNTL) to provide security at a student demonstration outside the Parliament on 12 and 13 June 2008 (Joint NGO Safety Office 2008d, 2008h, 2008i).

The political leadership continued to invoke the Joint Command most notably when opposing the ongoing presence of the ISF and UNPOL. On 30 September the Prime Minister Xanana Gusmão lamented that, whereas East Timor is an independent country, the movement of its Defense Force and its National Police is limited while Australian soldiers carried weapons: “You cannot do it (carrying weapons around) while *malaes* (foreigners) can; what kind of independence is this?” questioned Gusmão. He went on to request the officers of both F-FDTL and PNTL to keep the “spirit of joint operation” to show that they are ready to take responsibility of securing and defending the sovereignty of Timor-Leste (Prove me you’re professional and I’m ready send the FSI and UNPOL back, says PM – , 3 October 2008).

VI. The draft national security laws

This section details three draft laws that were admitted to the Timor-Leste Parliament on 29 June 2009, and are currently being considered by Committee B. They are Government Bills n. 25/II “Lei de Segurança Interna” (Law on Internal Security), 26/II “Lei de Segurança Nacional” (Law on National Security) and 27/II “Lei de Defesa Nacional” (Law on National Defense) (UNDP 2009).¹⁷

The draft laws mentioned above create a confusing tapestry. They are collectively contradictory and have unnecessary overlaps. They refer to outdated governmental structures, create an extraordinary number of new bodies for a small nation- that will be difficult to implement, and are unclear in many other respects. However, these aspects of the laws will not be detailed here. The focus of this section will be the explicit and implicit links to the Joint Command that are made in the legislation. In the next section of this paper these aspects of the legislation will be analysed using theories on how states of exception “become the norm”.

¹⁷ The draft laws have all been approved by the Council of Ministers. On 29 June 2009 they were admitted to Parliament and referred to Committee B for consideration. I have relied on unofficial English translations of the laws.

Before proceeding it should be noted that there have been calls for many years in Timor-Leste for a national security policy¹⁸ and accompanying legislative framework that would describe how security is to be provided for the state and its citizens. In the preparations for the transition from a peacekeeping mission to a sustainable development assistance framework during UNMISSET, and as part of preparing an exit strategy the UNMISSET SRSG convened a transitional Working Group responsible for examining the Roles and Working Relationships of National Security Agencies. The group reported that there was no national security policy or framework and that:

as a consequence, for some time now, a number of key decisions about the formation of special police units, legislation and other matters, have been made on an ad hoc basis. The State needs to develop a national security framework from which the roles and functions of the F-FDTL and PNTL could be more clearly defined, and explained to the members of the institutions and to the public (UNMISSET n.d. : 3-4).

The report also noted that:

the lack of a clearly articulated publicly expressed security policy contributes to a lack of accountability of the agencies and to a strong tendency for institutions to become personalised and politicised. Without strong civilian democratic control of the security forces, the F-FDTL and/or PNTL themselves could end up posing a security threat to the State sometime in the future(UNMISSET n.d. : 4).

The Timor-Leste government document *Security, Peacebuilding and Reconciliation: Priorities and Proposed Sector Investment Program* (April 2005)¹⁹ cited ‘an increasingly urgent’ need to develop a national security policy noting that:

Such a policy framework would set out the vision and strategy for national security, and articulate clearly the specific roles of all security organs of the state, and clarify Government’s objectives for structuring, coordinating and managing national security, including its defence needs, in a prioritised and affordable manner (Republica Democratica Timor Leste 2005: vii).

One of the key findings of the United Nations Special Commission of Inquiry into the crisis of 2006 was that “the Government was insufficiently proactive in addressing the lack of a national security policy” (United Nations 2006: 75). More specifically Rees has outlined the need for legislation for Military Aid to a Civil Power to describe the modalities of how F-FDTL should assist the PNTL in situations where the limit of PNTL’s capacity is reached (Rees 2004:19-22).

¹⁸ Until recently a national security policy and a national security law were both being drafted. Rather than this being a sequential and coordinated process the national security policy was drafted by advisors in the Office of the Secretary of State for Security while the national security law was drafted in the Office of the Secretary of State for Defence. Now that the national security law has been approved by the Council of Ministers there is every likelihood that the national security policy that was being drafted will fall by the wayside, in particular as the national security law is highly prescriptive about what the national security policy should contain. An adviser in the Secretary of State for Security’s office subsequently described the national security policy as a “dead duck”.

¹⁹ The report has a number of hallmarks of having been written by advisers to the Government. Nonetheless, it states that the report reflects policies and programs for the sector as at the time of publication.

However until this point in time no national security policy or Military Aid to a Civil Power legislation has been concluded. The practice instead has been on many occasions that the F-FDTL are called in on an ad-hoc basis in addition to, or instead of, the PNTL, in contravention of the roles delineated for the two organisations in the Timor-Leste Constitution.²⁰

Although the new suite of legislation recites the constitutionally separate roles of the two institutions (to the point of monotony), it does nothing to clarify the situation as all attention is on the extraordinary, rather than on the everyday mechanisms of managing security. The National Security Law, rather than comprehensively examining security provision at a national level only regulates the joint deployment and operation of the F-FDTL and PNTL. As well as explicitly valorising the model of the Joint Command, it is made clear that this will form the model for national security and internal security in the future. It formalises the move of F-FDTL into the realm of internal security but does so in a way that remains opaque. Both the draft Law on National Security and the draft Law on Internal Security cite the Joint Command in their preamble or explanatory statement, with the Law on Internal Security noting that:

There is a need to adopt a more comprehensive notion of Internal Security. Indeed, the traditional separation between Defence (External Security) and Internal Security is becoming increasingly blurred. The two areas are no longer hermetically sealed and that is why an effort should be made to get the most out of the supplementary and subsidiary nature of the different actors in the Security System from an integrated and systemic perspective.

The Law on National Defence cites new challenges to the State as a result of 11 September 2001 and the events of 11 February 2008. Similarly the Law on Internal Security cites the necessity of providing “preventative measures in the realm of internal security” as a result of the crisis of April 2006 and the events of 11 February 2008.

The draft Law on National Security makes provision for an Integrated System of National Security (Article 18) which will be the only circumstances under which joint operational deployment can occur. However, the draft law on National Defence (Explanatory Statement) foreshadows an Integrated System for National Defence which “provides for the joint deployment of forces and services in these two realms, thus distancing itself from the traditional distinction between “National Defence” and “Internal Security””.

Article 29 of the draft Law on National Security creates the Integrated Centre for Crisis Management. The Centre was foreshadowed as a successor to the Joint Command at the time the joint command was disbanded, and was budgeted for as early as last year. One of the most interesting aspects of the Centre contained in the legislation is that the Director of the Centre will have a rank equivalent to that of Secretary of State for remuneration

²⁰ The aftermath of two separate attacks by armed groups on the civilian population which occurred in rural areas in Timor-Leste in early 2003 is illustrative. In these attacks five people were killed in Atsabe and two in Atabae. After the attacks in Atsabe the UN agreed to hand over responsibility to F-FDTL to conduct a sweeping operation arresting around 90 people including a number of juveniles. The incident occasioned considerable interest as a local NGO, Judicial System Monitoring Program (JSMP), criticised the deployment of F-FDTL noting that they did not have powers of arrest and that the men’s detentions were not reviewed by a judge within the required 72 hour period. This analysis was met with outrage by Timor-Leste Government leaders including President ‘Xanana’ Gusmão, Prime Minister Mari Alkatiri and Brig-General Taur Matan Ruak and members of Parliament who vociferously supported the decision to deploy F-FDTL, once again contributing to public confusion about the respective roles of PNTL and F-FDTL.

purposes. A position that is equal to the Secretary of State for Security and the Secretary of State for Defence implies that the Crisis Management that is being anticipated is an everyday rather than an extraordinary event.

Another aspect of concern in the draft National Security Law is to be found in unclear provisions in Article 8(2-3) of the draft National Security Law which states that: “Besides their primary mission, the F-FDTL may be employed, additionally in other missions in support of civilian authorities within the framework of the Integrated System of National Security...(Art. 2)” and that “For the purposes stated in the paragraph above, F-FDTL shall develop civilian-military cooperation capabilities, with a special focus on the ***traditional social-cultural structure*** [emphasis added] of the country.” Although the intent of the provisions is unclear it does raise the rather important question of whether something akin to the Indonesian “dwifungsi” (dual function) doctrine and accompanying territorial command structure is being anticipated. During the Indonesian occupation the Indonesian military had both a military as well as a civilian role. It was arranged through a structure of ‘territorial military command’ which saw TNI (the Indonesian military) forces, present and shadowing Indonesian civilian officials all the way down to the village level (Robinson 2003: 27; Lindsey 1999:212). As Robinson explains:

The Korem Commander shadowed the Governor; the 13 Kodim Commanders looked over the shoulders of the 13 District Heads (Bupati); the 62 Koramil Commanders supervised the 62 SubDistrict Heads (Camat); and the 442 Babinsas operated alongside an equal number of Village Heads (Kepala Desa). In this way, the territorial military command effectively ensured military involvement in and dominance over, the formulation and implementation of policy at every level. Thus, even if civilian authorities such as the Governor and the Bupatis were formally in charge, in the final analysis military officers within the territorial command exercised greater power (Robinson 2003: 27).

It is also an interesting development in light of subterranean battles going on ahead of the forthcoming municipal elections in Timor-Leste. Both CNRT and FRETILIN are currently trying to gain control of the old selcom or clandestine structures at village level ahead of the election.²¹

The recent history of legislative development in this area is also of interest. On 17 March 2008—a month after the creation of the Joint Command, Brigadier Taur Matan Ruak sent a proposed Law on Defence and Security (hereafter “the TMR law”) to the National Parliament. Submitting legislation to the Parliament is not within the Constitutional mandate of the Chief of the F-FDTL and the matter went no further. It does however provide a window into the thinking within the defence establishment at this point in time. The TMR law had originally been drafted in November 2006. Like the other laws discussed in this section this draft law is full of poorly written aspirational statements and is difficult to follow. One of its most unusual aspects is the footnotes that it contains to the Maharishi’s theories of “Absolute Theory of Defence, Sovereignty in Invincibility” and “Principles to create Invincibility for Every Nation and Lasting World Peace”. It foreshadows in a number of ways the need to “integrate” and “conjugate” military and non-military components of security and defence policy. Although this legislation never saw the light of day many of its aspects have now been incorporated into the new security legislation.

²¹ Pers comm. Timorese security analyst July 2009.

VII. The significance of states of exception

In this section I make five main arguments. First I argue that the declaration of the states of exception in Timor-Leste commencing in February 2008 served another function over and above responding to attacks on the President and Prime Minister - that of 'reclaiming' sovereignty from international security actors. Secondly I contend that the veneer of legalism associated with the declarations served to divert attention from the major legal and procedural irregularities occurring at this time, and that in fact a deepening culture of impunity was spreading with little opposition from the UN. Thirdly I contend the Joint Command and its remnant traces has served as a proxy for a continuing state of exception. In the fourth and fifth subsections I argue that the Joint Command can be understood as a critical juncture in redefining both the relationship between international and national security actors, but also between the F-FDTL and the PNTL. Finally I argue that the various draft security laws that are currently with Committee B of the Timor-Leste Parliament represent a case of "the exception becoming the rule".

A. Sovereign is he who declares the exception (Schmitt 1985)

On the face of it the declarations of states of siege and states of emergency that occurred in Timor-Leste in 2008 would appear to be an entirely proportionate response to an attack on the organs of state. They can be understood as a measured, understandable and constitutional response. However, I argue the states of exception are better understood as an assertion of sovereignty by the Timor-Leste government over their armed forces, in particular the police, at a time when their sovereignty was contested.

A mechanism for dealing with unexpected events that threaten a sovereign nation, whether as a result of natural disaster, insurrection, civil war or military invasion is important. Although it is not possible to define the exact nature of emergencies until such time as they happen - they are by definition unforeseen - there is a sense that we will know one when we see one. It is understood that emergencies are a crisis, something out of the ordinary. It is, in fact, everyday normalcy that allows us to recognise an emergency. The opportunity that the events of 11 February 2008 provided to declare a state of exception can also be seen as the opportunity to realise the desire of the Timorese leadership to reassert sovereignty over the armed forces, including the police.

Although the previous FRETILIN government had invited foreign troops and police to assist as a result of the crisis of 2006, and this was followed by requests for UN intervention, this encroachment on national sovereignty never sat comfortably with any of the political elite in the newly independent country. By February 2008 relations between international and national police and military were poor and the leadership had tired of the foreign presence. The confusion over who was responsible for security for the President, and who should have been watching Alfredo Reinado, was arguably the final straw that produced the decision not only to declare a state of exception but also to pull the PNTL out from under UNPOL command and place it, instead, under the F-FDTL. The F-FDTL with their resistance antecedents have, after all, always been regarded as having much greater credibility, as opposed to the poorly regarded PNTL, when security is at stake.

Carl Schmitt, a major theorist of the state of exception, argued that sovereignty is determined, not by the everyday workings of the pillars of the state, but rather by the suspension of all those things through the declaration of an emergency (Schmitt 1985). As Oren Gross argues:

for Schmitt, the exception not only confirms the rule but is the source of the rule's very existence. In as much as crises represent the sphere of the political (indeed, the apex of politics) and given the primacy of politics over all other spheres of human endeavor (including law), Schmitt argues that it is the exception that defines the norm and not vice versa--the exception is primary to the norm and defines and informs that norm (Gross 1998:31).

Schmitt is most famous for his contention that “sovereign is he who declares the exception” (Schmitt 1985: 5). Schmitt’s concept is central to understanding the implications and consequences of the declarations of states of exception in Timor Leste in early 2008.

Although I argue that the declaring of the states of exception was symptomatic of the struggle for sovereignty over the security forces and was done in opposition to the authority of the UN, there was little protest from the UN. In the next subsections I contend that, in the main, the UN was satisfied by the form of the states of exception, while being less concerned with its substance and consequences.

B. The veneer of legalism

In this section I argue that, while flawed, the effort that the Timor-Leste government expended on the legalistic aspects of declaring the states of exception and the Joint Command served to ensure that international criticism of the process was kept to a minimum. UNMIT was keen to support the notion that it was respecting the wishes of a sovereign nation, instantiating ‘local ownership’, and arguably was uneasy about its own performance in relation to the attacks of 11 February.

Declarations of states of exception almost universally involve the suspension of civil and political rights. It has also been well-documented that even those exceptions that are declared in strict conformity with constitutional and other legal provisions nevertheless open the door to human rights abuses. As Rajagopal has noted “These emergencies have become a standard coercive tool in the repertoire of states to maintain law and order” (Rajagopal 2003:177).

The idea that postcolonial states such as Malaysia, Singapore, Sri Lanka, Fiji, Indonesia and others have drawn on colonial legacies and experience in their enthusiastic suspension of civil and political rights through the mechanism of emergencies (both *de jure* and *de facto*) in order to manage resistance and maintain ‘law and order’ has gained significant currency. This is elaborated on by authors such as Lev, Jayasuriya and Rajagopal (Lev 1985; Jayasuriya 2001; Rajagopal 2003). The case of Timor-Leste is no different. Timorese thinking about development of the security sector has been greatly influenced by the authoritarian resonances of both colonial and occupation history. The model of a police force under military command is a familiar feature of Timorese history. When the Portuguese returned to East Timor after World War II the police came under military command. Similarly the Indonesian Armed Forces (ABRI) from its inception had a responsibility not only for external defence, but also for internal security and until 1999 the police, similarly, came under military command.²²

²² Lowry notes that this focus on internal security in the late 1950s and 1960s was a major contributing factor to ABRI’s increasing involvement in domestic politics and the development of the doctrine of “dwifungsi (I)” or dual function. In 1957 through the mechanism of a state of siege ABRI’s involvement in government and the bureaucracy was formalised under the doctrine of Guided Democracy. (Lowry 1996).

Jayasuriya argues, citing the examples of Malaysia and Singapore, that as a result of states of exception not only do normal political processes get suspended but there is also a radical reorganisation of the apparatus of power, resulting in “extensive centralisation of power and increased reinforcement of the coercive powers of the state”(Jayasuriya 2001: 110). He goes on to argue that as exceptions become normalised, political elites no longer use states of exception or specialised legislation in order to curb the actions of oppositional political elements. Jayasuriya notes that in both Malaysia and Singapore their infamous Internal Security Acts are now little invoked but normal civil and criminal law is used instead to “intimidate and crush political opposition”. He provides compelling examples including the treatment of Anwar Ibrahim and his defense lawyer in Malaysia; and the routine use of defamation and contempt charges in the same country (Jayasuriya 2001: 110-111). Jayasuriya proposes that the use of the everyday law, or legalism, in this way normalises and legitimises authoritarian and exceptional rule in a way that would not be so readily accepted if emergency powers themselves were being used (Jayasuriya 2001: 113). I would argue, however, that initial exceptional powers are the portals through which these changes take place.

The suspension of civil and political rights during states of exception is legitimised by Article 4 of the ICCPR which allows for the rights mentioned in the covenant to be suspended with the exception of certain ‘non-derogable’ rights. The insertion of Article 4 in the ICCPR itself was not without controversy, providing as it does an opportunity for nations with authoritarian tendencies to exert constraints on their citizens. Rajagopal describes Article 4 as “the Achilles heel of the human rights doctrinal corpus” (Rajagopal 2003: 176). Article 4 was introduced during the drafting of the Covenant by Great Britain. Rajagopal argues that while suspension of rights was previously not unknown, the particular character of Article 4 was derived from Britain’s anti-colonial wars, commencing with Malaya in 1948. These “wars” were cast as “emergencies” in order to manage rising anti-colonial and nationalist sentiment more generally and the “masses” more specifically. The intention was to find a way to exert control that could not be construed as being about maintaining the empire but more benignly as being about “law and order” (Rajagopal 2003: 177-180).

I am not arguing for a diminution of constraints on states of exception in relation to non-derogable rights found both in the ICCPR, and reflected in other international human rights instruments, and many national constitutional and legal provisions. However, the lack of effectiveness of these constraints²³ both at a national and international level raises questions as to whether a resort to “legalism”, including declaring and notifying states of exception, provides a veneer of constitutional respectability which allows abuse to flourish. In Timor-Leste the UN was quick to make much of the states of exception being declared in conformity with the constitution but more muted in its criticisms of the human rights problems that rapidly emerged.

C. The enduring state of exception as a portal for change

I have noted the reluctance of the Timor-Leste political leadership to wind up the Joint Command once the final state of siege was over, and how it continued for quite some time even after it was wound up. In fact the leadership was not only reluctant to wind it up but were engaged in active speculation on, and promotion of, new activities that the Joint Command might be involved in. Continuing positive and nostalgic references to the Joint

²³ See e.g. Gross 1998.

Command indicated that it may be considered a possible model for the future. Meanwhile, as of August 2009, it is now the norm in Timor-Leste for the F-FDTL to be deployed alongside the PNTL for the purposes of maintaining internal security.

One of the arguments that is made about the nature of states of exception is that there is a danger that it is not always possible to determine what is an exception and what is not – they may be *de jure* or *de facto*, and in either case this can lead to an “enduring state of exception” where the “exception becomes the norm”(Agamben 2005).²⁴ Authors such as Neal and Aradau and van Munster make a similar case, differentiating between “the exception” which refers to the events and situations that are designated as “exceptional”; and “exceptionalism” which refers to those policies and practices legitimated by claims about the necessity of exception to the norm (Aradau and Munster 2009; Neal 2006). Many such “enduring states of emergency” or cases of “exceptionalism” have been documented. This has been noted by Jayasuriya in relation to Malaysia and Singapore and Fombad in relation to Cameroon (Jayasuriya 2001; Fombad 2004). The observation that emergencies have a capacity to become enduring suggests that, through the process of their implementation, an enabling environment for subsequent constitutional, legal, political and cultural change is created. Thus an exception has an inherent tendency to replicate itself, whether it is legally declared or, alternatively, through the production of circumstances that can be regarded as synonymous with an exception. One of the ways that this occurs is through the phenomena of ‘shifting goal posts’. Gross and Ní Aoláin contend that emergency powers and authorities create precedents not only for future exceptions but also for future normalcy:

Whereas in the “original” crisis the situation and powers of reference were those of normalcy and regularity, in any future crisis government will take as its starting point the experience of extraordinary powers and authority granted and exercised during previous emergencies. What might have been seen as sufficient “emergency” measures in the past (judged against the ordinary situation) may not be deemed enough to deal with further crises as they arise (Gross and Ní Aoláin 2006: 228).

Analysis of the way in which states of exception have a tendency to justify their own existence is often confounded by the premise that one can differentiate between a “normal” state of exception, conforming to its constitutional and legal constraint, and on the other hand deviations from this model that are regarded as “exceptional” states of exception. That the great majority of exceptions are not “normal”, but rather deviate from the model in their application, is a further important point in understanding the concept “that the exception defines the norm”. Gross and Ní Aoláin argue that theorising of exceptions has been constrained or circumscribed by a tendency to focus on “normal” exceptions with correspondingly little attention to “exceptional” exceptions, when few exceptions actually conform to the “normal” model.²⁵

At a purely formal level this concern is addressed by the ICCPR in the requirement that changes to the constitutional order do not occur during the state of exception. However, this provides little protection against the cultural changes that are facilitated through the process. In this section I argue that the continuation of the Joint Command after the end of the final state of siege, the failure of the F-FDTL to return to barracks, the repeated

²⁴ Extensive discussion about the different ways that emergencies have been conceived and categorised is outside the scope of this chapter but further detail can be found in Gross and Ní Aoláin (2006).

²⁵ See Gross and Ní Aoláin for an extensive critique of what they refer to as the “aberration” hypothesis.

extensions of the period of weapons searches and the alternating use of a language of both crisis and reconciliation has produced an enduring emergency that justifies the continued deployment of the F-FDTL for the purposes of internal security, something for which they are not constitutionally mandated.

The states of exception in Timor-Leste provided an opportunity both for the sense of ‘emergency’ to continue beyond its mandate; and for the Joint Command to be a proxy of that enduring exception. Gross and Ní Aoláin note that “The belief in our ability to separate emergency from normalcy focuses our attention on the immediate effects of emergency measures and powers while hiding from view their long term costs (Gross and Ní Aoláin 2006: 171-172)”. Recognising that it is the “exceptional” exception that is normal, I argue that it is also critical to acknowledge that emergencies not only have a possibility or capacity to become slippery, but are by nature *inherently* slippery. It is this slipperiness that produces the high propensity to manufacture enduring changes in legal culture and people’s states of mind.

D. Rearranged relationships between international and national security actors

In this section I argue that the states of exception in Timor-Leste served another function over and above responding to attacks on the President and Prime Minister, and reconciling two warring parties - that of “reclaiming” sovereignty from the international security actors.

Although international security forces had been invited into Timor-Leste, by February 2008 relations between international and national police and military were poor and the leadership had tired of the foreign presence. The relationship deteriorated further following the implementation of the Joint Command. This included the F-FDTL forcibly taking a suspect from UNPOL at gunpoint, and armed threats against UNPOL by the F-FDTL, military police and the Dili Task Force. Off-duty incidents between international and national security forces were not uncommon and included members of the F-FDTL threatening members of the Portuguese Formed Police Unit (GNR) with weapons, and PNTL threatening a United Nations Military Observer (UNMO) at a checkpoint.

The leadership of the PNTL had become increasingly vocal regarding its disagreement with UNPOL exerting control over PNTL in matters such as suspension for disciplinary breaches. When UNPOL arrested the Baucau District PNTL Commander Inspector Adérito Neto in October 2008 for impersonating a police officer (as he continued to go to work after being suspended) the PNTL Interim General Police Commander, Afonso de Jesus, “argued that there should be a profound investigation into the case and that the result of the investigation should be made to the Timorese public before the UNPOL disciplined the PNTL officer”. He went on to “express[ed] his dissatisfaction with the supplementary agreement between the state of Timor-Leste and the United Nations where UNPOL has more powers while the PNTL has less power.” Similar sentiments have been expressed by the Secretary of State for Security and the Prime Minister.

The Timor-Leste political leadership continues to invoke the “Joint Command” most notably when opposing the ongoing presence of the ISF and UNPOL. On 30 September last year Prime Minister Gusmão lamented that, whereas Timor-Leste is an independent country, the movement of its Defense Force and its National Police is limited while Australian soldiers carried weapons: “You cannot do it (i.e. carrying weapons around) while foreigners can; what kind of independence is this?” questioned Gusmão. He went on to request the officers of both F-FDTL and PNTL to keep the “spirit of joint operation” to show that they are ready to take responsibility of securing and defending the

sovereignty of Timor-Leste. Continuing positive and nostalgic references to the Joint Command support the contention that it will be a model for the future.

E. Rearranged relationships between F-FDTL and PNTL

The problem of Timor-Leste having a military with little tangible to do is not new. Nor is the phenomenon of the F-FDTL encroaching on the area of internal security constitutionally mandated for the police. Consequently, it is not the intention of this paper to argue that something new started with the Joint Command. Rather, I argue that the states of exception provided an opportunity to accelerate and institutionalise the involvement of the military in internal security in such a way that it has become normalised. This was done in part through the manufacture of ‘crises’ such as the weapons collection program and in part by deploying a language of reconciliation to promote the positive and harmonious image of two previously warring institutions working together in cooperative fashion.

Many commentators predicted that the creation of the Joint Command was a dangerous undertaking (Wilson 2008; Virgoe 2008). This was not only because of the abuses anticipated, but also for fear of the consequences of placing PNTL and F-FDTL in such close working proximity. The institutions had a long history of enmity: it was quite soon after members of the respective institutions had been involved in killing each other in the streets of Dili in 2006, and no significant reform of either institution had taken place. Plenty of human rights abuses occurred but the predicted bloodbath did not eventuate. The reasons for the apparently good relationship that developed are complex, and any analysis must be tentative. Some insight, however, is gained into the government’s rationale for the Joint Command from the 2008 Program of the Secretary of State for Security.²⁶ In Section VI (“Achievements”) there is a subsection (e.) on Mending the Relationship between F-FDTL and PNTL:

Joint Command. The decision of establishing joint command was to (1) neutralize the rebellions who carried attacks on President and Prime Minister; (2) to restore the authority of the state in the villages; (3) reconcile the two forces (F-FDTL & PNTL) that were fighting against each other in 2006 crisis; (4) bring back IDPs to home villages and; (5) collect weapons around the country.

Social activities. The aim of these activities are to (1) build confidence between the two institutions; (2) mending their relationships after having bitter relationships during the crisis of 2006.

Joint patrolling aims to (1) improve cooperation of the two institutions (2) prevent and overcome crimes and violence and; (3) provide security to the people [quote inserted with original errors].

Apart from apprehending rebels it is clear that achieving reconciliation between the two forces by working together was high on the agenda for the Joint Command. It also provided the F-FDTL with something to do that drew on their training and allowed them to use weapons. It appears that having a common enemy served as a unifying point for the institutions. Whether that common enemy was the rebels being hunted or the threats to sovereignty embodied by the ISF and UNPOL is less clear.

²⁶ Parts of this were reproduced in the weekly newspaper Tempo Semanal No 8, 11 August 2008.

A more complex reason for the ‘success’ of the Joint Command involves a nostalgic state of mind. This may be nostalgia for the resistance, inspired by once again being in the hills together. It may also be nostalgia for the ‘strong state’ that is represented by the ABRI model.²⁷ This is not to discount that Timorese were usually the victims of the police and military during the Indonesian occupation, but it appears that at this time in Timor Leste there is nostalgia for things such as subsidised rice and electricity and a favourable inclination to authoritarian modes of policing, familiar from the Indonesian occupation as well as embodied by the GNR (the Portuguese paramilitary style Formed Police Unit) in the contemporary context.

Jacqui Baker, who has written on police military relationships in Indonesia, provides a useful framework for thinking about nostalgia. She has noted that, apart from the often reported clashes between the police and the military in Indonesia, there is also a growing, but unregulated, cooperation between the TNI and POLRI in the area of internal security. She questions why POLRI has invited the TNI back into the management of day-to-day security when the organisations were so definitively separated in 1999. Her explanations revolve around a continued “belief in the kinship of ABRI” often created by TNI and POLRI having trained together, but notes that “police affection for ABRI is also tinged with unease about the tenure of police authority over internal security”. She claims that historically the police have been “long discredited within the military family as a corrupt, bumbling institution” and that there is recognition on the part of the police that their current autonomy and greater profile are at risk if the military once again achieves supremacy (Baker 2008).

The parallels with Timor-Leste are striking. Not only is there a nostalgia for a strong state model, as epitomised by ABRI, but arguably the PNTL feel safer having the F-FDTL on side as the future is uncertain. PNTL have similarly long been portrayed as the hopeless bumbling idiots while the F-FDTL is considered to be more credible in relation to internal security. Whereas in the Indonesian situation bonds were created between police and military during training, in Timor-Leste similar bonds were created during the resistance. Myrntinen’s observations on institutional loyalties in Timor-Leste are useful at this point. He notes that members of F-FDTL and PNTL may have multiple loyalties which can often conflict. He argues that police and military in Timor-Leste may have greater fealty to regional areas, political parties, family and clan networks and martial and ritual arts groups (Myrntinen 2008). It has already been seen that these multiple loyalties can trigger clashes between and within PNTL and F-FDTL. However, arguably these more complex loyalties could mask institutional conflicts in the interests of a sense of common history. A PNTL willingness to cooperate would be well received by the F-FDTL, long in search of something to do.

The current suite of security legislation formalises the use of a joint command as a matter of everyday rather than exceptional occurrence by focusing solely on the exception in the national security framework. By placing the separation of the constitutionally mandated separation of the role of the F-FDTL and PNTL to the side one sees an example of Agamben’s exception becoming the norm.

²⁷ ABRI (Angkatan Bersenjata Republik Indonesi) was the combined Indonesian Army and National Police Force under military command, replaced in April 1999 by separate Armed Forces (TNI) and Police (POLRI).

F. The national security laws as a case of “the exception becoming the rule”

Many authors have described how exceptionalism, referenced to the events of 11 September 2001, has been used to justify a range of illiberal practices including Guantánamo Bay detention camp, ‘extraordinary rendition’ of terrorism suspects, ‘criminalising’ of refugees, and a range of expanded police and immigration controls and powers (Neal 2006; Aradau and Munster 2009). Neal has noted that “On 11 September everything changed...The meaning and interpretation of the event are now thoroughly incorporated into a regime of legitimation for exceptional sovereign practices” (Neal 2006:35).

By placing the events of 11 September 2001 and the events of 11 February 2008 alongside each other in the explanatory statement of the Law on National Defence, a legitimation of exceptionalism flowing from 11 February is made. The Timor-Leste government is aware that there are parts of the international community that are not enthusiastic about the “blurring” of the roles of the police and military anticipated in the draft National Security Law. The Timor-Leste Secretary of State for Defence notes this in an August 2009 blog that is both highly critical of the role of the United Nations in the area of security sector reform, promotes the new suite of legislation and stresses the importance of genuine rather than token sovereignty for Timor-Leste:

The National Security Law is also indispensable because it regulates cooperation between the F-FDTL, the PNTL and Civil Protection in emergency situations. In fact, the Organic Law of the Ministry of Defence and Security, which has already been approved, foresees an Integrated Crisis Management Centre. Therefore we must be organized to provide assistance to the population in emergency situations, e.g. caused by some natural disaster. Although I have received no such official information, rumours have it that the National Security Law is not appreciated by the UN, as they say it militarizes the police. I hope that this information is not accurate (Pinto 2009).

Thus it can be seen that the invoking of 11 September alongside 11 February is speaking not only to a domestic audience but is seeking to re-legitimize, in the eyes of an international audience, Timor-Leste’s sovereign control of their armed forces. It also seeks to institutionalise pre-emptive exceptionalism as the act of a responsible nation-state.

VIII. Conclusion

The implementation of the states of exception and the Joint Command in Timor Leste in response to the events of 11 February 2008 produced a situation where the rule of law fell by the way side and the F-FDTL and the PNTL carried out abuses with apparent impunity. Rather than this being of concern to the Timor-Leste government this was seen as a successful way to resolve tensions between the two forces.

I have argued that these ‘crises’ manufactured a situation where the extraordinary use of the military for internal security may have become the norm, both tangibly and in the collective imagination. There was also a ‘gear shift’ that occurred through the Joint Command where it became much clearer that the Timor-Leste government had tired of the

presence of international security actors in Timor-Leste and would tolerate them only on sufferance.

The failure of the Timor-Leste government to consult with the UN prior to establishing the Joint Command, the limited mandate (and will) of the UN to exert any control over the human rights abuses committed by the Timorese security forces during the states of exception and the continuing inability of UNPOL to effectively command the PNTL all made it clear that the exertion of executive policing by UNPOL has certain fictive elements.

The continued deployment of F-FDTL in roles constitutionally mandated for the PNTL indicate that the Joint Command model is seen as a suitable way to keep the F-FDTL occupied, as well as minimising the role of the PNTL who are frequently perceived as having little political legitimacy or technical competence to carry out their assigned role. This situation is now being formalised with the consideration of draft legislation that both valorises the Joint Command and institutionalises the move of the F-FDTL into internal security with legislation that ensures the exception has become the norm.

REFERENCES

- AAP. 2008. Timor rebels parted with police, military after surrender. .
- ABC. 2008a. UN forces labelled 'cowards' by Ramos-Horta's brother. 140208
<http://www.abc.net.au/news/stories/2008/02/14/2163293.htm> Accessed 0108008.
- . 2008b. East Timor forces Accused of 'beating up' civilians.
<http://www.abc.net.au/news/stories/2008/04/07/2209925.htm> Accessed 260808.
- . 2008c.
<http://www.radioaustralia.net.au/programguide/stories/200804/s2231322.htm>.
Accessed 240708.
- Agamben, Giorgio. 2005. *State of Exception*. Translated by K. Attell. Chicago, London: The University of Chicago Press.
- Aradau, Claudia, and Rens van Munster. 2009. Exceptionalism and the 'War on Terror': Criminology Meets International Relations. *Brit. J. Criminol.* 49:686-701.
- Baker, Jacqui. 2008. Sibling rivalry. *Inside Indonesia Online*.
<http://insideindonesia.org/content/view/full/1106/47/>. Accessed 260808.
- Benjamin, Walter. 1969. Theses on the Philosophy of History. In *Illuminations*, edited by H. Arendt.
- Democratic Republic of Timor-Leste - Provedor for Human Rights and Justice. 2008. untitled [report on monitoring of state of siege 12 February - 11 March 2008]. In possession of author.
- ETAN. 2008. Background on Kopassus and Brimob.
<http://www.etan.org/etanpdf/2008/Background%20on%20Kopassus%20and%20Brimob.pdf>. Accessed 060908.
- Fombad, Charles Manga. 2004. Cameroon's Emergency Powers: A Recipe for (Un)Constitutional Dictatorship. *Journal of African Law* 48 (1):62-81.
- FRETILIN. 2008. Media Release: Police investigation misused to smear Fretilin and silence MP. 20 February 2008
- Gross, Oren. 1998. "Once More Unto the Breach": The Systemic Failure of Applying the European Convention on Human Rights to Entrenched Emergencies *Yale Journal of International Law* 23:437-501.

- Gross, Oren, and Fionnuala Ní Aoláin. 2006. *Law in Times of Crisis: Emergency Powers in Theory and Practice*. Edited by J. C. S. FBA and J. S. B. FBA, *Cambridge Studies in International and Comparative Law*. Cambridge: Cambridge University Press.
- International Crisis Group. 2009. Timor-Leste: No Time for Complacency: ICG.
- Jayasuriya, Kanishka. 2001. The Exception Becomes the Norm: Law and Regimes of Exception in East Asia. *Asian-Pacific Law and Policy Journal* 2 (1):108-124.
- Joint NGO Safety Office. 2008a. Weekly Report # 24: For Period 27 Feb-5 Mar 2008. In possession of author.
- . 2008b. Weekly Report # 33: For Period 7-9 May 2008. In possession of author.
- . 2008c. Weekly Report # 32: For Period 24 April-6 May 2008. In possession of author.
- . 2008d. Weekly Report # 34: For Period 14-21 May 2008. In possession of author.
- . 2008e. Weekly Report # 35: For Period 21 - 28 May 2008. In possession of author.
- . 2008f. Weekly Report # 36: For Period 28 May– 6 June 2008. In possession of author.
- . 2008g. Weekly Report # 39: For Period 18 June- 25 June 2008. In possession of author.
- . 2008h. Weekly Report # 37: For Period 6 -11 June2008. In possession of author.
- . 2008i. Weekly Report # 38: For Period 11 June - 18 June 2008. In possession of author.
- Jolliffe, Jill. 2008. Fears for the future as East Timor simmers. *The Canberra Times* <http://www.etan.org/et2008/3march/15/08fears.htm> Accessed 201008.
- Lev, Daniel S. 1985. Colonial Law and the Genesis of the Indonesian State. *Indonesia* 40:57-74.
- Lindsey, Tim, ed. 1999. *Indonesia: Law and Society*. Sydney: The Federation Press.
- Lowry, Robert. 1996. *The Armed Forces of Indonesia*. St Leonards, NSW: Allen & Unwin.
- LUSA. 2008. Timor Leste: Chronology of attacks on PR and PM. February 12 2008 (translated from Portuguese by machine translation)
- Mckenna, Michael. 2008. Timor 'journo' beaten by police. *The Australian*. 26 February 2008. <http://www.theaustralian.news.com.au/story/0,,23275912-2702,00.html> Accessed 260808.
- Michelmore, Karen. 2008. East Timor minister to be pardoned. *SMH*. 23 April 2008. <http://news.smb.com.au/world/east-timor-minister-to-be-pardoned-20080423-283b.html>. Accessed 140809.
- Myrntinen, Henri. 2008. Timor Leste - A Kaleidoscope of Conflicts: Notes from a visit to Timor Leste and West Timor, October-December 2007 *Watch Indonesia*. <http://home.snafu.de/watchin/Index-engl.htm>. Accessed 030309.
- Neal, Andrew W. 2006. Foucault in Guantánamo: Towards an Archaeology of the Exception. *Security Dialogue* 37 (1):31-46.
- Office of the High Commissioner for Human Rights, and UNMIT. 2008. Report on human rights developments in Timor-Leste: The security sector and access to justice 1 September 2007 - 30 June 2008.
- Pinto, Júlio Tomás. 2009. SSR in Timor-Leste. Reforming the Security Sector : Facing Challenges, Achieving Progress in Timor Leste. *Tempo Semanal*.18 August 2009. <http://temposemanaltimor.blogspot.com/2009/08/ssr-in-timor-leste.html> Accessed 250809.
- Prove me you're professional and I'm ready send the FSI and UNPOL back, says PM – , 3 October 2008. *Suara Timor Lorosa'e* 3 October 2008. <http://easttimorlegal.blogspot.com/2008/10/legal-reports-national-media-2-3.html> Accessed 201008.
- Rajagopal, Balakrishnan. 2003. *International Law from Below: Development, Social Movements and Third World Resistance*. Cambridge Cambridge University Press.

- Rees, Edward. 2004. Under pressure Falintil Forças de Defesa de Timor Leste Three Decades of Defence Force Development in Timor Leste 1975-2004. Geneva: Geneva Centre for the Democratic Control of Armed Forces.
- Republica Democratica Timor Leste. 2005. Security, Peacebuilding and Reconciliation: Priorities and Proposed Sector Investment Program.
- Robinson, Geoffrey. 2003. Annexe 1. East Timor 1999 Crimes Against Humanity: A Report Commissioned by the United Nations Office of the High Commissioner for Human Rights (OHCHR). In *Chega! The Report of the Commission for Reception, Truth and Reconciliation in Timor-Leste (CAVR)*.
- Schmitt, Carl. 1985. *Political Theology: Four Chapters on the Concept of Sovereignty*. Translated by G. Schwab. Edited by T. McCarthy, *Studies in Contemporary German Social Thought*. Massachusetts Institute of Technology. Original edition, 1922, 1934.
- Toohey, Paul. 2008a. Key Timor rebel surrenders. . *The Australian*. 3 March 2008. http://www.theaustralian.news.com.au/story/0,,23308438-601,00.html?from=public_rss. Accessed 201008.
- . 2008b. Autopsy doubt on rebels. August 13 2008. *The Australian*. <http://www.theaustralian.news.com.au/story/0,25197,24172477-2702,00.html>. Accessed 090909.
- UNDP. 2009. Four new Government Bills admitted to Parliament and referred to Committees. In *Parliament Project Flash News*. Dili: UNDP Timor-Leste Democratic Governance Unit Parliament Project.
- United Nations. 2006. Report of the United Nations Independent Special Commission of Inquiry. Geneva.
- . 2008. Report of the Secretary-General on the United Nations Integrated Mission in Timor-Leste (for the period from 8 January to 8 July 2008). S/2008/501.
- UNMISSET. n.d. . Transition Working Group 6: Roles and Working Relationships of the National Security Agencies: Final Report.
- UNMIT. 2008. Report UNMIT Internal Review Panel Conducted from 1 April to 24 April 2008. Upon the request of Mt Atul Khare, Special Representative of the Secretary-General for Timor-Leste On 1 April 2008. On the UN Actions in Response to the Attacks on the President and the Prime Minister on 11 February 2008
- Virgoe, John. 2008. Timor's predicament. *The Age*. 23 April 2008. <http://www.theage.com.au/news/opinion/timors-predicament/2008/04/22/1208742940791.html>. Accessed 211008.
- Williamson, Lucy. 2008. UN rejects Timor attack 'failure'. 21 August 2008. *BBC*. <http://news.bbc.co.uk/2/hi/asia-pacific/7575393.stm>. Accessed 250808.
- Wilson, Bu V.E. 2008. Joint Command for PNTL and F-FDTL Undermines Rule of Law and Security Sector Reform in Timor-Leste. . *East Timor Law Journal*.

**Comando Conjunto F-FDTL no PNTL
Operasaun Halibur 2008**

**Hatudu tiha ona, Hatudu tan dala ida!
Ita mas Bele!
Mai be So bele se'e ita hamutuk!
mai.....!!!!!!
Tuir exemplo nebe ita nia kolega,maun ka alin SUSAR hatudu
agora kedas, mai hamutuk ona.....!!!**

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