

Cohabitation in New Post-Conflict States: The Case of Timor-Leste

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Abstract

In the last two decades, many new democracies have adopted a semi-presidential system. However, scholarship still tends to focus on the negative effects of the system. Scholars believe that semi-presidentialism may encourage contradictory and ineffectual policies leading to government instability and democratic breakdown. In particular, cohabitation is considered to foster institutional conflict. This paper examines whether cohabitation is as problematic as the literature suggests. It does so, by analysing the effect of cohabitation in Timor-Leste, a young democratic state in a post-conflict setting. This paper confirms that in Timor-Leste cohabitation encouraged institutional conflict specifically, but not exclusively, over issues related to national security and defence. In addition, it shows that Timor-Leste's post-conflict context influenced institutional conflict and prevented democratic institutions from working optimally. The paper concludes that cohabitation in young democratic states outside Europe may be more perilous than recent literature on semi-presidential systems suggests.

Keywords

Political Institutions, Institutional Conflict, Semi-Presidential Systems, Cohabitation, Timor-Leste, Post-Conflict States.

INTRODUCTION

When, in January 1995, the President of Niger, Mahamane Ousmane, was forced to appoint the leader of the opposition party MNSD¹, Hama Amadou, as Prime Minister Niger entered into a “political and constitutional guerrilla” that “led the country into a political deadlock and on the brink of a civil war” (Grégoire and Sardan, 1996). The situation of “conflictual cohabitation” provided an opportunity for the armed forces to organise a military coup (Moestrup, 2007a). The root cause of Nigeria’s constitutional crisis was, according to Moestrup, Niger’s semi-presidential system. She concluded that “had the regime been a purely presidential regime or a parliamentary one, an important source of political conflict would have been eliminated: the continuous stand-off between president and prime minister over the extent of their relative powers” (Moestrup, 2007a: 115).

Some people considered Niger a textbook example of the danger of semi-presidentialism for the viability of young democracies. They claimed that the existence of a president and a prime minister at the helm of the state introduces competing incentives into the system. The problem becomes acute in a situation of cohabitation where the president and the prime minister are from opposing political groups. According to Elgie (2008; 2010), Niger is the only example where the collapse of electoral democracy has coincided with cohabitation. Based on a statistical analysis, Elgie and McMenamin (2011) concluded that cohabitation emerges in democratic countries that are able to regulate conflict and, therefore, do not collapse. They argued that cohabitation is perhaps less perilous than the literature suggests.

This paper examines the effect of cohabitation in Timor-Leste. The findings confirm that, like in Niger, cohabitation encouraged institutional conflict and encouraged the military to interfere in political affairs. In Timor-Leste, however, cohabitation threatened government stability but did not lead to democratic breakdown.

The paper is structured as follows. The first section summarises what has been written about semi-presidential systems and cohabitation. Based on the literature review, the second section presents the research design and the main hypotheses that will be tested. The third section presents the main findings in relation to the hypotheses. The final section discusses whether the empirical findings support or confound the arguments associated with cohabitation.

SEMI-PRESIDENTIALISM AND COHABITATION

Research on the specific effects of cohabitation on democratic performance comes under the heading of a much broader strand of literature that examines the relative merits of presidentialism and parliamentarism (Lijphart, 1992; Weaver and Rockman, 1993; Linz, 1994; Sartori, 1994; Tsebelis, 1995). Originally, the work of Juan Linz (1990; 1994) dominated the debate. He presented several arguments against presidential systems and concluded that parliamentarism is more conducive to stable democracy than presidentialism. The crux of his thesis was that not only are presidential systems more likely to generate executive-legislative conflict but these conflicts are also more prone to lead to legislative deadlock. Because presidential systems lack a constitutional principle to resolve the standoff,

such as the vote of no-confidence in parliamentary regimes, deadlock encourages actors to search for extra-constitutional means of resolving their differences. As a consequence, presidential systems are more prone to democratic breakdown than parliamentary systems. Linz's thesis was discussed in theoretical works (Mainwaring, 1993; Mainwaring and Shugart, 1997) and his arguments tested in small-n and large-n studies (Stepan and Skach, 1993; Power and Gasiorowski, 1997; Przeworski et al., 2000; Cheibub and Chernykh, 2008; Gerring et al., 2009). Most studies confirmed that presidential systems are likely to survive less long than parliamentary systems, with the exception of the works of Power and Gasiorowski (1997) and Cheibub (2007). Whereas Power and Gasiorowski concluded that the constitutional form is unrelated to democratic survival, Cheibub confirmed that presidential democracies live less longer. However, for Cheibub, the system's low survival rate is rooted not in inherently flawed institutions but in the fact that historically presidentialism emerged in political environments that were less propitious for democratic survival. Finally, recent research has questioned the validity of concepts like "presidentialism" and "parliamentarism" (Cheibub et al., 2010; Fortin, 2012). Given the institutional variation within, in particular, presidential systems the explanatory power of the concept is, according to these scholars, open to question.

The advantages and disadvantages of semi-presidentialism compared to presidential and parliamentary systems was examined by Shugart and Carey (1992). These scholars claimed that semi-presidentialism as a category separate from presidentialism and parliamentarism did not have enough explanatory power. According to them, the concept needed to be broken down into two different concepts, namely premier-presidential and president-parliamentary

systems. Shugart and Carey concluded that president-parliamentary democracies where authority over the cabinet is shared between president and legislature run a greater risk of collapse than their premier-presidential counterparts. In addition, and contrary to the academic consensus against presidentialism, they held that in certain contexts presidential or premier-presidential systems are to be preferred over parliamentary systems. Shugart and Carey claimed that under certain circumstances, “as when one party dominates such that it might be able to win control over the executive by itself under parliamentarism, a presidential or premier-presidential regime might even offer better opportunities for conflict regulation than would a parliamentary regime” (1992: 286).

By contrast, another strand of literature on semi-presidentialism has focused on the system’s institutional flaws. The primary feature of a semi-presidential system is the existence of two actors, a president and a prime minister. According to its critics, the existence of two executive actors introduces competing incentives into the system. Scholars identified different areas and situations where conflict between the dual executive could lead to legislative paralysis and democratic breakdown. Linz (1994) emphasised the danger of executive power sharing in the area of defence. He believed that semi-presidential systems encourage the president and military to join forces thereby effectively exempting the military from civilian control. The semi-presidential system, therefore, “involves a latent political and even constitutional crisis” (Linz, 1994: 58).

The problem of the dual nature of the executive becomes evident in a cohabitation situation. Under cohabitation, the cabinet is supported by a parliamentary majority but the president and prime minister are from *opposing*

parties and the president's party is not represented in the cabinet. In the 1990s, most scholars were convinced that cohabitation was perilous for young democracies (Linz, 1994; Stepan and Suleiman, 1995; Linz and Stepan, 1996). Shugart and Carey outlined two potential scenarios of conflict under cohabitation: first, the cabinet may refuse to accept the legislative powers of the president, and second, a president may refuse to acknowledge the claims to executive leadership made by an opposition assembly majority (1992: 57). Thus, according to these scholars, cohabitation may cause potential conflict between the president and the cabinet on the one hand, and between the president and the parliamentary majority on the other hand.

In the beginning, there was only anecdotal evidence of the effect of cohabitation based on a small number of mainly West European countries. However, from the mid-2000s onwards, scholars have examined the effect of cohabitation on democratic performance outside Western Europe in large n-studies, small n-studies in a regional context and in in-depth single-country case studies (Elgie and Moestrup, 2007b; Elgie, 2008; Elgie, 2010; Elgie and Schleiter, 2011). In a comparative study on the effect of cohabitation in five semi-presidential countries in Eastern Europe Protsyk concluded that "Eastern European prime ministers were much more frequently challenged by the presidents than their Western European counterparts" (Protsyk, 2005). Kirschke's large n-study in 23 countries in sub-Saharan Africa confirmed that divided executive power leads to "severe political breakdown" (Kirschke, 2007).

Moestrup (2007b) demonstrated that a particular subtype of the semi-presidential system is vulnerable for democratic collapse. Based on a statistical analysis on the performance of semi-presidentialism, she concluded that divided

government has a much more deleterious effect on president-parliamentary regimes than on premier-presidential ones. Moestrup used a wider definition of cohabitation because she believed that presidents in president-parliamentary regimes can relatively easily circumvent a cohabitation situation (2007b: 41). In a similar vein, Samuels and Shugart (2010) maintained that cohabitation is more prevalent in countries with the premier-presidential subtype of semi-presidentialism than in those with the president-parliamentary subtype. In a statistical analysis, Elgie and McMennamin (2011) confirmed the notion that cohabitation is more frequently found in premier-presidential democracies. In addition, they concluded that in consolidated democracies cohabitation does not pose a threat to the democratic system but can cause tensions within the executive. They found that “the conditions under which cohabitation is most likely to occur are also the ones under which it is likely to be most easily managed” (Elgie and McMennamin, 2011). In other words, these scholars believe that cohabitation in president-parliamentary systems may provoke democratic breakdown whereas cohabitation in premier-presidential systems may encourage intra-executive tension but does not threaten the survival of the democratic regime. Their conclusion seem to support the notion that cohabitation does not necessarily result in the breakdown of democracy (Elgie and Moestrup, 2007a) or the claim that cohabitation and democratic survival are unrelated (Elgie and Schleiter, 2011).

In sum, there is an ongoing debate in the literature about the virtues and the drawbacks of a semi-presidential system. An important part of the debate is focused on cohabitation and concludes that such a situation could generate democratic breakdown. However, the recent literature challenges the academic

consensus against cohabitation. This paper will test whether cohabitation helped or hindered democratic consolidation in Timor-Leste.

RESEARCH DESIGN

The literature identified two potential scenarios of conflict under cohabitation: first, between the president and cabinet, and second, between the president and the parliamentary majority (Shugart and Carey, 1992). If we do not observe conflict, cohabitation may not be as problematic as those who theorise about semi-presidentialism would suggest. Thus, the first and second hypothesis derived from work on cohabitation are:

H1: Under cohabitation, conflict is expected to take place between the president and cabinet.

H2: Under cohabitation, conflict is expected to take place between the president and parliamentary majority.

Linz (1994) recognised the danger of shared power and responsibility over the armed forces. He warned that semi-presidential systems encourage presidents to assume power over the military specifically, but not exclusively, in a situation of cohabitation. Thus, the third hypothesis is:

H3: Under cohabitation, conflict is expected to take place between the president and cabinet over defence policy.

Each type of conflict between the president, the cabinet, and the parliamentary majority has different observable implications. In the case of conflict between the president on the one hand, and the cabinet and parliamentary majority on the other hand, I expect the *president* to:

1. issue a veto;
2. submit statutes to the court for constitutional review;
3. call for a referendum;
4. issue a presidential decree;
5. refuse to name the prime minister and cabinet members;
6. dismiss the prime minister and cabinet members;
7. dissolve the national parliament;
8. refuse to appoint or to dismiss ambassadors, permanent representatives and special envoys;
9. criticise the government in messages to the national parliament and country.²

In the case of conflict between the president and the parliamentary majority, I expect the *parliament* to:

1. override presidential vetoes;
2. reject presidential decrees;

3. prevent the president from making state visits;
4. start impeachment proceedings against the president;
5. refrain from enacting laws which empower the president to fully exercise his constitutional competencies.

The third hypothesis is of a different order. It does not point to a particular form of sanction but to the policy area where conflict is expected to occur. In other words, different forms of sanctions are expected to be used pertaining to the area of defence and national security.

Case Selection

The three hypotheses that are derived from literature on cohabitation will be tested in Timor-Leste, a semi-presidential democracy. There are three reasons for selecting Timor-Leste. First, Timor-Leste is a post-conflict state with no democratic tradition. Therefore, it is a crucial case to test the arguments associating the effects of institutions and democratic performance. If the semi-presidential system and cohabitation are problematic, then we would expect to observe the implications of this form of government in such a context.

Second, Timor-Leste has a semi-presidential constitution. Academics often disagree whether countries should be classified as semi-presidential. For example, the political system of Tunisia or Djibouti is not always considered semi-presidential (Elgie, 2007; Kirschke, 2007). Similarly, no scholarly consensus exists about the nature of, for example, the system of Sri Lanka, Ireland, Iceland or Austria (Sartori, 1994; Elgie, 2007). The political regime of Timor-Leste, by contrast, has not been subject of academic controversy and has been consistently

classified as semi-presidential (Shoesmith, 2003; Smith, 2004; Feijó, 2006; Leach, 2006; Simonsen, 2006; Shoesmith, 2007; Vasconcelos and Cunha, 2008; Reilly, 2011). The constitution determines that the president and parliament are directly elected by the people and prescribes that the president and cabinet are accountable to the parliament.

Thirdly, arguably, Timor-Leste experienced a period of cohabitation from 2002-2006. The 2001 elections for a Constituent Assembly (CA) led to a landslide victory of the FRETILIN³ party. Before the elections it was decided that the CA would officially turn into the first national parliament (UNTAET, 2001). Marí Alkatiri, the leader of FRETILIN, was appointed as the first Prime Minister of Timor-Leste. The cabinet was made up exclusively of members of FRETILIN.⁴ In April 2002 José Alexandre Gusmão became president after winning the first presidential elections. The period from April 2002 to June 2006 when Alkatiri resigned can be considered a period of cohabitation. Elgie (2008; 2011) will disagree with this classification because the president was not a party member and therefore was *de jure* independent. According to him, cohabitation cannot prevail in semi-presidential democracies where the president is independent and non-partisan. Elgie's definition, however, presupposes a full-fledged political society in which political demands are channelled through political parties. In Timor-Leste, like in many other new democracies, political organisation lagged behind political participation in the form of elections (Huntington, 1996). Indeed, the party of President Gusmão was only established after the presidential elections and the introduction of the semi-presidential system. In other words, party affiliation, or non-partisanship, should be regarded with some suspicion in Timor-Leste.⁵

Here, though, following Shoesmith (2003; 2007) who argued that this was a period of 'conflictual cohabitation' (2007: 229), it is argued that Timor-Leste's first government period was a situation of cohabitation for two reasons. In the first place, long before the introduction of Timor-Leste's semi-presidential system, Gusmão and Alkatiri experienced serious difficulties working together. During the struggle against Indonesian occupation, conflict emerged between Gusmão and FRETILIN over leadership and the ideological foundation of the resistance movement. Gusmão wanted parties other than FRETILIN to become part of the independence struggle. However, his policy of national unity brought him into serious conflict with the FRETILIN leadership at the end of the 1980s. A similar dispute rose during the formation of the cabinet in April 2002. President Gusmão suggested forming a "government of national unity" but the prime minister and secretary general of FRETILIN decided otherwise. "There will not be this sort of government," Alkatiri said. "If there was one, I would not be in it." (Jolly, 2002) True to his word, the prime minister appointed ministers from exclusively FRETILIN for his cabinet.

A second reason to classify Timor-Leste's first period as an example of cohabitation is that Gusmão's was *de facto* partisan, that is to say, opposed to FRETILIN. Although in the presidential elections of 2002 he ran as an independent his candidature was publicly supported by virtually all political parties except for FRETILIN. Gusmão rejected the backing of the FRETILIN. The FRETILIN leadership, for its part, urged its members to vote for his opponent Francisco do Amaral (ASDT), or to cast blank votes. In addition, after the fall of the Alkatiri government in 2006 Gusmão was quick to form a new party, the CNRT, which according to its founder, intended to "knock the FRETILIN party off its pedestal as the dominant

political force and remove its majority in the parliament" (Patterson, 2007). These developments cast doubt on Gusmão's claim to be a non-partisan president situated above party politics. In sum, the political configuration that emerged in Timor-Leste in 2002 can reasonably be designated as a situation of cohabitation for a variety of reasons.⁶

Data Collection

In order to find institutional conflict during cohabitation, I consulted the electronic database of LexisNexis, the database of the Portuguese news agency LUSA, online news services and archives of the East Timor Action Network (ETAN) and the Asian Pacific Solidarity Network (APSN), as well as books and parliamentary reports. In the LexisNexis electronic databases, the following terms were used to search for institutional conflict. First, I introduced the terms "Timor", "Gusmão" and "Alkatiri" for the period 20 May 2002 to 26 June 2006. On 20 May 2002, the constitution of Timor-Leste went into force and on 26 June 2006 Prime Minister Alkatiri resigned. Second, I used the terms "Gusmão" and "parliament" or "legislature" to find conflict between the president and the parliamentary majority. I also consulted the database of LUSA to find inter- and intra-institutional conflict under the three situations. To do so, I translated the search terms into Portuguese.

The East Timor and Indonesia Action Network (ETAN) and the Asia Pacific Solidarity Network (APSN) are NGO websites. Both sites contain an extensive archive with both national and international news reports, articles and press releases on Timor-Leste. This archive also includes news reports that have been broadcast on radio and national television. I read all material archived between 20 May 2002 and 26 June 2006 from principally the ETAN site. Other sites that I

consulted were the “Judicial System Monitoring Programme (JSMP)” site and “Jornal da República”, the online government gazette of Timor-Leste.

I also used parliamentary reports on the legislative process in Timor-Leste to identify incidences of conflicts over legislation. These reports were sent to me by the UNDP and include information about the date and type of draft laws that were vetoed by the president. In addition, I collected and analysed all presidential speeches of Gusmão from May 2002 to June 2006. The presidential discourses form an important source of information for the president often used public speeches to criticise government and its policy.

THE FINDINGS

This section identifies evidence of conflict between the president on the one hand, and the cabinet and parliamentary majority on the other hand. The first hypothesis (H1) predicts presidential activism in the area of legislation and in the appointment and dismissal process. The presidential sanctions are subdivided into legislative sanctions and sanctions in the appointment and dismissal process. The second hypothesis (H2) predicts parliamentary activism aiming to limit presidential influence in the legislative domain. These conflicts are termed parliamentary sanctions. The last hypothesis (H3) expects institutional conflict over security and defence matters.

Presidential Legislative Sanctions

During the period of cohabitation, President Gusmão issued four vetoes, sent three statutes to the Court of Appeal for constitutional review and issued one presidential decree. In addition, the president used “soft sanctions” when he delayed the promulgation of statutes and he also used a “veto threat”.

Given that Timor-Leste’s highest court – the Court of Appeal – only started to function in June 2003, the president could neither submit legislation to the Court for constitutional review nor issue a constitutional veto during the first year after independence (Judicial System Monitoring Programme, 2003). However, soon after it became operational, in June 2003, President Gusmão submitted the first draft Law on Immigration and Asylum to the Court for constitutional review.⁷ In addition, the Freedom of Assembly and Demonstration Law and Timor-Leste’s Penal Code were sent to the Court in 2005 and in 2006 respectively.⁸ President Gusmão also vetoed the Immigration and Asylum Law and the Freedom of Assembly and Demonstration Law after the Court ruled that both laws were unconstitutional. The Court decided that the Timor-Leste Penal Code was consistent with the constitution. However, the president neither signed nor promulgated the law and thus effectively used a pocket veto (Vasconcelos and Cunha, 2009: 239, fn. 12). Eventually, the Penal Code was signed and promulgated by President José Ramos-Horta in April 2009. The president also vetoed the Revenue System Amendment Law on political grounds.⁹

Under cohabitation, the president did not call for a referendum. An important reason that he refrained from doing so was based on the fact that no organic law was passed to regulate the holding of a referendum (Feijó, 2006). So,

the absence of an organic law on the regulation of a referendum deprived the president from submitting issues of national interest to a referendum.

The fourth observable implication of conflict in the legislative domain is the use of presidential decrees. From May 2002 to March 2005 the president could not declare a state of siege or a state of emergency by presidential decree due to the absence of necessary legislation. The constitution states that the president is empowered to declare a state of siege or a state of emergency following authorisation of the national parliament, after consultation with the Council of State, the government, and the Supreme Council of Defence and Security (Section 85g).¹⁰ However, President Gusmão could not seek advice from the Council of State and the Supreme Council of Defence and Security because neither consultative institution was established until March 2005.¹¹ So, in case of aggression by a foreign force or (the threat of) serious disturbance to the democratic constitutional order or of public disaster the president was institutionally barred from calling on the army to restore internal security (Section 25). However, in May 2006 the president invoked a state of “emergency” by presidential decree.¹² The president assumed full executive and legislative power thereby effectively sidelining the cabinet and parliamentary majority. It is open to question whether the act was constitutional given that the declaration needed to have prior endorsement of the parliamentary majority (Section 85g). The parliament only approved the emergency decree a week after it was issued.

In addition to formal sanctions, President Gusmão used “soft sanctions” against the cabinet and parliamentary majority when he delayed the promulgation of statutes and used a veto threat. These sanctions indicate conflict but do not have the same political leverage on the legislative process as formal sanctions. The

president frequently delayed the promulgation of laws beyond the time period stipulated in the constitution. Under the constitution of Timor-Leste, it is incumbent on the President of the Republic to promulgate all statutes (Section 85a). The constitution states that the president must promulgate a law presented by the parliament (*proposta de lei*) within 30 days whereas a law presented by the government (*projeto de lei*) should be promulgated within 40 days (Section 88). Considerable delay in the promulgation of legislation indicates conflict between president and the other two institution. Here, delay is viewed as “considerable” in cases where the president promulgates (or vetoes) a statute outside the timeframe stipulated in the constitution. Out of a total of 122 laws no fewer than 45 draft laws were promulgated beyond the period provided by the Constitution (Ministério da Justiça, 2011). In other words, around 37 per cent of all draft laws experienced considerable delay. Draft legislation introduced by the government was a particular target of this sanction: the president held up 54 per cent of all government laws compared to 15 per cent of all laws introduced by the parliament (Ministério da Justiça, 2011).

In addition, President Gusmão used a “veto threat” (Wilson, 2005). In July 2005, President Gusmão threatened to veto the so-called “Treaty on Certain Maritime Arrangements in the Timor Sea” (CMATS) that would establish a 50-50 split of royalties from the Greater Sunrise gas field in the Timor Sea.¹³ Under the treaty, Australia would pay Timor-Leste \$US13.9 billion in exchange for postponing talks on the maritime boundary between the countries for the next 50 years. According to media sources, President Gusmão remained unconvinced that Timor-Leste should give up its sovereignty over gas reserves the U.N. believed conservatively to be worth more than \$US30 billion. In the president’s annual

address to the national parliament the government was accused of backroom politics and shady deals with Australia. Gusmão notified the deputies that “questions arise around the term ‘creative solutions’ (quotation marks in the original) expressed by the prime minister, and that doubts persist in the minds of people in relation to the meeting between foreign minister José Ramos-Horta and his Australian counterpart, when they spoke of an ‘open window’ and of ‘Christmas gifts” (Gusmão, 2004).

Presidential Sanctions in the Appointment and Dismissal Process

Conflict between President Gusmão on one side, and the cabinet and parliamentary majority on the other side, disrupted the appointment and dismissal process as well. Even before the constitution formally came into effect, in April 2002, a dispute rose between the president and prime minister over the composition of the cabinet. President Gusmão suggested forming a government of national unity, a coalition of six political parties, but Prime Minister Alkatiri refused. "There will not be this sort of government," Alkatiri said, "if there was one, I would not be in it." (Jolly, 2002). The prime minister added that if the president wanted a government of national unity, he should look at the constitution (Associated Press Worldstream, 2002). Prime Minister Alkatiri appointed ministers from exclusively FRETILIN.

During the first three years after independence, President Gusmão could not dismiss the prime minister due to the absence of the necessary legislation. Under the constitution, the president is constitutionally obliged to seek advice from the Council of State before removing the prime minister. The constitution further stipulates that the president shall only dismiss the prime minister when it

is deemed necessary to ensure the regular functioning of the democratic institutions, after consultation with the Council of State (Section 112). However, between May 2002 and February 2005 this consultative body only existed on paper. Indeed, only in 2005 the parliament passed legislation that established the legal framework of the Council of State.¹⁴ So, for some time in the period 2002-2006, the president could not dismiss the prime minister for the reason that the Council of State did not exist and, hence, could not be consulted. With regard to government members, the president was not permitted to unilaterally dismiss cabinet ministers. Under the constitution, the president can only dismiss cabinet ministers following a proposal by the prime minister (Section 86h). However, President was very displeased about the nomination and performance of Interior Minister Rogério Lobato. So, President Gusmão sought alternative ways to get Lobato fired, which brought him into serious conflict with the prime minister. In no fewer than eight formal speeches addressed either to the national parliament or to the nation President Gusmão criticised Lobato, and in particular his policy regarding the establishment and development of the Timorese police force (PNTL¹⁵). For example, in one of his first official speeches to the nation Gusmão accused Interior Minister Lobato of demagoguery and reproached him for “exploiting the failures of the state’s institutions to mobilise the population” (Gusmão, 2005: 17). Tension grew between the president and the prime minister when, in November 2002, President Gusmão publicly ordered the prime minister to dismiss the Minister of Interior (Gusmão, 2002). Prime Minister Alkatiri refused to do so. Prime Minister Alkatiri stated: “I will be the one to dismiss those incapable of doing their duties. It doesn't have to come from the president's speech” (Asia Pacific Solidarity Network, 2002). When in May 2006, violence

erupted between Timor-Leste's police and armed forces, President Gusmão ordered the Prime Minister to dismiss Interior Minister Lobato, this time together with Defence Minister Roque Rodrigues. Both ministers resigned in June 2006, after intense pressure from President Gusmão (Murdoch and Allard, 2006). However, according to President Gusmão, the removal of both ministers did not go far enough to put an end to the festering conflicts in Timor-Leste's security apparatus. In his speech to the national parliament Gusmão declared that the state was incapable and unwilling to resolve the problems. "We have witnessed the State become paralysed in the wake of all the events that took place in Dili". (...) "In politics, the non-recognition of a mistake, even if it is a small one, can lead us to make greater mistakes" (Gusmão, 2006a). On 20 June 2002, in a nationally televised speech, President Gusmão threatened to resign if Prime Minister Alkatiri refused to do so. The President gave FRETILIN an ultimatum to either ask Alkatiri to resign immediately and take responsibility for the current political crisis or he would tender his resignation to parliament (UNOTIL Daily Media Review, 2006e). Prime Minister Alkatiri resigned on 26 June 2002.

The third observable implication of conflict over the appointment or dismissal of officials between the president on the one hand, and the cabinet and parliamentary majority on the other hand, involves the dissolution of the national parliament. There again, though, the president could not dissolve the parliament due to legislative voids. The constitution empowers the president to dissolve the national parliament "in case of a serious institutional crisis preventing the formation of a government or the approval of the state budget and lasting more than sixty days, after consultation with political parties sitting in the parliament

and with the Council of State" (Section 86f). As stated earlier, the Council of State was only established in May 2005.¹⁶

The fourth observable implication of institutional conflict in the appointment and dismissal process manifested itself in disagreements about the appointment of government officials in the area of external affairs. President Gusmão refused to appoint the prime minister's candidate for the post of ambassador to Australia. The constitution empowers the government to propose a nominee (Section 115). The president appoints or rejects the nominee following the proposal of the government (Section 87b). Abel Guterres was the first choice of the president but his candidacy was vetoed in July 2002 by Prime Minister Alkatiri who backed Antoninho Bianco (Jolliffe, 2002). In an interview on 13 June 2002, the prime minister was adamant that Bianco had been nominated, a statement confirmed by Bianco. Confronted with this declaration, Ramos-Horta said the appointment could not be presented "as a fait accompli", stressing that the final say rested with President Gusmão who had to approve diplomatic appointments (Jolliffe, 2002). Eventually, in March 2003, a third candidate, Jorge Teme, was appointed ambassador (Jolliffe, 2003). All in all, Timor-Leste was unrepresented in Australia for almost a year due to the tug-of-war between the President and Prime Minister over the nomination of an ambassador to Canberra.

Parliamentary Sanctions

The second hypothesis (H2) predicts parliamentary activism aiming to limit presidential influence in the legislative domain. The first observable implication of a problematic relationship between the parliamentary majority and the president is when the parliament rejects and overrides a presidential veto. Under

cohabitation, the parliament overrode all presidential vetoes, including the Immigration and Asylum Law, the Freedom of Assembly and Demonstration Law and the Penal Code. The parliament even ignored the ruling of the Court of Appeal and adopted the Immigration and Asylum Law that had been declared unconstitutional.

With regard to presidential decrees, the parliament rejected a presidential decree nominating the President of the Court of Appeal on 10 March 2003.¹⁷ This parliamentary act delayed the Court of Appeal from becoming operational. The parliament finally ratified the presidential decree on 22 April 2003.¹⁸ In addition, some FRETILIN deputies doubted whether to approve the parliamentary resolution that would enable President Gusmão to make a state visit to Indonesia in February 2006 (UNOTIL Daily Media Review, 2006d).

The final observable implication of conflict might be termed parliamentary obstructionism. The parliamentary majority refrained from preparing laws that would have authorised the president to fully exercise his constitutional competencies (Feijó, 2006). The constitution determines that in several areas presidential decisions need to be preceded by consultation with the Council of State and/or with the Superior Council for Defence and Security. Only in 2005 the parliament passed legislation that established the legal framework of both organs.¹⁹ So, from 2002 to 2005 the president could not declare a state of siege or a state of emergency, declare war or make peace with a foreign country or call for a referendum. Similarly, the president was deprived of the power to dismiss the prime minister or to dissolve the parliament. These legal voids deprived the president *ipso facto* of several important powers that would have allowed him to oversee the legislature.

Conflicts over Defence and National Security

The last hypothesis (H3) predicts institutional conflict over security and defence policy. In early 2006 President Gusmão on the one hand, and the cabinet and high command of the armed forces on the other hand, differed over how to respond to internal dissent in Timor-Leste's army.

In January 2006, a group of 159 F-FDTL²⁰ soldiers submitted a written petition to President Gusmão and the Defence Force Commander Brigadier General Taur Matan Ruak complaining of discrimination in the defence force by officers from the eastern part of the country (*lorosae*) against people from the west (*loromonu*). According to them, western soldiers were treated unfairly in recruitment procedures, promotions and disciplinary measures. The disgruntled soldiers, however, declined to send a copy to the prime minister.

Early February 2002, Defence Force Commander Ruak called for a meeting with soldiers and sergeants to discuss the petition but when the issue was raised some of the soldiers said it was a matter that only the president had the power to resolve (UNOTIL, 2006b). The president decided then to meet the petitioners against commander Ruak's will. Ruak believed the president was ill-advised because the meeting would further politicise the problem, moving it beyond a disciplinary issue in the armed forces and bringing more petitioners into the group (ICG, 2006).

By the end of February 2006, the number of protestors had risen to 591. Some of the soldiers had decided to leave their barracks and refused to return, despite repeated calls of the president and the Defence Force Commander. When the president asked the government to resolve the problem the prime minister had bluntly refused. He noted that the petition was addressed to almost everybody

except for the prime minister and stated: "If they have forgotten me, I cannot do anything." "Let them keep forgetting me," added Prime Minister Alkatiri (UNOTIL, 2006a).

In March 2006 Defence Force Commander Ruak dismissed the 591 "petitioners". The soldiers refused to return to their head quarters and therefore had abandoned their post. Prime Minister Alkatiri and Defence Minister Roque Rodrigues supported the defence commander's decision but President Gusmão was strongly opposed. In a nation-wide speech Gusmão declared that Ruak's decision to expel almost 600 soldiers was "erroneous and unjust" (Gusmão, 2006b). In addition, the president criticised the defence minister and the defence force commander for being unable or unwilling to solve the problem and he urgently asked them to change their policy towards the petitioners and to "carefully consider" the option to re-accept the ex-F-FDTL soldiers "in order to resolve the matter accordingly" (Gusmão, 2006b). Prime Minister Alkatiri expressed his discontent with the president's stance on the issue and declared that "the decision came from the commander of F-FDTL, following consultation with me and I agreed and fully support the decision of the commander who has the capacity to make that decision" (UNOTIL Daily Media Review, 2006a).

In April 2006 President Gusmão declared in a conference that the country's military leadership was in crisis (UNOTIL Daily Media Review, 2006c). Against the background of growing tensions and anti-government demonstrations in Timor-Leste's capital, Dili, Prime Minister Alkatiri proposed to set up a government commission to look into the petitioners' complaints (Independent Special Commission of Inquiry for Timor-Leste, 2006). In addition, the Foreign Minister was nominated to talk with the protestors to put an end to the demonstrations.

However, these measures proved too little too late. The demonstration turned violent and the police did not control the situation. In an attempt to restore stability Prime Minister Alkatiri called for the army to intervene. During the April 2006 riots five people were killed and more than one hundred houses were destroyed (ICG, 2006). Some 15,000 persons sought refuge in churches, public buildings and the United Nations facilities in Dili, while others left for the districts. Despite several calls of Prime Minister Alkatiri to leaders of the petitioners to come to Dili in order to resolve the problem, their main leader, Lieutenant Gastão Salsinha, declared that he would talk only to Gusmão “because I only trust President Xanana [Gusmão] since he is our Supreme Commander” (UNOTIL Daily Media Review, 2006b).

In late May 2006 in clashes between the police and the army ten unarmed policemen were killed and another 27 were wounded. In response to the riots, President Gusmão assumed full executive authority and invoked emergency powers to resolve the political crisis. The violence between Timor-Leste’s security forces prompted President Gusmão to ask for foreign intervention to restore law and order. However, the decision brought them into conflict with the Prime Minister who argued furiously with President Gusmão against the request for foreign troops (Dodd, 2006). The President won out, and a formal appeal – that Alkatiri reluctantly signed – was sent to Australia, Portugal, Malaysia and New Zealand. Under pressure of President Gusmão, Defence Minister Roque Rodrigues and Interior Minister Lobato resigned. Some weeks later, the President pressured the Prime Minister into resigning. In a nationally televised speech President Gusmão threatened to step down if Prime Minister Alkatiri refused to do so. One week later, on 26 June, Prime Minister Alkatiri resigned as well.

CONCLUSION

There is an ongoing debate about the potential danger of cohabitation for new democracies. Until recently, cohabitation was considered to be the main peril of semi-presidential systems. Scholars warned that cohabitation may cause intra-executive conflict that could lead to democratic breakdown (Linz, 1994; Stepan and Suleiman, 1995; Kirschke, 2007). Linz (1994) emphasised the danger of intra-executive conflict over defence policy which could lead to a *coup d'état*.

However, in the past few years, comparative politics scholars have questioned the negative effects of cohabitation (Elgie, 2008; Elgie and McMenamin, 2011). According to Elgie (2008), only in Niger cohabitation was directly responsible for the collapse of the democratic regime. Based on a statistical analysis, Elgie and McMenamin (2011) claimed that cohabitation is more prevalent in relatively stable democracies that are able to regulate conflict and, therefore, do not collapse. They concluded that the problem of cohabitation is less serious than the literature suggests (Elgie and McMenamin, 2011: 18). In short, there is no academic consensus on whether cohabitation is unequivocally dangerous for a new democracy.

This paper has examined the effects of cohabitation in a new democracy. It has found that cohabitation encouraged tension between President Gusmão on the one hand, and the cabinet and the parliamentary majority on the other. Moreover, due to the absence of enabling legislation, President Gusmão was deprived of several powers of oversight. In other words, there may have been more institutional conflict had the correct legislation been in place. Hence, quite

possibly, Timor-Leste's post-conflict context had a dampening effect on institutional conflict.

This paper has also demonstrated that Timor-Leste's armed forces threatened government stability under cohabitation. Disagreements over defence policy between Gusmão on the one hand, and the cabinet and high command of the armed forces on the other hand, hindered a quick response to dissent within the Timorese army. The situation escalated when a substantial part of the military intervened in political affairs and demanded the resignation of the prime minister. Institutional conflict over security matters can partly be ascribed to the constitution of Timor-Leste. The constitution determines that the government is responsible for *internal* security and shares responsibility with the president regarding issues related to the country's *external* security. Internal conflict, therefore, requires a close co-operation between the president and the prime minister. For one thing, the head of state can only declare a state of emergency after he or she has been given permission by the national parliament of Timor-Leste. Cohabitation potentially hinders close cooperation between the president and cabinet.

All things said, Timor-Leste's is another example of the danger of cohabitation in new semi-presidential democracies outside Europe. However, caution should be exercised when drawing conclusions from a single country study. For one, eighteen months of cohabitation led to a collapse of Niger's democratic regime whereas Timor-Leste's democracy survived four years of cohabitation. Even so, cohabitation generated the kind of conflicts that in theory was predicted. According to Shugart and Carey "democratic institutions are supposed to be conflict regulators, not conflict generators" (1992: 165-166). This

paper has demonstrated that Timor-Leste's semi-presidential system failed to regulate conflict.

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Notes

1. Mouvement National pour la Société de Développement.
2. Given that cohabitation does not prevail under minority governments, presidential sanctions will target both the cabinet and parliamentary majority. Cohabitation *cum* minority government is coined a "divided minority government" (Skach, 2005: 17).
3. Frente Revolucionária de Timor-Leste Independente.
4. Apart from two independent ministers.
5. In his blog post on Timor-Leste, Elgie identified the government form between 2002 and 2006 as a possible period of cohabitation (Elgie, 2011).
6. We may even argue that political division between President Gusmão and Prime Minister Alkatiri was greater than in a typical situation of cohabitation for personal feuds are often more intense and more resistant to change. So, in addition to the already existing personal feuds cohabitation may generate political conflicts in Timor-Leste.

7. Parliamentary law 9/2003 of 18 October “Immigration and Asylum Act” (Imigração e Asilo).
8. Parliamentary law nº 1/2006 of 8 February 2006 “Freedom of Assembly and Demonstration”. (Liberdade de Reunião e de Manifestação), Government decree law 19/2009 of 8 April 2009 “Penal Code” (Código Penal).
9. Parliamentary law 5/2002 of 16 August 2002 “Revenue System Amendment Act” (Modificação do Sistema Tributário).
10. Constitution of the Democratic Republic of Timor-Leste (2002). All subsequent references made to the Constitution of Timor-Leste are drawn from this document.
11. Parliamentary law 1/2005 of 9 February 2005 “Law on the Council of State” (Lei do Conselho de Estado), Parliamentary law 2/2005 of 3 March 2005 “Law on the Superior Council for Defence and Security” (Lei Do Conselho De Estado de Defesa e Segurança).
12. Parliamentary resolution 12/2006 of 5 June 2006 “On the emergency measures to overcome the crisis decreed by H.E. President Ray Kala Xanana Gusmão” (Sobre as Medidas de Emergências para Ultrapassar Crise Decretadas por sua Excelência o Presidente da República, Kay Rala Xanana Gusmão). See: (Ministério da Justiça, 2011)
13. Parliamentary Resolution 4/2007 of 8 March 2007 “Treaty on Certain Maritime Arrangements in the Timor Sea” (CMATS) (Tratado sobre Arranjos Marítimos no Mar de Timor).
14. Parliamentary Law 1/2005 of 9 February 2005 “Law on the Council of State” (Lei do Conselho de Estado).
15. Polícia Nacional de Timor-Leste.

16. Parliamentary law 1/2005 of 9 February 2005 “Law on the Council of State”
(Lei do Conselho de Estado).
17. Parliamentary Resolution (Projeto de Resolução) 29/2003, Presidential Decree 4/2003 of 10 March 2003 “Appointing the President of the Court of Appeal”.
18. Parliamentary resolution 5/2003 of 22 April 2003 “On the Presidential Decree No. 4/2003, of 10 March 2003, Regarding the Appointment of the President of the Court of Appeal”.
19. Parliamentary law 1/2005 of 9 February 2005 “Law on the Council of State”
(Lei do Conselho de Estado), Parliamentary law 2/2005 of 3 March 2005 “Law on the Superior Council for Defence and Security” (Lei Do Conselho De Estado de Defesa e Segurança).
20. FALINTIL – Força de Defesa de Timor-Leste.

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