

INTERNATIONAL FEDERATION FOR EAST TIMOR (IFET)

International Secretariat: Charles Scheiner
P.O. Box 1182 White Plains, New York 10602 USA
Tel. +1-914-831-1098
ifet@etan.org

U.N. Representative: John M. Miller
48 Duffield St., Brooklyn, NY 11201 USA
Tel. +1-718-596-7668 fax: +1-718-222-4097
john@etan.org

www.etan.org/ifet

December 20, 2004

MEMBER ORGANIZATIONS

Australia-East Timor Association
Australians for a Free East Timor
Brisbane East Timor Office (Australia)
Campaign for an Independent East Timor
(South Australia)
East Timor Relief Association (Australia)
Hobart East Timor Committee (Australia)
Lismore Friends of East Timor (Australia)
Canadian Action for Indonesia and East
Timor
East Timor Alert Network (Canada)
Pacific Concerns Resource Centre (Fiji)
East Timor Group of Committee of 100
(Finland)
Agir Pour Timor (France)
Association Solidarité Timor-Oriental
(France)
Gesellschaft für Bedrohte Völker (Germany)
Watch Indonesia! (Germany)
Greek Support Group for East Timor
East Timor Roundtable (Hong Kong)
Indian Society for Human Rights
Forum Solidaritas Untuk Rakyat Timor
Lorosae (FORTILOS, Indonesia)
East Timor Ireland Solidarity Campaign
Latin American and Mediterranean Coalition
for East Timor (Italy)
Free East Timor - Japan Coalition
East Timor Information Network (Malaysia)
International Platform of Jurists for East
Timor (Netherlands)
Norwegian Cooperation Council for East
Timor and Indonesia
Asia-Pacific Coalition on East Timor
(Philippines)
Acção Jovem Para a Paz (Portugal)
Paz é Justiça para Timor Leste (Portugal)
East Timor Scotland Support Group
Instituto de Estudios Políticos para América
Latina y África (Spain)
Östtimor Kommitten (Sweden)
TAPOL (U.K.)
British Coalition for East Timor
East Timor Action Network (USA)
International Secretariat, Parliamentarians
for East Timor

His Excellency Kofi Annan
Secretary-General
United Nations
New York, NY 10017
By fax: +1-212-963-7055

Honorable Secretary General:

We are writing to encourage you immediately to appoint a Commission of Experts to continue the international community's unfulfilled task of ensuring justice for crimes against humanity committed in Timor-Leste during the Indonesian occupation.

We understand that you will meet with the Foreign Ministers of Timor-Leste and Indonesia this week, and that they plan to inform you of their proposal to establish a bi-national Commission of Truth and Friendship. Although truth and friendship between formerly warring nations is a welcome development, it cannot take the place of justice.

Nearly four years ago, when you visited a churchyard in Liquica where dozens of innocent civilians were murdered by Indonesian troops and their militia proxies in April 1999, you called for "justice to prevail over impunity."

Last November 9, you told the Security Council "I repeat my previous call for the full cooperation of Member States to ensure that impunity does not prevail." Even if the governments of two Member States, Indonesia and Timor-Leste, decide not to fully cooperate, 189 other Members should heed your call.

It has been five years since the United Nations implemented the wishes of the voters of Timor-Leste, replacing the brutal Indonesian military occupation with UNTAET. Timor-Leste is now self-governing, a proud Member State of the United Nations. Your leadership, and that of your Special Representatives, was essential in transforming a crime scene into a democracy.

Yet there is one glaring gap in that transition. The middle- and higher-level perpetrators of countless crimes against humanity in Timor-Leste, not only during 1999 but throughout 24 years of illegal Indonesia invasion and occupation, have not been held accountable.

You are well aware of the involvement of Indonesian military and police officials in war crimes and crimes against humanity in Timor-Leste. We need not reiterate the findings of the UN Commission of Inquiry and the KPP-HAM report, or the numerous indictments issued by the UN-created Serious Crimes Unit in Timor-Leste. Next year, Timor-Leste's Commission on Truth, Reception and Reconciliation will issue a comprehensive report on relevant events from 1974 through 1999.

Names have been named; truth has been reported. What remains is to bring the perpetrators to justice.

In July 2003, Dr. Geoffrey Robinson concluded his extensive report for the United Nations Office of the High Commissioner for Human Rights, "East Timor 1999: Crimes Against Humanity," saying:

"...the United Nations bears a special responsibility to ensure that the perpetrators of the violence in East Timor are brought to justice. [This report] concludes that an international criminal tribunal for East Timor should be established at the earliest opportunity, and that the Security Council and Secretary General of the United Nations should take the lead in doing so."

We concur, as do most of the people of Timor-Leste and many who strive for greater democracy in Indonesia. The open question is not who did what, but how to hold the perpetrators and organizers accountable – to bring the allegations against them to trial and punish those who are proven guilty.

As you are aware, the UN role in the serious crimes process in Dili is scheduled to end next May. Credible alternatives must be found. Political realities may make it difficult to establish an international criminal tribunal at this time, but several options are available to ensure that the door to justice is not locked shut. Consequently, we urge you to allow a Commission of Experts to evaluate the current situation and efforts toward justice up to this point, and to recommend future measures which may be implementable as political situations evolve, perhaps including an international tribunal.

The United Nations must not abandon its responsibility for justice to the governments of Timor-Leste and Indonesia.

Timor-Leste is too small and too vulnerable to shoulder the burden of justice alone. Its government institutions are still being developed. It must peacefully co-exist with its much larger neighbor, cooperating on commerce, borders and security. In Indonesia, the military still holds a great deal of extra-legal power and influence. As Timor-Leste learned from history, Indonesia is not reluctant to intervene violently in their country.

The government of Timor-Leste, against the wishes of most of its citizens, has opted for pragmatism over justice. This appears to violate Article 160 of their Constitution: "Acts committed between 25 April 1974 and 31 December 1999 that

can be considered crimes against humanity, of genocide or of war shall be liable to criminal proceedings with the national or international courts."

Indonesia, on the other hand, has made only slight progress toward democracy and civilian rule since 1999. They have made virtually no progress toward justice for crimes against humanity committed by their security forces. For three years, Jakarta played the international community for fools, with an "ad hoc human rights court" now universally recognized as a sham.¹ They refuse to cooperate with the Serious Crimes process in Timor-Leste and refused to share information with Timor-Leste's Commission on Truth, Reception and Reconciliation.² Indonesia has promoted many alleged perpetrators, some of whom are repeating the crimes and tactics they developed in Timor-Leste against the people of Aceh and West Papua.

Timor-Leste and Indonesia are not equal partners, with a common interest in justice. A bi-national commission will be just another mechanism for Indonesia to bully its smaller, weaker neighbor.

From 1975 through 1998, the United Nations stood by and allowed this to happen. We should be ashamed to allow it again.

Many of the crimes committed in Timor-Leste were crimes of universal jurisdiction, with all humanity as victims. The crimes of 1999 were designed to deter and sabotage the UNAMET mission, mandated by the Security Council. They involved assaults on both Timor-Leste and UN personnel, including murders of local UNAMET staff. How can staff members of current and future UN missions feel secure if the perpetrators escape with impunity? The United Nations needs to end impunity to preserve its own credibility and peacekeeping missions, whatever Indonesia and Timor-Leste decide.

Most nations (including Timor-Leste but not Indonesia) have joined the International Criminal Court, and we applaud your leadership in making this a reality. As you said when the Rome Statute entered into force in 2002:

"There must be no relenting in the fight against impunity or in our efforts to prevent genocide and the other horrendous crimes that fall under the Court's jurisdiction."

But that Court cannot try crimes committed before 2002, a responsibility which rests with the United Nations on an ad hoc basis. Since international law prohibits impunity for such crimes, your office has a legal obligation to ensure that their perpetrators in Timor-Leste do not escape accountability.

The UN-supported Serious Crimes Unit in Dili issued its final indictments last week, with half of the 1999 murders not even investigated. Three-fourths of its indictees

¹ See, for example, "Unravelling the First Three Trials at Indonesia's Ad Hoc Court for Human Rights Violations in East Timor" by Suzannah Linton in the *Leiden Journal of International Law* (2004), 17:2:303-361.

² This is well-documented in "Unfulfilled Promises: Achieving Justice for Crimes Against Humanity in East Timor" from the Coalition for International Justice and the Open Society Justice Initiative, November 2004.

enjoy sanctuary in Indonesia. Warrants issued by the SCU are defied by Jakarta or suppressed by Timor-Leste, under pressure from its neighbor. How can the United Nations claim to fight against impunity anywhere if it does not complete its own evidence and justice processes?

The UN is justifiably proud of its efforts in Timor-Leste, considering it one of the successes in recent UN history. But the good will earned by UNAMET, UNTAET and UNMISSET will not endure if the United Nations turns a deaf ear to calls for justice by victims and their supporters.

Within Timor-Leste, the majority of the population are victims of crimes by Indonesian security forces; the East Timor National Alliance for an International Tribunal has repeatedly and often expressed their views to your office. In a broadly-representative conference in Dili last September, the participants overwhelmingly agreed that accountability is an unfulfilled obligation and an international responsibility.

Your Special Representative, Mr. Sukehiro Hasegawa, addressed that conference:

“I do not believe that we should not pursue justice for those generals who committed serious crimes for fear of jeopardising the relationship with that country.

“After World War II, some 60 years ago, my own country, after its own role of expansion was brought down to its knees, the allied forces came and held the Tokyo trials. They found key generals guilty and they were executed. And a similar process was carried out in Germany. But yet you know that the relationship between my country and those allied powers is quite sound and therefore the relationship remains.”

Although Foreign Minister Jose Ramos-Horta was absent from Timor-Leste at the time, his Vice-Minister Olympio Branco spoke to the conference:

“We should never create an environment of impunity . . .

“We are happy to cooperate with the UN and personally with the Secretary General Kofi Annan in regard to the process of establishing a Commission of Experts. I feel that when it is established and starts to do its work many possible recommendations can be delivered to the Commission. This will be a good opportunity for the Community to participate in the process. Whatever the recommendations chosen by the UN, the Timor Leste government will cooperate with the UN.”

Over the last three months, Indonesia has pressured Timor-Leste's government to change that position. But whether the threats involve border incursions or economic sanctions, the United Nations should not succumb to them, even if Timor-Leste feels it has little choice

On October 25, 1999, in Resolution 1272, the United Nations Security Council:

“Condemns all violence and acts in support of violence in East Timor, calls for their immediate end, and demands that those responsible for such violence be brought to justice;”

That demand has not been met, and the governments of Indonesia and Timor-Leste, left to themselves, cannot meet it.

Unless you keep the process alive by appointing a Commission of Experts, impunity will have prevailed.

We thank you for your serious consideration of these urgent matters and look forward to your response.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Charles A. Scheiner". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Charles A. Scheiner
International Secretariat

cc: UN Member States and Secretariat, media