

The Topic of the Issue

EAST TIMOR

CRIMINALS ARE FREE

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A survey of the results achieved by both the Special Panel for serious criminal offences of the District Court in Dili and by the ad hoc tribunal in Indonesia, raises the question whether things would have been different had there been established at the very beginning of the UN Interim Administration in East Timor an international tribunal for East Timor like the tribunals for the former SFRY and Rwanda.

Indonesia's Government agreed on September 20, 1999, with the international intervention in East Timor and allowed the international forces (INTERFET) to land in East Timor. The Indonesian Parliament on October 25, 1999 recognized the results of the referendum in East Timor and handed the control over East Timor to UN forces (UNTAET). On the other hand, the UN exercised great pressure over the Government of Indonesia with the aim to have investigation of crimes committed in East Timor and the prosecution of all those responsible. As a response to this pressure, and with the intention to avoid the formation of an international tribunal for East Timor, the Indonesian authorities established an Ad hoc Tribunal for East Timor. The proclaimed aim of this Tribunal was criminal prosecution of those responsible for a tide of violence which caught East Timor during the decision making process related to the proclamation of independence in 1999. However, soon it became clear that Indonesia established this Tribunal in order to mitigate pressure of the international community to punish those responsible for crimes, but without a genuine will and desire on part of the Indonesian authorities to bring to justice the real perpetrators and masterminds. The Indonesian Government denied accusations that the Indonesian security forces had actively participated in the tide of violence and crime which happened to East Timor, leaving the possibility that there were individual incidents in which individuals from regular Indonesian forces could have been involved, but - as stated by the Government - this was certainly not in accordance with Indonesia's official policies.

In his letter to the UN Secretary General in 2000 the Indonesian Minister of Foreign Affairs Alvi Shihab rejected the recommendations to establish an international tribunal for East Timor, insisting that in regard to serious violations of human rights in East Timor the Indonesian laws and legal system are completely qualified for bringing the responsible ones to justice. In the meantime, the National Commission for Human Rights Violations in East Timor (KPP-HAM) concluded in its January 2000 report that in the period January-October 1999 there were massive human rights violations in East Timor which were characterized by massive, systematically planned criminal offenses in which the representatives of the army, the police and civil administration cooperated closely with the pro-Indonesian militia whose members committed the majority of the crimes. In this report 32 Indonesian officials and militia leaders were publicly named as suspected perpetrators of these crimes. Indonesia's state prosecutor investigated five cases in East Timor and after many prolongations indictments were raised against 18 persons, out of which only eight were mentioned in the report of the National Commission for Human Rights Violations in East Timor (KPP-HAM). After that 12 trials were organized. At the end of the proceedings out of 18 accused, charges were dropped in regard to thirteen persons, and five persons were sentenced to imprisonment from three to ten years. All those sentenced were left to wait in freedom for the judgments to become final, some of them still being in active service in Indonesian army and police.

Indonesia invaded East Timor, which up to then was a Portuguese colony, on December 7, 1975. After that on July 17, 1976, Indonesia declared East Timor its 27th province. During the next 25 years of occupation of East Timor, there was systematic violence and repression over the citizens. Violence was committed by paramilitary armed groups constituted of East Timor soldiers who were recruited, trained and financed by the members of Indonesian military forces. The UN did not recognize Indonesian sovereignty over East Timor. The Indonesian President Habibie on June 9th, 1998, issued a decision to consider declaring a special status of East Timor. Under UN pressure, and after a few months of diplomatic activity, Habibie announced on January 17, 1999, that there will be a referendum through which the inhabitants of East Timor will have the opportunity to decide whether they want autonomy within Indonesia. Vote against the autonomy status meant an independent status of East Timor. The referendum was organized on August 30, 1999, when the majority of the population voted for independence. In response to this decision of the citizens of East Timor the armed forces of the

Indonesian national army and members of the pro-Indonesian militia (so-called irregular forces) started a campaign of violence over the population of East Timor, which resulted in murder of around 2,000 citizen of East Timor and the expulsion of around 500,000 people from their homes. This wave of violence provoked strong reaction of the international community, lead by the UN.

This is why the UN Temporary Administration (UNTAET) formed a Council and the Office of the deputy prosecutor and the Serious Crimes Investigation Unit with the aim to investigate crimes and bring them to the District Court in Dili, capital of East Timor. In 2000 the UNTAET established by decree the Dili District Court, with special jurisdiction also over serious crimes. A later document in 2000 established also the Office of the deputy prosecutor which incorporates also the Serious Crime Investigation Unit. On the basis of the work of this Unit and the collected evidence, the District Court raised a significant number of indictments for the gravest crimes and human rights violations against highly ranking members of the Indonesian army. Unfortunately, Indonesia herself rejected to participate in this process, rejecting to recognize the Dili District Court's jurisdiction over crimes committed by Indonesian armed forces and members of the pro-Indonesian militia, and rejecting also to extradite the indicted persons to this court. It is exactly these reasons that made difficult the work of the Council, The Office of the deputy prosecutor and the Serious Crime Investigation Unit in East Timor. Until end of February 2003 the Serious Crimes Investigation Unit raised 58 indictments against 225 persons who in the majority of cases were accused of crimes against humanity including murders, sexual delicts, torture and other inhuman procedures, harassment, deportation and illegal detention of citizens of East Timor in the critical period January – October 1999. Within these indictments, nine related to crimes against humanity were raised against high ranking officials of the Indonesian army and police, including also some who stood trial in Indonesia and who were declared free. These indictments describe in detail the system of institutional performance and the involvement of official Indonesian security forces in committing crimes in the territory of East Timor. A certain number of military commanders were accused of participating in the creation of the militia, its financing, training and leadership. They were also charged with failure to act and for not punishing their subordinates who committed crimes.

A survey of the results achieved by both the Special Panel for serious criminal offences of the District Court in Dili and by the Ad hoc tribunal in Indonesia eventually raises the question whether things would have been different had there been established at the very beginning of the UNTAET an international tribunal for East Timor like the tribunals for the former SFRY and Rwanda.

1 The INTERFET mandate was envisaged by UN SC Resolution No. 1264 on September 15, 1999.

2 On October 25, 1999, the UN SC formed the UN Temporary Administration for East Timor (UNTAET); the primary aim of the Temporary Administration was to promote the rule of law and to develop legal institutions.

3 The first one started in March 2002.

4 In April 2003.

5 SCIU – the Serious Crimes Investigation Unit.

6 This formulation includes: war crimes, crimes against humanity, murders, sexual crimes and torture (jurisdiction for murders, sexual crimes and torture is limited to the period January 1 – October 25, 1999).

7 Within the District Court in Dili was established a Special Panel for serious criminal offenses.

8 Responsibility in the chain of command.

9 On September 4, 1999, it was announced that 78,5% of the population of East Timor voted for independence