

Indifference and Accountability

The United Nations and the Politics
of International Justice in East Timor

David Cohen



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Cover photographs, from left: flags of participating countries hang from the ceiling of the Serious Crimes Unit (SCU) canteen; the last day of the last trial held by the Special Panels for Serious Crimes; flags in the SCU canteen; the wall of the SCU canteen with handprints and messages left by participants in the Serious Crimes process as they departed from Dili.



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CHRONOLOGY

After 24 years of Indonesian rule following the precipitous departure of the Portuguese colonizers, in May 1999 the people of East Timor prepared to choose between maintaining a special autonomous status within the Indonesian Republic and becoming an independent nation. That month, the United Nations and the governments of Portugal and Indonesia had reached an agreement on a “popular consultation” on the issue. In June, the Security Council (Resolution 1246/1999) established UNAMET for the purpose of administering the vote, which was carried out on 30 August, with 98 percent of the registered voters participating. Of these, 78.5 percent voted against autonomy and in favor of independence. Although there had been very serious cases of atrocity in 1999 prior to the consultation, beginning on 1 September a deliberate and massive campaign of organized violence began in Dili and spread to the rest of the country. The violence, with few exceptions, was perpetrated by Timorese pro-autonomy militias. These militias had been organized, trained, financed, and equipped by the Indonesian armed forces (TNI). TNI troops participated in many of the major incidents of killings and in the massive destruction of buildings and dwellings across the country. There was also widespread rape, torture, looting, and approximately 1,400 cases of murder. On 15 September 1999, following an Indonesian request, the Security Council (Resolution 1264/1999) established a multinational force (INTERFET) to intervene and restore order. This was followed on 25 October by the creation of the United Nations Transitional Administration in East Timor (UNTAET, under Security Council Resolution 1272/1999), which administered the country until independence on 20 May 2002. At that time, the name of the mission was changed to the United Nations Mission of Support in East Timor (UNMISSET). The UN mission in East Timor finally ended on 20 May 2005 with the creation of a greatly downsized United Nations Office in Timor-Leste (UNOTIL).

UNTAET was endowed with wide authority, including the power to legislate and establish a judicial system for the country in the wake of the dissolution of Indonesian institutions. UNTAET’s mandate provided for “overall responsibility for the administration of East Timor ... including the administration of justice.” It also provided for a judicial mechanism to provide accountability for the violence. In June 2000, UNTAET created the Special Panels for Serious Crimes (SPSC) within the Dili District Court and the Serious Crimes Unit (SCU) within the office of the Prosecutor General of East Timor.* The Special Panels were the chambers of the Serious Crimes process and consisted of three judges per panel, two international and one Timorese. This structure was authorized by Article 163 of the Constitution of East Timor as a temporary institutional arrangement: “The collective judicial instance existing in East Timor, composed of national and international judges with competencies to judge serious crimes committed between the 1st of January and the 25th October 1999, shall remain operational for the time deemed strictly necessary to conclude the cases under investigation.” The Serious Crimes Unit was staffed by international prosecutors under the Deputy Prosecutor General for Serious Crimes. A defense function was not created within the UN mission until September 2002, with the formation of the Defense Lawyers Unit (DLU). Appeals from the Serious Crimes trials were to be heard by the Court of Appeal, created by UNTAET as the highest court in the Timorese justice system, pending the future establishment of the Supreme Court foreseen by the Constitution. The Court of Appeal was also created as a mixed tribunal, composed of two international judges and one Timorese judge.

* UNTAET Regulation 2000/15, On the Establishment of Panels with Exclusive Jurisdiction over Serious Criminal Offences.

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