



# SECURITY COUNCIL REPORT

## UPDATE REPORT



19 January 2006 No. 7

## TIMOR-LESTE

### Expected Council Action

The President of Timor-Leste, Xanana Gusmão, has asked to address the Council on 23 January. The immediate focus of the meeting is a report from the Secretary-General on the UN Office in Timor-Leste (UNOTIL) and a briefing from the Special Representative of the Secretary-General Sukehiro Hasegawa.

However, the larger reason for President Gusmão's visit is the justice and reconciliation issue in Timor. President Gusmão will formally present to the Secretary-General the report of the Commission for Reception, Truth and Reconciliation in Timor (*Comissão de Acolhimento, Verdade e Reconciliação*, or CAVR) and will probably want to use his appearance before the Council to influence members' thoughts on this issue.

### Key Facts

Indonesia annexed the former Portuguese colony of East Timor in 1975. It was an extremely brutal occupation. International and Timorese sources estimate that, out of a population of less than one million, between 100,000 and 180,000 individuals died of conflict-related causes between 1974 and 1999.

Following years of armed resistance and repression, Indonesia and Portugal agreed in May 1999 to a referendum on independence. The Council mandated the UN Mission in East Timor (UNAMET) to oversee the referendum, but Indonesian personnel and pro-integration militias started a campaign of violence that led to widespread murder and rape, displaced about 63 percent of the Timorese population and burned about 85 percent of all buildings in Timor.

The Council authorised the Australia-led International Force in East Timor (INTERFET) to restore peace and security. Indonesia withdrew, militias escaped East Timor and the Council established the UN Transitional Administration in East Timor (UNTAET), which ran the country and established from scratch most state institutions.

CAVR and the Serious Crimes Process were initially established by UNTAET under the leadership of the late Sérgio Vieira de Mello as two mechanisms to address human rights violations. They were the result of domestic and international support for accountability for those violations. This support was also included in Council resolutions and its visiting mission in 2000.

CAVR's mandate comprised:

- Establishing a truth commission to set the record of the occupation and the human rights abuses committed between 1974 and 1999. Interim numbers indicate that CAVR conducted eight national hearings, collected material from governments and academia, and took 7,927 victim statements.
- Conducting community reconciliation processes (CRPs), essentially using traditional mechanisms for mediating between victims and Timorese perpetrators of lesser crimes committed between 1974 and 1999. About 1,400 individuals participated in the CRPs.
- Reporting and making recommendations to UNTAET on the promotion of human rights.

CAVR is the only accountability mechanism that addressed the 1974-1999 period. The several commissions that visited the country, the Serious Crimes Process and the Commission on Truth and Friendship (CTF) established by Timor and Indonesia were all restricted to the violence that surrounded the 1999 referendum that brought the occupation to a closure. CAVR therefore made a unique contribution to both illuminating the historical record and establishing a foundation for community reconciliation. It has been relevant to several Council debates on East Timor as well as on international justice. The 2002 report of the Secretary-General on the protection of civilians in armed conflict cited CAVR as a good example of addressing reconciliation issues. And the January 2006 UNOTIL report considered CAVR "an important milestone" in the search for truth and reconciliation in Timor-Leste.

CAVR issued its final report in October 2005. It reportedly makes findings on Indonesian responsibility for killings and disappearances and recommends the continuation of a serious crimes process under UN auspices.

UNTAET ended in 2002 with the election of Xanana Gusmão as the Timorese president. The Council then established the UN Mission of Support in East Timor (UNMISSET) in 2002, and UNOTIL in 2005. Both were designed to prepare the gradual ceasing of Council-mandated activities.

Although the original UNTAET regulations determined that the CAVR report be made public by the UN, these were changed by the Timorese parliament. As a result, President Gusmão is only obliged to give the report to the Secretary-General, which he will do on 20 January.

There are reports that Dili opposes the public disclosure of the CAVR report's contents due to fears of souring of its relations with Indonesia. The Government of Timor-Leste is sensitive to Indonesian dissatisfaction with the resurfacing of the history of the occupation.

### **Key Issues**

While the routinely scheduled issue before the Council in January will be the UNOTIL report and the future of the UN presence in Timor, Council members will be conscious of the controversy surrounding the CAVR report and the broader issue of the future of justice and reconciliation in Timor.

Members will also have in mind the issue of the outstanding Secretary-General's report on truth and justice issues in Timor requested in September 2005.

The longer term issue for the Council is to find a way in which it can take into account Timorese concerns while upholding its own decisions on the need for accountability.

An issue may emerge about the possibility that the CAVR report should be made available promptly to the Council as a document.

## **Council Dynamics**

With the departure of Brazil from the Council, Japan will take the lead on the situation in Timor-Leste. The Council has struggled to accommodate both the need for accountability and the concerns and desires Dili has expressed. Some members' positions, for example Denmark and Argentina's, are likely to be particularly influenced by concerns with accountability as well as those of the civil society.

There is also a degree of sympathy in the Council for the concerns of Timor-Leste with maintaining good relations with Indonesia. Some Council members are also conscious of the difficulties faced by Indonesia in developing its own democratic institutions. Others are also concerned with maintaining good relations with Indonesia.

But there is awareness of the issues raised by the publishing of the CAVR report, which is the product of an UNTAET regulation and was funded with the contribution of some Council members, including more than one million by Japan.

Members are also conscious of the importance of upholding previous Council pronouncements in favour of wide accountability for gross violations of human rights.

Council dynamics are also affected by the stalling of the issue of the future of the Serious Crimes Process in Timor. After the discomfort with the recommendations in the report of the Commission of Experts (CoE), the ball has passed to the Secretary-General.

On UNOTIL, some members have indicated that it should not continue beyond May. But there are strong indications that Dili will ask for a smaller but continued Council-mandated presence on the ground, a position that attracts the sympathy of most Council members.

## **Options**

At this stage, the options, in the absence of the Secretary-General's recommendations on the CoE report, are to:

- limit action to receiving and discussing the progress report on UNOTIL;
- comment in general terms on the truth and justice issues; and
- in debate, request that the CAVR report be circulated as a Council document.

## **Underlying Problems**

In 1999, a UN Commission on Human Rights-mandated report called for an international body to bring to justice those responsible for gross violations of human rights during the 1999 referendum. But concerns with costs and Indonesian assurances of accountability led to two national processes, one in Timor and another in Indonesia (the Jakarta process).

UNTAET then established the Serious Crimes Process in 2000. It was comprised of a court, or the Special Panels for Serious Crimes (SPSC), the Serious Crimes Unit (SCU), and the Defence Lawyer's Unit (DLU). The process was subject to Council decisions, since the SCU was a unit of the peacekeeping operation.

In time it became clear that the Jakarta process would achieve limited results. The SCU then decided to focus on high ranking Indonesian and Timorese individuals, which led to Indonesian criticism and difficulties in the relations between the SCU and the Timorese government.

In 2004, the Council determined that the SCU should finish its activities by May 2005. However, there were calls for reactivation, since:

- numerous cases were left outstanding, particularly those involving commanders believed to be in Indonesia, and others were not even investigated or indicted;
- Timor-Leste does not have enough capacity to try returning offenders; and
- a sense of impunity and unfairness developed in communities where lower offenders' cases were addressed by the SCU or CAVR, while those most responsible escaped justice.

The Timorese government opposes the reactivation of the process, since it is seen as dangerous to relations with Indonesia. But it does not oppose an international tribunal, provided that the burden is not transferred to the Government of Timor-Leste.

In 2004, the governments of Indonesia and Timor-Leste decided to create the CTF and close this chapter. Its role is to:

- produce a report on the violence, but only that surrounding the referendum. There is no deadline, and it may take one to two years; and
- present recommendations such as amnesty and ways to promote reconciliation.

The decision attracted criticism for favouring impunity, since eventual prosecution is excluded. But there is a degree of understanding and support in the Council and the wider UN membership for much of the CTF mandate.

The Secretary-General's appointment of the CoE in early 2005 was in part a response to the dilemma. Its main recommendation was that a serious crimes process should be maintained. Other options were an international tribunal or referral to the International Criminal Court (ICC).

Several Council members were uncomfortable with the recommendations. In late September 2005, the Council requested that the Secretary-General present a report on justice and reconciliation for Timor-Leste, "with a practically feasible approach", taking into account the CoE report and the views from Indonesia and Timor-Leste. The report has not been issued yet.

## UN Documents

<b>Security Council Resolutions</b>
<ul style="list-style-type: none"><li>• S/Res/1599 (2005) established UNOTIL.</li><li>• S/Res/1543 (2004) determined that the SCU conclude activities by 20 May 2005.</li><li>• S/Res/1410 (17 May 2002) established UNMISSET.</li><li>• S/Res/1272 (25 October 1999) established UNTAET.</li><li>• S/Res/1264 (15 September 1999) authorised INTERFET.</li><li>• S/Res/1246 (11 June 1999) established UNAMET.</li></ul>
<b>Secretary-General Reports</b>
<ul style="list-style-type: none"><li>• S/2006/24 (17 January 2006) was the latest progress report on UNOTIL.</li><li>• S/2002/1300 (26 November 2002) was the 2002 report on protection of civilians.</li></ul>
<b>Reports of Council Missions</b>
<ul style="list-style-type: none"><li>• S/2000/1105 (21 November 2000)</li><li>• S/1999/976 (14 September 1999)</li></ul>
<b>Special Reports / Letters</b>

- S/2005/613 (28 September 2005) contained the Council's request for recommendations on justice and reconciliation.
- S/2005/459 (15 July 2005) contained the Timorese position on the CoE report.
- S/2005/458 (15 July 2005) contained the Report of the CoE.
- S/2000/59 (31 January 2000) contained the ICI report.

## **Historical Background**

*28 October 2005* CAVR handed over its final report to President Gusmão.

*28 September 2005* The CoE report was forwarded to the Council, who then requested recommendations from the Secretary-General.

*5 August 2005* The CTF officially met for the first time.

*May 2005* The CoE conducted its fact-finding mission, the SCU concluded its activities and UNOTIL was established.

*December 2004* Timor-Leste and Indonesia decided to establish the CTF.

*November 2004* The Jakarta process was concluded with the acquittal of all Indonesian officers. The SCU ceased all investigations.

*May 2002* UNTAET withdrew and Timor achieved independence. UNMISSET was established.

*January 2002* CAVR was established. Indonesia initiated the Jakarta process.

*July 2001* UNTAET promulgated regulation 2001/10 creating CAVR.

*June 2000* UNTAET regulations 2000/15 and 16 established the Serious Crimes Process by detailing the composition and powers of the SPSC and the SCU.

*October 1999* The Indonesian parliament recognised the referendum. UNTAET was established.

*September 1999* Anti-independence violence stepped up. INTERFET was authorised.

*August 1999* The referendum took place, showing a 78% support for independence.

*May 1999* Indonesia and Portugal agreed on modalities for a referendum under UN auspices. Anti-independence violence erupted.

*January 1999* Indonesia decided to carry out the referendum.

*1975-1999* Indonesian occupation was marked by bloody repression against civilians and armed resistance.

*December 1975* Indonesia occupied East Timor.

## Other Relevant Facts

<b>Special Representative of the Secretary-General</b>
Sukehiro Hasegawa (Japan)
<b>Size and Composition of UNOTIL</b>
Up to 115 civilian staff.
<b>Cost (requested budget)</b>
US\$ 22,027,700.00
<b>Serious Crimes Figures</b>
74 convictions and 2 acquittals. 95 indictments filed; 440 individuals charged. Approximately 200 outstanding arrest warrants against individuals believed to be in Indonesia. Of approximately 1,370 reported cases of murder, 572 have been included in an indictment.

## Useful Additional Sources

The Indonesian Mission to the UN's website ([http://www.indonesiamission-ny.org/issuebaru/IndToday/n031005\\_tor.htm](http://www.indonesiamission-ny.org/issuebaru/IndToday/n031005_tor.htm)) contains the terms of reference of the CTF.

CAVR's website (<http://www.easttimor-reconciliation.org>) contains a summary of the Commission's activities, as well as relevant UNTAET regulations.

Megan Hirst and Howard Varney, "Justice Abandoned? An Assessment of the Serious Crimes Process in East Timor", *International Center for Transitional Justice Occasional Paper Series* (June 2005), available at <http://www.ictj.org/downloads/ictj.justice-abandoned.pdf>.