

INTERNATIONAL LAW

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FALL 2000

- 1. This is an open book examination and you may use any sources or materials to answer “THE QUESTION”.**
- 2. There is no page limitation, so support your position with authority.**
- 3. Use white paper to answer, and either type or write your paper in blue or black ink.**
- 4. Place your examination number on the pages of your answer.**
- 5. Your papers are due by 5:00 p.m. on Wednesday, November 22nd at my office, Room 510. Make certain that you are checked off by me as having handed in your paper. If you hand in your paper before the due time, make certain that you give it to me personally.**
- 6. You may keep the Examination Questionnaire.**

GOOD LUCK

At present, you have both national courts and an international criminal tribunal exercising jurisdiction with respect to events that occurred in the 1990s in the former Yugoslavia and Rwanda. You have the unresolved issue of whether to set up an international criminal tribunal or to allow national courts to handle the crimes against humanity that arose in Cambodia under the Khmer Rouge control during the 1970s. You have the United Nations Security Council recently supporting the establishment of a special court to try war criminals in Sierra Leone which would be a “mixed” tribunal as what is envisaged in essence is a joint justice effort between the Sierra Leone Government and the international community. The United States has called for the United Nations to establish a war crimes tribunal to try Saddam Hussein for war crimes and crimes against humanity.

Against this background the United Nations has still not taken a definitive stand on whether to create an international criminal tribunal to try those persons who were responsible for the death, torture, destruction and crimes against humanity associated with the events that have taken place since January 1, 1999, in respect of East Timor. The Indonesian government and its military, and supported militias may be directly responsible for all of the alleged crimes. Also, the Indonesian government has taken the position that it will not accept an international tribunal but will try alleged perpetrators of such crimes in its domestic courts.

THE QUESTION:

WHAT LEGAL ARGUMENTS COULD BE MADE FOR SUPPORTING THE POSITION OF (a) ESTABLISHING AN INTERNATIONAL CRIMINAL TRIBUNAL FOR EAST TIMOR; (b) A DOMESTIC INDONESIAN COURT. IN EACH INSTANCE, TO HAVE THOSE WHO HAVE VIOLATED INTERNATIONAL LAW WITH RESPECT TO EVENTS THAT HAVE TAKEN PLACE CONCERNING EAST TIMOR AND EAST TIMORESE SINCE JANUARY 1, 1999.

You may use any sources to present your legal arguments.

A brief outline of events which have led up to THE QUESTION follows. Also, some Internet cites that may also be useful as to the events that have led up to the QUESTION posed, will also follow. There are also a number of law review articles that you can find on the background events concerning East Timor.

EVENTS

The Portuguese colony of East Timor was invaded by Indonesian forces on December 7, 1975, and was formally integrated into Indonesia on July 17, 1976, as its 27th province. Neither the East Timorese nor the international community allowed Indonesia to regard its actions vis-à-vis East Timor as a fait accompli. The United Nations condemned Indonesia's aggression but did little else. Australia was the only country in the world to recognize the Indonesian takeover as legitimate. Rebel groups of East Timorese fought Indonesian military and their militia supporters for decades in East Timor.

In January 1999, Australia announced that it changed its foreign policy and now supported self-determination for East Timor. In February 1999, Indonesian President Habibie announced that he wanted the East Timor status resolved by the end of the year. Despite the fact that pro-integration militias increased the level of violence in East Timor, Portugal and Indonesia worked out an agreement, whereby the United Nations would supervise a direct rolling ballot on East Timor's status.

Portugal and Indonesia signed three agreements on May 5, 1999; one agreement provided for a constitutional framework if the vote favored special autonomy for East Timor if it did not opt for independence. The second agreement called for the Indonesian armed forces and police to observe neutrality in maintaining law and order both before and after the referendum. The third agreement pertained to specifics with regard to the modalities for the referendum. The United Nations Assistance Mission to East Timor (UNAMET) took up its duties on June 11 to organize and conduct the referendum called the "popular consultation". Despite the second agreement aforementioned, Indonesian army-backed militias continued their violence.

The United Nations Security Council adopted Resolution 1262, whereby UNAMET'S mandate was extended until November 30, 1999. Violence continued both before and after the election. On September 3rd, the Secretary-General of the United Nations informed the Security Council of the results of the election held on August 30, that is, that 78.5 percent of the East Timorese voted against autonomy, and desired to separate from Indonesia. The pro-Indonesian militias, backed by the Indonesian military, then initiated a scorched earth campaign that destroyed most of the towns and villages and much of East Timor's physical infrastructure. On September 13, General Wiranto the commander of all Indonesian military announced that he had lost control over certain elements of the

military, and President Habibie requested the United Nations to send a peacekeeping force to East Timor.

The United Nations Security Council, acting under Chapter VII of the United Nations Charter, authorized the establishment of a multinational force with a mandate to restore peace and security in East Timor, to protect and support UNAMET. .to facilitate humanitarian assistance operations and to take all necessary measures to fulfil its mandate. Under the Security Council Resolution 1264, the International Force East Timor (INTERFET) was formed, with 16 countries contributing personnel to a coalition force under Australian leadership. This force was to remain in control until relieved by a United Nations peacekeeping force.

Following a report by the United Nations High Commissioner for Human Rights on the human rights situation in East Timor submitted to the Commission on Human Rights the latter body on September 27, 1999, requested the Secretary-General of the United Nations to establish an international commission of inquiry to investigate human rights violations in East Timor. The Commission on Human Rights asked that the commission of inquiry cooperate in its work with the Indonesian National Commission on Human Rights.

Hundreds of thousands of East Timorese had been killed, tortured and displaced by the pro-Indonesian militias. Over 200,000 East Timorese sought protection in West Timor, a province of Indonesia, or were forcibly taken there by these militia, where they were put into refugee camps. Once INTERFET was in place a number of humanitarian agencies began to care for the refugees and began a process of repatriation to East Timor which continues to this day.

On October 16th, the International Commission of Inquiry began its work under the authority of the United Nations. On October 25, 1999, the United Nations Security Council adopted Resolution 1272, in which it established the United Nations Transitional Authority in East Timor (UNTAET), which would take over from INTERFET and would operate in East Timor for an initial period until January 31,2001, to prepare East Timor for independence. At the end of October 1999, the last Indonesian troops left East Timor thus ending 24 years of illegal occupation.

Meanwhile Indonesia appointed its own national Commission for the Investigation of Human Rights Abuses in East Timor which announced on December 15, 1999, that there would be no trial of Indonesian generals who were allegedly linked to the post-referendum violence in East Timor. Subsequently, an Indonesian Presidential decree was issued to set up a human rights court, but the decree did not cover violations before October 8, 1999, the date that the decree came into effect.

On January 31, 2000, the United Nations Secretary-General forwarded the report of the International Commission of Inquiry on East Timor to both the Security Council and the General Assembly of the United Nations. The International Commission stated that “its fact-finding mission should be regarded as a starting point in the process of bringing those responsible for violations of human rights and international humanitarian law to justice.” It further found that these violations “took the form of systematic and widespread intimidation, humiliation and terror, destruction of property, violence against women and displacement of people. Patterns were also found relating to the destruction of evidence and the involvement of the Indonesian Army and the militias in the violations.” Moreover, the International Commission found evidence that “Indonesian army personnel, in addition to directing the militias, were directly involved in intimidation and terror attacks. Moreover, “the policy of engaging the militias was implemented by the Kopassus (Special Forces Command of the Armed Forces) and other intelligence agencies of the Indonesian army.

The International Commission made a number of recommendations that called for the United Nations to establish an international human rights tribunal consisting of judges appointed by the United Nations with participation of members from East Timor and Indonesia. The Tribunal would sit in Indonesia, East Timor and any other relevant territory to receive complaints to try and sentence those accused by the independent investigation body.

On February 15, 2000 the Secretary-General, after speaking with the Indonesian Foreign Minister indicated that if the Government of Indonesia demonstrated that it wanted to bring those accused of crimes in East Timor to trial, and “if it is mounting a credible trial and prosecuting these people, I suspect the Security Council would not rush to set up a competing international tribunal.”

JINTERFET officially transferred its military command in the East Timor to UNTAET on February 23, 2000, and legally ceased to exist. East Timor now has its own criminal courts.

To date, nothing has been done to either establish an international tribunal to try those who may have committed the atrocities in East Timor, nor has Indonesia taken any judicial action in these matters.

The following internet sites may be useful to you in providing more background on facts and events if you require more information on East Timor:

<http://www.un.org/peace/etimor/UntaetN.htm>

<http://www.un.org/peace/etimor/docs/UntaetD.htm>

<http://www.un.org/peace/etimor/DB/UntaetDB.htm>

<http://www.un.org/peace/etimor/docs/UntaetDI.htm>

<http://www.un.org/peace/etimor/UntaetB.htm>

<http://www.un.org/peace/etimor/news/UntaetNews.htm>

<http://www.reliefweb.int> Click on East Timor

<http://www.easttimor.com/>

There are many other East Timor links that you can find, but these will not assist you with respect to answering “The Question” posed.