



*American Model United Nations*

**Historical Commission of Inquiry  
of 2005**

**Report to the Historical Commission of Inquiry  
of 2005 on Commission of Experts to Review the  
Prosecution of Serious Violations of Human  
Rights in Timor-Leste (the then East Timor) in  
1999**

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# 1 Summary of Investigations

2 While still located in New York City, we heard several testimonies. First, we heard from a Sudanese military  
3 attach at the United Nations (UN) on 27 October 2004, though we requested to speak with the Sudanese Ambassador  
4 to the UN. The main points of his testimony were the following: The attach emphasized the role of the Sudanese  
5 military as keeping order against rebel encroachments. In reference to civilian casualties he said, "These are matters  
6 that just happen in war." Regarding the activities of the Janjaweed militias, he listed the following:

- 7 Rape
- 8 Genital mutilation
- 9 Burning of villages

10 Although he confirmed these actions on the part of the Janjaweed, he denied any official support for the  
11 militias, stating that the Sudanese government has provided "no funding, no food, no uniforms." In reference to  
12 the actions of the Sudanese government, he stated that "bombs are rather indiscriminate," further emphasizing  
13 his point that there is collateral damage. Next, on 2 November 2004, we heard from UN High Commissioner for  
14 Refugees (UNHCR) Goodwill Ambassador Angelina Jolie, who testified as follows: "Attacks on aid workers have  
15 been increasing."

16 There have been "terrible acts of genocide and injustice." This knowledge was based on her conversations  
17 with people in refugee camps in Darfur. Additionally, she stated that she believes that the motivations for the attacks  
18 are religiously and/or ethnically motivated. She was clear that her evidence is all anecdotal, rather than first hand  
19 experience.

20 On 10 November 2004, we received a written statement from the Secretary of State of the United States of  
21 America, Colin Powell which stated the following: "The United States collected the testimony of more than 1,100  
22 Darfurian refugees currently in the neighboring state of Chad. Three quarters of those interviewed said that Sudanese  
23 military forces were involved in the attacks which drove them from their homes, and that villages often experienced  
24 multiple attacks over a prolonged period before they were destroyed by burning, shelling or bombing, making it  
25 impossible for villagers to return." He also included the definition of genocide found in the Genocide Convention of  
26 1948.

27 He implicated both the Sudanese military and Janjaweed militias in the attacks on civilians and humanitarian  
28 aid.

29 On that same day, we heard from a representative of Dr. Samantha Power, an expert on genocide and a  
30 Harvard University faculty member. Her representative affirmed the integration of the Janjaweed into the Sudanese  
31 police and military forces, based on her first-hand experiences in the region.

32 The Commission then moved its offices to Nairobi, Kenya on 18 November 2004. At that time the Commission  
33 was made aware that the nations of Belarus, Russia, and China have provided weapons and military technology to the  
34 Sudanese government. Additionally, the Commission was informed that the President of Security Council declined  
35 to meet with the delegation from Darfurian rebel groups, based on the Council's agenda. The Commission also heard  
36 from a representative of the African Union Mission in Darfur on the same day. Her testimony addressed the following  
37 topics:

38 A significant lack of resources is limiting the ability of the AU to respond to and investigate the situation.

39 The AU has not been able to determine if the violence in the region has a specific target, because of limited  
40 resources.

41 She also described her first-hand experiences with the forced relocation of families with children.

42 The representative indicated the presence of some level of dialogue between the Sudanese government and  
43 rebel groups.

44 The representative stated that militias "are not what [she] would call hyper-organized," and she did not feel  
45 "comfortable comparing it to a traditional military conflict."

46 The representative did not view the deployment of UN Peacekeepers as a viable option, but instead preferred  
47 the deployment of further resources to preexisting humanitarian and investigative efforts.

48 The representative concluded that her testimony could not definitively represent the state of the situation  
49 in Darfur, given the lack of resources and the enduring confusion on the ground.

50 Later that day, the Commission heard from a representative of the Sudanese government, who testified  
51 as follows: He echoed the sentiments of the military attach the Commission spoke with on 27 October 2004. He  
52 described potential crimes against humanity as "collateral damage" and "something that happens in war." He accused  
53 the Janjaweed militias of committing crimes and blaming the Sudanese government, stating that the government  
54 "[does] not have a connection to Janjaweed, and [feels] that should be made explicitly clear." Provided no clear  
55 statement about measures to mitigate civilian casualties. The representative was unwilling to discuss specifics of  
56 military strategy and action. He categorically denied any government involvement in the forced relocation of civilians  
57 and stated that it falls under the definition of "ethnic cleansing, and that is something that [the government] is  
58 not engaging in at all." The representative claimed that the government fully supports aid workers. Would not  
59 conclusively deny that the Sudanese government had not considered utilizing Janjaweed forces, but rather stated  
60 that they had no need to use the Janjaweed militias as an addition to the military.

61 On 27 November 2004, the Commission received word that the UNSC had adopted resolution 1574. Addi-  
62 tionally, restrictions on humanitarian aid were lifted in western Darfur, and Libya lifted restrictions on humanitarian  
63 aid for northern Darfur. The Commission then unanimously decided to temporarily relocate to Darfur to meet with  
64 representatives of Doctors Without Borders (MSF) and of the rebel groups in the region.

65 On 2 December 2004, an AU officer traveling to investigate allegations by Sudanese rebels of attacks on an  
66 occupied village, was wounded by an unidentified gunman. The Commission was also made aware of ceasefire talks  
67 to take place in Abuja on 9 December 2004.

68 Later that day, the Commission heard from a doctor working with MSF. His testimony was as follows: He  
69 has been in Darfur since March 2004, providing medical care, first at a mobile clinic, then at a stationary clinic, due  
70 to an attack on the mobile clinic. The Sudanese government has "neither hindered nor helped" MSF. In reference  
71 to the nature of the injuries he sees and treats, he stated that "there's always gruesome stuff," because "there's  
72 been a lot of violence." He also explicitly mentioned several injuries including amputations and disembowelments.  
73 He mentioned supplies still come in quarterly, but things occasionally "go missing" because "it's valuable stuff." He  
74 was hesitant to comment on the politics of the conflict because it could put his team in a "bad situation." He also  
75 provided anecdotal evidence that attacks on aid workers have increased in frequency over time.

76 On 15 December 2005, the Commission received word that the English charity Save the Children had  
77 withdrawn from Darfur, because four of their personnel were killed. It is believed that two were killed by SPLM/A,  
78 and the other two have not been attributed to any group. Sudan also released eight rebel prisoners in accordance  
79 with the peace treaty signed on 9 November.

80 The Commission then heard from Colonel Abdallah Abdel Kerim, a military spokesperson of the SPLM/A,  
81 who testified as follows: Described the efforts of the SPLM/A and JEM as defensive. Claimed that the Sudanese  
82 government has violated the treaty of 9 November 2004. Claimed neglect of Darfur by the Sudanese government, no  
83 resources for development. When questioned about official support of the Sudanese government for the Janjaweed,  
84 the Colonel responded, "It seems they are [supporting the Janjaweed], as they are the group that are attacking  
85 civilians." Accused the Sudanese government of war crimes. Stated that the government is bombing villages and  
86 civilian targets, taking advantage of the rebels' lack of an air force. Stated that the government is "attacking mainly  
87 the civilians that support [SPLM/A and JEM]." Condemned attacks on aid workers.

88 The Commission heard testimony from Sheikh Musa Hilal, who is a recruiter on behalf of the militia groups  
89 known as the Janjaweed, as well as a tribal leader in Darfur: He expressed displeasure with the term "Janjaweed"  
90 stating that the term is derogatory, and claiming "we are not bandits, we are not thieves, we are not criminals."  
91 Claimed the motive of the militias is to "protect" Arab people and protect the rule of law." Stated that the Arab  
92 people of the region are concerned the unrest and where it might lead. The militias "have signed up to support  
93 the Sudanese government." Stated no fewer than five times that the militias work with and are directed by the  
94 Sudanese government in Khartoum, "The forces are directed by President al-Bashir. The forces are organized and  
95 directed by the president and we take all of our orders from Khartoum." When asked directly about claims made by  
96 representatives of the Sudanese government that the militias are committing heinous war crimes and are in no way  
97 associated with the government, he responded "I would tell you that we take our orders directly from the Sudanese  
98 government." Also stated that these militia groups are directly commanded by Sudanese generals. When asked about  
99 the issue of the displacement of massive numbers of civilians, he responded that "it [these events] would make sense  
100 given the context of the instability of the region."

101 On 20 December 2004, the Commission returned to Nairobi, Kenya. AU Mission to Sudan suspended all air  
102 operations because one of their helicopters came under fire. The rebels have perpetrated three attacks one on an oil  
103 pumping station, one on a town, and one on a troop convoy. In response the Sudanese government has launched a  
104 counterattack in southern Darfur and accused rebels of using a refugee camp as a base. The World Food Program  
105 has withdrawn, and the UN has suspended all humanitarian operations in southern Darfur. 260,000 people are now  
106 without their monthly food ration.

107 Sudanese government issued a written response the statements of the Janjaweed and other statements about  
108 their conduct. Denies all connection and asks the Commission not to conflate militia activity with the actions of the  
109 government. The Commission received another statement from the SPLM/A expressing condolences at the deaths  
110 of the aid workers from Save the Children. A new rebel organization, the Sudanese National Movement for the  
111 Eradication of Marginalization, claimed responsibility for these attacks.

## 112 **2 Recommendations to the Security Council**

113           On the basis of the findings of crimes against humanity, systemic legal shortcomings, failure to adhere to  
114 international law, the cooperation of the Indonesian government with pro-integration militias, and overall failure  
115 to prosecute criminal actors, the Commission urges the Security Council of the United Nations to either establish  
116 an international criminal tribunal, or refer the case to the International Criminal Court in the Hague. The Com-  
117 mission further recommends that the Security Council dedicate resources to investigation the perpetration of war  
118 crimes in East Timor by Indonesia dating from 1975 to 1999. Finally, the Commission strongly urges the Security  
119 Council to extend the mandate of UNMISSET for at least one more year, and expresses wholehearted support for the  
120 recommendation of the Security Council for a continued presence of peacekeepers in East Timor until May of 2006.

### 121 3 Interim Reports

122 Appendix 1: First Interim Report

123 The Commission of ExpertsThe Security Council of the United Nations28 February 2005

124 The Commission of Experts heard testimony from witnesses on security concerns in East Timor, as well as is-  
125 sues with the Indonesian justice system regarding trials on war crimes and similar offences.First Witness:Representative  
126 Hasegawa of UNMISSET described the security situation as "stable, but fragile."He felt that the Secretary General's  
127 recommendation of a continued peacekeeping mission was "in order."Stated that UNMISSET was primarily training  
128 police, supporting democratic legal institutions, and combatting corruption.Referred the Commission of Experts to  
129 the Special Crimes Unit on the issues of current security threats, and ongoing criminal trials.However, Represen-  
130 tative Hasegawa expressed concern over the ongoing border dispute with Indonesia regarding West Timor.Second  
131 Witness:Patrick Martin, representative of the Dili office of the International Center for Transitional Justice, testified  
132 next.Stated that the Indonesian government had failed to cooperate with the criminal prosecutions.Additionally, cited  
133 failings in the Indonesian criminal justice system, focusing on the inadequacy of witness protection programs, and  
134 lack of access to defense counsel.Mr. Martin expressed concern over the tribunals' failure to address socio-economic  
135 justice, and stated that he felt reparations might be in order.Expressed concern that international standards of  
136 justice were not being applied properly, stating that war criminals are often tried for lesser crimes such as murder  
137 or manslaughter.Offered no comment on the fragility of East Timor, or the possible threat of further violence.On  
138 28th February 2005, the Commission of Experts relocated its headquarters to Singapore in order to best meet with  
139 requested witnesses.Also, on the 28th, the Commission heard from a representative of the Judicial System Mon-  
140 itoring Program.The representative focused on numerous shortcomings within the established Indonesian justice  
141 system.These included a lack of proper facilities and staff, and issues with the selection of judges.She also mentioned  
142 "limits on time and geography" as factors that hampered the system, stating that the jurisdiction of the Ad Hoc  
143 Court was confined to three of East Timor's thirteen districts.Also, the representative articulated a lack of incentive  
144 for the Ad Hoc Court to prosecute those charged with crimes.Additionally, she answered in the affirmative when  
145 asked if she believed the Ad Hoc Court complies with the international standard of justice.Nevertheless, the witness  
146 could not provide comment on military involvement or intimidation based on her area of expertise.Later provided  
147 written clarification that in her opinion the members of the court system were not deliberately mishandling the cases,  
148 but that the inadequacies result from the failings of the system at large.

149 The Commission continues to investigate the claims outlined above, but has drawn no conclusions about  
150 their veracity at this time.

151 Appendix 2: Second Interim ReportCommission of ExpertsUnited Nations Security Council9th April, 2005Sec-  
152 ond Interim Report on the Situation In East Timor

153 On the 28th of February, the Commission heard from Karl Clark, a member of INTERPOL who served on the  
154 Crime Scene Detachment for UNTAET, and is currently with the Serious Crimes Unit of UNMISSET.Representative  
155 Clark described the Serious Crimes Unit as acting admirably in spite of a lack of resources and legal obstacles.The  
156 SCU has exhumed hundreds of victims of violence in East Timor, and issued indictments for those suspected criminals,  
157 at least those they were able to locate and try.The Unit faces many obstacles to trying criminal actors, since many  
158 of them have fled to Indonesia, particularly West Timor.Clark urged extension of the mandate of the Serious Crimes  
159 Unit, which expires later in 2005, saying "this is a big concern of ours."Clark also included a definitive mention  
160 of "torture" as a crime committed in East Timor.Denied all allegations brought against the Office of the General  
161 Prosecutor regarding a conflict of interest with the government of East Timor.Spoke very highly of the efforts of the  
162 Special Crimes Unit, saying, "We've done an excellent job of prosecuting, and prosecuting fairly."

163 March 28th, 2005:

164 Commission relocated to Jakarta, arriving on the 28th of March.On the same day, an earthquake occurred  
165 off the western coast of the island of Sumatra.No official death toll"estimated about 1000 people.Most casualties  
166 occurred on island of Nias, where hundreds of buildings are destroyedThe earthquake did not cause a tsunami.The  
167 Australian government deployed a naval ship to provide aid and medical staff to the affected area.

168 March 28th, 2005

169 On this day, the Commission heard the testimony of a diplomatic representative of the Indonesian gov-  
170 ernment.The representative stated that the court "applied our due diligence" regarding the aftermath of the cri-  
171 sis.Referred to the August 2004 mandate by President Megawati Soekarnoputri limiting the investigation to April

172 and September of 1999 and to only three districts of East Timor when asked about the allegations of war crimes in  
173 the KPP-HAM report. Stated that "we followed every international guideline" from the United Nations. Cited a lack  
174 of a treaty allowing extradition, a slow political process, and red tape when questioned about the possible extra-  
175 dition of militia criminals. Directed the Commission to the Special Crimes Unit when asked if war crimes occurred  
176 in April and September of 1999. Stated that he preferred not to answer on how Indonesia typically punishes war  
177 criminals. Declined to answer a question on the actions of pro-integration militias in East Timor. However, he denied  
178 any official connection between militia groups and Indonesia military. On the border dispute, expressed optimism for  
179 the future, stating, "it is a new border, so of course it is a source of tension." Described the creation of the Truth  
180 Commission as a success politically and personal. Commission he helped create as a success. Promised an official  
181 statement from the Indonesian government providing further information on the Truth Commission.

182 The Commission next heard from a prosecutor from the Indonesian Ad Hoc Court on East Timor in  
183 Jakarta. The witness emphasized brevity, opening with "I think we're going to keep this short." Stated that the  
184 Ad Hoc Court was "committed to the vigorous prosecution" of criminals. Attributed the violence in East Timor was  
185 attributable to infighting among the residents of East Timor. Most of those indicted have not engaged in violence? some  
186 were not even present for the violence unable to engage in violence. Stated that the Indonesian military "had very little  
187 to do" with the violence. Attributed it to low-level individuals, those not indicted by the SCU. Expressed confidence  
188 that the SCU was doing its duty. Did not allow time for question at the end of her testimony.

189 The Commission next heard a representative for the KPP-HAM investigation in Indonesia. The witness stated  
190 that the KPP-HAM aimed at a fair and objective understanding of the events in East Timor, which were then passed  
191 on to the Attorney General of Indonesia. The representative expressed confidence that the commission performed to  
192 the best of its ability. Found evidence of collaboration the military with the pro-integration militias. Stated, "we had  
193 indication of military involvement in the violence in 1999." Investigation was limited to the same time and place as the  
194 Ad Hoc Court. Mentioned evidence that military personnel were directly involved in the crimes committed. Discussed  
195 "intimidation and terror tactics use to prevent them from exercising political choice." These included: "Cutting off  
196 access to water" as a form of intimidation. Denial of access to humanitarian aid. Evidence of killings, gender violence,  
197 [and] women were targeted for sexual assault in somewhat of a cruel and systemic way. Offered no formal comment  
198 on an ethnic or religious motive. KPP-HAM recommended 22 prosecutions, but none have been convicted. Stated  
199 that he felt the Attorney General did not "use the full weight of evidence that we presented to him" in these  
200 proceedings. Stated that local police in East Timor collaborated with loyalist militias and military.

201 April 4, 2005:

202 Australian helicopter crashed on the Indonesian island Nias, leaving nine dead. The Indonesian President has  
203 scheduled a visit to Australia in response to this tragedy. Bilateral talks between East Timor and Indonesia.

204 April 9, 2005

205 The Commission received a letter from the Catholic Church of East Timor. The Bishops who authored the  
206 letter welcomed the Commission, and affirmed the values of the Catholic Church as guiding their stance. They invoked  
207 crimes against humanity and acts of genocide by the Indonesian government since 1975. Stated that the international  
208 community cannot accept when the government of East Timor chooses to act with impunity against the best interests  
209 of its people. Made numerous recommendations, including that the Truth and Friendship commission should not  
210 be treated as a substitute for criminal justice. Instead, the Bishops invoked the necessity of international criminal  
211 proceedings as remedy for crimes committed.

212 The Commission continues to investigate the claims outlined above, but has drawn no conclusions about  
213 their veracity at this time.