



AETFA NEWS

C/- Global Education Centre, 1st Floor Torrens Building
220 Victoria Square ADELAIDE SA 5000
PH (08) 8344 3511 WEB: www.bigbutton.com.au/~winroh/aetfa/



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Kirsty Sword Gusmão to visit Adelaide - April 21st

Fundraising tour for the Alola Foundation



Kirsty Sword Gusmao (pictured left) will be in Adelaide on Thursday April 21 as part of a speaking tour in Australia to raise funds for the work of the Alola Foundation.

Kirsty will speak at a public forum at 6pm in the city (venue to be confirmed).

The Alola Foundation was established in 2001 to raise awareness of and campaign against the

sexual and gender-based violence inflicted on women in East Timor. Today the Foundation has grown to respond to many other needs of East Timorese women such as advocacy, economic empowerment, education

and literacy, maternal and child health and humanitarian assistance. The Alola Foundation works proactively in direct partnership with individual citizens and non-profit organizations from within this new nation and around the world to improve the lives of East Timorese women.



Alola Foundation, www.alolafoundation.org

Experts to probe impunity in 1999 violence in Timor-Leste

18 February 2005—United Nations Secretary-General Kofi Annan announced the composition of an independent Commission of Experts to review the prosecution of serious human rights violations committed in 1999 in Timor-Leste after the former Portuguese colony occupied by Indonesia in 1974 voted for independence.

Recalling Security Council resolution 1573 of last year reaffirming the need to fight against impunity, he said the Commission would assess judicial progress made in both Timor-Leste, then known as East Timor, and Indonesia and recommend possible future action over the 1999 anti-independence violence in which dozens of people were killed and hundreds of thousands fled.

After the Indonesian Appeals Court last year overturned the convictions of Indonesian officials implicated, Assistant Secretary-General for Peacekeeping Operations Hédi Annabi asked the UN High Commissioner for Human Rights to probe the legal processes for dealing with such crimes in both countries.

In 2002 then High Commissioner Mary Robinson voiced concern when an Indonesian court sentenced a former Governor of Timor-Leste, Abilio Soares, to three years in prison, below the statutory minimum of 10 years, for crimes against humanity.

The three experts named are Justice Prafullachandra Bhagwati of India, Prof. Yozo Yokota of Japan and Shaista Shameem of Fiji.

The panel will consider how its analysis could be of assistance to the Commission of Truth and Friendship, which Indonesia and Timor-Leste agreed to establish in December, and Mr. Annan expressed his hope that both Governments would extend full cooperation.

In letters in December to Presidents Susilo Bambang Yudhoyono of Indonesia and Xanana Gusmão of Timor-Leste, Mr. Annan outlined the Commission's tasks and requested their cooperation.

Inside this issue:

- *Timor Gap & International Law* (page 2)
- *The News in Short* (page 3)
- *What's On* (page 4)
- *Call to extend UN Mission* (page 4)

Timor-Leste Maritime Boundary Case

DIONISIO BABO-SOARES & friends
from *East Timor Law Journal*, Article 17, 2004.

(edited and abridged – original at www.eastimorlawjournal.org/Articles/didionseaboundaries.html)

Background

East Timor has entered a diplomatic battle with Australia on the resource-rich area of Timor Sea. Australia believes in the Continental shelf approach and uses its 1972 Agreement with Indonesia as a basis to claim its maritime boundary beyond the median line zone with Timor Leste.

Recently, Australia launched a legal attempt with the United Nations to legitimize its claim, and a panel of experts is looking into the document for a decision in the near future. East Timor, on the other hand, believes in the median line approach in setting boundaries.

Legal Fundamentals

Timor-Leste believes international law supports their claim to the full extent of the current JPDA and to the areas east and west of JPDA encompassing the Greater Sunrise gas field, Laminaria-Corralina and Buffalo oilfields. At least 70 cases on maritime boundaries - internationally adjudicated through ICJ and ITLOS, or settled through negotiation - have been based on the principle that Timor-Leste has upheld, that is, the Middle-Line Principle in the delimitation of the boundaries of two Coastal States less than 400 nautical miles apart.

Timor-Leste's Southern Boundary Claim

The Australian Government claims a natural prolongation of Australia's territory northward to the deepest part of the Timor Trough and thereby the right over the whole disputed area. But the premises are wrong and misleading.

* The Timor Trough is not the end of Australia continental shelf or the end of Australian continental shelf and neither the limit of Australia's natural prolongation of its territory. Marking the Timor Trough as the physical discontinuity between Australia and Timor-Leste is just a misinterpretation of geology and wrongful definition of the natural prolongation of continental shelf set in the Article 76 of United Nations Convention on the Law of the Seas 1982.

* Geologically Timor and Australia are on the same continental plate. In this context, the limit of the outer edge of Australia Continental Shelf as described in Article 76 UNCLOS 1982 extends as far as the north coast of Timor-Leste, and such the limit Australia's natural prolongation of its continent/territory is in the north of Timor-Leste not in the Timor-Trough. The Timor Trough is just a "foreland basin", a buckled down [part] of Australia's continental margin during the collision of Australia's continental plate and Banda Arc islands some 3 Million Years ago (according to many geologists).

* The seabed arrangement between Australia and Indonesia did not involve Timor-Leste or the then Portuguese Timor, therefore, Timor-Leste could not be held to follow the same principle set by Indonesia and Australia in 1972 seabed arrangement.

* As the continental shelf claim is wrong and no longer valid under international law, the customary international law (i.e. UNCLOS 1982) allows 200 nautical miles entitlement for each Coastal State. Thus the middle line shall be drawn because the two Coastal States lie in a sea distance less than 400 nautical miles. And this is what is supposed to happen in the Timor-Leste and Australia case.

* Timor-Leste has always been ready for ne-

gotiations in good faith and is prepared to bring its case before international arbitration or courts.

Timor-Leste's Lateral Boundaries Claims

Timor-Leste's lateral claims encompassing the areas of Greater Sunrise and Laminaria-Corallina and Buffalo are all valid according to International Law as advised by *Lowe, Carleton and Ward* (2002) ¹.

* The starting point of Western and Eastern Laterals line of the JPDA are wrong and indefensible under the International Law. In fact, Australia and Indonesia recognized the possible flaw of these lines by providing in Article 3 of their 1972 seabed-boundary treaty that the point A17 and A16 (the starting point of JPDA lateral boundaries).

* Furthermore, even if the 1972 Indonesia-Australia treaty does not reserve some doubt on its starting points, the Treaty did not involve Timor-Leste. Therefore, Timor-Leste should not assume the accuracy of those points, instead Timor-Leste shall negotiate and draw the line based on the right starting points from landmass of Timor-Leste and its maritime boundary with Indonesia.

* When drawing from the right starting points from Timor-Leste as suggested by *Lowe-Carleton and Ward* (in 2002), Timor-Leste is entitled to all or at least most of the Greater Sunrise gas field and all of the Laminaria-Corallina and Buffalo oilfields.

* Since Timor-Leste has valid claims and Australia has been in the areas exploring and exploiting the resources, the area shall be considered as disputed areas deserving at least a temporary joint development solution before the maritime boundary is delimited.

* In the event of no agreement reached none of the parties shall explore and exploit the resources unilaterally as stipulated under international acceptable principles.

* However, Australia has unilaterally exploited the resources in the Laminaria-Corallina and Buffalo oilfield and collecting around US\$ 1 million a day (over the past 5 years) without any cent to Timor-Leste and with no consent from Timor-Leste's side.

* Any compromise or solution of the current Timor-Leste Australia Maritime Boundary Delimitation has to take into consideration these claims.

Below are some excerpts of the Advice by *Lowe, Carleton and Ward* in 2002, on the supposed Lateral Claims of Timor-Leste, as counter to Australia's argument that the lateral boundaries of the current JPDA are uncontestable.

Modern Position: Eastern & Western Lateral Boundaries

37. The Eastern and Western Lateral lines of the 1989 Australia-Indonesia Timor Gap treaty (which are reflected in the 5 July 2001 Memorandum of Understanding) are equally indefensible in modern international law.

38. The Western Lateral line proceeds from the wrong starting point in the land mass of Timor and passes through point A17 (drawn by Australia and Indonesia in 1971/72). East Timor need not accept the accuracy of Point A17 as the lateral limit of its EEZ. Indeed, Australia and Indonesia expressly provided in Article 3 of their 1972 sea-bed boundary treaty that Point A17 might have to be moved in the light of any delimitation of the sea-bed in the Timor Gap. In fact, if the lateral line proceeded from the correct point (the thalweg

of the Moti Masin) the line would move somewhat to the west of the existing line.

39. The Eastern line was drawn from a point between East Timor and the small Indonesian island of Leti, and connects with Point A16 in the 1972 Australia-Indonesia treaty. Again, East Timor should not assume the accuracy of point A16, which was also covered by the provision for adjustment in Article 3 of the 1972 treaty.

40. More significant than that is the fact that the Eastern Lateral line was drawn giving full weight to the island of Leti. That is to say, the line was drawn so that all points on it were equidistant from East Timor and from the nearest points on Leti or other Indonesian islands. Modern international law, however, does not permit small islands to have a disproportionate and inequitable effect upon maritime boundaries. The law requires that small islands that would disproportionately affect a maritime delimitation be given only a proportional effect - perhaps one half or three-quarters effect, depending on the size of the island and its relationship to the coastline. For example, one hypothetical equidistance line might be drawn giving full effect to Leti (resulting in the line in fact used in the 1989 Treaty), and another hypothetical equidistance line drawn disregarding Leti. The actual boundary might then be drawn half way between those two hypothetical lines, in order to give half effect to Leti, or three-quarters of the way towards the Westerly hypothetical line so as to give Leti three-quarters effect.

41. This approach is now very firmly established in the practice of international courts and tribunals. ICJ and arbitration cases routinely discount the effect given to small islands that would inequitably or disproportionately affect the delimitation. This was done, for example, by the arbitral tribunal in the Western Approaches case (1977) between France and the United Kingdom, where the United Kingdom's Scilly Isles were given half weight; and by the ICJ in the Tunisia/Libya case (1982), in which the Tunisian Kerkennah islands were given half weight. In the Dubai/Sharjah case (1981), Sharjah's island of Abu Musa was in effect ignored, by giving it no continental shelf beyond its territorial sea - a solution that had also been applied by the tribunal in the Western Approaches arbitration to correct the disproportionate effect of the United Kingdom's Channel Islands on the delimitation. More recently, the approach was applied by the ICJ in the Qatar/Bahrain case (2001). The approach has also been applied in State practice, in maritime boundaries established by agreement between the States concerned.

42. If half or three-quarters effect were given to the island of Leti, the Eastern Lateral line dividing East Timor's EEZ from the EEZs of Australia and Indonesia would move significantly to the East. That would have the practical effect of placing most or all of the Greater Sunrise field within East Timorese jurisdiction, and greatly increasing the resources under East Timor's control.

1. *Vaughan Lowe, Chichele Professor of Public International Law, Oxford University; Barrister, Essex Court Chambers, London*
Christopher Carleton, Head, Law of the Sea Division, UK Hydrographic Office
Christopher Ward, Barrister-at-Law, Wentworth Chambers, Australia

The News in Short

Bishop Belo to return

East Timor's Nobel Peace Prize Laureate Bishop Belo is to return in June. Since 2002, he has been working as an assistant parish priest in Mozambique. He hopes to work as a priest in East Timor's countryside. Bishop Belo set aside his \$270,000 share of the Nobel Prize to fund scholarships in East Timor. He plans to write a history of the church in East Timor.

China's aid to East Timor

China has promised East Timor 2.7m Euros in aid for projects to be decided by Dili. Foreign Minister Horta opened Dili's embassy in Beijing in December 2004. The government is also hoping for export tariff exemptions from China. It already receives special tariff treatment from the European Union, Australia and New Zealand.

Tsunami aid from East Timor

President Gusmao handed Indonesia's President Yudhoyono US\$75,000 in tsunami aid in Jakarta last month. It was raised from small donations, with added contributions from the government and the church. The government also gave another US\$50,000 for tsunami victims in Aceh through UN agencies, and another US\$10,000 for victims on the island of Alor.

"Truth" Commission opposed by ET church & lawyers

The governments of Indonesia and East Timor are pressing ahead with plans to set up a so-called Truth Commission to deal with Indonesian atrocities in 1999. Dili and Jakarta jointly presented their plan to UN Secretary-General Kofi Annan in December. Kofi Annan however has announced the establishment of a Commission of Experts (see front page). Indonesia has said it would not cooperate with the UN initiative. Both governments admit that their "Truth" Commission is intended to block the progress of the UN Commission.

Leading East Timorese lawyers said in January that their government's wish to block further investigation of 1999 is due to its prioritising good relations with Indonesia. They said that crimes against humanity are a matter of concern to the entire international community, not a matter of bilateral politics.

The Bishop of Dili, Bishop da Silva, said this month he opposes the Truth Commission. The position of the church is that justice must be done. "If there was a crime, there has to be justice", he said. He said that "all" Timorese people support war crimes trials, and that he hears constant complaints from his congregations about this issue. East Timor's former Bishop, Bishop Belo, also opposes the planned Truth Commission. He said that reconciliation and justice must go together; that the people expect justice to be done.

East Timor's Special Crimes Unit jailed 74 Timorese culprits for the 1999 violence, but was powerless to extradite Indonesian officers. More than 300 people wanted for trial have sanctuary in Indonesia. The Special Crimes Unit is due to close down when the current UN mission leaves East Timor in May. The Indonesian court trying suspects closed last year after acquitting 17 of the 18 accused. Only militia leader Eurico Guterres was found guilty, and that verdict is subject to appeal.

Aceh 2005 = East Timor 1999

After the Santa Cruz massacre in Dili in 1991, the US Congress stopped the State Department's IMET training program, training Indonesian army officers in the US & in Indonesia. After the 1999 rampage by the army & militias, Congress voted to ban US sales of lethal arms to Indonesia. With Condoleezza Rice replacing Colin Powell as Secretary of State, the IMET ban is now about to be revoked, as announced by Rice in mid-February. It's only a small amount of money (\$600,000), but its symbolic value is enormous. Former State Department official Ed McWilliams says restoring IMET would show no US wish for reform of Indonesia's military (TNI). Congress had previously demanded an improvement in TNI's human rights record. The Bush administration has been circumventing these bans with various types of "one-off" military aid, justifying it as "counter-

terrorism", since September 11th 2001.

Washington academic Dan Lev says the army is beyond the elected government's control. Indonesia's Navy & Air Force have greatly assisted tsunami relief in Aceh, but reports of army abuses continue. The army has hoarded & diverted aid and forced displaced people into camps under army control. The promotion of 2 hard-line officers & a hard-line statement by Chief of Staff Gen. Ryacudu indicate the army will refuse to negotiate peace in Aceh. Last month, London's "Daily Telegraph" reported that 900 former East Timor militias had set up camp in Aceh. They are being directed by Gen. Damiri, who directed all the militias in East Timor in 1999. Gen. Damiri was the army's first choice to coordinate tsunami relief; he was replaced when the army saw this was a public relations blunder. TNI seems intent on using the same militia tactics in Aceh that devastated East Timor in 1999. President Yudhoyono announced in mid-February that he was replacing General Ryacudu with Lt.-Gen. Joko Santoso. Santoso is considered more moderate than Ryacudu. The President also announced he would replace the armed forces chief General Sutarto in 3 months. This seems to be a serious attempt by the President to bring the army under civilian control. The President is also making major inroads into corruption in Indonesia, especially police and army corruption. Indonesia's elected government needs all the support we can give for these initiatives. The army is certain to defy him. Removal of the IMET ban can only be seen by TNI as the US seal of approval for its activities.

Disputed line calls during tennis telecast

Businessman Ian Melrose resumed his campaign of TV commercials about Australia's theft of East Timor's oil during the Australian Open tennis. He began the campaign during the 2004 elections. "It's East Timor's oil; it's as simple as that", he said.

Foreign Minister Downer said the ads were deceptive & misleading; & then proceeded to deceptively & misleadingly ignore the revenue from the disputed areas and mention only the revenue taken from the areas of the Timor Sea where the 2 countries have agreed on division of royalties. The 2 governments have agreed to resume boundary talks in mid-March.

Australia makes its "Continental Shelf" case

... But East Timor is on the shelf!

The Australian Government has put a submission to the UN-administered body of experts, the Commission on the Limits of the Continental Shelf. It formally claims all the mineral and petroleum resources on its continental shelf. If successful, it would give Australia legal rights to billions of dollars from exploitation of the resources. The Commission is due to examine Australia's submission early this year. The Commission's rulings are binding and final. A decision in Australia's favour would not affect the area of the Timor Sea where agreement has already been reached to exploit the resources. The Commission's decision is likely to be decisive in disputed areas. East Timor says the boundary between the 2 countries should be at the mid point rather than at the edge of the continental shelf. International law supports East Timor's claim based on the mid-point principle. East Timor received legal advice in 2002 (see page 2 of this newsletter) that it is entitled to larger areas of the Timor Sea than those within the joint development area agreed with Australia. 2 days after East Timor received this advice, Australia withdrew its recognition of the international court.

If Australia's submission to the UN Commission is successful, it could be challenged by New Zealand, Papua New Guinea, East Timor and Indonesia. East Timorese lawyer Dionisio Babo-Soares argues Australia's Continental Shelf claims are a misunderstanding of geology. Australia's continental shelf actually ends at the Ombai-Wetar Straits just north of Timor. The Timor Trough is just a "foreland basin". The Ombai-Wetar Straits are so deep they allow US submarines to avoid detection.

WHAT'S ON

* **Saturday, 12 March, 10:30am**

International Women's Day

**March starts from Victoria Square
...festivities on Barr-Smith Lawns at
University of Adelaide afterwards**

AETFA will be producing and distributing a leaflet about the plight of women in East Timor. To assist with distribution at the march or afterwards...

Please ring Miriam on 8295 6481

* **Saturday, 19 March, 9:00am-4:00pm**

Garage Sale—East Timor Fundraiser

1 Mozart Court, Somerton Park

Donations of saleable items required. Offers of assistance also welcome.

Please ring Miriam on 8295 6481

Proceeds to **Rebuilding Education in East Timor**

* **Saturday, 2 April, 10:00am-4:00pm**

AETFA Bookstall at St Peters Fair

Our second-hand bookstall at this fair last year was a successful fundraiser. So we are doing it again! But we need your donation of books, and offers of assistance with setting up and staffing the stall, so...

Please ring Miriam on 8295 6481

Proceeds to **Rebuilding Education in East Timor**

* **Sunday, 10 April, 2:00pm**

AETFA Annual General Meeting

(Details to be confirmed)

* **Thursday, 21 April, 6:00pm**

Kirsty Sword Gusmão

**Will speak at a public forum in the
CITY**

(venue to be confirmed)

This event will be a

Fundraiser for Aloia Foundation

Gold coin donation

Can we keep in touch with you by e-mail?
Visit us on the internet at—
www.bigbutton.com.au/~winroh/aetfa/
for information on how to join our e-mail list.

Call to extend UN Mission

East Timor's Foreign Minister Jose Ramos-Horta says his country needs a reduced UN presence to continue for another year. UNMISET is due to withdraw in May this year. East Timor still needs about 200 unarmed UN military observers and civil society advisers to assure stability. Germany and Portugal support East Timor's request, to be decided by the Security Council before May.

UN Secretary-General Kofi Annan's blunt assessment of a continuing need for "capacity building" in government administration, policing, and judiciary, as well as the danger of renewed hostilities on the border with Indonesia, was delivered in a report to the Security Council and came with a recommendation for a reduced UNMISET force to stay in East Timor until May next year.

Mr Annan's plan involves reducing the number of UN military personnel in East Timor from 477 to 179 and police trainers from 157 to 40.

At present, Australia, with 92 soldiers and 17 police, is the third-largest con-

tributor to UNMISET's security component, behind Brazil (143 military personnel) and Fiji (136).

He said corruption was a particular concern in the finance and justice sectors.

East Timor's police are critically short of skills in the key areas of investigations, forensics and logistics.

On the unresolved issue of East Timor's border with Indonesia, Mr Annan said East Timor's 300-strong border control unit lacked the capacity to "manage and interact with Indonesia's national army on its own".

"Provision of international assistance beyond the expiration of the current UNMISET mandate on May 20 will be crucial for the long-term security stability and sustainable development of the country," Mr Annan said.

"The need to continue to support Timorese institution-building remains critical."

At the same time, Mr Annan said East Timor, which endured 24 years of brutal occupation by Indonesia from 1975-99, had made "truly remarkable progress"

Sr Janet Mead— Sth Australian of the Year

Congratulations to Sister Janet Mead on being named South Australian of the Year. Sister Janet has long been an inspiration to all who strive for a better, fairer world.. The Romero Community, which she founded, runs a day care for homeless people. Every year they produce a wonderful musical to raise money for relief projects overseas and always emphasise social justice and compassion. Sister Janet and the Romero group have supported East Timor for many years, as well as liberation groups in many countries, and we have often benefited from her—and their—talents and generosity.

since it gained independence in May 2002.

Australia and the US have opposed Kofi Annan's recommendation.