

UNITED NATIONS

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ETTA
East Timorese Transitional Administration
DILI DISTRICT COURT

SPECIAL PANEL for SERIOUS CRIMES

Case No. 12/2000
Date: 31/5/2001
Original: English and Bahasa
Indonesia

IN THE TRIAL CHAMBER

Before:

Judge Luca Leandro Ferrero, Presiding
Judge Marcelo Dolzany da Costa, Rapporteur
Judge Maria Natercia Gusmao Pereira,

Registrar: José Manuel Simoes

Judgment of: May 31, 2001

THE PROSECUTOR

v.

CARLOS SOARES

case : 12/2000

JUDGEMENT

The Office of the Public Prosecutor:

Mr. Buwaneka Aluwihare assisted by Ms. Molly Groom

Counsel of the accused:

Mr. Cansio Xavier

INTRODUCTION

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The trial of Carlos Soares (aged 30, farmer, born in Lete Fohhu Village, Lete Foho Subdistrict, District of Ermera, East Timor, married and father of three children) before the Panel for Serious Crimes in the District Court of Dili, responsible for the handling of serious criminal offences (hereafter: the "Special Panel"), commenced on 24th April 2001 and concluded today, the 31st May 2001 with the rendering of the decision.

After considering all the evidence presented during the trial, and the written and oral statements from the office of the Prosecutor General for Serious Crimes (hereafter: the "Public Prosecutor") and also the Defendant and the defense for the defendant, the Special Panel

HEREBY RENDERS ITS JUDGEMENT.

A. THE SPECIAL PANEL

The Special Panels were established, within the District Court in Dili, pursuant to Section (hereafter "Sect.") 10 of UNTAET Regulation (hereafter "U.R.") no. 2000/11, in order to exercise jurisdiction with respect to the following serious criminal offences: genocide, war crimes, crimes against humanity, murder, sexual offences and torture, as specified in Sections 4 to 9 of U. R. 2000/15.

B. PROCEDURAL BACKGROUND

On 12 December 2000, the Public Prosecutor presented before the Dili District Court a written indictment (in English) with a charge of murder against the defendant Carlos Soares. Attached to the indictment were also typed and handwritten copies of the following documents, in English and Tetum versions:

- the statements of the accused (21.8.2000); and
- the statements of the witnesses Antonio Madeira (13/11/2000 and 18.11.2000), Alberto de Deus (18.11.2000) and Carlos dos Santos (18.11.2000)

About one week before the trial hearing, the Office of the Public Prosecutor served to the Court the originals, but not those documents relating to the statement of the accused made before the police. According to the case manager Molly Groom, "the original has been misplaced" (p. 47 - 63).

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The Court clerk provided notification of the receipt of the indictment to the accused (21.12.2000) and to his legal representative (22.12.2000), pursuant to Sect. 26.1 and 26.2 U.R. 2000/30.

Carlos Soares was arrested and detained on 19 August 2000. His arrest was confirmed and ordered by the investigating judge (p. 29-31). The Special Panel later decided to extend the detention until the first hearing after the indictment was submitted (p. 36-37). On 16 February 2001, the accused was released under substitute restrictive measures (p. 38).

The preliminary hearing commenced on the 14th February 2001. The Court checked if the defendant had read the indictment or if the indictment had been read to him, and asked if he understood the nature of the charges, his right to be represented by a legal advisor, his right to remain silent, to plead guilty or not guilty to the charge, as provided for in Sect. 30.4 U.R. No 30/2000. The defendant made a statement that he had read the indictment and that he understood the charge against him. The defense did not file any motion (p. 39 – 46). The Court admitted the evidence requested by the Public Prosecutor after the submission of the indictment. No request for evidence was submitted by the defense (p. 38).

The defendant did not plead guilty. He stated that at the time he was forced to kill somebody, and consequently was not guilty.

The ordinary trial was scheduled for 24 April 2001 (p. 46).

The ordinary trial was held over three sessions (24.4.01, 8.5.2001 and 11.5.2001). Since the composition of the Panel had changed, all the proceeding of the preliminary hearing was renewed. The Court also notified both parties that the record of the hearing would be provided by the rapporteur judge, considering that there is no audio or video recording apparatus, no stenographers and no shorthand writer available to the judicial administration in East Timor. The rapporteur judge made a record after summarizing as accurately as possible on a portable computer the statements made by the parties and judges during the hearing. The task resulted in a 25 page record typed in English (p. 64 – 89). The Special Panel decided that this record was authoritative with regard to the one made by the Court clerk.

The Public Prosecutor submitted as evidence the statements of the accused and three witnesses. The Defense did not present any witnesses or evidence, but filed an oral motion arguing that the accused was forced to join the militia plans to burn villages; he, under pressure from the Indonesian army, had no premeditation to commit murder. The Court decided that it was possible to respond to that motion at the end of the trial in accordance to the evidence. The Public Prosecutor read out the indictment in an open hearing; the accused maintained his stands by refusing to make an admission of guilt. The Court and both parties questioned him. The following witnesses were questioned and gave testimony under oath: Alberto de Deus, Antonio Madeira and Carlos dos Santos.

The Court closed the presentation and hearing of evidence and then adjourned to allow the parties to make their closing statements. The Public Prosecutor submitted a

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written statement (in English version only – p. 90-93) and read it out. The Defense made an oral closing statement. Finally the Court then gave an opportunity to the Defendant to make an additional statement. In short, he requested for the Court to consider that it was not his intention to kill and burn because he was scared and followed orders (p. 89).

On 15 May 2001, the Court read to the public the verdict and the sentence and adjourned to the 31 May 2001 to release the written judgment.

Every act before the Court was assisted by interpreters into English, Bahasa Indonesia and Tetum languages.

C. APPLICABLE LAW

As specified in UNTAET Regulations No.1/1999, No.11/2000 and No. 15/2000, the Special Panel for Serious Crimes shall apply:

- UNTAET Regulations and directives;
- Applicable treaties and recognized principles and norms of international law, including the established principles of international law of armed conflict;
- Pursuant to Sect. 3 UNTAET Regulation No. 1/1999, the law applied in East Timor prior 25.10.1999, until replaced by UNTAET Regulations or subsequent legislation, insofar as they do not conflict with the internationally recognized human rights standards, the fulfillment of the mandate given to UNTAET under the UNITED NATIONS SECURITY COUNCIL RESOLUTION 1272 (1999), or UNTAET Regulations or directives.

Therefore, the Court will apply U.R. No. 2000/15, No. 2000/11, the Penal Code of Indonesia (hereafter PCI) and U.R. No.2000/30 on Transitional Rules of Criminal Procedure.

D. THE FACTS

Factual allegations of the case

The Prosecutor's factual allegations may briefly be set out as follows. The accused Carlos Soares was a member of Darah Integrasi Militia in Lete Foho Village. On a day at the beginning of September 1999, members of this militia group, supported by the Indonesian army, burnt down a large number of houses in Haelun and Hunda, subvillages of Lete Foho Village. When a large group of militiamen appeared again in Hauleun subvillage on 10 September 1999, the village chief ordered the villagers to run away and hide in the mountains. Among this militia group was the accused, leader of a group of about 15 men, five of them, including himself, armed with rifles; the other ones, with machetes. When patrolling along the main street, the accused Carlos Soares noticed an old man named Luis de Deus hiding under a tree. The accused walked towards him and shot him with his G3 from short range through his neck. This shot caused the death of Luis de Deus. After having shot the victim, the accused burnt down

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the victim's house, left East Timor and went to Atambua in West Timor. From there he returned by boat to Dili on 29 September 1999 and hid in the house of his brother-in-law until he was arrested on 19 August 2000.

The Defense, on the other hand, firstly stressed that the indictment clearly ties the militia actions to the TNI forces (the Indonesian army). The alleged crime was not premeditated by the accused, considering that he was under pressure and forced to do it as a part of a plan drafted by the Indonesian forces. In his final statement, the Public Defender pointed out that the witnesses' testimonies contradicted the defendant's deposition in the courtroom. The witnesses, according to the defense, had different versions about the shots – Alberto de Deus stated that there was only one shot during the attack; Antonio Madeira and Carlos dos Santos declared that they heard many shots, not only one. As the defendant admitted that he shot the victim, as did his fellowmen, the defense pointed out that it is not easy to determine which shot killed the victim. As a result, the shots could have come from other militia members who were accompanying the accused. Also it was not shown whether the bullets that were aimed at the victim came from the militia or not. In relation to the victim's neck wound, "there is no evidence, no autopsy that proves that Luis de Deus' death was caused by the bullet in his neck. Not even a single word in the statement could confirm the involvement of the accused in a plan to burn houses, as was emphasized by the Public Prosecutor. The accused did come together with militia members to attack and burn villages, but he was not a leader; he was under superior orders in an attack that took place when there were clear Indonesian interests in East Timor.

Factual findings

The Court deems that the following facts have been proved in relation to what was charged and what the defendant acknowledged and the defense affirmed during the trial:

- The conduct of the accused
- The victim's cause of death and the link between the conduct and the outcome proved

The conduct of the accused

The accused was a member of Darah Integrasi Militia, says the Public Prosecutor. The defense agrees with this, according to what was stated by the accused before the Court:

(...) I was only an ordinary member of the militia [whose] commander was Miguel Soares Babo. (...) We did act under superior orders (...) we burned only the villages of Auleu and Hunba. Other militia members of other groups have burned other villages areas, not us. (p. 66-67, excerpts)

The accused admits that he shot the victim, but refuses to be the only perpetrator. He imputes that to his fellowmen Lino and Caetano fire other shots that are likely to have killed Luis de Deus. Additionally, he alleges that he was warned by his colleagues

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about an attack from the victim, who was carrying an iron bar and heading towards the accused. For him, the shot would be justified.

(...) As I was moving forward, my friends reminded me that Luis de Deus was just behind me and ready to hit me with an iron bar. That's why I shot him. I don't know where he was, but I was just warned [by] some colleagues that he was coming towards me holding an iron bar. I only shot him because I was warned that he was about to attack me. (...) I didn't particularly aim at Luis and I didn't want to kill anyone. (...) He was quite far. I only knew that I shot him when the body was collected. (...) I heard my friends saying he was holding an iron bar in his arm, I didn't see it. (...) Lino and Caetano (...) both of them shot him and I was also shooting. They belonged to the Indonesian Army at the time. (...) I was quick with the weapon, so I was entitled to have one (...). I didn't know him [Luis de Deus] until his body was collected, when I saw he was carrying an iron bar ready to attack me. (...) Only when my colleagues collected the body in front of me, did they collect the bar. Yes, I shot but there were some people also shooting from behind. (...) I didn't see him [Luis de Deus] hidden behind the bamboo, but they told me they collected his body behind a bamboo tree. (...) My friends collected the body and offered it to me. (...) We buried it in front of his house. (...) At the time the dead body was about 50 meters away from me. (...) the other militia members were about 20 meters. (...) I myself had one [rifle G3]. Lino, Caetano, Francisco and others also had guns (...), about 7 rifles, including the Indonesian army ones. (p. 66-70, excerpts).

The accused remained silent when Judge Maria Natercia questioned him "for what reasons [had he] decided to also shoot at Luis de Deus if [his] friends had decided to do it as well".

Those points in the accused statement have to be considered in face of what the eyewitnesses have declared before the Court.

The witness Alberto de Deus, 44 years-old, a long time friend of the accused, reports what happened in the village on 10 September 2001:

(...) They came to and attacked my village. Luis de Deus was in front of me and he was very near a bamboo tree. At the time we were watching militia members coming. I didn't recognize other militia members but one of them was Carlos Soares in the front of the line. The accused didn't see me at the time. As soon as the accused stood in front of the victim, he took a gun and shot the victim. The distance was just almost from here to that door (6 or 7 meters). Carlos Soares was at the time by himself, nobody else from the militia. There was not any arguments between them [the accused and the victim]. (p. 72)

The witness declares that the victim was holding a piece of iron, but also explains "the iron bar was normally used to beat a gong in order to warn the people about what is going on" (p. 72, lines 352-353). He confirms Luis de Deus didn't get to beat the gong when the militia were attacking the village (p. 72, lines 353-355). About the alleged threat to the accused, the witness underlines: "I didn't see any act of threatening because his other arm had problems" (p. 72, lines 358-359).

Alberto de Deus also confirms:

(...) I only heard a single shot. At the time Luis de Deus was in a bent down position. I saw Carlos Soares shooting Luis de Deus by a G3 rifle. (...) I didn't see how he died. Since I heard one single shot I escaped. (...) I did not see any TNI members shooting; the only one person to shoot was the accused. (...) I myself helped with the burial of the body, which took place on 11 September 1999, at 5 AM. So the incident took place on 10, but the following day they dug up the first place and removed the body from the grave. (...) I helped the family to put new clothes [on the body]. (...) I saw the site where he was shot, in the neck, a wound on the right side. (...) I only heard one single shot, but from the place I ran I could hear other shots (...) at 3,00 o'clock in the afternoon. (...) (p. 72-76, excerpts)

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About the victim Luis de Deus, the witness estimates that he was 56 years old at the time. As the victim's right arm was disabled, "he could hardly hit the gong" (p. 74, lines 429-430). "Surely, he could not use either the left or the right arm to attack the accused at the time" (p. 74, lines 433-434).

Such testimony reports that (a) the accused did indeed shoot the victim, (b) one single shot was heard at 10 o'clock in the morning, other ones at 3 o'clock in the afternoon, (c) there was a single wound in the neck of the victim, (d) the victim was holding the iron bar, not to attack, but to try to hit the gong to warn the villagers, and (e) the victim could not attack both due to his physical condition and was hidden and crouching under a bamboo tree when he was killed.

Antonio Madeira, the second witness presented by the accusation, testified that he was in the village of Letefoho, Hauleu, on 10 September 1999 when people received an order from FALINTIL to leave the site. The witness, a cousin of the accused and brother of the victim (p. 79, line 115, p. 81 – line 199, p. 83, line 276), explains the reason for the retreat: "People of the village were pro-independence for the referendum" (p. 78 – line 51-52). "I was told about 3:00 PM that somebody named Alberto de Deus mentioned there was a shot that [took] the life of Luis de Deus" (p. 78 – lines 73-74). He added that he could see from that distance Carlos Soares shooting the victim. "I could not see him falling, but after I could see him laid down" (p. 79, lines 93-94), he added. He admitted he could hear "one shot only" at the time. He details the scene:

(...)The shot broke part of the neck. The shot caused the cut of the neck". "I only noted [that Carlos Soares] came in the village and the victim stood at five or six meters away and he pointed at him and shot (...). Luis de Deus came from a coffee plantation to investigate the militia activity. (...) At the time I didn't see if Luis de Deus was holding anything because his right arm had no function (...); only the right arm had no function. (...) Under bamboo trees I could hear only one single shot. (...) I only heard one shot, but the material of the house was the bamboo, so it could be the sound of bamboo explosion, houses burning. (...) That morning I only heard one shot, but in the afternoon I heard many shots. (...) Carlos Soares was by himself [when I saw him at a distance of 5 or 6 meters]. (...) The neck was not totally destroyed, the head was still connected to the rest of the body" (p. 79-81, excerpts)

This witness also testifies that (a) only one shot was heard in the morning; (b) that shot came from the G3 rifle Carlos Soares was aiming at the victim; (c) the shot caused a wound in the neck of the victim.

Carlos dos Santos, the last witness, also was in the village on that morning of September:

(...) At the time I was on the hill from a distance when I saw Carlos Soares entering the village. Then the head of the village and myself went to a hidden place outside the village in coffee plantations. We didn't see the body directly or how he died, but we later reported and confirmed [that] Luis de Deus was killed. I myself didn't see how Luis de Deus was killed. Antonio Madeira and me were in the same place hidden. (...) At the beginning we were together after we escaped from the village and went to hide in a coffee plantation. It was Alberto de Deus who told us the news. (...) He mentioned that Luis de Deus died. (...) He told me Carlos Soares had shot him. (...) I noted a wound caused by a shot from one side to another. I could see [that] the bullet destroyed a part of the neck from one side to the other. (p. 83-84, excerpts)

The witness admits he didn't see Carlos Soares shooting the victim, but later he could note in the deceased that there was a neck wound whose description matches what was stated by the previous two witnesses.

The cause of the victim's death

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The defense complained that no autopsy was carried out to confirm the death and its exact cause. The rules of evidence provided in Sect. 34.1 of UR-2000/30 endow the Court to admit and consider "any evidence that it deems is relevant and has probative value with regard to issues in dispute". There are no hierarchical levels among statements.

The Court deems that there is sufficient evidence given by eyewitnesses and the statement of the accused with respect to the cause of Luis de Deus' death, according to the following assessment.

The accused does not deny in his statement that he shot the victim. Three phrases in his deposition are expressive of admitting the gunshot:

"I only shot him because I was warned he was about to attack me" (p. 67, line 104)

"They shot him and I was also shooting" (p. 67, lines 127-128)

"I only knew that I shot him when the body was collected." (p. 67, lines 110-111)

Therefore, the accused admits he shot and saw the victim's body, but he is not sure if he was the only one responsible for the death. He states that other two militiamen also shot at the same time.

Notwithstanding, the eyewitnesses stated clearly that the accused was really the only one to fire a shot that morning.

The eyewitness Alberto de Deus confirmed that he "saw Carlos Soares shooting Luis de DEUS with a G3 rifle" (p. 73, line 410). At other stages in his deposition, this eyewitness confirmed: "I [did not see] any TNI member shooting, but the only one person to shoot was the accused" (p. 75, line 464-465). Even though he had run away after hearing the single shot, he confirmed that Luis de Deus was dead after he returned to the village (p. 75, line 495).

The witness Antonio Madeira could also remember that, while he was under bamboo trees, he could hear only one single shot (p. 82, line 237). In the following lines he clarified to the defense that he had heard many shots in the afternoon; at the time Luis de Deus was killed, at the end of the morning, he heard only one shot (p. 82, line 51-52). He also saw that Carlos Soares was by himself when he fired a shot (p. 82, line 255).

About the result of the gunshot, both witnesses corroborate the wound in the victim's neck. Alberto de Deus, in helping the family to bury the victim, also confirmed that he "saw the site where he was shot, in the neck, a wound on the neck on the right side" (p. 76, lines 517-518). The witness Antonio Madeira noted the same wound.

Therefore, the victim was shot only once (p. 79, lines 101-102 and 105).

The witness Carlos dos Santos admitted that he himself had not seen Luis de Deus being shot by Carlos Soares (p. 84, lines 298-299). He added that the facts were

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reported to him by the witness Alberto de Deus. Such testimony has its value for the fact that this witness was able to see the dead body and helped with the burial. He also “noted a wound caused by a shot from one side to another” (p. 84, p. 351).

An important detail concludes that the shot actually came from the rifle used by the accused: Carlos Soares admits that he was entitled to have a gun because he “was quick with the weapon” (p. 68, lines 165-166). Considering he was by himself and at a distance not further than 7 meters from the victim as stated by the witnesses, the Court concludes that he was indeed the one responsible for the death of the victim.

An autopsy would be useless to reinforce what those testimonies confirm. We have a dead body with a single wound whose cause was the rifle used by the accused, who admitted that he had in fact fired a shot.

The version about multiple shots held by the defense has no basis. It is substantially unequivocal that the accused remained silent when judge Maria Natercia asked him for what reasons had he decided to also shoot Luis de Deus if his friends had decided to do it as well.

The Special Panel deems that the evidence summarized above proves, beyond reasonable doubt, that Carlos Soares did shoot Luis de Deus and that the gunshot was the cause of the victim’s death. He aimed at the victim and shot him without any hesitation. The victim fell down with a single wound in the neck. The bullet passed through the neck, cutting and destroying it. It is consistent with the gravity of the wound that the victim’s death in fact was sudden, so that the militia members brought him the dead body and promptly they provided the burial.

The Special Panel believes that there is no evidence of duress.

Carlos Soares, in his final statement to the Court, alleged “it was an order of TNI to shoot” (p. 89, line 91). He declared that he was afraid that he would be killed if he refused the order, so he was acting under pressure. He admits that the militia were ordered to look for people hidden in the villages. They received orders to kill those people and burn their houses.

Finally, the Special Panel believes that the “mistake of fact” consisting in the belief that the victim was attacking the accused holding an iron bar is both groundless and unproven. The defense intended to justify the conduct of the accused as a reaction to an attack from the victim, it means, an exclusion of criminal responsibility as self defense (Sect. 19.1.[c] UR-2000/15 and Article 49.1 PCI). The version where the victim was threatening with an iron bar is also unbelievable. A 56 year old man with a disabled arm would never attack a young man carrying a gun who belonged to a group largely known to be a group formed to frighten and kill villagers. There should be no threat in holding an iron bar against a rifle. It was also testified that the victim performed the watcher’s role to warn the community by hitting a gong with that iron bar. The witness Alberto de Deus declared the victim “could hardly hit the gong” (p. 74, line 430), considering that “his right arm was disabled” (p. 74, line 424-5). The eyewitness Antonio Madeira also confirmed the victim’s physical disability (p. 80, lines 133-139). Moreover, the accused finally admitted that he indeed “only noticed that [there] was an

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object of metal after [the] body was collected” (p. 67, lines 117-118). It means he actually did not see any piece of iron in the victim’s hand at the time he was allegedly attacking him.

E. THE LAW

The Special Panel deems that the evidence on record proves beyond any reasonable doubt that all the essential elements of murder – as alleged in the charge made by the Public Prosecutor – are met.

Pursuant to Sect. 8 U.R. 15/2000 and Article 340 PCI, “the person who with deliberate intent and with premeditation takes the life of another person, shall, being guilty of murder, be punished...”.

- ◆ The evidence clearly show that Carlos Soares shot Luis de Deus.
- ◆ The single shot destroyed part of the victim’s neck and cause his death. No other wounds were inflicted to the victim.
- ◆ There is no doubt that, when he was shooting the victim’s neck, Carlos Soares desired the death of the victim. The intention could not be more unequivocal. The distance between Carlos Soares and the victim was about 6 or 7 meters only, a favorable condition for a person who qualified himself as “quick with the weapon” (p. 68, line 166)
- ◆ Premeditation means that there is a time between when the intent to murder arises and when the intent is actually realized for the perpetrator/accused to calmly think about how the murder is to be committed. The evidence show that Luis de Deus was hidden under a bamboo tree and his unique activity was to protect his village by hitting a gong as a warning signal. He had no chance to react. Carlos Soares, since the beginning, was following the orders to kill the people who refused to run away and were hiding in the villages and to burn houses as an intimidation to those who were pro-independence. He knew that he would be accurate from such a distance. Carlos Soares knew Luis de Deus had no physical ability to threaten him. He opened fire and killed him because he also knew Luis de Deus was a member of CNRT, as informed by the eyewitness Alberto de Deus (p. 73, lines 386-387). All these actions are a part of the organization of the murder. The time between when the decision arose to fire and the shot can be assessed as the element of *premeditation*.

The Defense submitted that the actions of the defendant were at the order of and with coercion from the T.N.I.

According to article 49 of PCI, “not punishable shall be the person who commits an act necessitated by the Defense of his own or another one’s body”. U.R 2000/15 Sect.19.1.(d) provides that “the conduct which is alleged to constitute a crime within the jurisdiction of the panels has been caused by duress resulting from a threat of imminent death or of continuing or imminent serious bodily harm against that persons or another

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person, provided that the person does not intend to cause a greater harm than the one sought to be avoided. Such a threat may either be made by other person or constituted by other circumstances beyond that person's control".

The Special Panel deems that the aforementioned circumstance of exclusion of criminal responsibility is not applicable to the murder committed by Carlos Soares.

On one hand, as stated above, there is no evidence that the accused had been threatened. On the other hand, "the fact that an accused acted pursuant to an order of a superior shall not relieve him of criminal responsibility, but may be considered in mitigation of punishment..." (Sect. 21 of U.R. 2000/15).

Pursuant to the consideration of the aforementioned elements, it is found legitimately and in accordance with the law that the Defendant has committed the crime as specified in Sect. 8 U.R. 2000/15 and article 340 PCI.

F. VERDICT

For the aforementioned reasons, the Special Panel is satisfied that the Public Prosecutor has proved the case against the accused beyond reasonable doubt and therefore finds Carlos Soares guilty of murder, as a violation of Sect. 8 U.R. 2000/15 and article 340 PCI.

G. SENTENCING

Pursuant to these findings of guilt, the Special Panel will proceed to sentence Carlos Soares, in order to determine the appropriate penalty.

According to the applicable law, in particular Article 340 of the PCI, the penalties that the Special Panel could impose on a person convicted of murder are capital punishment, life imprisonment or a maximum of 20 years of detention. U.R. No. 1999/1, Sect. 3.3, excludes capital punishment. Finally, U.R. No. 15/2000, Sect. 10, excludes life imprisonment by providing that it has to be for a specified number of years, which may not exceed a maximum of 25 years.

Carlos Soares did not plead guilty and a trial had to be conducted. It was a brutal murder and it could be avoided simply by ignoring the victim, an old and disabled man. Therefore the Public Prosecutor recommended a punishment with a minimum of 12 years.

The defense underlined that Carlos Soares acted under the pressure of militia and T.N.I. and that he has a family with children.

The Special Panel has taken into account the following:

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Aggravating circumstances:

The Special Panel deems that there are no aggravating circumstances in this case.

Mitigating circumstances

The accused had order to kill the people who refused to run away and were hiding in the villages and to burn houses as an intimidation to those who were pro-independence supporters. He acted to carry out an order from a government who was supporting militia groups in East Timor as reprisal to the popular consultation who decided by the independence of this territory. Therefore, the Special Panel deems that the attenuating circumstance provided by Sect. 21 U.R. 2000/15 is applicable to this case.

The Special Panel bears in mind that the accused is married with children. However this may be said of many accused persons and cannot be given any significant weight in a case of this gravity. The accused has no previous convictions.

Sentencing policy

According to Sect. 10 U.R. 2000/15, for the crimes referred to in Sect. 8 of the aforementioned regulation "the penalties prescribed in the respective provisions of the applicable Penal Code in East Timor (i.e. the PCI) shall apply". "In imposing the sentences, the panel shall take into account such factors as the gravity of the offence and the individual circumstances of the convicted person".

The penalties imposed on accused persons found guilty by the Special Panel must be directed, on one hand, as retribution of the said accused, who must see their crimes punished (*punitur quia peccatur*). Over and above that, on other hand, as deterrence, namely to dissuade for ever, others who may be tempted in the future to perpetrate such atrocities by showing them that the international community shall not tolerate the serious violations of law and human rights (*punitur ne peccetur*).

Finally, the objective to prosecute and punish the perpetrators of the serious crimes committed in East Timor in 1999 is to avoid impunity and thereby to promote national reconciliation and the restoration of peace.

Carlos Soares is guilty of a cold-blooded murder. He killed an old and disabled man, whose ability to react was clearly diminished. He could have let the old man to flee to the mountains and coffee plantations, where the other villagers were forced.

During the trial, the accused never admitted that he himself shot the victim. He knew he was the only perpetrator, but he refused to accept the circumstance that he was by himself, as stated by the eyewitnesses.

Taking into account the mitigating circumstances, the gravity of the crime and the aforementioned considerations, the Special Panel, deems appropriate the punishment of 15 (fifteen) years and 6 (six) months.

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H. DISPOSITION

For the aforementioned reason, having considered all the evidence (statements from the witnesses and the defendant) and the arguments of the parties, the transitional rules of Criminal Procedure, the Special Panel finds and imposes sentence as follows:

With respect to the defendant CARLOS SOARES:

- (1) GUILTY for the charge of murder, in violation of Sect. 8 of UNTAET Regulation 2000/15 and Article 340 of the Penal Code of Indonesia;
- (2) In punishment of the aforementioned crime, sentences CARLOS SOARES to an imprisonment of 15 (fifteen) years and 6 (six) months.
- (3) Orders the defendant to pay the costs of the criminal procedure

Credit for time served

According to Sect. 10.3 U.R. 15/2000, Sect. 42.5 UR-30/2000 and Article 33 of Indonesian Penal Code, the Special Panel deducts the time spent in detention by CARLOS SOARES, due to an order of an East Timorese Court. The defendant CARLOS SOARES was arrested on 19 August 2000 and released on 16 February 2001, therefore he was under detention for 5 (five) months and 29 (twenty-nine) days. Accordingly, previous detention shall be deducted from the sentence today imposed, together with such additional time he may serve pending the determination of any final appeal.

Enforcement of sentence

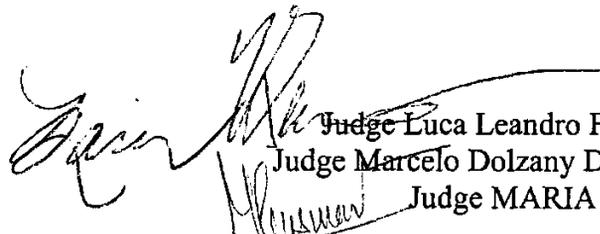
Pursuant to Sect. 42.1 and 42.5 of UR-2000/30, the convicted shall be immediately imprisoned and shall spend the duration of the penalty in East Timor.

The sentence shall be executed immediately.

This decision is provided in one copy to the Defendant and his legal representative, Public Prosecutor and to the prison manager as a warrant of arrest.

The Defense has the right to file a Notice of Appeal within the coming 10 days and a written appeal statement within the following 30 days (Sect. 40.2 and 40.3 UR-2000/30).

This Judgment was rendered and delivered on the 31st May 2001 in the District Court of Dili by



Judge Luca Leandro FERRERO (presiding)
Judge Marcelo Dolzany DA COSTA (reporting)
Judge MARIA NATERCIA Gusmao.

(Done in and English and Bahasa Indonesia, the English text being authoritative)