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Report 84

Treaty tabled on 6 December 2006

Agreement between Australia and the Republic of Indonesia on the Framework for Security Cooperation (Mataram, Lombok, 13 November 2006)

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Contents

Membership of the Committee	v
Resolution of appointment.....	vii
List of abbreviations	viii
List of recommendations	ix
1 Introduction	1
Purpose of the report.....	1
Briefing documents	1
Conduct of the Committee's review	2
Structure of the Report.....	2
2 The Agreement between Australia and the Republic of Indonesia on the Framework for Security Cooperation.....	3
Introduction	3
Language	6
Entry into force and withdrawal.....	6
Implementation.....	7
Consultation	7
3 A broad consideration of the Agreement	9
Introduction	9
The bilateral relationship.....	9
Human rights	13

Human rights and the principle of non-interference.....	16
4 Cooperation provisions of the Agreement	17
Article 2(3)	17
Intelligence cooperation.....	22
Defence cooperation.....	25
Comment on Papua	28
Counter-Terrorism Cooperation	29
Nuclear Cooperation.....	30
5 Conclusions.....	33
Dissenting Report—Senator Andrew Bartlett	35
Introduction	35
Democracy and human rights.....	36
Nuclear Cooperation.....	36
Conclusion	37
Appendix A - Submissions.....	39
Appendix B - Exhibits	43
Appendix C - Witnesses	47
Monday, 26 February 2007 - Canberra	47
Monday, 26 March 2007 - Canberra	48
Monday, 30 April 2007 - Sydney	49



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Resolution of appointment

The Resolution of Appointment of the Joint Standing Committee on Treaties allows it to inquire into and report upon:

- a) matters arising from treaties and related National Interest Analyses and proposed treaty actions presented or deemed to be presented to the Parliament;
- b) any question relating to a treaty or other international instrument, whether or not negotiated to completion, referred to the committee by:
 - (i) either House of the Parliament, or
 - (ii) a Minister; and
- c) such other matters as may be referred to the committee by the Minister for Foreign Affairs and on such conditions as the Minister may prescribe.



List of abbreviations

ACF	Australian Conservation Foundation
ACFID	Australian Council for International Development
ADF	Australian Defence Force
AFP	Australian Federal Police
ANSTO	Australian Nuclear Science and Technology Organisation
ASNO	Australian Safeguards and Non-Proliferation Office
AusAID	Australian Agency for International Development
Cth	Commonwealth
DFAT	Department of Foreign Affairs and Trade
JSCOT	Joint Standing Committee on Treaties
MOU	Memorandum of Understanding
NIA	National Interest Analysis
NSW	New South Wales
TNI	Tentara Nasional Indonesia



List of recommendations

3 A broad consideration of the Agreement

Recommendation 1

The Committee recommends that the Australia Government continue to address widely expressed concerns about human rights in Indonesia with the Indonesian Government and in appropriate international fora.

4 Cooperation provisions of the Agreement

Recommendation 2

The Committee recommends that the Australian Government increase transparency in defence cooperation agreements to provide assurance that Australian resources do not directly or indirectly support human rights abuses in Indonesia.

Recommendation 3

The Committee recommends that the Australian Government encourage the Indonesian Government to allow greater access for the media and human rights monitors in Papua.

5 Conclusion and recommendations

Recommendation 4

The Committee recommends that the Australian Government engage in a campaign to increase public support for the Australia – Indonesia relationship. This campaign would have the goal of increasing awareness of the democratic reforms in Indonesia and the value to Australian security of strong relations with Indonesia.

Recommendation 5

The Committee supports the *Agreement between Australia and the Republic of Indonesia on the Framework for Security Cooperation (Mataram, Lombok, 13 November 2006)* and recommends binding treaty action be taken.

Introduction

Purpose of the report

- 1.1 This report contains advice to Parliament on the review by the Joint Standing Committee on Treaties on the *Agreement between Australia and the Republic of Indonesia on the Framework for Security Cooperation* (Mataram, Lombok, 13 November 2006) (the Agreement).¹
- 1.2 The Agreement is designed to provide a framework for cooperation between Australia and Indonesia on traditional and non-traditional security threats.

Briefing documents

- 1.3 The advice in this Report refers to the National Interest Analysis (NIA) prepared for the proposed treaty action. This document is prepared by the Government agency responsible for the administration of Australia's responsibilities under the treaty. Copies of the NIA may be obtained from the Committee Secretariat or accessed through the Committee's website at:

www.aph.gov.au/house/committee/jsct/6december2006/tor.htm

1 Australia, House of Representatives 2004-05-06-07, *Votes and Proceedings*, No. 145 p. 1634; Senate 2004-07, *Journal*, No. 125, p. 3257.

- 1.4 Copies of the treaty action and NIA may also be obtained from the Australian Treaties Library maintained on the internet by the Department of Foreign Affairs and Trade. The Australian Treaties Library is accessible through the Committee's website or directly at:

www.austlii.edu.au/au/other/dfat/

Conduct of the Committee's review

- 1.5 The review contained in this report was advertised in the national press and on the Committee's website.² Invitations to lodge submissions were also sent to all State Premiers, Chief Ministers, Presiding Members of Parliament and to individuals who have expressed an interest in being kept informed of proposed treaty actions. Invitations were also sent to organisations and individuals who the Committee identified as having an interest in the Agreement. The Committee received 56 submissions. Submissions received and their authors are listed at Appendix A. Exhibits are listed at Appendix B.
- 1.6 The Committee also received evidence at public hearings held on 26 February and 26 March in Canberra and 30 April in Sydney. A list of witnesses who appeared before the Committee at the public hearings is at Appendix C. Transcripts of evidence from public hearings may be obtained from the Committee Secretariat or accessed through the Committee's website at:

www.aph.gov.au/house/committee/jsct/6december2006/hearings.htm

Structure of the Report

- 1.7 Chapter 2 provides an examination of the provisions of the Agreement, chapters 3 and 4 consider the issues raised by the submissions and chapter 5 provides the Committee's conclusions in relation to the Agreement.
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2 The Committee's review of the proposed treaty action was advertised in *The Australian* on 14 February 2007. Members of the public were advised on how to obtain relevant information and invited to submit their views to the Committee, both in the advertisement and via the Committee's website.

The Agreement between Australia and the Republic of Indonesia on the Framework for Security Cooperation

Introduction

- 2.1 This chapter examines the provisions of the *Agreement between Australia and the Republic of Indonesia on the Framework for Security Cooperation* (the Agreement).
- 2.2 Broadly speaking, the Agreement is designed to provide a framework for cooperation between Australia and Indonesia on traditional and non-traditional security threats. As such, it is the pinnacle of previous formal and informal declarations of the bilateral security relationship.
- 2.3 A number of formal arrangements have been concluded in areas such as policing, defence, immigration and intelligence¹ and informally the 2005 Australia-Indonesia Joint Declaration on Comprehensive Partnership describes a mutual desire to increase 'cooperation in combating other forms of transnational crime and non-traditional

1 The National Interest Analysis (NIA), at para. 8, provides examples such as the 2002 Memorandum of Understanding (MOU) on Terrorism, the 2002 MOU on Combating Transnational Crime and Developing Police Cooperation, and the 2006 MOU concerning Cooperation on Migration and Border Control Management.

security threats, especially in areas such as people smuggling, narcotics, outbreaks of disease and money laundering.’²

- 2.4 Both Australia and Indonesia have been committed to negotiating a security agreement since the 2003 visit to Australia by Dr Susilo Bambang Yudhoyono, who was at the time the Indonesian Coordinating Minister for Political and Security Affairs. Following Dr Yudhoyono’s inauguration as Indonesia’s President in 2004, Australia and Indonesia commenced discussion, negotiation and drafting of the Agreement.³
- 2.5 The Committee was informed that the Agreement reflects Australia and Indonesia’s common commitment to advancing the bilateral relationship in areas important to both countries.

[The Agreement] aims to deepen and expand bilateral cooperation and exchanges on matters affecting our common security. It will provide a strong legal framework for encouraging enhanced intensive dialogue exchanges and implementation of cooperative security activities, and provides a firm basis for conclusion of separate arrangements in specific areas of cooperation.⁴
- 2.6 The Agreement is intended to function as a framework agreement, drawing together different aspects of the security relationship and providing a basis for the conclusion of separate arrangements in specific areas.
- 2.7 Article 1 states that the Agreement has two purposes. First, to establish a framework for deepening and expanding bilateral cooperation and exchanges, and to intensify cooperation and consultation between Australia and Indonesia on matters affecting their common security and respective national security. Second, to establish a bilateral consultative mechanism for encouraging intensive dialogues, exchanges and implementation of cooperative activities and to strengthen institutional arrangements.⁵
- 2.8 The Agreement lists ten areas and forms of cooperation:

- Defence;

2 For the full text of the Joint Declaration, see the Department of Foreign Affairs and Trade website: www.dfat.gov.au/geo/indonesia/comprehensive_partnership_1105.html. See also the NIA, para. 6.

3 NIA, para. 9.

4 Ms Gillian Bird, *Transcript of Evidence*, 26 February 2007, pp. 2-3.

5 NIA, para. 18.

- Law enforcement;
- Counter-terrorism;
- Intelligence;
- Maritime security;
- Aviation safety and security;
- Proliferation of weapons of mass destruction;
- Emergency cooperation;
- Cooperation in international organisations on security related issues; and
- Community understanding and people-to-people cooperation.

2.9 Underlying the Agreement are six key principles which will guide Australia and Indonesia's relationship. First, Indonesia and Australia's relationship is guided by 'equality, mutual benefit and recognition of enduring interests each Party has in the stability, security and prosperity of the other.'⁶

2.10 Second, 'mutual respect and support for the sovereignty, territorial integrity, national unity and political independence of each other, and also non-interference in the internal affairs of one another.'⁷

2.11 The third principle of the Agreement has attracted significant interest and is extracted here in full:

The Parties, consistent with their respective domestic laws and international obligations, shall not in any manner support or participate in activities by any person or entity which constitutes a threat to the stability, sovereignty or territorial integrity of the other Party, including by those who seek to use its territory for encouraging or committing such activities, including separatism, in the territory of the other Party.

2.12 The fourth principle entails the peaceful settlement of any disputes that might arise between Australia and Indonesia so that international peace, security and justice are not endangered.

6 Article 2(1) of the Agreement.

7 Article 2(2) of the Agreement.

- 2.13 Fifth, Australia and Indonesia will refrain from the threat or use of force against the integrity or political independence of the other.
- 2.14 Finally, the sixth principle states that nothing in the Agreement shall affect in any way the existing rights and obligations of either Australia or Indonesia under international law.

Language

- 2.15 The English language and Indonesian language version of the Agreement are equally authentic but the Agreement itself states that in the case of divergence, the English text will prevail.⁸

Entry into force and withdrawal

- 2.16 In accordance with Article 10(1) of the Agreement, the Agreement will enter into force on the date of receipt of the last notification by which the Parties notify each other that their internal requirements for entry into force have been fulfilled.⁹
- 2.17 Indonesia's domestic processes for entry into force will involve Commission I, the defence, foreign affairs, communication and information committee of the Indonesian Parliament, considering the Agreement.
- 2.18 Under Article 10(2), six months written notice is required to terminate the Agreement, at which point, the Agreement will terminate six months after receipt of the notice of termination.
- 2.19 Withdrawal or denunciation by Australia would be subject to Australia's domestic treaty process, including tabling and consideration by JSCOT.

8 This was confirmed by the Department of Foreign Affairs and Trade, *Transcript of Evidence*, 30 April 2007, p. 48.

9 NIA, para. 2.

Implementation

- 2.20 The Committee was informed that no legislation is required to implement the provisions of the Agreement.¹⁰

Consultation

- 2.21 States and Territories were being consulted on aspects of the Agreement which relate to their areas of responsibility through the Commonwealth-State and Territories Standing Committee on Treaties. No other consultation was undertaken prior to the Committee's inquiry.¹¹

¹⁰ NIA, para. 36; see also Ms Gillian Bird, *Transcript of Evidence*, 30 April 2007, p. 47.

¹¹ NIA, Consultation, paras 1 & 2.

A broad consideration of the Agreement

Introduction

- 3.1 The Committee's inquiry into the Agreement attracted strong interest from a relatively limited range of organisations, individuals and academics. This chapter considers the key issues raised in submissions and public hearings which can be broadly described as concerning the scope and content of the Agreement as a whole, such as the impact of the Agreement on the bilateral relationship and the absence of human rights provisions. The following chapter provides the Committee's discussion of issues concerning specific provisions of the Agreement such as the defence, intelligence and nuclear cooperation provisions as well as the third principle of the Agreement contained in Article 2(3).

The bilateral relationship

- 3.2 Australia and Indonesia's relationship has developed a great deal in recent years and is an important bilateral relationship. The Department of Foreign Affairs and Trade noted that:

Bilateral cooperation reflects a number of important shared interests, our geographical proximity, extensive and long

standing people-to-people links, and is underpinned by frequent two-way high-level visits.¹

- 3.3 Primary to the bilateral relationship is a shared concern for stability and security in the region. The Agreement recognises the value of cooperation and collaboration between Australia and Indonesia to enhance both countries' capabilities in combating traditional and non-traditional security threats.²
- 3.4 However, the extent to which the Agreement enhances the bilateral relationship was subject to some debate. Professor Hugh White from the Australian National University contends that the Agreement is not built on a solid bilateral relationship but rather on Indonesia's concerns about Australia's policy towards Papua.³ This, he considers, is largely a result of Australia's involvement in East Timor. Professor White argues that the Agreement might ultimately be damaging to the relationship between Australia and Indonesia as Article 2(3) – the commitment not to participate or support activities which constitute a threat to the stability, sovereignty or territorial integrity – may create unrealistic expectations of Australia's actions, for instance, the next time asylum seekers from Papua arrive in Australia.

So it seems to me that on both sides the clause appears to create obligations on the other which neither of them can meet within their present political cultures and legal frameworks. My concern about that situation is that it would be bad for bilateral relations with Indonesia. The history of bilateral relations with Indonesia has been that it has been punctuated by periodic crises in which one side or the other has been disappointed at the other's inability to manage our domestic affairs in ways that suit the expectations of the other. A clause in a treaty like this which raises expectations of the way in which either side can manage these issues which cannot be met, which go beyond the kinds of

1 Department of Foreign Affairs and Trade, *Political Brief on Indonesia*, available from the DFAT website, accessed 16 May 2007
<www.dfat.gov.au/geo/indonesia/indonesia_brief.html>

2 National Interest Analysis (NIA), para. 9.

3 Professor Hugh White, *Exhibit 1*, p. 1; see also Hugh White, 'Security: The Lombok Pact's Empty Promise', *Far Eastern Economic Review*, December 2006 (subscription required). This article is reproduced on the Graduate Studies in Strategy & Defence, Australian National University website, accessed 16 May 2007:
<http://rspas.anu.edu.au/gssd/analysis/White_FEERAusIndonSecAgmtNov06.pdf>

approaches that either government can take, are in a crisis likely to amplify bitterness rather than reduce it.⁴

3.5 Professor White concludes that ‘without deeper work on the fundamentals of the relationship from both sides, agreements like [this one] are worse than useless’.⁵

3.6 Other submissions expressed concern about the divergent expectations of the Agreement as a result of Australia’s and Indonesia’s different motives for its negotiation. Civil Liberties Australia suggested that:

While both Indonesia and Australia obviously used the Papuan refugee incident recently to achieve the treaty they wanted, there is a potential danger in the fact that the motives of the two parties for entering into this treaty appear to be quite different. Australia wants Indonesia to cooperate closely on a range of police and security measures. Indonesia wants a guarantee that there will not be a repeat of the recent refugee debate.⁶

3.7 Other submissions consider the Agreement a positive development but simultaneously emphasise the vulnerability of the bilateral relationship. Dr Malcolm Cook, from the Lowy Institute, welcomes the Agreement as a means to ‘focus the bilateral relationship on our permanent shared interests’ and points out that the scope of the Agreement indicates how Australia and Indonesia’s shared interests have grown and diversified in recent years.⁷ However Dr Cook also cautions that the Agreement, similar to the 1995 security agreement with Indonesia, is likely to be more vulnerable to the bilateral relationship than be able to moderate it.⁸

This problem is the vulnerability of the relationship to policy difference and conflict between the two states and the negative popular and political reactions these cause on both sides of the Arafura Sea. On the Australian side, the inability of the relationship to remain on an even keel during these inevitable points of disagreement is partially explained by the airplay critics of the Indonesian state and of the bilateral

4 Professor Hugh White, *Transcript of Evidence*, 26 March 2007, p. 41.

5 Professor Hugh White, see note 3 above.

6 Dr Kristine Klugman, *Transcript of Evidence*, 26 February 2007, p. 15.

7 Dr Malcolm Cook, *Submission 3*, p. 1.

8 Dr Malcolm Cook, *Submission 3*, p. 1.

relationship in general gain during these incidents. On the Indonesian side, there is also a small but growing number of “Australia” critics playing a similar role in the Indonesian media, the security forces and even in parliament.⁹

3.8 The result, Dr Cook suggests, is pressure for a politically expedient response rather than one which focuses on the long term interests of a cooperative bilateral relationship.¹⁰

3.9 Similarly, Professor Vickers from the University of Sydney, describes Australia and Indonesia’s relationship as ‘fluctuating’ and sees the current period as a low point.¹¹ He attributes this largely to the negative portrayal of Indonesia by the media and resulting tendency among Australians to view Indonesia narrowly within a context of terrorism.

Broadly speaking, sections of the media focus on negative portrayals of Islam and present Indonesia as a source of jihad directly threatening Australia. Positive aspects of Indonesia are downplayed or ignored, and the country is not treated in the comprehensive manner that the UK or the USA (both also sites of major terrorist acts), or even China and India, for example, are portrayed.¹²

3.10 This view is supported by the Lowy Institute’s 2006 survey, ‘Australia, Indonesia and the World: Public Opinion and Foreign Policy’, which indicates a belief among Australian respondents that Indonesia was a dangerous source of Islamic terrorism and that Australia was right to worry about Indonesia as a military threat.¹³

3.11 However, the Committee notes that the survey also found that:

More than three quarters (77%) [of Australians surveyed] said that ‘it is very important that Australia and Indonesia work to develop a close relationship’, firmly rejecting the idea that ‘Australia and Indonesia are too different to develop a close relationship’¹⁴

9 Dr Malcolm Cook, *Submission 3*, p. 1.

10 Dr Malcolm Cook, *Submission 3*, p. 1.

11 Professor Adrian Vickers, *Submission 9*, p. 1.

12 Professor Adrian Vickers, *Submission 9*, p. 1.

13 Ivan Cook, *The Lowy Institute Poll 2006: Australia, Indonesia and the World: Public Opinion and Foreign Policy*, The Lowy Institute, 2006, p. 2.

14 Ivan Cook, see note 12 above, p. 14.

- 3.12 Australia's bilateral relationship with Indonesia is strategically, politically, economically and culturally important. However the Committee also recognises that there are some elements of the bilateral relationship that are not as strong as others. A number of submissions made the point that some of the more fundamental issues, such as trust and expectation, must be resolved before a more resilient bilateral relationship can develop. To this end, the Agreement makes clear Australian government policy on Indonesian territorial integrity, reassuring Indonesia on this point, and provides a framework for cooperation between Australia and Indonesia on a broad range of traditional and non-traditional security threats, ranging from defence cooperation to people-to-people cooperation. This would seem to provide an opportunity to forge a closer relationship and as such, the Committee welcomes and supports the Agreement as a positive development in the bilateral relationship.
- 3.13 The Committee notes as a positive development the increased cooperation between Australia and Indonesia, including combating illegal fishing, people trafficking, transnational crime and terrorism.

Human rights

- 3.14 Many submissions were concerned that the Agreement does not contain any reference to human rights. The New South Wales (NSW) Council for Civil Liberties expressed this most directly, commenting that 'the most disturbing flaw in the Lombok Treaty is that it contains no recognition of individual rights or express human rights safeguards.'¹⁵

In our view, human rights values are framework values that should be included in the treaty. It is essential that the other aspects of the treaty are understood in that context.¹⁶

- 3.15 The Human Rights Law Resources Centre recommended including a recognition that the Agreement will be interpreted to promote universal respect for, and observance of, human rights and freedoms.¹⁷ The NSW Council for Civil Liberties also recommended that any cooperation under the Agreement should be subject to a

15 NSW Council for Civil Liberties, *Submission 22*, p. 2.

16 Mr Cameron Murphy, *Transcript of Evidence*, 30 April 2007, p. 1.

17 Human Rights Law Resources Centre, *Submission 17*, p. 3.

guarantee that such cooperation will not result in the violation of anyone's human rights.¹⁸

- 3.16 In response to this issue the Department of Foreign Affairs and Trade pointed out that Article 2(6) of the Agreement, which states that 'nothing in this Agreement shall affect in any way the existing rights and obligations of either Party under international law', ensures the maintenance of Australia's and Indonesia's human rights obligations alongside the Agreement.¹⁹ The Human Rights Law Resources Centre considers that a specific reference to human rights may not be *necessary* but it is not without value and put the same argument with regard to the inclusion of the principles of sovereignty and territorial integrity:

... the same could be said for the issues of sovereignty and territorial integrity. We have seen the need to specifically and expressly include those provisions in the agreement, so to balance those provisions, why wouldn't we include human rights safeguards?²⁰

- 3.17 The extent of both Australia's and Indonesia's human rights obligations outside of the Agreement is considerable. Both Australia and Indonesia have ratified a number of significant human rights treaties²¹, including the International Covenant on Civil and Political Rights²², the International Covenant on Economic, Social and Cultural Rights²³, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment²⁴, the International Convention on the Elimination of All Forms of Racial Discrimination²⁵, the Convention on the Elimination of All Forms of

18 NSW Council for Civil Liberties, *Submission 22*, p. 7.

19 Ms Gillian Bird, *Transcript of Evidence*, 26 March 2007, p. 42.

20 Mr Mathew Tinkler, *Transcript of Evidence*, 26 March 2007, p. 34.

21 See generally Office of the United Nations Commissioner for Human Rights website, accessed 16 May 2007. <www.ohchr.org/english/countries/ratification/>

22 Opened for signature 19 December 1966, entered into force generally 23 March 1976, ratified by Australia 13 August 1980, acceded to by Indonesia 23 February 2006.

23 Opened for signature 19 December 1966, entered into force generally 3 January 1976, ratified by Australia 10 December 1975, acceded to by Indonesia 23 February 2006.

24 Opened for signature 10 December 1984, entered into force generally 26 June 1987, ratified by Australia 8 August 1989, by Indonesia on 28 October 1998.

25 Opened for signature 19 December 1966, entered into force generally 3 January 1976, ratified by Australia 30 September 1975, acceded to by Indonesia on 25 June 1999.

Discrimination against Women²⁶ and the Convention on the Rights of the Child.²⁷

- 3.18 The Committee acknowledges that a reference to human rights would be of symbolic value to the Agreement. However, it is not convinced that the Agreement should be rejected unless human rights provisions are added. Both Indonesia and Australia have extensive human rights obligations under international law and the absence of a reference to human rights in the Agreement does not imply that these obligations cease to apply. Rather, these obligations continue to exist alongside the obligations and principles provided for in the Agreement.
- 3.19 There is nothing in the Agreement which is inconsistent with Australia's human rights obligations nor does the Agreement attempt to exclude the operation of any recognised human rights. On the contrary, such obligations are indirectly referenced through Article 2(6), which states that 'nothing in this Agreement shall affect in any way the existing rights and obligations of either Party under international law', and in effect, maintains Australia's and Indonesia's human rights obligations in addition to the obligations acquired under the Agreement.
- 3.20 The Department of Foreign Affairs and Trade informed the Committee that a commitment to human rights and an open dialogue with Indonesia would continue to be a part of the bilateral relationship.

The Australian government's strong commitment to human rights is reflected fully in our international cooperation activities, including with Indonesia. Activities pursued under the agreement will be no exception ... We continue to register with the Indonesian government at the highest levels the importance of upholding its commitment to an open, tolerant and pluralist society and ensuring that the human rights of all Indonesians are respected.²⁸

- 3.21 As human rights are already part of Australia's and Indonesia's obligations and the Agreement does not attempt to exclude their operation, the Committee considers it unnecessary to specifically require a reference to them. The Committee expects human rights
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26 Opened for signature 1 March 1980, entered into force generally 3 September 1981, ratified by Australia 28 July 1983, by Indonesia 13 September 1984.

27 Opened for signature 20 November 1989, entered into force generally 2 September 1990, ratified by Australia 17 December 1990, by Indonesia 5 September 1990.

28 Ms Gillian Bird, *Transcript of Evidence*, 26 March 2007, p. 42.

concerns in relation to Indonesia to be raised at high levels with the Indonesia government.

Human rights and the principle of non-interference

3.22 A number of submissions questioned whether the principle of 'non-interference in the internal affairs of one another' in Article 2(2) of the Agreement would affect Australia's commitment to raise human rights concerns with Indonesia.²⁹

3.23 Dr Ben Saul from the University of Sydney pointed out that human rights violations 'no longer fall within the exclusive domain of domestic jurisdiction' and as a result, 'expressions of concern by one government about the human rights situation in another country can no longer be seen as interference in internal affairs.'³⁰ This is consistent with the Australian government's approach to human rights:

Pursuing these standards is a responsibility of all countries and a legitimate subject for international scrutiny. Australia does not accept the argument that the treatment of human rights constitutes an 'internal affair' for any country. Equally, in our bilateral dealings, we do not presume to hold other nations to standards that we do not apply to ourselves.³¹

Recommendation 1

The Committee recommends that the Australia Government continue to address widely expressed concerns about human rights in Indonesia with the Indonesian Government and in appropriate international fora.

29 See for instance Indonesian Solidarity, *Submission 13*, p. 1.

30 Dr Ben Saul, *Submission 43*, p. 2.

31 Department of Foreign Affairs and Trade, Human Rights Manual, Chapter 1 'Australia and Human Rights – An Overview', accessed 21 May 2007: <www.dfat.gov.au/hr/hr_manual_2004/chp1.html>

Cooperation provisions of the Agreement

- 4.1 This chapter discusses the issues raised by submissions where they related specifically to particular areas of cooperation contemplated by the Agreement. This includes Article 2(3) and the defence, intelligence and nuclear cooperation provisions of the Agreement.

Article 2(3)

- 4.2 One of the key principles of the Agreement is a commitment by both Australia and Indonesia not to support or participate in activities which constitute a threat to the stability, sovereignty or territorial integrity of the other Party. Article 2(3) of the Agreement provides:

The Parties, consistent with their respective domestic laws and international obligations, shall not in any manner support or participate in activities by any person or entity which constitutes a threat to the stability, sovereignty or territorial integrity of the other Party, including by those who seek to use its territory for encouraging or committing such activities, including separatism, in the territory of the other Party.¹

1 Article 2(3) of the Agreement.

- 4.3 As mentioned previously within the context of the bilateral relationship, many submissions considered Article 2(3) to be the key obligation and the primary motivation for the Agreement.

The Treaty is driven largely by the Indonesian government's attempt to elicit a formal non-intervention in internal affairs commitment from the Australian government.²

- 4.4 Many organisations and individuals felt that this Article was specifically aimed at the Indonesian province of Papua, although Papua is not directly referred to in the Agreement.³ Broadly speaking, many of the issues raised by the submissions related to the interpretation of Article 2(3). First, there was concern that the terms 'support', 'participate' and 'threat' were not defined in the Agreement and could be interpreted in a way disadvantageous to aid organisations in Papua. Second, there was concern that the content of the obligation under Article 2(3) was open to conflicting interpretation. Finally, and related to the second point, there was concern that this article would restrict the range of activities that supporters of Papuan independence or Papuan human rights could lawfully undertake in Australia.

- 4.5 The Australian Council for International Development (ACFID) raised the issue of textual clarity, particularly with regard to the terms 'support', 'participate' and 'threat', which are central to the understanding and operation of Article 2(3) but are not defined in the Agreement:

While the treaty has been drafted with the best of intentions on both sides, it was, in our view, an error to decide to avoid the use of clear textual language on matters that are at the heart of this relationship and which the treaty tries to deal with.⁴

- 4.6 ACFID suggested that misinterpreting Article 2(3) might lead to increased difficulty in the provision of aid to Papua.⁵ This may occur as a result of a misperception that some aid organisations were supporting or participating in activities that are thought to constitute

2 Flinders University, *Submission 14*, p. 1.

3 This Report uses the terminology 'Papua' unless it is quoting or citing from a source where 'West Papua' is used in the original.

4 Mr Paul O'Callaghan, *Transcript of Evidence*, 26 March 2007, p. 23.

5 Australian Council for International Development, *Submission 45*.

a threat to the stability, sovereignty or territorial integrity of Indonesia.⁶

4.7 The Committee recognises that AusAID⁷ programs in Papua currently operate under a slightly different approvals process than aid programs in the rest of Indonesia as a result of sensitivities regarding that province.⁸ However, representatives from ACFID acknowledged that the five agencies currently in Papua are ‘able to operate their program activities with access and through meeting with relevant communities without major problems.’⁹ If difficulties for aid agencies working in Papua were to occur as a result of misinterpretation of the Agreement, the Committee would expect these to be raised by Australian government representatives with their Indonesian counterparts. This would be consistent with the process described by representatives from the Department of Foreign Affairs and Trade, who informed the Committee that any issues regarding interpretation of the Agreement would be dealt with by Australia and Indonesia through regular and close communication.¹⁰

4.8 The second issue regarding the interpretation of Article 2(3) was that it was open to conflicting interpretation by Indonesia and Australia. Professor Hugh White made this point when he appeared before the Committee:

It depends entirely ... on how you define ‘support’, ‘participate’ and ‘threat’. The interpretation of that, I would suggest, is likely to occur within the context of the meaning of the latter clause ... :

... including by those who seek to use its territory for encouraging...

... What is significant about that second clause, the second part that begins with ‘including’, is that it appears to place obligations on the states parties to regulate the activity of those on their territory – that is, ‘individuals’.¹¹

4.9 It was put to the Committee that there are two potential consequences of the misinterpretation of Article 2(3). First, restriction or control of

6 Australian Council for International Development, *Submission 45*, p. 3.

7 AusAID stands for the Australian Agency for International Development.

8 See Australian Council for International Development, *Submission 45*, p. 1.

9 Mr Paul O’Callaghan, *Transcript of Evidence*, 26 March 2007, p. 26.

10 Ms Gillian Bird, *Transcript of Evidence*, 26 March 2007, p. 41.

11 Professor Hugh White, *Transcript of Evidence*, 26 March 2007, p. 43.

the activities of private individuals in support of Papuan human rights or independence in Australia. Second, conflict in Australia's bilateral relationship with Indonesia when Indonesian expectations of Australia's obligations under this article are not fulfilled.

- 4.10 On the first point, the Committee notes that there was considerable concern that Article 2(3) will restrict activities by private individuals in Australia in support of Papuan independence or human rights:

This phrase puts in place a mechanism to restrict Australian support for West Papua, through the pretext that support for the region is implicit support for the separatist movement. Despite the assurances of the National Interest Analysis [2006] background paper accompanying the treaty, the intention of this phrase is to prevent support for West Papua.¹²

We are deeply concerned about Article 2 Principle 3. Does this principle limit or preclude our democratic right in Australia of freedom of speech and assembly to discuss and comment on the affairs of the respective parties, including the rights and wrongs, merits or otherwise of such ideas as self-determination or 'separatism' for indigenous people?¹³

- 4.11 Responding directly to these concerns, the Department of Foreign Affairs and Trade made it clear that the obligation in Article 2(3) would not prevent peaceful demonstrations conducted in accordance with the law, political commentary or free speech from occurring.¹⁴ Furthermore, Article 2(3) would not limit other fundamental rights:

On the specific claim that the agreement could commit Australia to suppress Papuan independent separatists, let me emphasise that the agreement does not in any way infringe rights to freedom of expression or freedom of association.¹⁵

... this treaty is about what the parties to this treaty – the Australian government and the Indonesian government – will do or not do. It does not infringe on the rights of those individuals or groups who want to hold such conferences or put forward such views.¹⁶

12 The Hon Meredith Burgmann MLC, *Submission 20*, p. 2.

13 Christians for a Democratic West Papua, *Submission 24*, p. 4.

14 NIA, para. 19.

15 Ms Gillian Bird, *Transcript of Evidence*, 26 March 2007, p. 42.

16 Ms Gillian Bird, *Transcript of Evidence*, 30 April 2007, p. 46.

4.12 The rules on state responsibility also provide that:

Parties and reference to parties in international agreements means that parties are responsible for their own actions – that is, of the government or of their agents, not of private individuals within their territory unless there is a specific statement to that effect. An ordinary interpretation informed by an understanding of the treaties process would inevitably bring an informed reader to that conclusion.¹⁷

4.13 Finally, the Department of Foreign Affairs and Trade reiterated the Australian government position in relation to Papuan independence and fundamental human rights:

The Australian government does not support separatism or Papuan independence but we support freedom of speech and assembly.¹⁸

4.14 The Committee is satisfied that Article 2(3) will not limit the expression of support for Papuan human rights or independence in Australia, provided it is in accordance with Australian law. However, there was some discussion as to whether this understanding of Article 2(3) accorded with Indonesia's expectations of the content of the obligation in Article 2(3).¹⁹

The critical question for the way in which this language affects the future of Australia-Indonesia relations is whether that is the reading Indonesia has.²⁰

4.15 It is clear to the Committee that this article provides a treaty-level commitment that the Australian government supports the province of Papua as part of Indonesia. The Department of Foreign Affairs and Trade confirmed that the significance of this article related to the question of Australian support for an independent Papua and that there is no misunderstanding as to its purpose:

There is no confusion over what this article means in the Indonesian mind or in ours. When we negotiated the treaty we went through these things very carefully with the Indonesians. They also, obviously, have access to our own

17 Mr Michael Bliss, *Transcript of Evidence*, 30 April 2007, p. 47, citing the rules on state responsibility as adopted by the 56th General Assembly of the United Nations in 2001.

18 Ms Gillian Bird, *Transcript of Evidence*, 30 April 2007, p. 46.

19 See *Transcript of Evidence*, 26 March 2007, pp. 40-45.

20 Professor Hugh White, *Transcript of Evidence*, 26 March 2007, p. 43.

national interest analysis, which makes it crystal clear what this article means.²¹

[This article] will enable the Indonesian government to put to rest the suggestions that are still made from time to time that the Australian government would like to see the break-up of Indonesia; to see Papua secede, for example.²²

4.16 In addition, the Committee was informed that any future asylum seekers arriving from Papua would be assessed within the existing legal framework administered by the Department of Immigration and Citizenship.²³

4.17 Although the Committee cannot speak to Indonesia's understanding or expectations of Article 2(3), it is satisfied that its purpose is to provide a binding commitment by the Australian *government* not to support the secession of Papua.

4.18 On the issue of differences between Australian and Indonesian interpretations of the Agreement, the Department of Foreign Affairs and Trade informed the Committee that:

Any questions about interpretation of the agreement can be resolved through the regular and close communication that takes place between the two governments.²⁴

Intelligence cooperation

4.19 Article 3(12), the intelligence cooperation provision of the Agreement, provides for the:

Cooperation and exchange of information and intelligence on security issues between relevant institutions and agencies, in compliance with their respective national legislation and within the limits of their responsibility.

4.20 A number of submissions expressed concern that safeguards, such as the ability to refuse a request if it relates to an offence which might attract the death penalty, may not apply to intelligence sharing under the Agreement.

21 Ms Gillian Bird, *Transcript of Evidence*, 30 April 2007, p. 44.

22 Ms Gillian Bird, *Transcript of Evidence*, 30 April 2007, p. 44.

23 Ms Gillian Bird, *Transcript of Evidence*, 30 April 2007, p. 44.

24 Ms Gillian Bird, *Transcript of Evidence*, 26 March 2007, p. 41.

There is no guarantee in this treaty that information that is provided in a security context will not lead to people being arrested and prosecuted and then facing the death penalty.²⁵

4.21 Currently, information sharing between Australia and Indonesia can take place through a formal mutual assistance request or through informal arrangements, such as police-to-police cooperation or agency-to-agency cooperation.²⁶ Safeguards exist under mutual assistance legislation which provide the discretion to refuse a mutual assistance request where it relates to a charge for which the death penalty may be imposed.²⁷ The legislation also provides other grounds for refusing to provide assistance.²⁸ Information provided through police-to-police cooperation is subject to the Australian Federal Police (AFP) Practical Guide on International Police to Police Assistance in Death Penalty Charge Situations.²⁹ These guidelines allow information to be shared prior to charges being laid which may result in the death penalty being imposed. After charges have been laid which may result in the death penalty, the Minister for Justice and Customs may decide that police-to-police assistance can continue.³⁰

4.22 A representative from the Australian Federal Police informed the Committee that:

Normally, what we deem police to police exchange covers intelligence exchange ... when we move to a more formal exchange where coercive powers may be requested from country to country – such as the execution of search warrants in that jurisdiction – they are matters normally covered by mutual assistance requests under the mutual assistance framework. The day-to-day exchange of intelligence from police is not covered under that framework.³¹

25 Mr Cameron Murphy, *Transcript of Evidence*, 30 April 2007, p. 1.

26 See *Mutual Assistance in Criminal Matters Act 1987* (Cth) and the *Treaty between Australia and the Republic of Indonesia on Mutual Assistance in Criminal Matters*, see JSCOT Report 1.

27 See *Mutual Assistance in Criminal Matters Act 1987* (Cth), sections 8(1A) and 8(1B).

28 See *Mutual Assistance in Criminal Matters Act 1987* (Cth), section 8(1)(a) to (f).

29 See the AFP Practical Guide on International Police to Police Assistance in Death Penalty Charge Situations, accessed 18 May 2007:

<http://afp.gov.au/__data/assets/pdf_file/21096/Guideline_for_international_death_penalty_situation.pdf>

30 See the AFP Practical Guide on International Police to Police Assistance in Death Penalty Charge Situations, note 29 above.

31 Federal Agent Tim Morris, *Transcript of Evidence*, 26 February 2007, p. 13.

- 4.23 The Committee supports a system of safeguards which will govern the provision of intelligence and information. As a starting point, the Committee was informed that there is no obligation on Australian intelligence agencies to share information with their Indonesian counterparts:

It does not place any obligations on us to exchange – for instance, that we must or must not exchange intelligence on specific issues. Each agency can still make decisions about what it will or will not exchange intelligence on with their Indonesian or Australian counterparts.³²

- 4.24 However, as a framework agreement with little detail on the information sharing which will occur between Australia and Indonesia, there are practical difficulties in inserting a provision on safeguards against the death penalty. This point was made by the Attorney-General's Department:

This is a framework treaty. The issue of the assistance provided in death penalty cases is dealt with in more detail in the mutual assistance treaty with Indonesia, and that is the appropriate place to do it.³³

- 4.25 As the Agreement does not provide details on information sharing, the discussion as to what safeguards do or do not apply is largely hypothetical. It may be the case that no new information sharing arrangements are concluded as a result of the Agreement. If that is the case, the formal and informal processes which currently exist, that is mutual assistance and police-to-police cooperation, already have a system of safeguards in place. The Committee has considered these issues previously and is generally satisfied with the safeguards as they stand although it has some outstanding concerns that information shared lawfully under police-to-police cooperation may inadvertently result in the death penalty being carried out.³⁴ If new information sharing processes are concluded as a result of the Agreement, the Committee expects at least the same type of safeguards that are currently in practice to apply to any new arrangements.

- 4.26 The Committee also recognises the value of intelligence sharing between Australia and Indonesia, particularly as a means of

32 Federal Agent Tim Morris, *Transcript of Evidence*, 30 April 2007, p. 53.

33 Mr William Campbell, *Transcript of Evidence*, 26 February 2007, p. 13.

34 See JSCOT Report 79, chapter 3.

combating traditional and non-traditional security threats. The Committee would be concerned if the Agreement specifically precluded the AFP and other bodies from sharing information in situations which might lead to the death penalty, as it would severely limit the ability of the AFP to combat a range of security threats. On this point, the Committee was informed that:

It depends on the final wording but, if such a clause were inserted it would mean that most of our activities on terrorism and drug trafficking would have to cease. If there were the possibility that, eventually, someone might be charged with an offence that involved the death penalty, we would have to cease those activities. We would certainly have to cease our counterterrorism activities with Indonesia, and many lives – both Australian and Indonesian lives – would be put at risk.³⁵

Defence cooperation

4.27 The defence cooperation provisions of the Agreement provide for:

Regular consultation on defence and security issues of common concern; and on their respective defence policies;

Promotion of development and capacity building of defence institutions and armed forces of both Parties including through military education and training, exercises, study visits and exchanges, application of scientific methods to support capacity building and management and other related mutually beneficial activities;

Facilitating cooperation in the field of mutually beneficial defence technologies and capabilities, including joint design, development, production, marketing and transfer of technology as well as developing mutually agreed joint projects.³⁶

4.28 The Department of Foreign Affairs and Trade informed the Committee that this is likely to include:

³⁵ Federal Agent Tim Morris, *Transcript of Proceedings*, 30 April 2007, p. 53.

³⁶ Article 3(1), (2) and (3) of the Agreement.

Senior-level reciprocal visits, training and postgraduate education focusing on professional development and governance, annual single service staff talks, a defence strategic dialogue and combined exercises.³⁷

- 4.29 There were strong concerns regarding the defence cooperation provisions of the Agreement and many submissions questioned the benefit to Australia of such cooperation.³⁸

The benefit is principally to Indonesia, and in particular through legitimising the status of the TNI in the eyes of other states.³⁹

- 4.30 Some submissions argued that previous defence cooperation with Indonesia had not increased respect for, or observance of, human rights by the TNI – the Indonesian military – and also questioned the appropriateness of cooperating with a military which has a questionable human rights record.

...unlike the Australian Defence Force, the TNI is not a neutral institution of the elected civilian government. It is a partisan force with its own agenda. Its military, civil and economic agenda is executed through its territorial command structure, a structure that is embedded in every strata of the Indonesian society including the bureaucracy, legislation and economy.⁴⁰

- 4.31 A further, more serious, suggestion was that defence cooperation with Indonesia will increase its capacity to commit human rights abuses.

...our main concern is defence ties with the Indonesia military that this treaty would commit us to. We believe that any aid or training given to the Indonesian military will only be used to oppress the West Papuan people.⁴¹

- 4.32 Similar to the provision on intelligence cooperation, the difficulty with assessing the provisions on defence cooperation in a framework agreement is that there is no detail of how such cooperation will work

37 Ms Gillian Bird, *Transcript of Evidence*, 26 February 2007, p. 3.

38 See Assoc. Professor Damien Kingsbury, *Submission 2*, and Dr Clinton Fernandes, *Submission 31*.

39 Assoc. Professor Damien Kingsbury, *Submission 2*, pp. 4-5. See also Dr Clinton Fernandes, *Submission 31*, whose submission examines the typical claims used to justify close links between the Australian Defence Force and the Indonesian military.

40 Clemens Runawery, *Submission 35*, p. 3.

41 Australia West Papua Association (Sydney), *Submission 6*, p. 2.

in practice. However, representatives from the Department of Foreign Affairs and Trade informed the Committee that:

Part of Australia's defence engagement with Indonesia is focused on enhancing the Indonesian military's human rights awareness and accountability. ADF training with TNI seeks to increase professionalism and emphasises adherence to strict rules of engagement based on the laws of armed conflict and respect for human rights.⁴²

4.33 The Committee was also informed that government policy limits cooperation to exclude any persons 'known to have links to violent groups or have backgrounds of known human rights concern'.⁴³

4.34 This was reiterated by the Department of Defence:

The other aspect I should mention is that any kind of training we do obviously – but let me state for the record – does not relate to teaching of any kind of human rights abuses. If there are records of people who are committing abuses they are not picking up those ideas or techniques from us. Another point that I should make is that a very large part of our defence training and education is deliberately focused on the broad area of governance and human rights issues ... I suppose the difference that we have found in recent years compared to what we found in the 1990s is the interest by the senior leadership of TNI and also by defence generally in Indonesia in this whole area of governance. They are much more interested in engagement in the activities and training that support good governance than they were in the past.⁴⁴

4.35 The Committee recognises the concerns regarding the Indonesian military. However, the Committee expects that the focus on human rights and good governance, in conjunction with stated policy that known or suspected abusers of human rights will not participate in such cooperation, provides appropriate safeguards to ensure that defence cooperation will be beneficial to both Australia and Indonesia.

4.36 The Committee does not regard defence cooperation with Indonesia to be, in principle, damaging or harmful. The Committee supports an approach which engages, rather than isolates, the Indonesian military

42 Ms Gillian Bird, *Transcript of Evidence*, 26 February 2007, p. 3.

43 Mr Michael Pezzullo, *Transcript of Evidence*, 26 February 2007, p. 8.

44 Mr Ben Coleman, *Transcript of Evidence*, 30 April, 2007, pp. 48-49.

as contact and communication provide a greater opportunity for progress to be achieved on the issues of concern. The Department of Defence and the Department of Foreign Affairs and Trade have made it clear that the purpose of such cooperation is to improve the professionalism of the Indonesian military and this is in both Australia's and Indonesia's national interest.

Recommendation 2

The Committee recommends that the Australian Government increase transparency in defence cooperation agreements to provide assurance that Australian resources do not directly or indirectly support human rights abuses in Indonesia.

Comment on Papua

4.37 The Committee is conscious that most of the submissions to its inquiry concerned human rights and the independence of Papua. To some degree, these issues overlapped with issues regarding the defence cooperation provisions of the Agreement. Unfortunately, much of this discussion was not put to the Committee in a way that was relevant to the terms of the Agreement, and as a result, its inquiry. However, the Committee thought it was appropriate to comment briefly on these issues.

4.38 As media access is restricted in the province of Papua, the Committee is not in a position to comment directly on human rights matters, particularly where they relate to the Indonesian military. However, the Committee agrees that more open access to Papua would help to ensure greater respect for human rights:

If the goal is to improve human rights, Australia must ensure that there is unhindered access for human rights monitors and foreign journalists to anywhere in Indonesia, and especially in West Papua.⁴⁵

4.39 The Committee supports increased access for the media and for human right monitors in Papua as an additional measure which would allay specific concerns regarding the operation of the military

45 Dr Clinton Fernandes, *Submission 31*, p. 8.

in Papua, and by extension, the value of defence cooperation under the Agreement.

Recommendation 3

The Committee recommends that the Australian Government encourage the Indonesian Government to allow greater access for the media and human rights monitors in Papua.

Counter-Terrorism Cooperation

- 4.40 Article 3, sub-articles 8 to 11, provide for cooperation to combat and eliminate international terrorism. For instance, Article 3(8) provides that Australia and Indonesia will:

[Do] everything possible individually and jointly to eradicate international terrorism and extremism and its roots and causes and to bring those who support or engage in violent criminal acts to justice in accordance with international law and their respective national laws.

- 4.41 Dr Ben Saul raised concerns regarding the operation of this provision, pointing out that there is no agreed definition of terrorism, both in the Agreement itself and in international law generally.⁴⁶

Australia and Indonesia have very different definitions of terrorism, so the extent of both countries' obligations to cooperate under the treaty is unclear.⁴⁷

- 4.42 Australia's definition of terrorism is relatively narrow in comparison to the definition of terrorism under Indonesian law, which states that terrorism is 'any violent act that could create terror or insecurity among the public, violate the public's freedom, cause the death of other people or cause the destruction of vital or strategic objects.'⁴⁸

46 Dr Ben Saul, *Submission 43*, p. 3.

47 Dr Ben Saul, *Submission 43*, p. 3.

48 Dr Ben Saul, *Submission 43*, p. 3, citing *Regulation in Lieu of Law No 1/2002 on the Eradication of Criminal Acts of Terrorism*. For Australia's definition, see section 100.1 of the *Commonwealth Criminal Code*

- 4.43 The Department of Foreign Affairs and Trade informed the Committee that counter-terrorism cooperation, as with other areas of cooperation under the Agreement, would occur to the extent that there is agreed understanding between Australia and Indonesia:

I suppose the important point about this treaty ... is that we are talking here about cooperative activities between Australia and Indonesia. So when we are talking about terrorism – as is the case when we are talking about the other issues – we are talking about issues on which we both agree that it is in our mutual interest to cooperate. So I do not see the potential for misunderstanding as a result of the fact that there is no common agreed definition of terrorism.⁴⁹

- 4.44 Moreover, the Committee was informed by the Australian Federal Police that the different definitions of terrorism would not affect activities which are lawful in Australia but might be regarded as terrorism under Indonesia's broad definition of the term:

CHAIR – So in a situation which involves legitimate political protest or freedom of expression –

Federal Agent Morris – That would not be of any interest to the Australian Federal Police in their joint activities with the Indonesian National Police.⁵⁰

- 4.45 The Committee is satisfied that the lack of an agreed definition of terrorism poses no difficulty to the operation of the Agreement.

Nuclear Cooperation

- 4.46 The commitment to nuclear cooperation is located under the proliferation of weapons of mass destruction provision.⁵¹ Article 3(17) provides cooperation for:

Strengthening bilateral nuclear cooperation for peaceful purposes, including to further the objective of non-proliferation of weapons of mass destruction and strengthen international nuclear safety and security through enhanced standards, in accordance with international law.

49 Ms Gillian Bird, *Transcript of Evidence*, 30 April 2007, p. 42.

50 Federal Agent Tim Morris, *Transcript of Evidence*, 30 April 2007, p. 42.

51 Article 3(17) of the Agreement.

- 4.47 The Australian Conservation Foundation (ACF) raised concerns about the development of nuclear programs and activities in Indonesia. The ACF point out that nuclear technology is 'dual use, potentially having both a civil and military purpose'.⁵² The geological instability of Indonesia also means that the siting, construction and operation of nuclear facilities increases the risk of any nuclear programs and activities.⁵³
- 4.48 The Committee recognises there are often community concerns where any kind of nuclear activity is proposed. The inquiry into the Australia China Uranium Agreement is a recent example.⁵⁴ However, the kind of cooperation contemplated by the Agreement moves Australia and Indonesia towards cooperation for peaceful purposes, including the improvement of safety and security standards and a commitment to non-proliferation of weapons of mass destruction.
- 4.49 This was confirmed by representatives from the Department of Foreign Affairs and Trade:

The kinds of activities that that would cover are the activities that ASNO and ANSTO are taking part in with Indonesia and other regional countries. ASNO, the Australian Safeguards and Non-Proliferation Office, is working with Indonesia and other regional countries on the application of best practice for nuclear safeguards and security. In fact, we are going to be co-hosting with Indonesia an APEC meeting in Sydney in June of this year to discuss the establishment of an Asia-Pacific regional association of safeguards authorities. ANSTO, the Australian Nuclear Science and Technology Organisation, is working with Indonesia and other regional countries on peaceful nuclear science and technology applications, issues to do with operation and maintenance of nuclear research reactors. That is the kind of thing that is meant by 'nuclear cooperation for peaceful purposes.'⁵⁵

52 Australian Conservation Foundation, *Submission 36*, p. 2; see also Mr Dave Sweeney, *Transcript of Evidence*, 30 April 2007, pp. 54-59.

53 Australian Conservation Foundation, *Submission 36*, p. 3.

54 See JSCOT Report 81, *Agreement between the Government of Australia and the Government of the People's Republic of China on the Transfer of Nuclear Material* (Canberra, 3 April 2006) and the *Agreement between the Government of Australia and the Government of the People's Republic of China for Cooperation in the Peaceful Uses of Nuclear Energy* (Canberra, 3 April 2006).

55 Ms Gillian Bird, *Transcript of Evidence*, 30 April 2007, pp. 49-50.

- 4.50 The nuclear cooperation provision appears to be confined to nuclear activities for peaceful purposes and this was confirmed by government representatives. For this reason, the Committee is satisfied that the kind of cooperation proposed under Article 3(17) of the Agreement is intended to improve Indonesia's nuclear safety and security standards. The development and improvement of safety and security standards would seem to address some of the issues that ACF had regarding nuclear activities and programs in Indonesia.

Conclusions

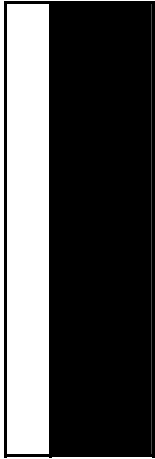
- 5.1 The Committee supports the scope and content of the Agreement and considers it to be in the national interest. The Agreement provides a solid basis for encouraging dialogue, exchange and cooperative activities in an area of particular strategic importance. The Committee welcomes the inclusion of non-traditional security threats, such as natural disasters, in the Agreement. The Agreement also recognises the value of community understanding and people-to-people cooperation in improving mutual understanding of security challenges and identifying the appropriate responses to them.
- 5.2 The Committee recognises the range of concerns that were raised in submissions and appreciates that the concerns have an historical basis. The Committee does not support disengaging from any area of joint cooperation with Indonesia as the best way to address those concerns. Engagement with Indonesia, with open and regular lines of communication, is the appropriate way forward and the Agreement provides at least one means through which this may occur.
- 5.3 Noting the Lowy Institute 2006 Survey, the Committee believes there is a benefit in increasing public awareness in Australia of Indonesia.

Recommendation 4

The Committee recommends that the Australian Government engage in a campaign to increase public support for the Australia – Indonesia relationship. This campaign would have the goal of increasing awareness of the democratic reforms in Indonesia and the value to Australian security of strong relations with Indonesia.

Recommendation 5

The Committee supports the *Agreement between Australia and the Republic of Indonesia on the Framework for Security Cooperation (Mataram, Lombok, 13 November 2006)* and recommends binding treaty action be taken.



Dissenting Report—Senator Andrew Bartlett

Introduction

I support and welcome recommendations 1 – 4 in this report, which attempt to address the concerns raised by many witnesses and submitters over the course of this inquiry. However, I cannot agree with the final recommendation by the majority of the Committee that binding treaty action should be taken at this time.

I accept that there is a plausible case for arguing that this Treaty will strengthen effective ties between Australia and Indonesia. However, I believe the weight of evidence and history suggests that it is too soon for both countries for a treaty such as this to be agreed to, and as such may actually be detrimental in the long term to this very important relationship.

I share the view expressed by Professor Hugh White. Whilst the bilateral relationship between our two countries is vital and we need to work harder to strengthen it, I am not convinced that the relationship as it currently stands is strong enough for each side to be able to meet the expectations of the other, particularly at times of stress or crisis in the relationship. It is my assessment that there are simply too many unresolved issues between our two countries which have yet to be openly addressed.

I agree with Professor White's perspective given in evidence to the committee, as reflected in his quote at paragraph 3.4 of the majority report, that "*A clause in a treaty like this which raises expectations of the way in which either can manage these issues which cannot be met, which go beyond the kinds of approaches that either government can take, are in a crisis likely to amplify bitterness rather than reduce it.*"

Democracy and human rights

I have publicly stated a number of times that Indonesia's progress into being a parliamentary democracy in such a short space of time has been extraordinary, particularly given the challenges involved. This is often underappreciated in Australia, as it is easy to underestimate how hard a task this is for any country.

However, while this fact should be noted and welcomed, it should not be used to obscure some of the significant problems that still remain, particularly in the area of human rights abuses. As the Committee noted in paragraph 4.38, most of the submissions to the inquiry concerned human rights issues, and particularly the situation in Papua. From my reading, most of them did not address the issue of independence for Papua, but rather a concern that human rights issues should not be ignored, and the risk that by increasing direct military cooperation, that Australia may be inadvertently facilitating human rights abuses.

Whilst it is not the place of the Committee to make definitive conclusions about the full extent and nature of the human rights situation, it is none the less not something that can just be ignored. Despite the restrictions on access to Papua, there is still widespread evidence that serious human rights abuses continue, and that segments within the Indonesian military are complicit in much of this.

It is easy to point to human rights issues in other countries whilst diminishing those in one's own country, and I fully acknowledge Australia is less than perfect as well. Australia certainly doesn't have many positive lessons to share with the world when it comes to facilitating or promoting self-determination for the Indigenous peoples in our country, a fact which no doubt many in Indonesia note when issues of self-determination in Papua are raised.

It is my view that sensitivities around Papua played a big part in both countries deciding to adopt a Treaty with wording such as this one. But this is also one of the key areas where it is quite possible that circumstances will arise that will generate the sort of impossible to meet expectations that Professor White was referring to in his comment above. We cannot wish away human rights concerns just because they make our relationship with another country uncomfortable. Leaving aside ethical considerations about such things, history has given us enough examples to show that such an approach usually does not work in the long run.

Nuclear Cooperation

I also have some concerns regarding the clause in the treaty promoting bilateral nuclear cooperation. The Committee deals with this issue in paragraphs 4.47 – 4.51

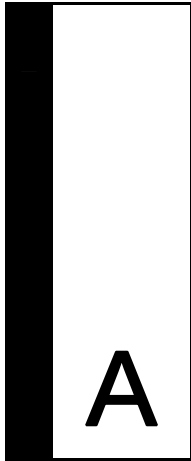
of the main report. I agree with the Committee that strengthening nuclear safety and security standards is desirable, but I have some concerns that this clause may also serve as a forerunner for opening up future opportunities for promoting nuclear power development, in line with current Australian government policy to expand uranium exports. It could even be seen down the track as an endorsement for examining returning nuclear waste back to Australia.

I accept that any such future actions would require further treaties to be developed and adopted, as well as potentially amendments to existing Australian laws. However, I remain concerned that this could be interpreted or used as a green light to start exploring such pathways at some stage.

Conclusion

It is always a balancing act promoting better ties and understandings between two countries while being prepared to be open about human rights concerns. Promoting stronger engagement at all levels of our two countries is something I am strongly in favour of, but we have to avoid creating unrealistic or premature expectations along the way, as well as ensuring that we do not facilitate or reinforce elements that are a barrier to further progress.

There have been many improvements in the situation between Australia and Indonesia, and current faults are certainly not all on one side. We need to facilitate greater understanding and contacts at all levels of our two societies. But I believe the cracks that are still there are simply too wide at present to satisfactorily paper over them with a treaty such as this.



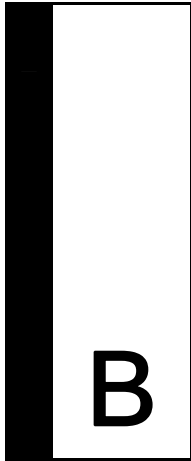
Appendix A - Submissions

Treaty tabled on 6 December 2006

- 1 Australian Patriot Movement
- 2 Associate Professor Damien Kingsbury
- 3 Dr Malcolm Cook
- 4 Mr Adam Hughes Henry
- 5 Reverend Alan & Betty Matthews
- 6 Australia West Papua Association (Sydney)
- 6.1 Australia West Papua Association (Sydney)
- 6.2 Australia West Papua Association (Sydney)
- 7 Civil Liberties Australia (ACT) Inc
- 7.1 Civil Liberties Australia (ACT) Inc
- 8 Australia West Papua Association WA
- 9 Professor Adrian Vickers
- 10 Mr Errol Clive Kendall
- 11 Ms Hannah Kendall
- 12 Mr Andrew Johnson
- 12.1 Mr Andrew Johnson
- 13 Indonesian Solidarity

- 13.1 Indonesian Solidarity
- 13.2 Indonesian Solidarity
- 13.3 Dr Clinton Fernandes
- 14 Flinders University
- 15 Mr Max Stark
- 16 Women's International League for Peace and Freedom
- 17 Human Rights Law Resource Centre Ltd
- 18 Australia West Papua Association South Australia (inc)
- 19 Mr Rob Wesley-Smith
- 20 The Hon Dr Meredith Burgmann MLC
- 21 Mr Jim Elmslie
- 22 NSW Council for Civil Liberties
- 23 The Uniting Church in Australia
- 24 Christians for a Democratic West Papua (Australian Chapter)
- 25 Mr Ian Melrose
- 26 Australia - Safe Refuge for Christians
- 27 Mr Ben Oquist
- 28 Australian Coalition for Transitional Justice in East Timor
- 29 Medical Association for Prevention of War (Australia)
- 30 Professor G Peter King
- 31 Dr Clinton Fernandes
- 32 Mr Jason MacLeod
- 33 The Uniting Church in Australia National Assembly
- 34 Australia West Papua Association (Melbourne)
- 35 Mr Clemens Runawery
- 36 Australian Conservation Foundation
- 37 Mary MacKillop East Timor
- 38 Tears of the Oppressed

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- 39 International Commission of Jurists Australia
 - 40 Institute for Papuan Advocacy and Human Rights
 - 41 Mr John W Gratton Wilson
 - 42 CONFIDENTIAL
 - 43 Dr Ben Saul
 - 44 Caritas Australia
 - 45 Australian Council for International Development
 - 46 Australia-East Timor Friendship Association (SA) Inc
 - 46.1 Australia-East Timor Friendship Association (SA) Inc
 - 47 Free West Papua Campaign (Melb)
 - 48 Dr Martin Wesley-Smith, AM
 - 49 Mr Bill Fisher
 - 49.1 Mr Bill Fisher
 - 50 Institute for Human Rights Study and Advocacy (ELSHAM)
 - 50.1 Institute for Human Rights Study and Advocacy (ELSHAM)
 - 51 Queensland Government
 - 52 Attorney-General's Department
 - 53 Department of Foreign Affairs and Trade
 - 54 SEARCH Foundation
 - 55 Australia East Timor Association NSW
 - 56 NSW Josephite Justice Committee



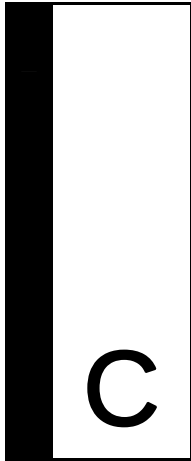
Appendix B - Exhibits

Treaty tabled on 6 December 2006

- 1 Professor Hugh White
FEER Article
- 2 Dr Malcolm Cook
The Lowy Institute Poll 2006 (Related to Submission No. 3)
- 3 Dr Malcolm Cook
Article from The Australian (Related to Submission No. 3)
- 4 Reverend Alan & Betty Matthews
Letter to The Hon Alexander Downer MP (Related to Submission No. 5)
- 5 Mr Max Stark
Annex A: A brief well researched history of Papua since it was Dutch
(Related to Submission No. 15)
- 6 Mr Max Stark
Annex B1: Genocide in West Papua? (Related to Submission No. 15)
- 7 Mr Max Stark
Indonesian Human Rights Abuses in West Papua: Application of the Law of Genocide to the History of Indonesian Control (Related to Submission No. 15)
- 8 Mr Max Stark
An email sent to Senator Stott Despoja covering a note to Pres. RI, Susilo Bambang Yudiyono tendering a report by the UK Courier Mail in 2005.
(Related to Submission No. 15)

- 9 Mr Max Stark
Terror-Razing the Forest: Guns, Corruption, Illegal Logging, JI and the Indonesian Military in Papua Niugini (Related to Submission No. 15)
- 10 Mr Ian Melrose
Various background documents (Related to Submission No. 25)
- 11 Mr Ian Melrose
CD-ROM (Related to Submission No. 25)
- 12 Mr Ian Melrose
CD-ROM (Related to Submission No. 25)
- 13 Mr Ben Oquist
Indonesia - Protest and Punishment (Related to Submission No. 27)
- 14 Mr & Mrs David and Jan Wauchope
Correspondence to the Prime Minister and correspondence from DFAT
(Related to Submission No. 26)
- 15 Free West Papua Campaign (Melb)
Paying for Protection - The Freeport mine and the Indonesian security forces
(Related to Submission No. 47)
- 16 Free West Papua Campaign (Melb)
1132 form letters (Related to Submission No. 47)
- 17 Australia West Papua Association (Melbourne)
Statement of Facts concerning Indonesian Intelligence Agencies Campaign to Discredit and Harass Dr Jacob Rumbiak Within Australia and Overseas
(Related to Submission No. 34)
- 18 Mr Adam Hughes Henry
Correspondence and NewMatilda.com article
- 19 Professor G Peter King
Elsham Papua Barat 2006 Year End Report (Related to Submission No. 30)
- 20 Dr Benny Giay
Media Release 1 January 2007 (Related to Submission No. 50)
- 21 Professor G Peter King
Blundering In? The Australia-Indonesia Security Treaty and the Humanitarian Crisis in West Papua (Related to Submission No. 30)
- 22 Australian Council for International Development
ACFID Code: integrity - values – accountability (Related to Submission No. 45)

-
- 23 Mr Richard Chauvel
Paper published in the Nautilus Institute's Austral Policy Forum
- 24 Australia West Papua Association (Sydney)
Press Release: The Coalition of Students and People Who Care for Papua Land (Related to Submission No. 6)
- 25 Mr Philip Amos
Symbol of Strength or Symbol of Fragility?



Appendix C - Witnesses

Monday, 26 February 2007 - Canberra

Individuals

Dr Clinton Fernandes, Senior Lecturer, Strategic Studies, School of Humanities and Social Sciences

Suciwati

Attorney-General's Department

Mr William McFadyen Campbell, First Assistant Secretary, Office of International Law

Australian Federal Police

Federal Agent Tim Morris, National Manager, Border and International Network

Civil Liberties Australia (ACT) Inc

Dr Kristine Klugman, President

Mr William Rowlings, CEO

Dr June Verrier, Director

Department of Defence

Mr Michael Pezzullo, Deputy Secretary Strategy

Department of Foreign Affairs and Trade

Ms Gillian Bird, Deputy Secretary

Mr Michael Bliss, Director, International Law and Transnational Crime Section, Legal Branch

Ms Michelle Chan, Assistant Secretary, South-East Asia (South) and Regional Issues Branch

Mr David Mason, Executive Director, Treaties Secretariat, Legal Branch

Indonesian Solidarity

Mrs Nonie Hodgson, Human Rights Worker

Mr Eko Waluyo, Coordinator

The Commission for Disappeared and Victims of Violence (KontraS)

Mr Usman Hamid, Coordinator

Monday, 26 March 2007 - Canberra

Individuals

Professor Geoffrey Peter King

Professor Hugh White, Professor of Strategic Studies and Visiting Fellow, Strategic and Defence Studies Centre

Attorney-General's Department

Mr Geoffrey Skillen, Principal Legal Officer

Australian Council for International Development

Mr Paul O'Callaghan, Executive Director

Ms Carly Sheehan, Humanitarian and Emergencies Coordinator

Department of Foreign Affairs and Trade

Mr David Mason, Executive Director, Treaties Secretariat, Legal Branch

ELSHAM (Institute for Human Rights Study and Advocacy)

Ms Paula Makabory, International Human Rights Campaign Coordinator

Human Rights Law Resource Centre Ltd

Mr Mathew Tinkler, Seconded Solicitor

Monday, 30 April 2007 - Sydney**Australia West Papua Association (Sydney)**

Mr Joe Collins, Secretary

Dr Anne Noonan, Member

Australian Coalition for Transitional Justice in East Timor

Mr Mark Byrne PhD

Australian Conservation Foundation

Mr Dave Sweeney, Nuclear campaigner

Australian Federal Police

Federal Agent Tim Morris, National Manager, Border and International Network

Department of Defence

Mr Benedict Coleman, Assistant Secretary, ASIA IP Division

Department of Foreign Affairs and Trade

Ms Gillian Bird, Deputy Secretary

Mr Michael Bliss, Director, International Law and Transnational Crime Section, Legal Branch

Ms Michelle Chan, Assistant Secretary, South-East Asia (South) and Regional Issues Branch

Mr David Mason, Executive Director, Treaties Secretariat, Legal Branch

International Commission of Jurists Australia

The Hon John Dowd AO QC, President

Lowy Institute for International Policy

Dr Malcolm Cook, Program Director, Asia and the Pacific

NSW Council for Civil Liberties

Mr Cameron Murphy, President

Mr Thomas Spohr, Committee Member

Mr Michael Walton, Committee Member

Sydney University

Mr Jim Elmslie, Co-convenor, West Papua Project, Research Fellow,
Centre for Peace and Conflict Studies

Professor Geoffrey Peter King, Co-convenor, West Papua Project,
Centre for Peace and Conflict Studies

The University of Sydney

Dr Ben Saul, Faculty of Law