

Submission to the Inquiry regarding:

Agreement between Australia and the Republic of Indonesia on the Framework for Security Cooperation (signed Mataram, Lombok, 13 November 2006, referred to here as 'the Lombok Treaty').

Abstract:

Good relations between Australia and Indonesia are desirable, but not at any cost. In particular, there needs to be clear recognition that Australia and Indonesia are at different stages of political development and have different political priorities. Further, there are implications in the treaty for the diminution of the status of Australian citizens by potentially or actually exposing them to considerations that fall outside the Australian legal framework. These matters need to be addressed, clarified and dealt with according to Australian law and common expectations in relation to UN 1948 Articles 19, 20 and 21.

Keeping in mind the desirability of all countries to maintain constructive relations, and the relevance of Indonesia to Australia as its biggest proximate neighbor, it is worth noting that the preamble to the Lombok Treaty, while not itself binding, over-compliments the internal organization of the signatory countries. It implies that the term 'democratic' has equal and consistent meaning across its range of variations (Collier and Levitsky 1997 note there are 550 sub-types), in particular between Australia and Indonesia. The literature on democracies and democratization demonstrates there is a fundamental difference between 'substantive' (see Grugel 2002:6) and 'procedural' democracies (Schumpeter 1976, Burton, Gunther and Higley 1992:1).

While Australian democracy can be criticized for failing in some, perhaps many, respects (I think we should all be careful not to engage in the often unwarranted 'politics of self-congratulation'), it generally conforms to the 'substantive' description. Indonesia, on the other hand, remains a 'democratising' state, with the status of its democracy still fairly well located in the 'procedural' camp. This is not a criticism of Indonesia, and it does recognize that after an uneven start (one dumped president, one non-reformist president, a fractious legislature) that Indonesia has continued, cautiously, along the democratic path since the end of its authoritarian New Order government. However, the Indonesian state continues to suffer under elements of its authoritarian legacy, in particular a military that remains well outside the full control of the civil administration. The TNI's functional budget is still about two-thirds self-funded, giving it economic independence in decision making, and its Territorial structure and lack of accountable mechanisms continues to place it outside civil control (e.g. see HRW 2006, McCulloch 2003, Kingsbury 2003).

Similarly, the commander in chief of the TNI retains ministerial ranking nominally equal to but in practice above the minister for defence, hence positioning the c-c as an equal or greater political actor to his civilian counterpart. This impacts directly upon its

democratic status, key issues in the bilateral relationship and, hence, the treaty between Australia and Indonesia. Related to this, the argument that greater military-to- military links will produce a more professional TNI with greater respect for human rights has been shown to be unsubstantiated – not only have TNI-perpetrated human rights abuses continued apace during the period of ADF-TNI co-training, but the key former proponent of this policy, then Foreign Minister Gareth Evans, has since admitted that he was mistaken and that this policy had not worked in this way (Evans 2001). It was only ever, and remains, a fig-leaf to cover military training for purposes of gaining greater closeness to the TNI as Indonesia's formerly dominant and still enormously powerful political institution. This in turn reflects a view in Australia that closeness with Indonesia does not have to be predicated upon support for democratic institutions or democratic outcomes (the 'Jakarta Lobby' position). This in turn runs into the contradiction of Australian public expectations and thus leads to policy dissonance, which produced debacles like the diplomatic fall-out following Australia's intervention in East Timor in 1999. Indeed, after nearly three decades of ADF-TNI links during which anti-civilian violence, human rights abuses and corruption continued unabated, the TNI capped off its then relationship with the ADF by burning East Timor, mass deportation of a third of its citizens, and killing or orchestrating the killing of well over a thousand more.

It was not surprising, given the ethical complexities of the previous relationship with the TNI that the practical component of the renewal of links between the ADF and Kopassus came undone before it had even started. The head of Kopassus, Major-General Sriyanto Muntasram, and 10 other Kopassus members were invited to Australia in October 2003 by the Australian government ostensibly to look at security for the World Rugby Cup then about to be staged¹. This was to have been the first official, and low-key, broaching of the renewed relationship. However, the ADF officially pointed out that Sriyanto was at that time awaiting trial on a charge of murder, for ordering his troops to open fire in what is known as the Tanjung Priok massacre of 12 September 1984, in which soldiers shot unarmed Muslim protesters in a north Jakarta port-side neighbourhood, killing at least 33 and wounding at least 55 others. The Australian government, aware of the likely protests, media coverage and therefore political embarrassment Sriyanto's visit could therefore cause in Australia, quickly backed away from the invitation. The Australian Foreign Minister, Alexander Downer, told ABC Radio's 'World Today' program that: '... it's inappropriate for the Australian Defence Force to be involved in training with people in the Indonesian military, or for that matter in the Indonesian system generally, who have been involved in and in some cases, charged with egregious human rights abuses.' (Downer 2003) Several other Kopassus members from the visiting party were also barred by Australia (Moore 2003). In response, the TNI objected to Australia vetting its members, with Sriyanto saying it was not appropriate for 'a best friend' to impose conditions on such a visit.

Further, the preamble notes 'new global challenges, notably from international terrorism, traditional and non-traditional security threats'. In fact, apart from the role of Jema'ah Islamiyah (JI), most 'terrorist' organisations, such as Laskar Jihad, Laskar Mujahidin,

¹ They were to have 'looked at rugby security' by visiting the SASR base at Swanbourne, Perth, Western Australia.

Islamic Defenders Front and various local militias in Indonesia have specific links to or are functionally part of the Indonesian military (with LM having a training association with the national police). As the best known terrorist organisation, JI also has links to elements of the Indonesian military (Tentara Nasional Indonesia – TNI). Indeed, the only ‘terrorist threat in Indonesia derives either from TNI-backed militias or the TNI itself, in particular its Special Forces (Kopassus). In support of the TNI-Jema’ah Islamiyah association, according to Laksamana.Net, an ‘intelligence source’ said that in the 1970s key Jema’ah Islamiyah operative Hambali had been a Special Operations (Opsus²) plant into JI. He was given the codename G-8 and tasked with building the financial structure of JI (Laksamana.net 2002). The aim of the operation was to discredit political Islam and to legitimise repressive action by the New Order government. A similar link was established between the TNI and Fausi Hasbi, an Acehese whose father was a leader of the Darul Islam movement in Aceh, who had a history of links with TNI intelligence dating to 1977. Hasbi was later identified as the link between TNI intelligence and three men (one of whom, Edi Sugianto, was also associated with Kopassus) charged with a bombing on Christmas Eve 2000 in Medan³ (Tapol 2003a, *Tempo* 25.12.2001, *Tempo* 4.3.2001, ICG 2002:33). As senior Jema’ah Islamiyah researcher Sidney Jones noted: ‘If you scratch any radical Islamic group in Indonesia, you will find some security forces involvement’ (*Associated Press* 12.8.2002).

This complicated series of entanglements by the security and intelligence forces then impacts upon the determination to ‘maintain and strengthen the long-standing political, economic, social and security cooperation which exist between the two Parties, and their common regional interests and ties, including the stability, progress and prosperity of the Asia-Pacific region’.

While Indonesia’s security from external threat (external invasion) is of longstanding concern to Australia (dating to 1941-2), it is not at all clear that Indonesia’s internal security is of or should be Australia’s concern. In so far as Indonesia has had internal security concerns, these have invariably reflected an inability or an unwillingness of the central government to address through a political process, or its brutal military response, a host of usually quite legitimate regional grievances, including a desire for democracy, regional self-determination, dissatisfaction with imposed corruption and so on. Indonesia’s issues with internal stability, then, at best are of interest to Australia for possible flow-on consequences, but not of direct concern, except where if Australia’s external values were consistent with its internal values it might have greater sympathy for such expressions of concern and dissent. In terms of political instability in Indonesia, the alleged possibility of waves of Indonesian refugees coming to Australian shores is without specific or commensurable evidence, and as such can be understood primarily as a trumped up ‘scare tactic’ by lobbyists with a particular regional agenda. In the period of

² Opsus seagued into other intelligence organizations, culminating in the State Intelligence Body (Badan Intelijen Negara – BIN), which retains substantial military links, especially with Kopassus, which has an intelligence function.

³ Similar links were established between military intelligence and more than 30 other ostensibly Islamic bombings against churches and other targets in 2000, in which 19 people were killed and 120 injured (see Tapol 2003, *Tempo*).

considerable political instability, between 1996–2004, there were no such waves of refugees. Further, in so far as Indonesia has faced internal security threats since the end of the Darul Islam Rebellion (1963), these have either been in response to or sponsored by the TNI or its predecessor organizations such as Angkatan Bersenjata Republik Indonesia - ABRI (see Fernandes and Kingsbury 2005).

Beyond this, one might question ‘the value of bilateral agreements and arrangements between the two countries since 1959’, given the two countries were engaged in a shooting war (‘Confrontation’ 1963-66) and the failure of Australian-Indonesian Security Agreement to clear its first hurdle in 1999. That is to say, the bilateral relationship has been marked not by ‘valuable arrangements’, but by a series of diplomatic tiffs, which have not been ameliorated by military-to-military links (the argument that they would have otherwise been worse is an assertion only and is not predicated upon evidence), and intervening periods of equanimity which is common to neighboring countries and which would be most surprising if it did not exist (one only need to look at Indonesia’s relations with Malaysia, or Malaysia and Singapore, Thailand and Burma, etc. to see how common this is).

Regarding Article 2, under Principles:

Point 2. Sovereign states may and generally do respect the sovereignty and territorial integrity of other sovereign states. However, there are numerous circumstances where this is not the case, especially but not exclusively under particular elements of international law (in cases of legitimate dispute) and in particular UN Security Council resolutions. More to the point, respect for the sovereignty of another state implies that it will not actively interfere in the affairs of that state. It does not, however, imply ‘support’ for ‘sovereignty, territorial integrity, national unity and political independence’, in so far as that implies an active policy.

Point 3. This remains ambiguous, particularly in relations to legitimate expressions of concern about or, arguably, the legitimacy of, various aspects of the Indonesian state. This point requires clarification to explicitly acknowledge the rights of citizens in a democracy to hold a plurality of political views, none of which may be excluded from the first principle civil and political right of freedoms of expression and association (UN 1948 Preamble, Article 19, 20).

Regarding Article 3, under Areas and Forms of Cooperation

Defence Cooperation:

The preamble which states: ‘In recognition of the long-term mutual benefit of the closest professional cooperation between their Defence Forces’ is asserted but not substantiated. This is of particular concern given that the degree to which Australia benefits from ‘the closest professional cooperation’ has been and remains contested. The benefit is principally to Indonesia, and in particular through legitimising the status of the TNI in the

eyes of other states, in particular the United States, which is resuming its role as Indonesia's principle supplier of weapons and external training.

This then goes to points 2 and 3, which appears as ambiguously worded as to apply to any manner of assistance or support, including for 'counter-insurgency' operations against parties that might otherwise have legitimate political claims, and which may in fact not constitute a counter-insurgency but expressions of peaceful civil society opposition. This is of particular concern given the history of the TNI generally and in East Timor (Moore 2001, Budiardjo and Liong 1984) and Aceh in particular (AI 1993, 2000, 2004), and its continuing operations in Papua (see Davies 2006, Tapol 2003b). Indonesia has a particularly troubled history, including substantial and well-documented accounts of human rights abuses, with 'counter-insurgency' and the behavior of its military in such operations. In particular, the conduct of its Special Forces, Kopassus, in a range of anti-civilian activities and in training, supplying and supporting informal 'militias', which have also been involved in extensive human rights abuses, has been extensively documented (see Kingsbury 2003,).

Regarding Law Enforcement Cooperation:

Point 7.i. 'Other types of crime if deemed necessary by both Parties' is ambiguous and while it might be claimed as necessary to encompass specific threats not mentioned or at this stage conceived of, it allows great scope for one party to constitute as a crime a matter that might not be noted as a crime by the other, and which may have negative implications for otherwise law-abiding citizens. This clause thus requires considerable clarification about its intent and limitations.

Intelligence Cooperation

Point 12. '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' is vague and ambiguous, particularly concerning 'security issues', which may be widely conceived. In particular, this point allows for the exchange of intelligence material concerning law-abiding residents of the state from which the intelligence is derived. That is, what is not illegal in one state might be so in another, and hence be subject to the international transfer of intelligence which could have negative implications, e.g. regarding international travel, for the person concerned. This point therefore needs to be clarified to ensure that there will be no transfer of intelligence concerning citizens whose conduct remains within the law of their own state.

It is also of note that Indonesia's intelligence agencies have been principally involved in compelling compliance among Indonesia's own citizens and concerned foreign citizens. Its role has been, and remains largely akin to that of the Soviet-era KGB, in that it is overwhelmingly an ideological organization which, moreover, operates to a considerable degree well outside the purview of and is not practically accountable to the civil government.

Maritime Security

This section is ambiguous and could range from illegal fishing or people smuggling to legitimate and internationally sanctioned flight from persecution (UN 1948 Article 14). It thus also requires clarification to ensure that it does not imply activity against people legitimately seeking refuge from political persecution.

Proliferation of Weapons of Mass Destruction

Point 17 is odd in that it locates 'Strengthening bilateral nuclear cooperation for peaceful purposes' under proliferation of weapons of mass destruction. This should be under a separate category. Further, any assistance intended to enhance Indonesia's development of a nuclear energy industry is profoundly misguided, given the geologically unstable nature of the archipelago and the regional consequences of a geologically induced meltdown. Beyond this, however, is the signal reluctance of private investors to express any interest in Indonesia's proposed nuclear program.

Article 4, Confidentiality:

Points 1 and 2 fail to adequately address the issue of confidentiality of information in relation to citizens who have behaved lawfully in their own state but which might have engaged in activities illegal in the other state, e.g. membership of an avowedly Marxist political party.

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