

A Logical and Ethical Critique of Merit:

Lombok Treaty

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Submission to:

Committee Secretary

Joint Standing Committee on Treaties

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AUSTRALIA

1. Ratification of the Treaty Undermines Australia's International Commitments to Human Rights

There is very credible evidence that the Indonesian Military have been involved in an ongoing pattern of system of human rights violations in West Papua over a period of four decades.¹ It is not anti-Indonesian to be highly critical of the horrendous record of this military institution. That the question of genocide can be debated at all in regards to West Papua is an indictment on the attitude of the T.N.I toward the human rights of its fellow Indonesian citizens. However, the Indonesian record in that province is not to be applauded on the basis that technical arguments rejecting genocide can be made. We should not lose sight of the fact that a death toll of 100,000 West Papuans is not an exaggeration of fact.²

1 For a brief introduction please see Theo Van Den Broek & Alexandra Szalay, "Current Developments in the Pacific Raising the Morning Star - Six Months in the Developing Independence Movement in West Papua." In *Journal of Pacific History*, 36 (1), pp. 77-92.

Other publications of note:

Nonie Sharp, *The Rule of the Sword: the story of West Irian* (Malsbury 1977); Tapol, *West Papua: The Obliteration of a People* (London 1984); Hermann Munninghoff, *Laporan Pelanggaran Hak Asasi terhadap Penduduk Lokal, diwilayah sekitar Timika, Kabupaten Fakfak, Irian Jaya, Tahun 1994/1995* (Jayapura, Aug. 1995); Indonesian Evangelical Church (GKII)Mimika, Catholic Church, Three Kings Parish, Timika, Christian Evangelical Church, Mimika, Report on human rights violations and disaster in Bela, Alama, Jila, and Mapnduma, Irian Jaya (Timika 1998); Tim Flannery, *Throwim Way Leg* (Melbourne 1998), 215 ff.; Mark Davis, 'Blood on the Cross' (Four Corners, ABC TV, 1999).

2 Ed McWilliams, Senior Foreign Service Officer (Ret.) Memorandum Date: November 2005

Re: Response to Efforts to Deny Crimes Against Humanity in West Papua

Available from <http://www.etan.org/news/2005/11/mcfet.htm>

'...a death toll of 100,000 is entirely consistent with the savage record of this institution (The Indonesian army). The murder rate was augmented in the 1970s by provision of OV-10 Bronco aircraft, which were employed against civilians in both East Timor and West Papua'.

Human Rights Watch and Amnesty have consistently made high estimates for the death toll in West Papua. Any move to ratify the treaty where the T.N.I. still remain beyond the control of the central government in Jakarta would be a travesty of integrity for the Australian parliament. There must be honest and thorough Australian parliamentary investigations of T.N.I. human rights violations in West Papua given its record in Aceh and East Timor.³

That such a treaty could be ratified by the Australian government without a serious and honest investigation of the human rights conduct of the T.N.I. belies the lessons of recent history. The lessons of what occurred in East Timor should not be forgotten, nor should the fact that the 1993 Standing Committee on Foreign Affairs found it credible to believe that at least 200, 000 East Timorese had died under Indonesian rule. An estimate that has been vindicated by later investigations.

2. Indonesia's unrealistic expectations of the treaty

No credible security or defence analyst from Australia or Indonesia seriously considers that there is military threat from the other. Therefore, from Jakarta's perspective the treaty is largely political in its intent. Many, if not all of the anti-terrorist cooperation measures can continue to exist without the benefit of any treaty. Opposition to this treaty does not imply a dismissive attitude toward the importance of Australian-Indonesian relations, only that the current form of this possible relationship is undesirable.

Although West Papua is not named in the text of the document, it cannot be over emphasised that one of the greatest measures of importance that Indonesia places on this document will be those clauses that seemingly recognise the territorial integrity of Indonesia and prevent secessionist activity in each nation. There are no such credible movements in Australia and such dangerously vague language is

³ Joint Standing Committee on Foreign Affairs, 1993, Defence & Trade report on 'Australia's Relations With Indonesia', Parliament of the Commonwealth of Australia
Subsection 7.8.2

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This estimate has also proved to be highly accurate. The current estimate is 183,000. At least 10% of Timor-Leste's present population died as a direct, or indirect result, of Indonesian rule. This estimate is the most accurate and scientifically rigorous ever made for Timor-Leste, and is based on the CAVR database, a retrospective mortality survey, and a census of public graveyards'. See Final Report of the Commission for Reception, Truth and Reconciliation in East Timor (CAVR)

no doubt directed at West Papua, Aceh or other secessionist groups within the Republic of Indonesia. How is the definition of secessionist activity to be defined? Given the manner in which the T.N.I. have dealt with those that have refused to be covered by their operations does Jakarta seriously expect that Australian NGO's will be prevented by the Commonwealth government from highlighting human rights violations in Indonesia through peaceful rallies, newsletters and other media?

3. Hardline Indonesian Attitudes to Diplomacy with Australia

There is the strongest tendency to view any potentially 'special relationship' between Jakarta and Canberra to be ethically selective. If the Australian government must turn a blind eye toward obvious developments in the Indonesian Republic how does this pass the National Interest 'litmus test' proposed in the 1997 DFAT White paper 'In the national Interest'? If the Australian government must provide an extra sensitive reaction to diplomatic developments to maintain Jakarta's trust then this smacks of appeasement, not partnership.

For example, following the arrival of 43 West Papuans there was a nationalistic Javanese campaign of immature diplomatic threat that saw the recalling of their ambassador and the even the public naming of Australian citizens as agents of Papuan separatism.⁴ Prime Minister Howard's attempted to implement controversial new legislation amendments to process all refugee boat arrivals offshore.⁵ Armed with the BIN investigated list of Australian citizens an Indonesian political delegation visited Canberra and demanded that 42 West Papuans be stripped of their temporary protection visas. Immigration minister Senator Amanda Vanstone, who met with the delegation on the 13th of June, assured them that a review is now underway.⁶ If this situation was reversed one does not need to be a genius to imagine the reaction in Jakarta to this style of diplomacy.

4 Sydney Morning Herald, April 6, 2006 'Supporters of Papuan separatism revealed'

The list was compiled at the insistence of Indonesian Parliamentarians representing major parties in the Peoples Representative Council (DPR) The senior Indonesian MPs behind the list were aided Indonesian intelligence, Badan Intelijen Negara (BIN). This list included activist groups, union leaders, politicians, academics, universities and even the Australian Council for Overseas Aid. Prior to the list there have been concerns that BIN also monitored Papuan themed refugee rallies in Australia. At least one such complaint has been investigated by the Federal Attorney General's Department.

5 John Howard as cited from The Herald Sun, April 1 2006, 'Laws not a concession to Jakarta'

Denying that the changes were influenced by Jakarta he went on to state '...that said, the relationship with Jakarta is very important'.

6 The Australian June 13, 2006, 'Indons hold hope of visa review'

Available from <http://www.theaustralian.news.com.au/story/0,20867,19456882-1702,00.html>

4. Democracy & Justice

Ordinary Indonesians remember only too well the era of reformasi. Instead they have witnessed the transformation of a brutal and corrupt Dictatorship where the T.N.I. were given free reign and an extra special role in domestic politics, to an equally corrupt fledgling democracy where the military refuses to heal. Indonesians want the T.N.I. reformed and the serious issue of corruption tackled. This treaty in affect is rewarding the same elements that were rampant under the Suharto Regime. Crimes against humanity in East Timor remain unpunished and Jakarta refuses to take the final step toward true democratisation e.g. the reform of the T.N.I. and the punishment of those indicted by the UN as war criminals by an international court of law.

5. Will Australia's Selective Ethics Throw Away a leadership role in the Pacific

Pacific leaders are fully aware of the "pragmatic" & "special Case" attitudes of those that seek relations with Indonesia at high ethical cost. Why should Pacific nation listen to Australian lectures about corruption and good governance when we refuse to apply the same values to Jakarta.

e.g. '**Australia's selective ethics on Timor**', 27 June, Crikey at <http://www.crikey.com.au/articles/2006/06/27-1459-6828.html>

[Australia's Selective Ethics On Timor by Adam Henry](#)

<http://www.parasindonesia.com/read.php?gid=367#listcomment>

[Article first published in Crikey.](#)

Prime Minister John Howard has blamed the unrest in East Timor on bad governance and corruption. The ethical condemnation of Timor Leste, one of the poorest nations on earth, by Howard and Downer should be cause for reflection. The Howard government refused to accept the US assessments that peacekeepers would be required to protect the 1999 UN independence ballot, absurdly arguing that the Indonesian military could handle security. Howard and Downer then watched the post-referendum rampage by T.N.I. militias, when tens of thousands of Timorese were forced at gunpoint to West Timor. Neither Howard nor Downer ever supported East Timorese independence, preferring Jakarta's special autonomy package.

The current situation in Timor Leste, despite Alkatiri's resignation, cannot erase the facts. After sacking disgruntled members of the army, who claim to be victims of regional discrimination, Alkatiri received overwhelming support from the Fretilin Party. The sacked soldiers turned rogue and used their stolen heavy weapons and ADF training to intimidate the elected government. This lawlessness spread violence and factional tensions across Dili. The leader of this group even looked forward to sharing a VB with the ADF. Alkatiri's resignation was forced not by his party, who for a second time endorsed him, but by civil unrest and the political manoeuvrers of political rivals.

Canberra has bravely labelled PNG, the Solomon Islands and now Timor Leste as corrupt. But there is one nation-state rated as worse by international watchdogs where Australian comment is absent. One need not support the cause of West Papuan separatism to ask simple questions about basic ethics and human rights.

Does a well-governed nation allow its military to so consistently undermine its own rules of law? If all is well in West Papua why does Jakarta continue to block international media and medical access, and require the presence of an estimated 40,000 T.N.I. troops?

Over the last decade there has been a flurry of Australian comment over the bad governance of the Pacific. In contrast, our major parties maintain a stoic silence over the governmental situation in Indonesia. Instead of a similarly strong Australian call for reform of the T.N.I. and for Jakarta to fix its dubious financial ethics, it seeks closer military co-operation and a possible 2006 bi-lateral security treaty.

The UN enquiry into Indonesian rule (1975-99) of East Timor estimated that 183,000 Timorese died as a direct or indirect result of Indonesian/T.N.I. actions. At least a comparable figure is estimated for West Papua.

Our leaders seem only most willing to highlight the corruption of smaller regional nations. In turn, ordinary Australians are expected to overlook that our leaders refuse to apply these very same universal ethical standards to the substantially more corrupt administration of Jakarta.

Any security treaty between the two nations that is secured by selective Australian silence is doomed to failure. History demonstrates that Jakarta's ongoing involvement in any such arrangement will rest on the continuation of this sensitive Australian approach. Any perceived

Australian breach of this unwritten quid pro quo diplomatic contract will quickly void any treaty arrangement and plunge relations into turmoil. A clear case in point has been the Indonesian reaction to the 42 temporary protection visas Australia granted to West Papuan refugees three months ago.

The lessons of 1999 underline the dangers of this style of Australian diplomacy to our regional security. Given the many valid questions over Indonesian administration and the large presence of an unreformed and unrepentant T.N.I. in West Papua, these lessons should be urgently re-examined.

5. Australian Civil Liberties

Surveillance: Who's Watching Whom? By Adam Henry

New Matilda

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<http://www.newmatilda.com/home/articledetailmagazine.asp?ArticleID=1971&HomepageID=173>

I was at a rally in support of West Papuan refugees earlier this year, listening to the speakers and enjoying the almost festive atmosphere, when I noticed three men at a nearby café. They were keenly observing the small but enthusiastic gathering in front of them. This would not have been unusual, given the rally's central location, but something about them seemed odd. One of the men then began filming the speakers and the crowd, including me, in a long right-to-left pan. He made no effort to hide what he was doing. Many West Papuans granted refugee visas in the late-1980s were present at the rally.

I was somewhat angered by the invasion of privacy, so began taking pictures of the men with my own camera. They quickly stopped filming. Others had also noticed them and the words 'Indonesian intelligence people' were whispered among the crowd. To make a point, someone took a picture of me kneeling near the three men pointing at them with a jovial smile — naïve and mockingly arrogant.

It all seemed funny to me at the time.

It wasn't until later that I realised my rights as an Australian citizen — to protest without fear of intimidation — had been infringed upon. I wrote a letter to the Attorney-General outlining my concerns, accompanied by pictures and a statutory declaration. I assumed such an occurrence would be investigated by ASIO, given the serious issue of possible foreign interference on Australian soil.

Soon after, I was contacted by ASIO and invited to a meeting to discuss the rally and my complaint. Given my desire to get to the bottom of this matter, and believing that they too shared the same motivations, I went along.

The investigators who interviewed me asked questions regarding the incident. None of the answers I gave provided new information, as it was all contained in my letter and statutory declaration. Then I was asked questions about West Papua. For example, whether I thought that domestic support in Australia could grow to the levels experienced during the Indonesian occupation of East Timor, and what my connections were with the movement. They were also interested in getting more evidence of filming at rallies by possible foreign agents.

Nothing at the meeting confirmed anything regarding my complaint and I left a bit mystified. Only a short time later, it was announced in Indonesia that a list had been compiled, with the assistance of Indonesian intelligence (BIN), of Australians who allegedly supported Papuan separatism. Invited to attend a second meeting with ASIO, I felt certain that I would, this time, receive the answers I wanted and hear what action my government would now take. Instead, apart from one or two comments about my original complaint, I was asked other questions. These questions related to what I knew about possible Indonesian militia activities in West Papua, where I got my information from, who I knew, etc.

Apart from a vague confirmation that foreign agents commonly filmed at rallies during East Timor's resistance, I received no definite answers. What were they investigating? When I indicated that I talked to people to discuss foreign affairs for intellectual curiosity, one of the two ASIO investigators uttered something curious. It was along the lines of 'people seem comfortable talking to you.'

I pondered what had transpired and gradually felt that my sincerity in answering their questions was easily exploitable. I composed another letter to the Attorney-General outlining

my new concerns. I asked: Have the Australian authorities now identified these three men? Have these three men now been asked to leave the country?

Have authorities ascertained the likely purpose of their presence and why it was necessary for them to film those at the rally?

Have these three men been involved in any other such incidents in any other parts of our country? Is the Attorney-General aware of any other such activities in Australia? Were the men 'attachés' from the Indonesian Embassy?

The letter was again passed on to the same investigators, who contacted me. They indicated that there had been a misunderstanding, apparently on my part, and wished to meet again. I asked if there was any particular reason to not just discuss it by phone. Only meeting in person would seemingly suffice. Later, I indicated that I was not going to meet them, as I had nothing to add to my original complaint. Everything I wanted clarified was in my second letter to the Attorney-General and I would prefer to have such questions answered in writing.

I've not been contacted again and I have certainly received no answers. The original incident occurred in January and I've no doubt that I, and many others, have been filmed for surveillance purposes since.

I remain unconvinced about the motivations of the investigators who interviewed me. Were they interested because my rights as an Australian citizen had been infringed upon, or were they seeking more information about how the issue of West Papua could negatively impact on the important bilateral relationship between Australia and Indonesia?

In light of the new Australia-Indonesia security treaty, it is a question that needs to be asked by human rights groups and NGOs around the country.

CONCLUSION

To argue that we must accept the T.N.I. in its current form and continue with the treaty process is folly. Should we now formally embrace similar treaties across our region with other brutal military organizations? We must remember that there

is a distinction between friendship, and diplomatic and political elites being mere partners in crime e.g East Timor, Aceh and now West Papua. I would have no objection to a treaty if the T.N.I. could end its corrupt practices and cease killing dissenting Indonesian civilians in very large numbers. This last point is one that Pro-Jakarta advocates, who bemoan those that complain about Australian-Indonesian relations should remember, that Australian negativity toward any treaty is caused by the actions of the T.N.I.