

CHAPTER FIVE

HUMAN RIGHTS AND REGIONAL SECURITY AND STABILITY

Human rights observance as a basis for stability

5.1 This Committee's 1994 report concluded that 'Development of better human rights in the region is more than an idealistic ambition; it is a practical necessity'. The report quoted former Human Rights Commissioner, Mr Brian Burdekin:

I think our security in this region is dependent on the stability of the region, and I very strongly believe that the stability of the region, in turn, is dependent on the extent to which governments in particular do or do not observe fundamental human rights.¹

5.2 This perception of a close link between human rights observance and stability and security was represented across a range of submissions to this inquiry. The government's position was stated clearly:

The Government believes that the promotion and protection of human rights is important to Australia's national interest not least because it underpins Australia's broader security and economic interests. These interests are inextricably linked to the stability and economic prosperity of the Asia Pacific region. Therefore, the Government attaches particular importance to the promotion and protection of human rights in the region as an inseparable part of Australia's overall foreign policy approach.²

5.3 Rather than seeing human rights fitting in to Australia's foreign policy as a valuable adjunct to stability and prosperity, some witnesses went further and argued that where there was a conflict, human rights should be afforded priority over Australia's economic interests. This debate has been considered at some length in Chapter Three.

5.4 In the context of security and stability, the need to bring protection of human rights to the forefront of Australia's foreign policy was raised again in submissions. The Service for the Treatment and Rehabilitation of Torture and Trauma Survivors (STARTTS) cited the dependence of regional security and stability on human rights, and the need for credibility in our foreign policy approach, as further reason to give prominence to human rights:

The prime reason for Australia's commitment to human rights is humanitarian: the rights and dignity of the human person. Yet we also affirm that increased respect for human rights provides the only sure

1 Joint Standing Committee on Foreign Affairs, Defence and Trade, *A Review of Australia's Efforts to Promote and Protect Human Rights*, November 1994, pp. 13-14.

2 DFAT/AusAID, Submission, p. 851.

basis for true regional security and stability. Therefore human rights issues should be prominent, not incidental, to Australian government positions on regional security and stability. Continuing unjust economic systems and oppressive political regimes do not provide security either to a country's citizens or to its neighbours, including Australia. Rather, they encourage extremist responses, forced displacement, armed conflict and continuing instability and crises. Moreover, if Australia's foreign policy is based on short-term economic interest at the cost of human rights, Australia will come to be regarded in the region as opportunist and exploitative. This reputation will jeopardise Australia's future participation as more representative forms of government emerge in the region.³

5.5 The argument that regional stability and security rely on respect for human rights is likely to be challenged only in terms of the depth or extent of that reliance and the repercussions which flow from a failure to recognise the link. Some witnesses set out instances where the depth of the link has been demonstrated, as well as the longer-term dangers for security that are posed by any failure to perceive the importance of the link and to check human rights violations promptly.

5.6 Amnesty International stated:

Human rights and regional security issues are inextricably linked. The security of nation states begins with the security of the civil society that makes them up. The security problems that beset the region—notably in Cambodia, Myanmar, North Korea, East Timor, Bougainville, Sri Lanka, northeast India/Bangladesh, and Jammu and Kashmir—are the projected shadow of human rights violations. ...

In Cambodia, human rights violations have again fuelled conflict, thwarting the country's development and posing a threat to the stability and security of the Asia-Pacific region. Around 20,000 Cambodians have once again been displaced by fighting and are poised on the Thai-Cambodia border.

The 1991 Paris Peace Accords, which form the basis for the Cambodian settlement, provide a good illustration of the link between human rights and security. The parties to the Paris Accords recognised explicitly "that Cambodia's tragic recent history requires special measures to assure protection of human rights and the non-return to policies and practices of the past". Amnesty International believes that a failure to uphold the law and act on human rights violations in Cambodia—the problem of impunity—has been one of the key factors in bringing the political settlement unstuck and plunging the country back into crisis. ...⁴

3 STARTTS, Submission, pp. 341-342.

4 Amnesty International, Submission, p. 697.

5.7 Another major body, the Australian Council for Overseas Aid (ACFOA), illustrated the flow-on effect of human rights abuses. The real costs include instability, refugee flows, use of government resources, divisiveness, and business losses. In the long-term, impunity leads indirectly to further destabilisation.

Repression and conflict cannot be internalised. Repression is destabilising and it spills over into the region and into Australia, in the form of refugees from countries like Burma, East Timor, and Irian Jaya; it consumes increasing governmental resources and diplomatic energy with representations and lobbying as in the cases of Indonesia, China, Burma, Cambodia. It sets sections of the Australian community against the Government over matters of policy, as in the case of East Timor. ... An unstable human rights environment hinders trade and economic development as in Burma and Cambodia. Increasingly, Australian business will face ethical dilemmas, unexpected costs and possible consumer and shareholder backlashes as it tries to operate in regional countries with repressive government activities.⁵

Most disturbingly, repression and unchecked human rights abuses create a sense of impunity by the violators and can contribute to a culture of belligerence and arrogance within governments, which works against diplomatic solutions. Such belligerence can spill over into regional tensions ... and sow the seeds of future conflicts. The Asia Pacific currently has the fastest rate of military expansion of any region in the world and this must be seen as symptomatic of these new anxieties.⁶

5.8 The Australian Forum of Human Rights Organisations (AFHRO) referred to the potential for regional security and stability to subordinate the promotion of human rights, to its own 'more urgent' requirements, as some Asian nations argue that respect for human rights and regional stability are mutually exclusive. This argument is similar to the one which would defer extension of civil and political rights until the right to development is achieved.⁷

Sources of instability

5.9 Some submissions suggested that the foundation of current sources of instability can be found in the battle for independence from colonial rule in Asia and the need to assert national boundaries and national identities. The Asia-Pacific Human Rights Information Center, discussing the effect of colonialism on the development of law in the region, stated:

After independence, all the Asian states naturally adopted constitutions with human rights clauses. However, after the independence fighters became the new rulers of their countries, self-determination, nationalism and national integration were emphasised rather than human rights. As the concepts of self-determination and

5 ACFOA, Submission, pp. 756-757.

6 *ibid.*, p. 757.

7 AFHRO, Submission, p. 615.

independence themselves are centred around the nation-state, they tend to exist in tension with the concept of human rights which is centred around individual human beings. This tension was enhanced by the Cold War and by the need to consolidate newly established national boundaries. This led to severe oppression of indigenous peoples in Asia—minorities in Burma, Tibetans, Jumas in Bangladesh, Ainu in Japan, just to name a few.⁸

5.10 The Center's submission, still tracing the recent history of Asian states, referred to the fact that in newly emerging nations where law was regarded as a 'tool for rule', the concept of the rule of law was not supported by an establishment which benefited from a system of strong government:

This was more so in those countries in East Asia where governments pursued aggressive development policies, at least in their initial stages. The Cold War also legitimised governments to use law for social control. In order to suppress real or imagined insurgencies, national security laws were enacted or those inherited from colonial masters were strengthened.⁹

5.11 When outlining some of the issues raised by the Asian values debate, Professor Camilleri also referred to the subordination of civil and political rights to political goals and to the need for political stability and cohesion:

Singaporean and other Asian leaders have often referred to the threat posed by internal subversion and racial agitation, which they see as justifying the curtailment of a number of civil rights, including the right to associate and assemble, and the right to exercise free speech and expression. Such practices as detention without trial, and other deviations from the normal standards of criminal law are defended on the same grounds.¹⁰

5.12 The spillover of the 'Asian values' debate into this issue of regional security and stability was also highlighted by AFHRO:

The debate on regional security and stability is, like the basic debate on the interpretation of human rights in the region, to some extent based on the concept of cultural relativity or the distinctiveness of Asian values. However, appeals to the uniquely fragile nature of Asian society to support repressive acts in the name of national security and stability are unsupported by both historical and contemporary evidence.¹¹

5.13 Fundamental differences from the international framework, in terms of respect for individual rights, are expressed through the laws of some countries. In evidence, ACFOA

8 Asia-Pacific Human Rights Information Center, Submission, p. 407.

9 *ibid.*, p. 408.

10 Camilleri, Submission, p. 298.

11 AFHRO, Transcript, p. 129.

reminded the Committee that some governments in the region regard claims for what we would regard as entirely legitimate rights as:

... equalling opposition, dissent, and subversion. ... [T]hrough national security laws right across the region, which are there as legal expressions of that sort of philosophy, there is obviously a problem for application of universal human rights.¹²

5.14 Around the region, ACFOA perceived a number of trends had emerged over issues of human rights and security:

- the increasing use of defence and security forces for 'domestic police operations';
- the growth of repressive internal security laws; and
- the rallying of NGOs and other groups and individuals to highlight the oppression caused by the laws.¹³

5.15 Some detail about the use of national security laws and the reactions they arouse was provided by ACFOA. It referred to thirteen countries in the region with internal security laws which derogate from international human rights norms (Bangladesh, Burma, Cambodia, Indonesia, Malaysia, India, Laos, Pakistan, Singapore, South Korea, Sri Lanka, Tonga and Vietnam).¹⁴

5.16 While ACFOA acknowledged the variety of political systems represented in these countries, it noted that they all had in common certain laws and regulations purporting to protect national security or public order. In fact, according to ACFOA, these laws silence or intimidate large sections of society; they are used against opposition politicians, journalists, ethnic minorities. They grant powers of preventative detention to state agents and paramilitary forces to act with impunity against international human rights standards under a 'veil of legality'.¹⁵

5.17 ACFOA made a number of recommendations, including the need to seek the repeal of national security laws which retard and restrict the development of a vibrant civil society in many countries in the region. In addition to dialogue with countries with such laws, ACFOA suggested the Australian Government should lobby within the UN system to establish a Working Group and Special Rapporteur on Human Rights and National Security Laws to investigate the effects of the laws on human rights in the region, prepare a list of countries which restrict internationally recognised human rights on the basis of national security and recommend measures to the UN Commission on Human Rights.¹⁶

5.18 The Committee views with concern the use of national security laws to excuse violations of human rights. The Committee recommends that:

12 ACFOA, Transcript, p. 310.

13 ACFOA, Submission, p. 728.

14 *ibid.*

15 *ibid.*

16 *ibid.*, p. 716.

12. The Australian government raise the issue of the inappropriate use of national security laws in its bilateral dialogue with countries in the region, and also at the UN Commission on Human Rights, with a view to the Commission establishing an investigation into such use and the development of guidelines setting out the circumstances in which their use would be justified.

Asian economic crisis

5.19 The region's fundamental stability has been underpinned by the economic growth of Asia over the last two or three decades. The collapse of the Suharto regime as a consequence of the collapse of the Indonesian economy is an example of the importance of the economic strength of the region to political and social stability.

5.20 As noted by Dr Paul Dibb, the Asian crisis is more than an economic phenomenon. He anticipates (as do others) that the longer the crisis lasts, and the deeper it becomes, the greater the chances of political and social turmoil. In considering the factors that should be taken into account in anticipating the impact of the crisis, Dr Dibb referred to the historical pattern of successful domestic economies keeping aggressive nationalism below the surface. Once unemployment and interest rates rise, as economies falter, then social discontent rises, and national leaders may seek to bolster their own position by naming foreign scapegoats.¹⁷

5.21 Dr Dibb also noted that high economic growth has restrained some 'profound antipathies' between neighbouring countries in the region. He gave consideration to the effect of a worsening crisis on relations between South Korea and Japan, North Korea and South Korea, China and Japan, and China and Southeast Asia. ASEAN countries, in particular, will be more exposed to strategic uncertainties and pressures from the changing balance of power in Northeast Asia and the rise of China to power. In addition to this pressure, these countries will be bearing the pressure of a loss of economic growth which had provided their national confidence and defence purchasing power.¹⁸

5.22 Reaction to the impact of the crisis has been mixed. Mr Alan Dupont referred to the economic success of East Asia, and proclamation of an Asian way as coming 'dangerously close to a form of cultural triumphalism', based on a belief that Asians were inherently more hardworking and morally superior, so that the economic crisis has been humbling psychologically.¹⁹

5.23 Some people would regard the crisis as vindication of their claims that the cronyism and corruption of authoritarian regimes would ultimately bring about their downfall. Others see the crisis as presenting a unique opportunity to apply pressure to some countries over areas of abuse that have long been a source of contention in their relations. For instance, there have been reports that the United Nations is urging the new leadership of Indonesia to resolve the dispute over the annexation of East Timor.²⁰ Jose Ramos Horta is

17 Dibb, Dr Paul, *Strategic and Defence Studies Centre Newsletter*, Spring 1997, Summer 1998, pp. 1-2.

18 *ibid.*, p. 2.

19 Joint Standing Committee on Foreign Affairs, Defence and Trade, *The Asian Currency Crisis: Report on a Seminar on the Asian Currency Crisis and its Effect on Australia*, 19 March 1998, p. 63.

20 'UN pushes for solution on East Timor', *Canberra Times*, 23 May 1998, p. 11.

reported to have said 'Now that Indonesia is in a far weaker position than ever before economically, financially and politically they cannot afford to continue the same policies regarding East Timor ... Australia should add its voice to the rest of the world's call for human rights freedoms for East Timor'.²¹

5.24 The effect of the economic crisis on Australia's security in the long-term has also been a focus. Writing in February 1998, Geoffrey Barker stated:

Perhaps the good news ... is that economic problems are forcing some Asian countries to slow the pace of military force modernisations that have already eroded Australia's regional military edge. ... The bad news for Australia's strategic planners is that economic recession and rearmament are not mutually exclusive, as the world learned in the 1930s. Moreover, protracted economic problems breed political instability. ... How would Australia react if economically stricken Indonesia, with whom Canberra has a security treaty and growing defence links, descended into serious social disorder that led to grave human rights violations? ... Part of the problem for Australia is that there is little effective regional security architecture to address and contain such possibilities. The ASEAN Regional Forum (ARF) is embryonic and both ARF and the APEC organisation largely toothless.²²

5.25 Mr Anthony Burke, an academic with a particular interest in Indonesia, referred to the detention of activists and students by the Suharto government at the same time as Australia lobbied the IMF and the US government to relax conditions of the economic package for Indonesia. He urged the Australian government to match its diplomacy on behalf of the Indonesian government with public calls for the release of detained activists and for the repeal of the anti-subversion law.²³

5.26 As has already been mentioned, the Australia Tibet Council referred to the opportunities presented to Australia as a result of its generous participation in bail-out packages:

If human rights had a stronger voice, there ought to be ways in which it could be institutionally recognised that an integral component of such a bail-out package must include ensuring the civil and political rights of a populace...²⁴

5.27 The economic crisis poses particular dangers for minority groups. This has been made clear by the treatment of ethnic Chinese in Indonesia in recent times. It remains to be seen what action the military under the new Indonesian leadership will take to protect the lives and property of this group and what pressure will come to bear on countries such as Australia to accept their residence.

21 'Indonesia to Ignore East Timor at its Peril', AAP, 24 May 1998.

22 *Financial Review*, 12 February 1998, p. 31.

23 Burke, Submission, p. 1245.

24 Australia Tibet Council, Transcript, p. 217.

5.28 In the Committee's view Australia has a particularly important role to play in the region during the economic crisis. While Australia has assumed a very proper and responsible role in its contribution to the IMF packages, a renewed consideration of the opportunities to protect and promote human rights is timely and would be in Australia's interest.

5.29 The Committee recommends that:

13. The Australian government consider including human rights considerations in the assistance it provides to countries in the region in the wake of the Asian economic crisis.

Refugees

5.30 Amnesty International's submission was one of a number that drew attention to the security problems arising out of refugee flows. It noted that such flows can be a cause of instability and insecurity themselves, and that:

Improving human rights in neighbouring countries is the best way of stemming refugee flows. The international system for the protection of refugees should be used as a framework by countries bearing the humanitarian consequences of conflict and dislocation in the region. The legal framework for refugee protection in the region remains very weak, with few countries (including those hosting major refugee populations) having ratified the 1951 Convention and its 1967 Protocol. Amnesty International recommends that the Australian Government seek to strengthen this framework through encouraging its neighbours to ratify the UN Refugee Convention and its Protocol.²⁵

5.31 The Department of Foreign Affairs and Trade (DFAT) noted that this region was familiar with large scale movements of people from country to country:

Many of these people have claimed to be refugees. Under the 1951 *Refugee Convention* and the 1967 *Protocol relating to the Status of Refugees*, both of which Australia has ratified, a refugee is defined as: "...a person outside the country of their nationality, who has a well-founded fear of persecution on the grounds of race..."²⁶ The fundamental obligation States accept in respect of refugees is not to return them to situations where they would face violation of their human rights, an obligation which operates parallel with many of the responsibilities of States under the UN Charter and other international human rights instruments.²⁷

5.32 Australia has considerable experience of the issues involved. The Department of Immigration and Multicultural Affairs (DIMA) noted that Australia was one of the first signatories to the United Nations 1951 Convention Relating to the Status of Refugees (the

25 Amnesty International, Submission, p. 698.

26 DFAT, Submission, p. 852.

27 *ibid.*, p. 853.

Refugee Convention) and, as such, provides protection to every applicant within Australia who falls within the Convention's definition of a refugee. The Convention and its associated protocols are incorporated into Australia's domestic law through the Migration Act. However, not all countries in the region are signatories to the Convention. Those which are not signatories include Burma, Indonesia, Malaysia, Singapore, and Thailand.²⁸ DIMA states that it has encouraged those countries which are not signatories to sign the Convention.²⁹

5.33 In terms of regional dialogue on refugees, DIMA appears to have developed a substantial role. It referred to activities where Australia had an important role, including a Conference on Regional Approaches to Refugees and Displaced Persons which it co-sponsored in 1996 with the United Nations High Commissioner for Refugees (UNHCR). This meeting was attended by representatives of 23 Asia Pacific countries, and was designed to be the start for continuing cooperation and dialogue to resolve refugee and displaced persons issues in this region. Delegates considered there was a need for further consultation and dialogue within the region on these issues.³⁰

5.34 According to DIMA, the follow-up consultations, (the Asia-Pacific intergovernmental consultations on refugees and displaced persons (APC)) provide a forum in which Australia may influence regional approaches to migration issues which tend to have a human rights component. DIMA considers that there is considerable trust between the member countries and that the involvement of the UNHCR renders the APC a credible forum.³¹

5.35 In evidence, DIMA also mentioned the constructive relations it has with the UNHCR (regional offices and the Geneva headquarters), as well as the International Organisation for Migration. DIMA participates in meetings of the executive committees of both these organisations.³² In May 1997, DIMA participated in the second UNHCR Regional Resettlement Consultations, hosted by UNHCR and attended by NGO and government representatives from Australia and New Zealand. Observers from Papua New Guinea, Canada and the United States attended.³³

5.36 The first Regional Conference on Illegal Migration was initiated by Australia in 1994 and, since the conference, Australia has participated in other conferences and encouraged dialogue within the region. DIMA also submitted that it had been active in offering assistance to countries in the region with a view to enhancing regional cooperation and control of illegal people movements, and encouraging the establishment of policies and practices that are consistent with relevant international instruments, such as the Refugee Convention. It gave as examples its cooperation with delegations from the Peoples' Republic of China and the Socialist Republic of Vietnam.³⁴

5.37 DIMA anticipated that the Asian economic downturn would produce an increase in attempted illegal people movements between countries as people sought employment. It noted a significant increase in the first three months of 1998 in the number of people detained

28 DIMA, Transcript, p. 340.

29 DIMA, Submission, p. 1111.

30 *ibid.*, p. 1121.

31 DIMA, Transcript, pp. 340-341.

32 *ibid.*, p. 341.

33 DIMA, Submission, p. 1113.

34 *ibid.*, pp. 1122-1123.

by Malaysia for attempted illegal entry. It also noted that such people movements could include economic migrants and persons who seek asylum for humanitarian reasons. Differentiating between the two groups is a significant task for receiving countries.³⁵ This task would appear likely to be an on-going problem and the source of contention in the receiving countries of the region for some time to come.

5.38 DIMA stated that it was committed to dialogue on human rights issues in the Asia Pacific and would continue to address these issues, in particular, refugee issues, at every appropriate bilateral or multilateral contact on immigration matters within the region. In this regard DIMA would encourage a common regional response to humanitarian situations and consistency in the application of the Refugee Convention.³⁶

5.39 The success of the Comprehensive Plan of Action for Indo-Chinese Refugees (which ended in 1996), was used by DFAT to demonstrate that countries in the region are able to cooperate and find solutions to the threat posed to regional security and stability by significant population movements. DFAT also referred to Australia's reliance on the multilateral framework to develop a regional mechanism to deal with the issue of refugees.³⁷

5.40 With respect to the treatment of asylum seekers, the Committee notes the report by HREOC, *Those who've come across the seas: Detention of unauthorised arrivals*, which addressed the human rights aspects of the detention of people who arrive without a visa, pending a determination of their refugee status, and the conditions, services and treatment of detainees.³⁸

35 DIMA, Transcript, p. 340.

36 DIMA, Submission, p. 1125.

37 DFAT, Submission, p. 853.

38 HREOC, *Those who've come across the seas: Detention of unauthorised arrivals*, Sydney, 1998.

Australia's contribution to security and stability

5.41 Australia has highly developed bilateral defence relationships with most countries of the South-East Asia and Pacific regions. Bilateral regional engagement activities include policy talks and high level visits, combined exercises, personnel attachments and exchanges, study visits, and training programs conducted in Australia and overseas. During 1997-98, approximately 1320 overseas defence personnel will train in Australia and most of these personnel will be from our immediate region.³⁹

5.42 While Australia's security focus has been on relationships with South East Asian countries, particularly Indonesia, the Philippines, Malaysia and Singapore, the Minister for Defence has noted that Australia is fostering high-level security contacts with Japan and South Korea, as well as China. Australia has also worked on strengthening the defence relationship with Thailand and has active defence relations with the countries of the South Pacific.⁴⁰

5.43 Some concern was expressed in submissions regarding Australia's developing security links with countries in the region. Dr Ian Barns and TEAR Australia's submission in this regard was quite typical:

[W]e wish to express our dismay about the deepening military and security relationships with our Asia-Pacific neighbours and our concern that these linkages might further weaken human rights conditions in the Asia-Pacific region.

We are concerned with the links being developed at an operational level with security forces in Asia, especially those of Indonesia. Whilst we recognise that there is value in maintaining communication and cooperation with the defence forces of our regional neighbours, we believe that there are serious moral and political problems in establishing linkages at an operational level—both for the civil populations in Asian countries—and our own civil society.⁴¹

5.44 The convergence of human rights and regional security in terms of military and security co-operation and transfers was also highlighted by Amnesty International:

The Asia-Pacific region is today one of the fastest growing markets for arms in the world. New strategic realities are leading countries like Australia to seek closer security partnerships with countries in the region. Increasingly co-operation is underpinned by military and security training and transfers.

In this context it is imperative that Australian policy be explicitly committed to opposing military or security transfers—including transfers of equipment, personnel, training or technology—that could

39 Address by the Hon Bronwyn Bishop, MP, 'Enhancing Regional Security and Defence Cooperation in the Asia-Pacific Region', Malaysia, 3 December 1997, p. 3.

40 Address by the Hon Ian McLachlan, AO MP, 'The Defence Reform Program and Regional Engagement', to the Joint Services Staff College, Weston ACT, 29 April 1997, pp. 8-10.

41 Barns, Dr I and TEAR Australia, Submission, pp. 260-261.

reasonably be assumed to contribute to human rights violations such as torture and ill-treatment, "disappearances" or deliberate and indiscriminate killings. The Australian Government should take a proactive approach to human rights in its military relationships with countries in the region.⁴²

5.45 Mr Anthony Burke referred to the breadth of defence cooperation: language training, combat and anti-terrorism skills, recruiting workshops, staff college courses and joint air, sea and land exercises. Mr Burke stated that it involves all major services of the Australian Defence Force (ADF) and is becoming a major component of our defence policy, as well as a major strand in our diplomacy, especially with those countries whose military are politically powerful.⁴³

5.46 Australia's resumption of substantial defence co-operation with Indonesia was traced by Mr Burke back to the 1991 visit to Australia by the Indonesian armed forces (ABRI) Commander Sutrisno. After the Dili massacre in 1991 and the decline of US defence co-operation with Indonesia, Australia's co-operation grew. Australia trains up to 400 Indonesian officers each year, has regular exercises with Kopassus (the Indonesian Special Forces Command) and with Kostrad (the Army Strategic Command).⁴⁴ In June 1998, 32 Indonesian military personnel were reported to be studying in staff and military colleges in Australia, and Australians have been posted to Indonesia, and joint exercises in Australia and Indonesia were to proceed.⁴⁵

5.47 According to Mr Burke, future expansion through the 'future directions' document signed by the Australian and Indonesian Defence Ministers in December 1996, is to include logistics co-operation, intelligence exchanges, defence procurement, and defence science and technology collaboration.⁴⁶

5.48 Mr Burke's assessment is that a major objective appears to be 'increasing interoperability and the enhancement of Indonesian Command and Control (C+C) communications and procedures':⁴⁷ the ability of the two militaries to deploy together in operations. He considers that the Agreement on Maintaining Security (signed with Indonesia in 1995) allows for this, although he notes that officials play down the possibility that this will occur.⁴⁸

5.49 Despite assurances from Australian defence staff that Australia's training is only in skills that could be applied to an external operation, Mr Burke is concerned that the Indonesian military has in fact been able to apply these skills in internal security contexts. Kopassus and Kostrad units have played key roles in Aceh, Irian Jaya and East Timor, and can be quickly called upon in circumstances of severe disturbance, insurgency or terrorism. Mr Burke considers the skills learned from Australia could be applied within Indonesia.⁴⁹

42 Amnesty International, Submission, pp. 698-699.

43 Burke, Submission, p. 398.

44 *ibid.*

45 'Defence ties with Indonesia to stay', *Sydney Morning Herald*, 8 June 1998, p. 1.

46 Burke, Submission, p. 398.

47 *ibid.*

48 *ibid.*

49 *ibid.*

5.50 Mr Burke considered that the possibility of indirect Australian involvement in human rights abuses by the Indonesian military highlighted the need to consider reforms that would reconcile our strategic co-operation with our support for international human rights covenants. The inclusion in training by the ADF of the rules of engagement and the Geneva Convention was not seen as sufficient to overcome these concerns.

5.51 In terms of activity within Indonesia, however, Mr Burke noted that the area commander for Irian Jaya had drafted a code of conduct for his troops and the ABRI leadership had begun a dialogue with Komnas HAM. According to Mr Burke, guidelines should be drafted which prohibit any defence co-operation which could contribute to the recipient forces internal security function and for a parliamentary committee to have the power to monitor Australia's defence and intelligence co-operation activities. These include all forms of training, intelligence sharing and the content of courses.⁵⁰ Mr Burke was careful to state that he did not suggest Australia was associated with grave abuses of human rights, but noted the possibility of it being associated with broader infringements, such as freedom of speech and association, freedom from arbitrary arrest and detention.⁵¹

5.52 A slightly less pessimistic view of Australia's defence relationship with Indonesia was presented by Professor Harold Crouch. He stated:

Calls have been made to halt military co-operation with Indonesia and even to withdraw from a security agreement signed in December 1995. The agreement, however, deals with external threats and does not lead to our involvement in internal strife in Indonesia. It does not add to the repressive capacity of the Indonesian military. Most of our military co-operation with Indonesia does not involve domestic politics. Regular exercises are held with the navy and air force, but demonstrators are not likely to be strafed or shelled by ships. Some of our defence co-operation does, however, involve army troops which are routinely used for internal security in Indonesia. This co-operation should be stopped. Such cancellation would not affect the military's political behaviour. Australians need to recognise that the Indonesian military will continue to play a major role in government even after Mr Suharto's departure.⁵²

5.53 The Department of Defence had detected some improvement in the Indonesian human rights situation in recent years.

Most of the experts would acknowledge that, over the past few years, there has been a noticeable improvement in the way in which the security forces have managed internal security disturbances in Indonesia.⁵³

The killing of six students by Indonesian defence forces during demonstrations on May 12 appears to counter this view, to some extent. However the holding and speedy conclusion of an inquiry into the forces' use of live ammunition was a positive sign, as was the fact that the

50 *ibid.*, p. 1245.

51 *ibid.*, p. 399.

52 Professor Harold Crouch, 'Military will still rule over Jakarta', *Herald Sun*, 20 May 1998, p. 19.

53 Department of Defence, Transcript, p. 358.

inquiry led to the trial of 18 soldiers for their alleged involvement. The conduct of this trial is seen as a test of the new government's willingness to stand up to scrutiny.⁵⁴

Opportunities to promote human rights

5.54 Opportunities to discuss human rights with regional defence force members were canvassed during the inquiry, and they include conferences, seminars and discussions, as well as training by the ADF of its own and regional members. A representative of the Department of Defence referred to engagement with personnel from the region on courses, in particular peacekeeping seminars.⁵⁵

5.55 The Department anticipates that, in time, human rights could be factored into exercise scenarios, and this would help to build discussion on issues. The Department also engages in regional discussions, exercises and conferences where human rights approaches in operations are presented.⁵⁶

5.56 The Department of Defence's representative referred to the Department's practice of including human rights in basic practical training of soldiers, in planning and conduct of exercises and engagement with allies and anticipated the use of computer generated simulation training which would create virtual environments that would include considerations of human rights issues such as refugees and displaced persons.⁵⁷

5.57 The Department of Defence submission provided an overview of its relevant training:

Humanitarian law ... is an integral part of a comprehensive training approach for all ADF personnel. Such training is included in basic military training courses, specialist legal and operational courses, single Service command and staff college courses, the Joint Services Staff College course and at the Australian College of Defence and Strategic Studies. Regional personnel participating in ADF courses receive the same periods of instruction regarding international humanitarian law as do their ADF counterparts and there is strong attendance at all these courses by students from the Asia Pacific region.⁵⁸

5.58 The 1996-97 update of Australia's National Action Plan in respect of human rights refers to a 1995 review of human rights training in the ADF which examined all such training provided to members of the ADF. The review did not consider that further training needed to be developed. The Action Plan contains details of the training provided by the ADF (law of armed conflict, anti-discrimination training, human rights training provided to members prior to deployment overseas), ADF policy, and other documents and services relating to human rights within the forces.⁵⁹

54 'Settling accounts', *The Economist*, 6 June 1998, p. 29.

55 Department of Defence, Transcript, p. 354.

56 *ibid.*

57 *ibid.*

58 Department of Defence, Submission, p. 224.

59 *National Action Plan Australia, 1996-97 Update*, Appendix II, p. 79.

Defence exports

5.59 The matter of defence exports was also raised in submissions to the inquiry. The Department of Defence controls the export of military, military-related, and dual-use goods through the Customs (Prohibited Exports) Regulation 13E. Applications for export are considered in accordance with guidelines which include five criteria for denial. One of these is that 'Exports of military goods will not be permitted to governments that seriously violate their citizens' rights unless there is no reasonable risk that the goods might be used against those citizens.'⁶⁰ Mr Burke states that the ambiguity of the guidelines and the interdepartmental SIDCDE process of approval allowed the export of 20 Steyr semi-automatic rifles to Indonesia in 1995.⁶¹

5.60 The Committee acknowledges that there is concern that Australia's defence co-operation with other countries in the region may contribute, however indirectly, to human rights abuses in those countries. The Committee concluded that, where possible, Australia's defence co-operation should be used to assist countries in the region to develop respect for human rights.

5.61 The Committee recommends that:

- 14. The Australian government review the human rights implications of Australia's defence co-operation with other countries and establish guidelines which prohibit any defence co-operation which could contribute to the recipient forces internal security function.**
- 15. The Australian government review the operations of its defence co-operation program with a view to providing assistance to the governments of regional countries in provision of training for the military in international human rights law.**

Institutions and processes to address security and human rights

5.62 The interdependence of respect for human rights and regional security and stability has not yet been recognised in regional institutions. Some submissions sought to impress upon the Committee the opportunities that economic and security relationships present for initiatives to develop human rights in the region:

Over the past few years, co-operation on regional security and transnational issues has strengthened between countries of the region and major outside powers, both bilaterally and through the institutional arrangements that have grown up around ASEAN. The ASEAN Regional Forum, in particular, is moving beyond dialogue into more practical areas of confidence building and preventive diplomacy. But the ASEAN Regional Forum and other dialogues will only develop to their full potential if they address the regional security agenda more comprehensively. Conflicts cannot be resolved,

60 Department of Defence, Submission, pp. 224-225.

61 Burke, Submission, p. 400. Mr Burke referred to this Committee's 1994 report *The Implications of Australian Defence Exports* as a response to the controversy surrounding defence exports.

confidence cannot be built, multilateral co-operation cannot be strengthened, unless regional security issues are addressed at their root cause—the violation of human rights. ...⁶²

It is encouraging that ASEAN is finding its own language for discussions of this kind. ASEAN showed positive leadership to the international community in its response to the Cambodian crisis. ...

Australia should encourage such new thinking and approaches through its bilateral exchanges and own participation in the ASEAN Regional Forum and other bodies. And in seeking closer formal association with ASEAN—such as through recognition of the Bali Treaty—Australia should not compromise its international interests and responsibilities in the promotion of human rights by actively or passively subscribing to the doctrine of non-interference.⁶³

5.63 According to DFAT, the potential of the ARF had already been tapped, to some extent, although it is a forum for its members to discuss regional security issues and develop co-operative measures to contribute to peace and security in the region. ARF meetings are held annually at Foreign Minister level, in conjunction with the ASEAN Post Ministerial Conference (PMC). ARF does not have a human rights mandate and DFAT noted that most members are unwilling to discuss their own or each others 'internal affairs'. However, ARF is prepared to discuss internal issues where there is a potential to affect other countries or to contribute to regional stability. Australia and other countries raised the issue of Burma before the 1996 meeting and in 1996, developments in Burma and Cambodia were discussed, and ARF support given for the ASEAN initiative on Cambodia.⁶⁴

5.64 DFAT concludes that ARF is showing some capacity to raise sensitive issues and it notes that Australia will continue to encourage this. Bilateral meetings between Ministers in the 'margins' of the ARF meetings also enable Ministers to pursue sensitive issues. Mr Downer used this opportunity in 1997 to raise Australia's concerns about human rights with his Burmese counterpart.⁶⁵

5.65 Australia's Minister for Defence Industry, Science and Personnel has referred to the possibility of encouraging the ARF to play a greater role in discussing and managing issues that threaten stability or confidence. She suggested the establishment of voluntary mechanisms which regional states could draw upon to prevent differences from becoming disputes, and disputes from being armed conflict. She stated that Australia would see value in the ARF developing a conflict resolution capacity.⁶⁶

5.66 In the Committee's view, ASEAN and the ARF present some opportunities to contribute to the promotion of human rights in the region. In particular, it would seem appropriate that a dispute resolution role for the ARF could encompass a capacity to receive and review complaints of systematic human rights abuse by governments in the region.

62 Amnesty International, Submission, pp. 697-698.

63 *ibid.*, p. 698.

64 DFAT/AusAID, Submission, pp. 851-852.

65 *ibid.*, p. 852.

66 The Hon Bronwyn Bishop, MP, *op. cit.*, p. 4.

5.67 The Committee recommends that:

- 16. The Australian government consider evaluating the capacity of ASEAN and the ARF to play a role in the promotion and protection of human rights in the region, and where appropriate, advocate the assumption of such a role by those institutions.**

