

Submission to the Joint Standing Committee on Treaties concerning the Agreement between Australia and the Republic of Indonesia on the Framework for Security Cooperation

Mr Andrew Johnson, Australian citizen

I thank the Australian Commonwealth government for its efforts to promote the mutual best interests of the people of the Commonwealth and of the Republic of Indonesia;

however there are several issues of concern in the proposed "AGREEMENT BETWEEN THE REPUBLIC OF INDONESIA AND AUSTRALIA ON THE FRAMEWORK FOR SECURITY COOPERATION".

The agreement contains contradicting clauses which open the door to future violation of the intention if not wording of Australians legal and human rights obligations; I believe the proposed agreement would require the Commonwealth to violate it's United Nations obligations; and although the agreement does use terms such as "consistent with international law", the proposed agreement would invite violation of international law and the human rights of the citizens of the Republic and/or Commonwealth.

United Nations obligations:

As members of the United Nations, both Parties are obliged to respect the United Nations Charter including but not limited to Article 1 part 2, and Articles 73 and 74; they are further obliged to comply with United Nations General Assembly Resolutions, including those Resolutions which the Parties themselves endorsed including 1514 and 1541.

Regarding the territory of West New Guinea, the Republic of Indonesia in August 1962 signed a contract accepting colonial administration responsibilities for the territory of West New Guinea as a colony of the Republic of Indonesia. Under United Nations GA Resolution 1514 the Republic of Indonesia has been under obligation to allow without delay an act of Self-determination in compliance with both UN GA Resolution 1541 and the agreement of August 1962; it is unfortunate that according to United Nations General Assembly Resolution 2504 of November 1969 that the 'Act of Free Choice' supervised by General Sarwo Edhie Wibowo had not complied with either UN GA Resolution 1541 or the agreement of August 1962.

In addition to the above historical confirmation of West New Guinea as a colony subject to UN GA Resolution 1514 and regular reports to the UN Secretary General under Article 73e of the United Nations Charter; the territory's status as a colony is independently confirmed by UN GA Resolution 1541 Principle 4, and in combination with United States of America Department of State records UN GA Resolution 1541 Principle 5.

As the territory of West New Guinea is a colony which has not yet attained a full measure of self-government; it would have to be excluded from any part of the Security Cooperation Agreement citing sovereignty, unity, territorial integrity, or which sought to limit the rights of the colony while the territory is being demilitarised in accord with UN GA Resolution 1514 part 4.

As the Australian government is now aware of West New Guinea's status as a colony, the Commonwealth of Australia as a member of the United Nations is now morally and legally obliged to raise this issue at the United Nations; where formal confirmation of the territory's colony status can be determined by the International Court of Justice.

Security of human rights and compliance with international law and conventions:

Article 3 parts 2, 4, 6, 9, 10, 11, 12, 13 would require extensive monitoring and clarification to protect the human and civil rights of the citizens of the Republic and Commonwealth. It would be morally and legally the responsibility of the Australian government if this Security Cooperation Agreement caused any information being transmitted or otherwise shared with foreign police or other forces, which resulted in the violation of the human rights of any person.

This is a grave issue given the historical and current problems the Republic has with police, military and other agencies which have and continue to fail to protect the legal rights of its citizens, including Indonesia's Constitution Article 28 guaranteeing free speech and other expressions (such as peaceful Papuan flag raisings, political discussion, and political movements) - as was demonstrated

by the 1965 to 1966 killings and subsequent imprisonment of tens of thousands of political prisoners for over a decade;

by the assassinations of Theys Eluay and Munir Said Thalib;

and the on-going United States Department of State human rights reports from 2000 to 2005 citing "Security forces were responsible for numerous instances of, at times indiscriminate, shooting of civilians, torture, rape, beatings and other abuse, and arbitrary detention in Aceh, West Timor, Irian Jaya (also known as Papua or West Papua), the Moluccas, Sulawesi, and elsewhere in the country." (2000);

"Security forces continued to commit unlawful killing of rebels, suspected rebels, and civilians in areas of separatist activity, where most politically motivated extrajudicial killings also occurred. There was evidence that the TNI considered anyone its forces killed in conflict areas to have been an armed rebel." (2004);

"The government largely failed to hold soldiers and police accountable for such killings and other serious human rights abuses in Aceh and Papua." (2005).

Pass treatment of foreign nationals including imprisonment of Swiss journalist Oswald Iten from 2nd to 13th December 2000 (ref: <http://wpik.org/Src/jail-rescue.html>), and media restrictions during the tsunami emergency in early 2005 reinforce concerns about transparency and an ongoing culture of human rights disregard.

The Indonesian court system is also of concern, as demonstrated by the trial of Anthonius Wamang, Rev. Ishak Onawame, and five others flown from Papua to Jakarta's courts in violation of the Indonesian Special Autonomy Law, where four weeks later Brig. Gen. Anton Bachrul Alam announced his police investigation had cleared the TNI of any involvement in the Timika ambush for which the TNI had shot a Papuan man the day before and placed his corpse dressed in military fatigues at the murder scene shortly after the ambush.

It would appear to be a betrayal of the Australian people's trust if our government sought to entrust our region's welfare to a paper agreement depending on a military, police, and court culture which continues to display disregard of such agreements.

Another concern is the ongoing history of privileged rights enjoyed by major corporations such as Freeport McMoRan which was sold a West Papuan 30 year mine license two years before Indonesia claimed sovereign rights for such contracts; and what I understand to be continuing payments to local TNI commanders again in violation of domestic Indonesian law.

As the Security Cooperation Agreement also refers to terrorist and terrorism, but does not clarify any definition of these terms; and there are transnational corporations which

would benefit by billions of dollars should certain civil movements or other groups in Aceh and Papua be erroneously labelled as terrorist or armed guerrilla, this is an issue which can not be left open for later determination.

Such issues would have to be determined and published before signing any Agreement.

Contradiction:

Article 2 Principle 6 requires "Nothing in this Agreement shall affect in any way the existing rights and obligations of either Party under international law", yet signing this agreement when one or both parties are in violation of United Nations obligations (see above) would and does mean Article 2 Principle 2 requiring "support" of "territorial integrity, national unity" would be in violation of Principle 6.

Article 2 Principle 3 irrespective of its term "consistent with their respective domestic laws and international obligations", would encourage the Parties to attempt to limit the legal and human rights of the citizens of the Republic and/or Commonwealth.

For example any future Australian government could feel obliged by the Agreement to repress Australian free speech using national security provisions.

Also Indonesia could claim future refugees to be 'separatist' and request the Australian government to return refugees for 'illegal entry', a request which any future government may feel unduly obliged to comply with unless such issues are specifically addressed before signing such an Agreement.

The proposed Security Cooperation Agreement provides too wide a commitment and its scope is not clear.

Conclusion:

I therefore request the Commonwealth of Australia withdraw the proposed Security Cooperation Agreement until these issues regards Australian United Nations obligation regarding the status of West New Guinea as a "Non Self-Governing territory", human rights and security concerns, and the inbuilt contradictions of the proposed Agreement can be more reliably dealt with.

Yours sincerely

Andrew Johnson