

INDONESIA AUSTRALIA SECURITY TREATY

SUBMISSION TO JSCT INQUIRY ON BEHALF OF THE AUSTRALIAN COALITION FOR TRANSITIONAL JUSTICE IN EAST TIMOR

We, the undersigned, wish to make the following points in regard to the treaty:

1. While we support initiatives to improve relations between the peoples of Australia and Indonesia, we do not believe this should be at the expense of human rights in either country or in other nations in the region which may be affected by this treaty. We therefore draw the Committee's attention to the implications of improved defence cooperation in view of the lack of accountability for past human rights violations by ABRI and TNI forces and their political masters in East Timor, Aceh and (West) Papua.
2. In particular, we are concerned that improved defence cooperation will negate Australia's ability to pressure the Indonesian Government to bring to trial those TNI officers accused of, and in many cases indicted for, war crimes, crimes against humanity and other human rights violations for their activities during the illegal Indonesian occupation of East Timor between 1975 and 1999. We do not believe it is appropriate for Australia to enter into enhanced defence cooperation while this matter remains unresolved following the failure of Indonesia to cooperate with the Serious Crimes process in Dili; the discredited and ineffective ad hoc Human Rights Tribunal in Jakarta in 2002; the breakdown of Indonesia's own Truth and Reconciliation Commission in December 2006; the serious flaws in the current Indonesia-Timor Leste Commission of Truth and Friendship; and the international community's failure to heed the recommendation of the 2005 UN Commission of Experts that there should be an international tribunal to try the accused in the absence of Indonesian Government cooperation in bringing its citizens to trial in a credible justice mechanism.
3. Specifically, the treaty's provision of "military education and training, exercises, study visits and exchanges", etc., implies the possible entry into Australia of serving TNI officers who are the subject of Interpol red notices, and others who are the subject of outstanding indictments from the Serious Crimes Special Panels of the Dili District Court, established under UNTAET Regulation 2000/15. To allow these people into Australia, or to cooperate with them or with the units of the TNI (especially Kopassus) which have been accused of serious human rights violations in East Timor, would undermine Australia's commitment to upholding and promoting high standards of human rights at home and in our international relations. This commitment is reflected, in theory at least, by the Australian Parliament having passed legislation in 2002 giving effect to our ratification of the Statute of the International Criminal Court; and by the question in Australian visa application forms which asks whether applicants have ever "committed, or been involved in the commission of war crimes or crimes against humanity or human rights?". As Foreign Minister Downer noted in speaking to ABC Radio's World Today program in 2003: "...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."
4. The proposal for improved defence cooperation contravenes the intention of the treaty that both parties should "comply in good faith with their obligations under generally recognized principles and rules of international law" and the intention that the principles of the treaty "are to be interpreted in a manner consistent with the Parties' existing international obligations, including those under the UN Charter", which commits member states to upholding fundamental human rights. For instance, according to Art 53 of the Vienna Convention on the Law of Treaties, "A treaty is void if, at the time of its conclusion, it conflicts with a peremptory norm of general international law". Given that various

serving ABRI/TNI officers have, as a result of their actions or their command responsibility in East Timor, been accused of the peremptory norm of genocide, the new security treaty could be seen as implying immunity from prosecution for any such officers coming to Australia, or otherwise as condoning their alleged crimes, and thereby as violating Australia's responsibility to prosecute persons accused of such crimes.

5. There are East Timorese who became Australian citizens and residents during the Indonesian occupation. To allow into Australia those who perpetrated human rights violations against them and their families, or to encourage cooperation with TNI (and former ABRI) units responsible for such violations, in the absence of credible justice processes is disrespectful to their suffering. Further, in view of the current coronial inquest being carried out in Sydney into the death of Brian Peters, one of the Balibo Five journalists killed in October 1975, it is also insulting to the memory of the families involved if the Australian Government is once again seen to be prioritising our relationship with the Indonesian military over the human rights of its own citizens – in this case, the right to know the truth about what happened in Balibo in 1975.
6. We therefore **recommend** that the provisions of Article 3 of the treaty relating to defence cooperation be suspended until such time as Indonesia meets its international obligations in respect of war crimes, crimes against humanity or other human rights violations in East Timor between 1975 and 1999. Should the treaty be ratified in its current form, both countries' failures to comply with their international obligations with respect to crimes committed by ABRI/TNI forces in East Timor in 1975-1999 may render it invalid in international law.

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