



Criminal Justice and Security

02/9860
13 December 2002

The Secretary
Foreign Affairs Sub-Committee
Joint Standing Committee on Foreign Affairs, Defence and Trade
Parliament House
Canberra ACT 2600

Dear Mr Lawson

ATTORNEY-GENERAL'S DEPARTMENT SUBMISSION TO THE INQUIRY OF THE JOINT STANDING COMMITTEE ON FOREIGN AFFAIRS, DEFENCE AND TRADE INTO BUILDING AUSTRALIA'S RELATIONSHIP WITH INDONESIA

I refer to the letter of 29 August 2002 from the Chairman of the Foreign Affairs Sub-Committee of the Joint Standing Committee on Foreign Affairs, Defence and Trade seeking submissions from agencies in the Attorney-General's portfolio to its inquiry on "Building Australia's Relationship with Indonesia".

Several portfolio agencies have made separate submissions to the inquiry. The Attorney-General's Department submission is attached and I thank the Committee for providing the Department with the opportunity to contribute.

The action officer for this matter is Maggie Jackson who can be contacted on 62506027.

Yours sincerely

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Building Australia's Relationship with Indonesia

Inquiry by Foreign Affairs Sub-Committee

Joint Standing Committee on Foreign Affairs, Defence and Trade

Attorney-General's Department Submission

December 2002

Australia's relationship with Indonesia

Submission by Attorney-General's Department

This submission sets out the activities undertaken by the Attorney-General's Department and AUSTRAC in collaboration with Indonesia. Other portfolio agencies such as the Australian Federal Police have made their own submissions to the inquiry.

Interaction between the two countries has increased in recent years as Indonesia has sought to build democratic institutions and attract foreign investment by developing modern legislation to regulate its financial sector and implement international instruments on transnational crime and terrorism.

This submission deals with six main areas: the activities of the International Legal Services Advisory Council, departmental activities under the Government Sector Linkages Program; the Working Group on Legal Co-operation; joint regional activities; bilateral cooperation; and ministerial visits.

International Legal Services Advisory Council (ILSAC)

The International Legal Services Advisory Council (ILSAC) is a part-time consultative and advisory body which reports to the Attorney-General on matters concerning international legal and related services. Its membership comprises both senior lawyers from the private sector and government representatives with law-related responsibilities or interests. Details on ILSAC are available at www.law.gov.au/ilsac.

The development of links in law and legal services between Australia and countries of the Asia-Pacific region has been fostered and promoted by the ILSAC since its inception in 1990. Indonesia is a country of prime focus. The ILSAC Secretariat is located within the Commonwealth Attorney-General's Department and co-located with the Department's International Legal Services Section.

The ILSAC Chairman, the Hon Sir Laurence Street AC KCMG QC, in his covering letter to AusAID (July 1997) responding to the report by the Simons Committee on the review of Australia's aid policy said the following:

The Council (ILSAC) believes that law and legal development should occupy an important place in the formulation of strategies to promote sustainable development and alleviate poverty. An adequate system of law and legal process is fundamental to the development of all economies and societies. Law and legal processes define public and private rights and provide bases for the peaceful resolution of disputes. The absence of an adequate system of law and legal process is inimical to, and ultimately inconsistent with, the notion of sustainable development.

The Council would like to draw attention to the following points which it hopes will be taken into account in the Government's consideration of the recommendations of the report of the Committee of Review:

- *the essential contribution to good governance and sustainable economic and social development of stable and independent legal institutions, a transparent legal and judicial system and the rule of law;*
- *the substantial and internationally acknowledged expertise residing in Australia's legal sector to facilitate and promote this process;*
- *the appropriateness, in ILSAC's assessment, of sourcing expertise on law and legal development for the aid program from Australian service-providers, which has the potential to bring significant collateral benefits for Australia in the conduct of our international relations and in the development of cross-border trade and investment without detracting from the effectiveness of Australia's overseas aid.*

AusAID through various programs has supported the activities of both government and non-Government organisations, individual legal institutions and universities to assist Indonesia in its program of legal reform. In the process many relationships have been developed fostering an improved understanding of the cultural and legal environment in which each country operates.

ILSAC activities during the 1990's included participation in seminars, most notably the Australia-Indonesia Legal Seminar held in Jakarta on 28 June 1994, visits to Australia of senior Indonesian officials and judges and similar visits of high profile Australian lawyers to Indonesia. It also included the development of the *Australia-Indonesia Contract Management Handbook – Dispute Avoidance and Resolution* which was launched under the auspices of the Australia-Indonesia Ministerial Forum in 1996.

ILSAC Indonesia-Australia Ad Hoc Legal Visits

More recently, with AusAID funding, ILSAC has conducted a program of visits/study tours - the Indonesia-Australia Ad Hoc Legal Visits program. This program was designed to identify Indonesian lawyers and officials with law related responsibilities who would have the potential to exercise influence in the development of Indonesia's legal system.

The Indonesian lawyers visited Australia on a short-term study visit to undertake an approved program designed to suit their particular interests. The visitors included Mr Indra Surya, of the Indonesian Capital Markets Supervisory Agency. Mr Surya was interested in financial sector regulatory bodies and had meetings with key officials in such agencies as Australian Securities and Investments Commission (ASIC), Australian Prudential Regulation Authority (APRA), Australian Stock Exchange (ASX), and the Director of Public Prosecutions (DPP). A private sector lawyer, Mr Rahmat Soemadipradja, undertook a study tour of Alternative Dispute Resolution centres and practices and the Australian judicial appeal system. Ms Nini Halim, a private sector

lawyer visited in June 2002. Ms Halim's particular interest was in the development and strengthening of the legal profession in Indonesia. She met with professional bodies in most states and with the Law Council. She also looked at practical and continuing legal education with visits to the Legal Workshop at ANU and the NSW College of Law. The final visit was Ms Wiwiek Awiati, Executive Director of the Indonesian Centre of Environmental Law. Ms Awiati was interested in alternative dispute resolution as a means of resolving environmental disputes, in the ways in which competing uses of resources were managed; in the development of class action and public interest cases and the regeneration of land which had been destroyed through mismanagement.

In July 2002, Mr Bruce Johnston, a partner of Allans, Arthur Robinson, and Chair of the ILSAC International Legal Cooperation Committee visited Indonesia to participate in a Legal Infrastructure Symposium. As Indonesia is also a country of focus for the APEC initiative of Strengthening Economic Legal Infrastructure, Mr Johnston was subsequently invited to prepare a report to be presented to the APEC Joint Ministerial Meeting in Los Cabos, Mexico on 23-24 October 2002.

ILSAC has recently published the third edition of the *Legal Services Country Profile Indonesia* September 2002 (a copy is attached).

Activities under the Government Sector Linkages Program (GSLP)

Due to the economic crisis in 1997 AusAID requested assistance from the Department for advice on how Australia would be best able to assist Indonesia with the establishment of a new commercial court. Officers of the Federal Court and the Insolvency Trustee Service Australia (ITSA) participated in an AusAID led mission to Indonesia for this purpose. Subsequently, on three further occasions, an officer from ITSA provided ad hoc assistance with the development and establishment of commercial court processes.

In 1997 the Department received funding through the AusAID funded GSLP to undertake a project with the Indonesian Ministry of Justice and Human Rights. In collaboration with the Asian Law Centre of the University of Melbourne the Department conducted a seminar for about 40 lawyers in Jakarta on bankruptcy and insolvency. Six participants were selected to undertake a further one month study at the University of Melbourne incorporating a short study tour to Canberra and to relevant government agencies.

The Centre for Democratic Institutions at the Australian National University seeks to encourage and facilitate the involvement of various Australian legal institutions and non-government organisations in activities with Indonesia. It facilitated the Federal Court undertaking a series of programs of training of judges funded under the GSLP and involving the New South Wales Judicial Commission, the Australian Institute of Judicial Administration and non-government organisations such as Australian Legal Resources International and the Australian Indonesian Legal Development Foundation. The Centre also conducted independent studies on law related activities.

Another program funded under the GSLP in which the Department has been involved, was designed to increase the skills of Indonesian Government lawyers and develop capacity in international law. This was implemented in conjunction with the Ministry of Justice and Human Rights. It included a seminar in Jakarta for more than 40 Government lawyers. Seven lawyers visited Australia for intensive training in international law at Monash University. The participation of one of the young women lawyers was funded by the Australia Indonesia Institute. The seven lawyers also participated in an international conference on international law, and had a short study visit to Canberra and Sydney. A further study tour on international humanitarian law for the Director of International Law and another senior officer of the Ministry of Justice and Human Rights was conducted in January 2002.

The Department has also hosted and coordinated a Comparative Study on Legislative Drafting involving the Office of Parliamentary Counsel, and the ACT and NSW Parliamentary Counsels. Two senior Indonesian Government lawyers participated and visited Australia for 10 weeks. Subsequently a legislative drafting workshop conducted by Mr Vince Robinson from the Office of Parliamentary Counsel, and Ms Lita Chan from the Attorney-General's Department, was held in Jakarta in March 2002.

The Department currently has an Information Technology based project with the Indonesian Ministry of Justice and Human Rights to develop an internet based searchable legal information database facility. This is a four-phase project and a report is expected shortly on the conclusion of the first phase of the project.

The Attorney-General's Department currently has two activities approved for funding by AusAID under the Government Sector Linkages Program. They are for the provision of legal assistance in criminal justice matters (A\$149,345) and for Legislative Drafting Training and Technical Assistance (A\$76,500). It is anticipated that these programs will be implemented in 2003.

The Department has fostered the increasing interest in Indonesia in the formal use of alternative dispute resolution through a project involving four Indonesian organisations and agencies namely the Ministry of Justice and Human Rights, the Indonesian National Board of Arbitration, the Jakarta Initiative Task Force and the Indonesian Centre for Environmental Law. This project was funded by AusAID under its APEC Support Program

Working Group on Legal Cooperation (WGLC)

As a result of this interest in, and rapid escalation of, legal assistance to Indonesia a Working Group on Legal Cooperation (WGLC) was established by the 4th Australia Indonesia Ministerial Forum when it met in Bali in February 1999. The WGLC is co-chaired by the Commonwealth Attorney-General's Department and the Indonesian Ministry of Justice and Human Rights. .

A Sub-Group on Intellectual Property formed under the Australia Indonesia Ministerial Forum (AIMF) was originally an active sub-group of the Working Group on Trade, Industry and Investment chaired by the Department of Foreign Affairs and Trade. The activities of this group had received funding through AusAID's Indonesia-Australia Specialised Training Program. The Sub-Group had a vigorous training agenda that facilitated contact between lawyers working in the public and private sectors and Academe. The Sub-Group on Intellectual Property is now a Sub-Group of the WGLC

On 25 October 2000 the Attorney-General and the Minister of Justice and Human Rights of the Republic of Indonesia signed a *Memorandum of Understanding on Legal Cooperation* between Australia and the Republic of Indonesia (a copy is attached). The memorandum is intended to underpin the activities of the WGLC and to promote co-operation in the development of legal systems, laws and legal institutions on a wide range of issues including human rights.

Representatives from the Attorney-General's Department attended the inaugural meeting of the Australia-Indonesia Working Group on Legal Cooperation (WGLC) held on 9–10 April 2002 in Jakarta. There is no separate funding provided by either Government for this activity. Australian participants (organisations and individuals) were responsible for funding their own participation. The meeting was hosted by the Ministry of Justice and Human Rights. This meeting was extremely successful and 36 Australians and 66 Indonesians participated.

On 9 April 2002, the Australian Attorney-General with the Indonesian Minister for Justice and Human Rights opened the WGLC meeting and outlined the growth of legal cooperation activities between Australia and Indonesia over the last decade. He noted that the signing of the MOU in 2000 strengthened the already close legal links between the two countries. The Indonesian Minister of Justice and Human Rights explained that Indonesia is in a new era of democratization. He emphasised the importance of legal cooperation in further improving the bilateral relationship between the two countries. The Minister also stressed the efforts of the Indonesian Government to promote and protect human rights.

Officials of the Indonesian delegation presented papers on intellectual property rights, immigration and human rights focusing on the need for continued capacity building projects. Private sector members of the Australian delegation presented sessions on private sector links with Indonesia, Australian legal education and training links with Indonesia, industrial relations in Australia, international commercial dispute resolution and links between the Australian Federal Police and Indonesia.

The main business of the WGLC meeting was conducted in six parallel sessions of five focus groups and a sub-group on intellectual property. The focus groups covered immigration, human rights, legal education and training, commercial law including bankruptcy and insolvency, and alternative dispute resolution and arbitration.

The Attorney-General's Department, AusAID, the Human Rights and Equal Opportunity Commission (HREOC) and the Casten Centre for Human Rights Law at Monash University participated in the focus group on human rights.

The WGLC noted the outcomes of the focus group on human rights in relation to:

- the shared commitment of the Australian and Indonesian Governments to advancing human rights through education,
- the range of AusAID-funded legal cooperation activities on good governance and human rights underway in Indonesia, and
- the practical suggestions made by Indonesian members on future possible collaboration activities between Australia and Indonesia on good governance and human rights.

The WGLC will report to AIMF when it next meets in the first half of 2003.

Since this WGLC meeting, the Department has participated in other legal cooperation activities on human rights with Indonesia.

Roundtable for Indonesian Participants in the Indonesia-Australia Specialised Training Project (IASTP) Human Rights in Australia Course

On 27 May 2002, the Department hosted a roundtable for Indonesian participants in the IASTP Human Rights in Australia course. The IASTP provides knowledge and skills development that meets both the priorities of Government and the needs of participants through the design and delivery of appropriate technical and professional training.

Legal specialists from the Department gave presentations on the role of the Attorney-General's Department in domestic and international human rights matters; treaty making processes; reporting to United Nations treaty bodies; Commonwealth anti-discrimination laws; and Australia's domestic implementation of its international human rights obligations.

Indonesian participation in Human Rights Study Program

On 19 August 2002, the Department met a group of Indonesians participating in an AusAID-funded Human Rights Study Program in Australia. The participants were from the Ministry of Justice and Human Rights in Jakarta.

The Department provided wide-ranging practical briefings to the group including an overview of the role of: the Attorney-General's Department; Australia's legal system; Commonwealth anti-discrimination laws; and the domestic implementation of Australia's international human rights obligations. Discussions also covered Australia's National Action Plan, treaty-making processes, reporting to United Nations treaty bodies, and operational planning and priority setting. This meeting is an example of the kind of technical cooperation on human rights set out in the MOU on Legal Cooperation between Australia and Indonesia.

An updated compilation of Department and portfolio legal cooperation activities which was prepared for the meeting of the Working Group on Legal Cooperation (WGLC) is attached. This provides a fuller description of some of the legal cooperation activities referred to in this submission.

Joint Regional Activities

Regional Ministerial Conference on People Smuggling, Trafficking in Persons and Related Transnational Crime

The Regional Ministerial Conference On People Smuggling, Trafficking in Persons and Related Transnational Crime, held in Bali, from 26 to 28 February 2002, was co-chaired by the Foreign Ministers of Australia and Indonesia. Representatives of 38 countries attended, together with a number of observer countries and organisations. Australia was represented by the Minister for Immigration and Multicultural and Indigenous Affairs and by the Minister for Justice and Customs.

At the conclusion of the Conference Ministers agreed on a Co-Chairs' statement which addressed the following matters of significance:

- many people smuggling and trafficking activities are orchestrated by criminal networks which are also involved in other transnational crime, including drug trafficking, document fraud, money laundering and arms smuggling. These networks could undermine the rule of law in countries where they are active.
- countries should consider the benefits of signing and ratifying the United Nations Convention Against Transnational Organised Crime and its Protocols;
- developing more effective information and intelligence sharing arrangements within the region, improving cooperation between law enforcement agencies and enhancing border control systems to improve the detection and prevention of illegal movement; and
- agreement that the adoption of legislation that specifically criminalises people smuggling and trafficking is an important deterrent strategy.

Ministers also agreed to establish follow up mechanisms involving ad hoc meetings of experts to take concrete steps to implement the recommendations of the Conference. The activities to be undertaken include:

- law enforcement cooperation, through the expansion of existing initiatives through consultation (there is specific mention that the AFP will identify mutually beneficial strategies through its Law Enforcement Cooperation Program);
- regional discussions aimed at enabling countries to enact legislation that criminalises people smuggling and trafficking;

- provision of training and expertise in specialist areas such as document examination, border control and law enforcement technical capacity;
- the conduct of a regional workshop focusing on identity fraud and its linkages to transnational crime; and
- the enhancement of the network of agreements between financial intelligence units which enable the region to better combat money laundering.

The two ad hoc experts groups are being chaired by New Zealand and Thailand. The work of these groups will be submitted for consideration by Ministers at a subsequent meeting also co-hosted by Australia and Indonesia to be convened in April 2003.

The co-hosting of the Conference represented a clear statement by both Australia and Indonesia of their shared interest in cooperating to combat people smuggling and trafficking in persons. The Conference played an important role in raising the profile of these issues as regional problems that require the cooperation of all states to effectively address.

The experience of working together with Indonesia to address issues of transnational crime, and the understanding that has been developed that bilateral and regional cooperation is vital has formed a good foundation to expand into combating other areas of transnational crime such as terrorism. This can already be seen in light of recent events, with a high degree of cooperation between the Australian Federal Police and the Indonesian Police, who formed a joint task-force to investigate the bombing on 12 October 2002.

Bali People Smuggling conference follow up

Following the Bali conference the Government announced the appointment of Mr John Buckley as the Ambassador for People Smuggling Issues. The Ambassador is the focal point for Australia's contribution to the follow up work from the Conference and for the necessary liaison with the chairs of the working groups.

A priority in follow up work is to ensure that our regional partners develop effective domestic criminal legislation covering people smuggling and trafficking, and that effective extradition and mutual assistance relationships with regional countries are implemented to enforce the relevant offences. Extradition (and to a lesser extent mutual assistance) is dependant on other countries having appropriate criminal legislation to fulfil the requirement of dual criminality.

As part of our strategy for assisting regional partners, a regional workshop on criminalisation of trafficking in persons and people smuggling was held in Malaysia in September 2002. Australia cooperated closely with Indonesia, Thailand and the International Organisation for Migration in the preparation and running of the workshop. The workshop was also of assistance for countries that are considering ratification of the Transnational Crime Convention and its Protocols on People Smuggling and People Trafficking.

As a follow-up to the workshop, Australia will continue to engage bilaterally with regional countries to assist in the development and implementation of a comprehensive

regional network of criminal laws covering people smuggling and trafficking. These bilateral approaches could also be used to facilitate development of extradition and mutual assistance relationships (or to update existing relationships to adequately cover people smuggling and trafficking).

December regional meeting on Money Laundering and Terrorist Financing

It has recently been announced that Indonesia and Australia will co-host a regional meeting on Terrorist Financing and Money Laundering. That meeting is scheduled to be held on 17 and 18 December 2002 in Bali. The Minister for Justice and Customs will co-chair the meeting. The purpose of the meeting is for countries from the Asia Pacific region to meet to discuss the challenges of developing and maintaining an effective money laundering regime particularly one which is effective against terrorist financing, to identify needs for technical assistance and to identify sources of assistance for capacity building.

Bilateral co-operation

Money laundering

The Financial Action Task Force on Money Laundering (FATF) was established by the G7 in 1989 to set international standards for action to be taken against money laundering. FATF has developed 40 recommendations for action to combat money laundering. Since September 11 2001 a further 8 special recommendations have been added to cover terrorist financing. FATF has compiled a list of countries which are considered non co-operative because they have failed to fully implement the FATF recommendations. A number of countries in the region, including Indonesia, are listed. If a country remains on the list for a period in excess of 12 months counter measures can be applied. Although Indonesia has been listed since July 2001, countermeasures have to date not been applied to Indonesia largely because of the passage of an anti money laundering law by the Indonesian Parliament in March 2002. That law is not fully FATF compliant. Implementation of the legislation is proceeding with the assistance of various foreign donors including Australia.

Legislation

For a number of reasons including the need to comply with conditions attached to international financial assistance and its listing by FATF as non co-operative, Indonesia was anxious to advance the development of anti money laundering legislation during 2001. AusAID commissioned the Technical Assistance Management Facility (TAMF) to provide Indonesia with a range of assistance both in the development and implementation of an effective and internationally acceptable anti money laundering regime.

From November 2001 until March 2002 lawyers from the Department worked closely with TAMF in providing assistance to Indonesia in the formulation of the legislation.

Australia provided comments on a draft law which was before the Indonesian Parliament at that time and compiled a consolidation of comments which Indonesia had received from various other international bodies. In February 2002 a senior lawyer from the Department went to Indonesia to prepare a fresh draft law and to discuss it with the Indonesian Parliamentary Committee considering the legislation. TAMF also enlisted the assistance of Mr Bill Coad the foundation director of AUSTRAC to make a presentation to the Parliamentary Committee and to facilitate the passage of the legislation. Unfortunately the law was further modified before being passed by the Indonesian Parliament so that it was no longer fully FATF compliant. Australia is supporting initiatives to develop regulations, particularly applicable to the non-bank financial sector to overcome some of the deficiencies in the law and providing assistance in the establishment of the new financial intelligence unit (PPATK).

AUSTRAC is also providing assistance to Indonesia to enhance its anti money laundering regime. AUSTRAC hosted a delegation from Indonesia on Friday 7 June 2002 that included officials from the Ministry of Justice and Human Rights, the Attorney General's Office, Bank Indonesia and the Indonesian Police. These officials were briefed on the establishment, role, functions and daily operations of AUSTRAC, including AUSTRAC's information technology resources that support much of its work. The briefing was designed to assist the Indonesian officials with their plans for the establishment of PPATK.

AUSTRAC will provide advice and assistance when appropriate and where resources permit to assist the Indonesian authorities to introduce measures to combat serious crime through the gathering, analysis and exchange of financial intelligence. This issue is urgent in the aftermath of the Bali bombing where the identification of financial transactions could provide clues to the identity of those supporting the perpetrators. An Australian investigator skilled in money laundering investigations is working with TAMF and Bank Indonesia to analyze the suspect transaction reports already received by the bank under its anti money laundering regulations.

Terrorism

During the April visit of the Attorney-General to Jakarta he offered Australian assistance in the preparation of legislation to implement United Nations Conventions and Security Council resolution 1373 dealing with various aspects of terrorism particularly terrorist bombings and terrorist financing. Two lawyers from the Attorney General's Department spent several days in Jakarta in May to discuss a draft of the proposed Indonesian law and Australia's experience in the preparation of its implementing legislation. The draft legislation formed the basis of one of the Presidential Decrees made by President Megawati on 18 October 2002. The other made the decree retrospectively applicable to the Bali bombings. Draft legislation is now before the Indonesian Parliament which would, if passed supersede the Presidential Decrees.

The Department is also currently working with Indonesian authorities to develop arrangements for the possible deployment of air security officers on Australian aircraft on flights between Australia and Indonesia.

Extradition

Treaty

Australia began negotiations with Indonesia on an extradition treaty in 1982 and the text of a draft treaty was initialled by officials after negotiations in Jakarta in 1985. The negotiations stalled for several years because of technical issues such as the definition of "territory". The modified treaty was ultimately signed in April 1992 during the then Prime Minister's visit to Indonesia. The treaty entered into force in January 1995.

The terms of the Extradition Treaty have been the subject of a number of further negotiations with Indonesian authorities. The issues have centred on the adequacy of Indonesian criminal law and the list of extraditable offences under the treaty. A necessary precondition to extradition is that the alleged conduct constitutes an offence against both the law of the requested and requesting states. Indonesia enacted money laundering offences early this year and only recently established terrorism offences by Presidential decree. Indonesia has yet to introduce laws which make people smuggling an offence. None of these offences is listed in the treaty as extraditable.

Indonesian authorities have recently stated that extradition for such offences once enacted could be granted under the discretionary provision of the treaty. This is consistent with the position put during the treaty negotiations but not with comments made during discussions last year on the possible extradition of people smugglers. Indonesian authorities have indicated a willingness to extend the range of offences in the list and to consider the possibility of removing the list and relying on dual criminality and a penalty in excess of 12 months imprisonment as the criteria for an extraditable offence.

Cases

Since the Treaty came into force Australia has extradited one person to Indonesia. In April 1995 Indonesia requested the extradition of Subagio Lagaida Prabowo to answer charges of embezzlement, forgery, fraud and failure to document banking transactions. The first request failed for technical reasons but Prabowo was extradited on a fresh request. He was surrendered to Indonesia in 1998.

In June 1995 Hendra Rahardja was provisionally arrested in Sydney at the request of the Indonesian authorities for alleged offences of bank fraud. His extradition has been the subject of extensive litigation in the courts of both Indonesia and Australia. Rahardja is currently challenging the Minister's decision to surrender him to Indonesia.

Australia has made one extradition request to Indonesia under the treaty. On 13 October 2000, Indonesian authorities arrested Ross William Macarthur at the request of Australia for an offence under s29D of the *Crimes Act 1914* of defrauding the Commonwealth by dishonestly failing to pay the \$7 million penalty surcharge on the sale of marked fuel. Macarthur agreed to return to Australia and was eventually deported on 31 August 2001 after Australia withdrew its request for his extradition.

Mutual Legal Assistance

Treaty

In April 1992 negotiations began for a treaty on mutual legal assistance between Australia and Indonesia. The treaty was signed in October 1995 and entered into force in July 1999.

As with the extradition treaty this treaty contains a list of offences for which assistance may be provided. That list is a little more extensive than that in the extradition treaty but does not cover terrorism or money laundering. This treaty also contains a discretionary clause permitting assistance for any other offence for which assistance is permitted by the laws of both countries. Double criminality is not a necessary precondition to the provision of assistance under the *Mutual Assistance in Criminal Matters Act 1987* but the absence of double criminality provides a basis on which assistance may be refused at the discretion of the Attorney General. Indonesian authorities have recently confirmed that Indonesia could provide assistance in any case where there was double criminality even if it were not a listed offence. Indonesia does not have a specific law underpinning its mutual assistance treaty but can, we are advised, do so under its Code of Criminal Procedure and the treaty.

Cases

The Attorney-General's Department has made two requests under the treaty. Both of these requests have been made this year. The first relates to the location, confiscation and sale of assets of two convicted drug traffickers. The other request seeks documents and statements relating to the investigation of fraud of \$1.5 million unpaid customs duty on cigarettes imported by an Australian company.

In February 2002 Australian police received informal assistance from Indonesian authorities to travel to Indonesia and conduct inquiries into a suspicious death without the need for a formal request under the treaty. Also this year Indonesian authorities requested assistance in obtaining a statement from a witness in an embezzlement case. No formal request under the treaty was required in that case.

Recent Ministerial contacts

As mentioned earlier, Attorney-General, the Hon Daryl Williams, AM QC MP made an official visit to Indonesia from 7-10 April 2002 to open the inaugural session of the Australia Indonesia Working Group on Legal Cooperation together with his Indonesian counterpart H.E. Professor Dr Yusril Mahendra, Minister for Justice and Human Rights.

In the course of that visit the Attorney-General hosted a round table discussion with Australian lawyers in Jakarta to discuss with them ways of enhancing the co-operation between lawyers from the two countries and ways of improving the access of Australian lawyers to the Indonesian legal system.

The Attorney-General met the justices of the Supreme Court to discuss judicial independence and the administration of federal courts in Australia. He also held discussions with the Indonesian National Commission on Human Rights (KomnasHAM).

A bilateral meeting with the Indonesian Minister focussed on legal cooperation and capacity building particularly in the area of money laundering. Extradition, people smuggling and terrorism were also discussed. These issues were further discussed with the Indonesian Attorney-General H.E. Mr M.A. Rachman, (who is broadly the equivalent of the Director of Public Prosecutions) and Mr Muljohardjo the Chief Prosecutor for Central Jakarta.

Also mentioned earlier was the Regional Ministerial Conference on People Smuggling, Trafficking in Persons and Related Transnational Crime held in Nusa Dua, Bali from 26-28 February 2002. In addition to taking part in the conference the Minister for Justice and Customs took the opportunity for bi-lateral meetings with a number of key Ministers including his Indonesian counterpart, the Minister for Justice and Human Rights.

More recently on 14-16 October the Minister for Justice and Customs and the Minister for Foreign Affairs visited Indonesia for a series of high level talks in the aftermath of the Bali bombing. These talks covered a range of co-operative efforts to ensure that the offenders are identified and brought to justice. The announcement of the joint investigation team was a significant outcome. The issue of the two Presidential Decrees relating to terrorism has been a major achievement not only in relation to the Bali bombings but to enable Indonesia to deal with terrorist threats in the future.

Attachments

- ILSAC Country Profile – Indonesia
- Memorandum of Understanding on Legal Cooperation
- Australian Legal Co-operation Activities with the Republic of Indonesia.