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In the name of national interest? Assessing the shift of Australian foreign policy regarding West Papua during 2006

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In the name of national interest?

**Assessing the shift of Australian foreign policy
regarding West Papua during 2006**

Jaymin Beck

**A thesis submitted in partial fulfilment of the
requirements for the award of**

**Bachelor of Arts Honours (Politics and
International Relations)**

in the Faculty of Education and Arts, Edith Cowan University

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Abstract

The Australian government currently maintains a strong position against an independent West Papua. Despite claims of human rights abuses by the Indonesian Government in West Papua and the huge number of West Papuan refugees fleeing to Australian shores, the Australian Government continues to tighten foreign policy and migration laws to make it increasingly difficult for West Papuans to seek asylum in Australia and hope for an independent West Papua. When Australia's humanitarian intervention in the Timor-Leste fight for independence in 1999 is considered, reasons why the Australian government maintains an anti-separatist position towards West Papua are unclear. Australia took a humanitarian approach to forty-two West Papuan refugees arriving on Australian shores in January 2006; however, after the Indonesian Government gave a negative response to this decision, the Australian Government demonstrated a significant shift in its foreign policy-making and international relations. This thesis argues that Australian foreign policies regarding West Papuan independence and refugees shifted from international moral-based decisions to a realist approach after the granting of temporary protection to the forty-two West Papuan refugees in early-2006, and then the introduction of amended migration legislation later that year. The theory of realist international relations will be utilised to analyse Australian Government decisions and policies regarding West Papua during 2006 in order to reach this conclusion.

Declaration

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Glossary

AHRC – Australian Human Rights Commission

ASRC – Asylum Seeker Resource Centre

AWPA – Australian West Papua Association

INTERFET – The International Force for East Timor

MP – Member of Parliament

OPM – *Organisasi Papua Merdeka* (Free Papua Movement)

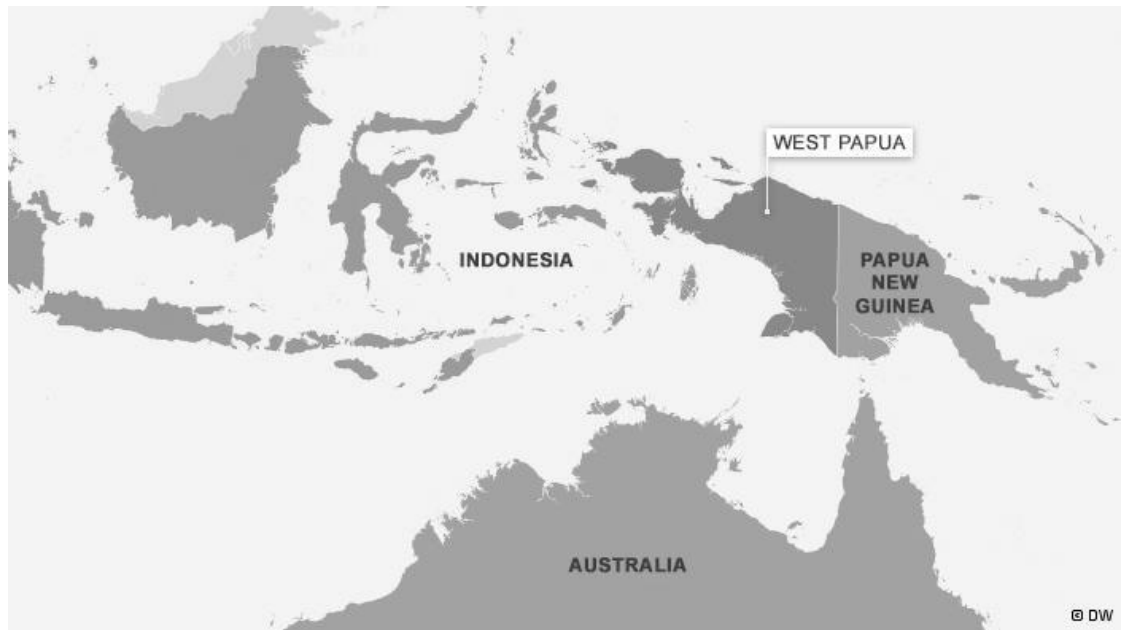
UN – United Nations

UN EXCOM – United Nations Executive Committee

UNHCR – United Nations High Commissioner for Refugees

Maps

Indonesia and Australia



Source: Bongiorno (2013)

Chapter One: Introduction

The fight for independence in West Papua has very little support in the international sphere. Despite being so close to home, the Australian Government maintains political opposition towards an independent West Papua and continues to pretend “nothing untoward happens inside Indonesia’s easternmost province” (Martinkus, 2002, p. 6). Indonesian oppression and the fleeing of West Papuans led the Australian Government to warn off West Papuan refugees from entering Australia after 2006. Temporary protection visas were granted to forty-two West Papuan asylum seekers in early 2006. However, after the Indonesian Government’s opposition became clear, the temporary protection visa category of the Migration Regulations Act 1994, “which was introduced in November 1999 via the Migration Amendment Regulations 1999” (Migration Legislation Amendment (Temporary Protection Visas Repeal) Bill 2006), was later repealed. Prime Minister John Howard stated that West Papuan refugees “are not welcome in his country” (“Aus warns off Papua refugees”, 2006). Despite several changes in government since, this position has been maintained by the current Abbott Coalition Government. In October of 2013, Tony Abbott made the Government’s anti-separatist views towards West Papua plain when he stated “the people of West Papua are much better off as part of a strong, dynamic and increasingly prosperous Indonesia” (Murphy, 2013).

Research into the Australian Government’s position towards the West Papuan fight for independence and refugees travelling to Australia is crucial because both issues occupy an extremely important area in our international relations, particularly with Indonesia, and also national security. A shift of foreign policy decisions, like that demonstrated throughout 2006, must be assessed to understand future Australian Government policy decisions. This thesis aims to assess the changes in Australia’s foreign policy regarding West Papua and West Papuan refugees from the arrival of the forty-three asylum seekers in January 2006 through to the introduction of legislation amendments that demonstrated a significant shift to realist international policy-making later that year.

West Papua is located between the Australian and Asian continents, just south of the equator. There has been continued tension in West Papua since the Indonesian takeover of the province from the Dutch in 1963 (Bertrand, 2004). For six years, West Papua existed in a state of unease and uncertainty, until the “sham” Act of Free Choice of 1969 – sponsored by the United Nations and significant international actors – finalised Indonesian control over the former Dutch colony (Davidson, 2009). Indonesia, a country comprising of more than 13,000 islands, is home to in excess of 300 different cultures; the Malays being the most demographically dominant of those cultures. The drive for independence in West Papua is said to be significantly linked to the cultural differences of the native Melanesian of West Papua and the Malays of Indonesia (Kingsbury, 2005). The cultural traditions and religious practices of the two cultures are so vastly different that very little cohesion exists within communities where they both reside.

Under President Sukarno it was argued that West Papua was indeed part of the Indonesian nation, regardless of the ethnic differences, because of a “shared experience of suffering under, and struggle against, colonialism” (Fernandes, 2006, p. 54). The rise of the Suharto regime in 1966, known as the New Order, saw very little hope for an independent West Papua, yet many native Melanesians – under the organisation of the *Organisasi Papua Merdeka* (OPM – Free Papua Movement) – have maintained a constant fight for independence and a guerrilla campaign in response to the brutality of the Indonesian soldiers stationed in West Papua (Kingsbury, 1998).

The former Australian Minister for Foreign Affairs Alexander Downer once stated that “we cannot simply speak with a loud voice when injustice occurs on the other side of the world, whilst whispering softly or remaining silent when similar events take place within our own region” (cited in Fernandes, 2006, p.1). Yet, despite the conflict in our neighbouring West Papua forcing people to flee their homes in search of asylum in Australia, the Australian Government continues to maintain opposition towards an independent, sovereign West Papua.

This research project will focus on Australia's position towards the separatist movement in West Papua and its policies towards West Papuan refugees in 2006, and how this demonstrates a shift to realist policy-making in Australian international relations.

The research questions this thesis will address are:-

1. How did a realist international relations perspective influence Australian foreign policy towards West Papuan independence and West Papuan refugees in 2006?
2. Why did the Australian Government grant temporary protection to forty-three West Papuans in early 2006, yet demonstrate a significant shift in foreign policy later that year?

Throughout the literature regarding Indonesia published before 1998, the term "Irian Jaya" (or "West Irian") is used when referring to the Western half of the New Guinea Island (Davidson, 2009); however, from this point onwards I will use the culturally preferred name of "West Papua" when making reference to the Indonesian half of the island, unless quoted otherwise from select sources. Likewise, current literature continues to use the name "East Timor" when referring to the country at present; however, for the purpose of this thesis and from this point forward, I will use the name afforded to the country after independence in 1999, "Timor-Leste", unless specifically quoted otherwise.

This thesis will discuss how Australian foreign policy in 2006 shifted from being significantly influenced by international moral principles to emphasising the government's anti-separatist position towards West Papuan independence, which has resulted in Australian foreign policy regarding West Papua shifting to a realist approach during 2006.

Research into Australia's policies towards Indonesian regional conflict is significant for several reasons. First, the conflict in West Papua is current and unresolved, meaning Australia could potentially have an influence on how, or if, West Papua ever becomes an independent state. Australia played a significant role in the formation and independence of Timor-Leste, which could be used as a precedent for how Australia conducts its relations regarding West Papua.

Second, the avenue that Australia takes in the future regarding West Papua will have an extremely important influence on Australian-Indonesian relations. Australia and Indonesia have had very tense relations since the mid-to-late 1990s due to the intervention in Timor-Leste (Chalk, 2001). At present, another situation like that of Timor-Leste has arisen in West Papua and the Australian government has displayed a transition from moral principle-based policy to realist foreign policy-making so as to not destroy already fragile relations with Indonesia. Finally, this research project will offer a contribution to the field of politics and international relations. As there is limited literature on Australia's position towards West Papua because the situation is still ongoing, this thesis will provide a contribution to closing a gap in the literature.

This project encompasses a realist international relations theoretical perspective. Realism in international relations theorises about state interests, actions and power in the international arena (Korab-Karpowics, 2010). Stewart Firth (2005) summarises key realist theories in saying that because there is no international government to ensure order "the international system is anarchic, and in the end states protect their interests through power politics" (p. 18). An influential thinker in the field, Kenneth Waltz (1979), theorises that all policies made by a state in the international arena are made to serve the state's interests and successful policy is determined by the preservation and strengthening of the state. States are the leading authority in the international realm according to key realism theorist John Mearsheimer (2002) and, as a result, the absence of any higher actor in the hierarchy is known as anarchy; which, "does not mean chaos and violence, but simply that states are sovereign political entities" (Mearsheimer, 2002, p. 25). Power politics is a key component of realist thinking and the competition between states to survive creates an intense and unforgiving international scene (Mearsheimer, 2002). Realist international relations theory will frame my theoretical perspective because it is a "distinctive but still diverse style or tradition of analysis" (Donnelly, 2000, p. 6) and it is also the most appropriate theoretical perspective to explain the shift of Australian foreign policies during 2006. Realism suggests that due to the nature of the anarchic international arena, the pursuit of successful political action by the state does not allow for the application of universal

moral principles to state actions (Morgenthau, 1948). States act in favour of their own interests of survival and, where possible, will merely claim morality as justification for their conduct (Korab-Karpowicz, 2010). In this sense, realism is based on pragmatic principles rather than moral principles.

Australia's gradual change in international policies and relations with Indonesia throughout 2006 will be assessed from a realist perspective to establish how much of an influence the theory of realist international relations had on Australia's policies towards West Papua and West Papuan refugees during 2006. There is a notable shift in Australian policies regarding refugees and migration and the government's relationship with Jakarta towards the end of 2006. Following the granting of temporary protection visas to the forty-two (and later forty-three) West Papuan asylum seekers the Indonesian Government responded negatively towards Australia, which, in turn, led the Australian Government to propose dramatic realist-based policy action. It is the causation of this gradual realist approach that will be assessed throughout this thesis.

I will use the method of comparative politics to conduct this research project. Comparative politics is simply the study of the ever-expanding field of political science (Johari, 1981). However, it is anything but simple. Frank L. Wilson (1996) suggests that through comparative studies in politics, political scientists can compare "political experiences and phenomena in one setting with those in other settings" (p. 4). To conduct a comparative politics project, one must first establish the approach that the study will take: either a traditional approach – philosophical, historical, institutional, or legal approach; or a modern approach – sociological, psychological, economic, quantitative, systems, simulation, behavioural, or Marxian approach (Johari, 1981). For the purpose of this research project, I will adopt a behavioural approach to fulfil my research aims and answer my research questions. The behavioural approach to a comparative politics methodology is important because it involves "the collection and examination of 'facts' relating to the actual behaviour of man as a social and political being" (Johari, 1982, p. 33). The comparative politics behavioural approach is essential to the project because it will allow for the

systematic analysis of political behaviour of people and groups to establish the reasoning behind political actions and decisions.

Johari (1982) explains that within the comparative politics behavioural approach “research ought to be systematic: research untutored by theory may prove trivial and theory unsupportable by data futile” (p. 34). With this in mind, I have established that I need a cemented theory and extensive literature to be able to conduct this methodological approach. The literature and research I gather will be of the highest standard and will allow me to make a concise analysis of Australia’s policies towards West Papuan refugees during 2006.

In addition to the comparative politics methodology, I will utilise content and textual analysis to systematically identify the overarching themes and arguments within the available literature on the topic of Australian decision-making and foreign policy. Content analysis is “any technique for making inferences by systematically and objectively identifying special characteristics of messages” (Hoisri, 1968, cited in Berg, 1989, p. 240). Klaus Krippendorff (1980) states that “content analysis has an important place in the methodology of investigative tools” (p. 33), which will assist me to analyse past and current literature on the topic of West Papua. I will analyse Australian foreign policy to establish how Australia’s position towards West Papua demonstrates a realist international relations perspective and a change of policy-making.

The purpose of this research project is to determine the extent to which Australia’s decision to grant temporary protection visas and its later proposal of multiple immigration legislations and a treaty demonstrates a shift to pragmatic policy-making during 2006. Therefore, by utilising the comparative politics behaviour analysis approach I will be able to establish why the Australian Government has adopted this anti-separatist position based on their behaviour and decisions, and how this position has had an effect on Australian policies regarding West Papuan refugees.

My methodology of comparative politics entails that my research will comprise predominantly of content and textual analysis of Australian legislation and committee Hansard pertaining to: the granting of temporary protection visas to forty-two West Papuans; the Australian

Government's opposition to an independent West Papua; the Migration Legislation Amendment (Temporary Protection Visas Repeal) Bill 2006; the Migration Amendment (Designated Unauthorised Arrivals) Bill 2006; and the Agreement Between the Republic of Indonesia and Australia on the Framework for Security Cooperation 2006 (the Lombok Treaty). By analysing these documents, I will be able to establish: first, the reasoning behind the Australian Government's decision to grant temporary protection visas and later repeal the category from the Migrations Regulations Act 1994; how this decision resulted in a negative reaction from Jakarta and impacted on Australia's close relations with Indonesia; and finally, the extent to which Australia's introduction of amended immigration laws was the result of a realist international relations perspective being present in Australian foreign policies towards West Papua.

Chapter Two: Literature review

In this thesis I will apply the realist theory of international relations to Australian policies regarding West Papua and West Papuan refugees during 2006. This chapter is a literature review and will be separated into five areas of research: first, the background to the West Papuan fight for independence; second, the Australian government's position towards an independent West Papua, with an observation of Australian refugee policies and international law; third, the Australian government's position towards Timor-Leste and the resulting intervention of 1999; fourth, the change from a principled approach to more realist approach to Australian foreign policy; finally, a realist perspective as a method of conducting international relations.

Nationalism, as defined by Benedict Anderson (1999), is “a ‘common project’ for the past and the future” (p. 2) and arises when the inhabitants of a physical territory “begin to feel that they share a common destiny, a common future” (p. 3). Jacques Bertrand (2004) expresses a similar view when he states that “nations are ‘imagined communities’ of citizens sharing common characteristics that differentiate them from other communities” (p. 16). To understand the fight for independence in West Papua and Australia's resulting policies towards the situation, it is important to note that literature on Indonesian nationalism expresses a vastly consistent view: that despite significant cultural, religious and ethnic differences Indonesia believed that West Papua's place was within the Indonesian state because of a shared history of colonialism (Bertrand, 2004; Fernandes, 2006). Indonesia's claim over West Papua is said to have been based on the idea that the Indonesian state should be a culmination of all territory formerly part of the Dutch East Indies, which includes West Papua (Kingsbury, 2005). Damien Kingsbury's earlier work also reiterates Anderson and Bertrand's ideas of a nation being that which exists with a “shared set of values” (1998, p. 11). In his book *The Politics of Indonesia*, Kingsbury also states that no shared values “can be said to have existed before the construction of the Indonesian state” (1998, p. 11). West Papua was separate from Indonesia until 1963, when the

“sham” Act of Free Choice confirmed Indonesian rule over the province (Davidson, 2009; Bertrand, 2004; Fernandes, 2006; King, 2004).

A reoccurring theme throughout the literature pertaining to Indonesian regional conflicts is the idea that tensions exist and conflicts derive from the vast ethnic diversity that makes up Indonesian society (Forrester, 1999; Bertrand, 2004). In West Papua, the drive for independence continues because of a significant cultural difference between the Melanesian native population and the Malays that have migrated to West Papua since the Indonesian takeover (Kingsbury, 2005; Suter, 2001; Vatikiotis, 1993). It is argued that the Melanesian of West Papua have more ethnic, cultural and religious features and practices in common with the neighbouring Papua New Guineans, than with the Malays of Indonesia, and, arguably, only their colonial pasts truly separate them (Robinson, 2010; Martinkus, 2002). Robin Osborne (1985) explains that strong hostilities exist between the West Papuans and the Indonesians, stating that “local people... resented the foreigners. Indonesians, on the other hand, said that ‘Irianese’, were primitive and needed guidance from a superior culture” (p. xiv). Anderson expands this idea by suggesting that West Papuans are not simply seen by Indonesians as indigenous, but rather “objects”, “possessions”, “servants”, and “obstacles” of the government and military (1999, p. 5).

Much of the hostility and ethnic tension that occurs within West Papua is closed off and hidden from the international community. Journalist John Martinkus (2002) and scholar Freddy K. Kaligjernih (2008) both argue that it is becoming increasingly difficult for international journalists to report on the situation in West Papua. The Indonesian Government’s restriction of the international media in West Papua means that accounts of possible human rights abuses in West Papua are not accurate and only speculation can be made about the extent (Klinken, 2007). However, over many years, and through many secret trips to West Papua, Martinkus has managed to meet and interview members of the West Papua resistance group, the *Organisasi Papua Merdeka*, to report on first-hand accounts of human rights abuses within West Papua. Martinkus’ analysis of the conflict in West Papua exists as an excellent source for the history of the conflict until 2002. It is evident in the literature that scholars endeavour to address all

aspects of the West Papuan conflict; from the Indonesian takeover in 1963, through the Suharto era, and into the twenty-first century, despite limited access to the country itself (Lagerberg, 1979; Osborne, 1985; Forrester, 1999; King; 2004).

The literature reveals that the Australian Government has maintained opposition to an independent West Papua since the Indonesian takeover of the province from the Dutch in 1963. This was originally an Australian national security tactic amidst the threat of communism during the Cold War (Fernandes, 2006; Neumann & Taylor, 2010; Kingsbury, 2005). Literature on the topic states that prior to the Indonesian takeover, Australia “had been very much in favour of the Dutch policy of self-determination for West New Guinea” (Lagerberg, 1979, p. 4). Yet, as suggested by Stuart Doran (2010), Australia abandoned its “traditional” policies towards West Papua in favour of cohesive relations with the Indonesian government. The Australian government’s adamant support for Indonesian state-sovereignty is expressed significantly throughout past and present political commentary (Murphy, 2013; Elmslie, 2007; Hawke, 2006a; “Aus to Review Refugee Process”, 2006; “Aus warns of WP refugees”, 2006; “Papua asylum seekers ‘in Aus’”, 2006). According to Neumann and Taylor (2010), Australian support for Jakarta has resulted in the downplaying of serious human rights violations. This position has been reiterated by Martinkus who states that Australian policies are inclined to pretend “nothing untoward happens inside Indonesia’s easternmost province” (2002, p. 6). A point that David Manne, of the Refugee Immigration and Legal Centre, suggests is in an effort to “appease Indonesia” (n.d.).

Refugees and asylum seekers entering Australia from West Papua are a very prominent topic within the literature regarding Australia’s position towards West Papuan independence. Australia is an island country with a huge border and is quite often the country of first asylum for those from Indonesia and other Asiatic countries (Neumann & Taylor, 2010). As a result, the issue of refugees and asylum seekers is never really out of political discussion. In early 2006, forty-three West Papuan asylum seekers made their way to Australian shores (Neumann & Taylor, 2010); forty-two of which were granted asylum and temporary protection visas “based

on Australia's treaty obligations and international law" (Fernandes, 2006, p. 1). Many political analysts at the time and since have stated that this decision held potentially serious repercussions for Australian-Indonesian relations. Consequently, the Australian Government began adamantly denying support for independent West Papua and reiterating recognition and support for Indonesian territorial integrity (Elmslie, 2007; Hawke, 2006a; Murphy, 2013; Palmer, 2006; Robinson, 2012).

Stewart Firth (2005) notes that, unlike that of Timor-Leste, the Australian Government's position towards West Papua has remained the same for years. This is despite the many changes that took place within Indonesian society during *reformasi*, which was marked by the end of Suharto's reign. Scholars writing in the years just after the Timor-Leste intervention displayed hopeful sentiments that the Australian Government might propose policies towards West Papua that would reflect those of Timor-Leste (Chalk, 2001; Cotton, 2001). However, as Martinkus, Neumann and Taylor, and Fernandes point out, the Australian Government has "sidelined" concerns about human rights abuses and humanitarian policies in favour of stabilising and maintaining good relations with Indonesia; relations that were significantly damaged during the Australian-led International Force for East Timor (INTERFET) intervention of 1999.

There is limited literature that assesses the shift from principle to pragmatism in Australian foreign policy in relation to West Papua and even less for the 2006 period specifically. The idea of a pragmatic stance to policy-making in past Australian governments is mentioned in a number of sources (Ishizuka, 2007; Wear, 2009; Grant, 1972; Flitton, 2010); however, in these examples the author is making reference to the succeeding governments since the Whitlam Labor government of 1972 to 1975 until the Howard Liberal Coalition of 1996 to 2007. Considering 2006 was quite a significant year in relation to Australian foreign policy, there is a gap in the literature relating to analysing Australia's changing foreign policies regarding refugee law and West Papua during 2006.

The most relevant government to this debate is the Howard Liberal/National Coalition Government, which held office for thirteen years and was subsequently the key player in the Timor-Leste affair and a number of key foreign policy decisions regarding West Papua. Derek McDougall and Kingsley Edney (2010) provide an excellent assessment of Howard's time in office as well as an extensive analysis of the extent of his pragmatic foreign policy-making. McDougall and Edney apply Douglas Foyle's (1993) theory of pragmatic leaders to Howard and the preceding governments, outlining that "beginning with Gough Whitlam in 1974-5, Australian governments supported incorporation of East Timor into Indonesia" (2010, p. 214); and later "under Keating, the pro-Indonesian orientation reached a peak in 1995 with the conclusion of a security agreement between the two countries" (2010, p. 214). However, "Howard's approach as a pragmatist meant that he developed a policy that was appropriate for Australian national interests as he saw them, while also accommodating the need to demonstrate to the public that the government was acting decisively to uphold East Timor's act of self-determination" (2010, p. 215). McDougall and Edney, with a similar position held by Jamie Mackie (2001), argue that Howard's policies toward Timor-Leste were a result of pragmatic decision-making. However, Chalk argues that the Timor intervention was a by-product of "the liberal democratic ethos that underscores Australian political society and that this simply would not have tolerated inaction in response to the civil violence that was unleashed following the 1999 'consultation'" (2001, p. 245). In other words, Chalk proposes that it was a moral response; based on international moral principles.

The available literature does very little to address policies on West Papua in the same way that the situation in Timor-Leste is addressed. This could be a result of the fact that the fight for independence in West Papua is ongoing and Australia has not made any "historic" decisions in terms of West Papua's future. There are however, a number of sources that look at the issue of West Papuan refugees and Australian policies relating to this issue (Neumann, 2006; Neumann & Taylor, 2010; Palmer, 2006; Ungerer, 2007). What is evident in this literature is that West Papua asylum seekers and refugees make up only a small portion of what is addressed by the

existing research and there is urgent need for the issue of Australia's overall position towards West Papua to be addressed further. This urgency derives from the current and ongoing issue of asylum seekers and refugees travelling to Australia. Without addressing the issue further it is impossible to know how to help these people in need.

Extensive literature in the field of international relations explains that the realist approach is one of the oldest theories of international relations which encompasses a distinctive yet diverse tradition (Donnelly, 2000). Overall there are many principles upon which realism is based; however, key theorists in the field suggest that realism is based on three crucial principles. First, theorists argue that the international realm is inherently anarchic due to a lack of hierarchy in which the state is the key actor (Donnelly, 2001; Waltz, 2000; Mearsheimer, 2002; Korab-Karpowicz, 2010). Stewart Firth (2005) states that "realism focuses on states, governments, and state power in the international arena" and that "since there is no world government to impose order, the international system is anarchic" (p. 18). To further this point, it is suggested that the anarchy of the international arena creates a tendency towards conflict (D'Anieri, 2010), which in turn, "requires that States constantly ensure that they have sufficient power to defend themselves and advance their material interests necessary for survival" (Slaughter, 2011).

The importance of the survival of the state is the second key principle outlined by realist theorists such as Kenneth Waltz (1979) and John Mearsheimer (1994). Waltz theorises that with a realist approach, states will choose "policies that best serve a state's interests... and success is defined as preserving and strengthening the state" (1979, p. 117). Likewise, Mearsheimer (1994) suggests that survival is the motive driving all international decisions made by states. Firth (2005) reaffirms this principle when he suggests that states "act on their own interest" (p. 18). Basically, realism explains the tendency of states to act for themselves before any other entity when making international decisions. Key theorists connect this principle very closely to the next, the idea that international norms and morals cannot ever really explain the actions of the state.

Realists propose that there is no room in state actions for international norms or moral principles (Morgenthau 1948), purely because states are rational actors (Mearsheimer, 1994). International moral principles, such as human rights, are a secondary factor in realist international relations. Julian Korab-Karpowicz (2010) details that realists are usually “sceptical about the relevance of morality to international relations”, which “can lead them to claim... that there is a tension between demands of morality and requirements of successful political action” (online). For realists, international survival is predominantly a game of power politics with little manoeuvrability for moral principles to be applied (Donnelly, 2001; Firth, 2005; D’Anieri, 2010). Realism in the context of Australian policies is not covered as extensively as it perhaps should be within the available literature. This means that there is an area of research to be explored further by future researchers, scholars and theorists.

Despite the difficulty for journalists and scholars to enter and report on the situation in West Papua, there is extensive literature relating to the conflict within the province since its takeover by Indonesia in 1963. There is also a large range of sources detailing the history, conflict and Australia’s decisions surrounding the Timor-Leste fight for independence that was won in 1999. However, there is a significant difference in the amount of literature available regarding Australia’s position to Timor-Leste and its position towards West Papua. Little literature exists to analyse and detail the Australian Government’s debates and policies towards an independent West Papua. Although, from the literature available, it is evident that the Australian government maintains strong opposition towards the independence of West Papua, there is still need for the issue to be addressed further. One area that would benefit from further research is the debate over West Papuan asylum seekers travelling to Australia. To analyse these decisions and policies, a realist perspective of international relations can be utilised to best assess the shift of Australian policy-making in 2006. However, there is very scarce literature that applies realist theory to Australian foreign policy decisions, which is a gap in the literature that this thesis will endeavour to address.

Chapter Three: Australia's moral approach to foreign policy, early-2006

West Papuans have been fighting for territorial sovereignty and independence from Indonesia for over fifty years and, as a result, have been the victims of harsh Indonesian control (Jackson, 2006). There are significant claims and thorough documentation of human rights violations within West Papua (The Conflict for Rights, 2006; Elmslie, 2007); although, because of the Indonesian government's reluctance to allow the United Nations and non-government human rights observers into the province, the credibility of such claims cannot be verified (Manne, n.d.). Yet, many instances of heavy handed action by the Indonesian military and security forces can be dated back to the time of the New Order. Claims such as those of imprisonment, torture and deaths in custody of West Papuan civilians, who oppose government policies and are labelled as separatists, have emerged over the years (McGibbon, 2006). In an interview, David Manne verified that "West Papuans face undoubted vicious human rights abuse on a daily basis... including rape, including torture, including arbitrary detention, beatings and extrajudicial killings" (Hawke, 2006). Due to these alleged human rights abuses it is not uncommon for West Papuans to flee the Indonesian province and cross the border to Papua New Guinea or the Torres Strait to Australian shores.

On January 18, 2006, forty-three refugees landed on Australian soil, just near the Gulf of Carpentaria, after a five day canoe journey from West Papua. The diverse group of men, women and child refugees, some with political activist backgrounds, claimed upon their arrival to Australia, that they were the victims of human rights abuses by Indonesian security forces in West Papua (Rimmer, 2006; "Howard to visit Indonesia", 2006). The forty-three refugees were collected by the Royal Australian Air Force (RAAF) and transferred to Christmas Island where their claims and applications for refugee status in Australia were assessed (Rimmer, 2006).

The United Nations 1951 Convention (the Convention) and the 1967 Protocol Relating to the Status of Refugees provides that under international law the Australian government is obligated

to provide asylum and ensure a sufficient quality of life to any person seeking refuge in Australia. According to the Convention a person is considered a refugee if he or she,

Owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it. (UNHCR, 1951, p. 14)

In signing the United Nations Convention and Protocol, the Australian Government has declared that it will uphold the human rights of those found to be refugees and seeking asylum on Australian shores, whether they are in possession of a valid visa or not. The United Nations High Commission for Refugees (UNHCR) Executive Committee (EXCOM) Conclusion No.22 entails that refugees “should be admitted without any discrimination as to race, religion, political opinion, nationality, country of origin, or physical capabilities” (UNHCR, 1981). Under Articles 32 and 33 of the Convention, Contracting States cannot, in any manner, deny entry or expel refugees from their territory, except for in the case that a refugee is found to be a legitimate danger to the security of the State or on grounds of public order.

United Nations EXCOM Conclusion No.22 sets out the basic measures that Contracting States should adhere to when dealing with asylum seekers in large-scale influx situations. Unlike the Convention and the 1967 Protocol, the EXCOM Conclusions are considered as more recommendations rather than international law. However, as a signatory of the United Nations Convention Relating to the Status of Refugees, it is the duty of the Australian Government to adhere to the recommendations of the EXCOM to the best of its ability. Australia’s obligations to international refugee laws also extend to the detention of refugee and asylum seekers. EXCOM Conclusion No.44 states that for asylum seekers and refugees entering Australia by any means, “detention should normally be avoided” and that,

Detention may be resorted to only on the grounds prescribed by law to verify identity; to determine the elements on which the claim to refugee status or asylum is based; to deal with cases where refugees or asylum-seekers have destroyed their travel and/or identity documents or have used fraudulent documents in order to mislead the authorities of the State in which they intend to claim asylum; or to protect national security or public order. (UNHCR, 1986, pp. 1-2)

Under international law, detention and temporary protection must not be used by Contracting States as a deterrence or penalty for those seeking asylum (Thom, 2006). Article 31 of the Convention prohibits Contracting States from discriminating against refugees on the basis of mode of arrival. A refugee who arrives in a State should not be penalised dependent on the illegality of their presence in that country. For example, in Australia, where it is illegal for people to migrate without valid visas, identification and documentation, refugees who flee their country of origin seeking asylum must not have penalties laid against them based on their means of travel to Australia; whether that be via air or sea. Not only do the UN Convention, Protocol and EXCOM Conclusions outline international law to be upheld by Contracting States, they also set out basic international moral principles designed to govern the actions and thoughts of all nation states, leaders and citizens, in maintaining human rights around the world.

The temporary protection visa was introduced through the Migration Amendment Regulations 1999 specifically targeting those who travel to Australia via boat seeking asylum (Australian Parliament. Record of Proceedings, June 22, 2006a). The Australian Human Rights Commission outlines that a temporary protection visa was available to “people who arrive in Australia without a visa and are found to be owed protection obligations” (AHRC, 2013, online). The visa allowed for a temporary stay of up to three years with very limited access to medical and welfare services, while permanent protection visa applications were being assessed (Asylum Seeker Resource Centre, 2013). The minimal provisions held by temporary protection visa holders included those such as: unclear access to settlement support; permission to work but possible restrictions based on geographic limitations with the ability to find employment impeded by the visa’s temporary status; unclear education and fee requirements; little to no

eligibility for English language education; no rights to family reunion; and the forfeiting of the visa upon leaving Australia for overseas travel (Refugee Council of Australia, 2013; Australian Parliament. Record of Proceedings, June 22, 2006a, p. 18). As the name suggests, temporary protection visas are temporary, with a maximum timeframe of three years. However, this timeframe can be made shorter at the discretion of the Minister of Immigration. Refugees holding temporary protection visas are able to apply for a second visa if the first expires before their application for a permanent visa has not been successful within the allocated time.

Christmas Island is a territory of Australia, nearly 2,000 kilometres off the coast off Port Hedland, Western Australia. The Christmas Island Immigration Detention Centre has been a processing centre for those applying for refugee status within Australia since 2001. In 2006, the West Papuans who travelled via canoe to Australia spent two months in the Christmas Island detention centre as their claims for asylum were being processed. Of the forty-three West Papuans to claim refugee status in Australia, forty-two were successful in gaining temporary protection visas by March that year. The Immigration Minister in 2006, Senator Amanda Vanstone, explained that each claim of asylum was assessed on a case-by-case basis. In an ABC radio interview she stated that “each of these decisions are made individually... that is, what was happening to them and their fear in a particular area” (“Aus warns off Papua refugees”, 2006). In an interview, a member of the group explained how the granting of protection, despite being temporary, was a momentous time for not only them individually, but for West Papua as a whole, as it was an acknowledgement and the respecting of their rights by the Australian government (Jackson, 2006; Hawke, 2006a). The forty-two West Papuans were later assisted into temporary housing.

Mr David Wainggai was the only West Papuan to not receive a temporary protection visa concurrent with the other forty-two refugees. There were a number of reasons hindering Mr Wainggai’s application for refugee status in Australia; the most significant of those being that “investigations had shown he had not exhausted his options to live in another country” (“Democrats Slam Papuan Asylum Claim Denial”, 2006). Mr Wainggai, whose mother is a

Japanese-born citizen, is also the son of Mr Thomas Wainggai, a prominent pro-independence advocate in West Papua until his death in custody in 1996 (Rimmer, 2006; “Democrats Slam Papuan Asylum Claim Denial”, 2006).

During 2006, the Australian Liberal/National Coalition Government adamantly declared on multiple occasions that it did not, and would never, support the West Papuan separatist movement (Rimmer, 2006; Elmslie, 2007; Fernandes, 2006). Despite international law stating that a person must not be denied asylum or refugee status dependent on their political views or activities, the case of Mr Wainggai demonstrated Australia’s willingness to “toe the line” with regards to human rights. Senator Vanstone did not explicitly state that the reason for Mr Wainggai’s delayed visa granting was due to his relations and involvement in the pro-independence movement in West Papua; however, it has been argued that Mr Wainggai’s delayed visa application was used to douse the tension that arose between Indonesia and Australia following the granting of the previous forty-two temporary protection visas (“Democrats Slam Papuan Asylum Claim Denial”, 2006). Mr Wainggai was eventually granted temporary protection in August 2006, after appealing the original decision through the Australian courts.

Historically through the opinion polls, Australians have shown hesitance towards asylum seekers arriving by boat (Betts, 2001). However, the Australian public’s reaction towards the arrival of the forty-three West Papuan refugees in 2006 was surprisingly one of sympathy, a vast shift from the strong support of harsh refugee policies since 1992 (Manne, n.d.). The arrival of the asylum seekers brought to the attention of the Australian public the crisis unfolding in the Indonesian province of West Papua. In April 2006, after the arrival and granting of temporary protection visas to the West Papuan asylum seekers, a Newspoll survey concluded that 76.7 per cent of the Australian public supported West Papuan independence (McDougall & Edney, 2010).

Since 1999, non-government organisations and human rights groups have shifted their attention from Timor-Leste to West Papua (McGibbon, 2006). Particular attention has been afforded to the issue of refugees and asylum seekers leaving West Papua and escaping Indonesian persecution, many of whom travel to Australia. In 2006, the Australian West Papua Association (AWPA) Sydney sent multiple letters to Senator Vanstone concerning the forty-third West Papuan asylum seeker in the so-called refugee “crisis”, Mr Wainggai. A letter dated May 29, 2006 details concerns about Mr Wainggai’s continued detention and proposed deportation back to Indonesia (AWPA, 2006). It is stated that “we [the AWPA] believe David Wainggai to be a genuine asylum seeker and would be in great danger if deported to another country from where he could be returned to West Papua” and that it is possible his “long term isolation on Christmas Island could have an effect on his health” (AWPA, 2006, online). The AWPA concludes the letter by suggesting that Mr Wainggai “should be granted a visa on humanitarian grounds” (AWPA, 2006, online).

The AWPA wrote to members of parliament, in particular to Senator Vanstone Minister for Immigration and Alexander Downer MP, regarding the West Papuan refugees during 2006. In addition, a number of letters sent raised concerns about the family members of those forty-three West Papuans who continued to reside in West Papua or were hiding in Papua New Guinea at the time (AWPA, 2006). Due to political affiliations, some members feared for their families given that their temporary protection visas and refugee status did not allow for family reunions.

According to the Human Rights Watch Commentary on Australia’s Temporary Protection Visas for Refugees, temporary protection was utilised as a deterrent and a penalty for those seeking asylum in Australia without valid visas (Human Rights Watch, n.d.; Asylum Seeker Resource Centre, n.d.). The Human Rights Watch critique of Australian refugee and asylum seeker laws was released following the “West Papuan refugee crisis”. The critique states that “temporary protection should have a finite duration, eventually allowing for a more secure status” (Human Rights Watch, n.d., online). Although a temporary protection visa may only last for up to three years at a time, if an applicant’s claim for permanent protection has not been granted within that

timeframe the applicant must continue applying for consecutive temporary protection visas repeatedly if they were to stay in Australia, without any guaranty of eventual permanent residency. There is a constant threat associated with the re-evaluation process involved in the temporary protection system, which human rights groups claim can be of harm to the mental health of refugees (Refugee Council of Australia, 2013)

The Australian Government's decision to grant temporary protection visas to the forty-three West Papuan asylum seekers in early 2006 demonstrated Australia's commitment to its international human rights obligations and international moral principles, yet it was not a decision that could be made lightly. Minister Vanstone, Minister Downer and the government as a whole were required to take into consideration the seriousness of the claims of human rights abuses made by the West Papuans, as well as their safety and human rights, and the impact that such a decision would have on our country's already tender relations with the Indonesian government. The visa grants were considered a win for not only the forty-two refugees involved in the so-called "crisis" (and later, Mr Waingai), but also for all the people of West Papua and the pro-independence movement spreading through the province. However, Susilo Bambang Yudhoyono, the President of Indonesia in 2006, stated that "the decision of the Australian Government to give political asylum to 42 Indonesian citizens from Papua is seen in Indonesia, including by myself, as incorrect, unrealistic and unilateral" (Hawke, 2006, online). Despite being a logical response to the "crisis", the extent of the Indonesian Government's reaction to the visa grants was not fully anticipated and required drastic measures by the Australian Government to maintain what remained of the good relations with our northern neighbours.

Chapter Four: Strained Australian-Indonesian diplomatic relations

It was not necessarily the granting of temporary protection visas to the forty-two West Papuan asylum seekers – and later Mr Waingai also – that was the crisis of early 2006, despite the name afforded to the situation. Rather, it was the Indonesian Government's furious reaction to the granting of the visas that really constituted a "crisis" for the Australian Government. Upon the arrival of the forty-three asylum seekers on Australian shores, the Indonesian Government requested that they be sent back to Indonesia, claiming that no persecution would come to them based on their political affiliations in West Papua ("Jakarta rages over visas", 2006; "Indonesia recalls ambassador", 2006; McGibbon, 2006). The Australian Government did not fulfil Indonesia's request and proceeded to grant political asylum (or temporary protection) to forty-two of the forty-three asylum seekers. This action by the Australia Government, although inherently humanitarian and claimed to be based on Australia's obligations to the 1951 UN Refugee Convention, was considered by Indonesia as an act of betrayal and a sign of Australia's support for the West Papuan independence movement (Bruce, 2006). Consequently, the Indonesian Ambassador to Australia, Ambassador Mohammad Hamzah Thayeb, was recalled from Canberra on March 25, 2006 ("Indonesia recalls ambassador", 2006; Rimmer, 2006), signifying the most strained state of relations between Australia and Indonesia since Australia's intervention in the Timor-Leste crisis of 1999.

The Australian Government's decision to grant temporary protection to the West Papuans in early 2006 had more significant consequences than the government had anticipated. Not only were political relations strained because of the decision, but military and national security relations between Australia and Indonesia were also tested (Hall, 2006). In March 2006, following the recall of the Indonesian ambassador to Australia, the Indonesian government declined an invitation by Australia to cooperate in an international military exercise off the coast of Darwin (Rimmer, 2006; Hall, 2006). Reports also confirm that the Indonesia military deployed additional patrols into the Torres Strait, between Indonesia and Australia, in an effort

to prevent West Papuans from travelling to Australia seeking asylum (“Jakarta patrols to prevent Papuan escapes”, 2006). Military presence in West Papua was also increased; further demonstrating the diminishing of trust by the Indonesian government in Australia to deal ‘appropriately’ with West Papuans attempting to flee the province, and prompting increasing claims of human rights abuses (Fitzsimmons, 2006).

Australia’s relationship with Indonesia is crucial to diplomatic relations, economic stability and national security (Manne, n.d.). Tensions in the bilateral relationship between Australia and Indonesia have emerged over the years as a result of differing cultures, histories and legal-political traditions between the two Asian-Pacific countries (McGibbon, 2006). The issue of West Papuan asylum seekers and Australian foreign policy cannot be analysed without taking into account the history of the West Papuan independence movement, Australia’s position to the movement and relations with Indonesia, and Australia’s involvement in the 1999 Timor-Leste intervention and how this could act as a precedent for future foreign policy. Australia had been such a strong supporter of Indonesian expansionist ambitions for so long that when the 1999 Timor-Leste intervention occurred, no one was more surprised than the Indonesian government itself (Lagerberg, 1979).

The intervention strained relations between the neighbouring countries like never before and, as a result, Australian-Indonesian relations have suffered (Chalk, 2001; Conley, 2005). In the aftermath of the intervention, Australia was determined to mend its relations with Indonesia. To an extent, this was achieved. The 2002 Bali bombings marked a significant turning point for Australian-Indonesian relations (Yudhoyono, 2012). As the President of Indonesia explained in 2012, the 2002 terrorist attack “produced a compelling reason for Jakarta and Canberra to explore new ways of cooperation in a world haunted by new, unfamiliar threats... an emotional connection between Indonesia and Australia” (Yudhoyono, 2012). The Indonesian earthquake and tsunami of 2004 also strengthened the Australian-Indonesian diplomatic relationship through shared suffering (Hawke, 2006a). Following these events, politically and militarily, Australia and Indonesia were in good standing. However, the temporary protection visa grants

of early 2006 effectively forced Australian-Indonesian relations back to a different situation mirroring where they were following the 1999 Timor-Leste intervention.

The tenderness of the Australian-Indonesian relations following the visa grants was literally illustrated by newspaper cartoonists in both Australia and Indonesia, who offered an exchange of unflattering cartoons (Hawke, 2006b). However, this was merely the petty side of the overall debate. Much of what occurred was due to the previously forgotten suspicions relating to the Timor-Leste intervention rising once again into the public spectrum. These suspicions originally arose because, for the majority of the 1990s, the Australian government inherently sacrificed Timor-Leste independence “for the sake of maintaining the wider strategic partnership with Indonesia” (Chalk, 2001, online). Yet, the government conceded it was time to act when public outrage began to build towards the atrocities being committed in Timor-Leste. An Australian intervention gained extensive public support because it appeared that if Australia did not act soon, no one would. As a result, Australia’s intervention here tarnished Canberra’s relationship with Jakarta and this coloured the relations during the West Papuan refugee “crisis” in 2006.

From the early 1960s, consecutive Australian governments have realised the importance of Indonesia in all aspects of Australia’s foreign diplomacy (McGibbon, 2006). Since 1975, both Liberal Coalition governments and Labor (ALP) governments were faced with the prominent issue of Timor-Leste. Yet, the approach taken by successive governments was subtle in “persuading Indonesia to pursue certain courses while avoiding rocking the boat of nascent democratic institutions” (Albinsky, 2002, p. 196). Australia adopted an approach of “limited interference” during the 1970s, which was enforced by Prime Minister Gough Whitlam who, when asked about Australia’s actions should Indonesia invade the country now known as Timor-Leste, exclaimed “we would do absolutely nothing!” (Ishizuka, 2007, p. 273). It was Australia’s strong relations with Indonesia that impacted the visible lack of consistency of Australian policies towards Timor-Leste in the 1990s (Ishizuka, 2007). The cohesiveness of an Australian-Indonesian relationship was the “top priority” (Shuja, 2000, p. 139) leading up to the mid-1990s, and by maintaining this relationship Australia could indirectly promote a stable

government in Indonesia (Leaver, 2010). Mid-1998 to early-1999 marked the transition period of Australia's view and policies towards an independent Timor-Leste.

Prior to 1999 Timor-Leste had been an important aspect of Australian foreign issues, and on January 12, 1999 the Australian government announced a "historic shift in Australia's East Timor policy" (Frost & Cobb, 1999, online) that was like no other, and would change the face of Australian foreign policies (Doran, 2012; Kelton & Leaver, 2002). On September 20, 1999, Australia intervened in the Timor-Leste fight for independence. Australia's intervention is argued to be the result of three key factors. First, Australia's intervention stemmed from the failure of Jakarta's past policies in the province of Timor-Leste (Chalk, 2001). Second, Australia recognized, when Jakarta did not, "that the majority of the island's inhabitants neither saw themselves, nor wished to be considered part of Indonesia" (Chalk, 2001, p. 244). Finally, the Australian intervention was, to an extent, a result of "the liberal democratic ethos that underscores Australian political society and the fact that this simply would not have tolerated inaction in response to the civil violence that was unleashed following the 1999 'consultation'" (Chalk, 2001, p. 245). Jennifer Robinson (2012) suggests that "East Timor should remind us of the hefty price of turning a blind eye to repression in the mistaken belief that it serves stability in our region". Yet, despite the conflict in West Papua replicating a number of the same key issues as that of the Timor-Leste scenario, the Australian government continues to reiterate Indonesian territorial integrity over West Papua in an effort to maintain stable relations.

In 2000, Prime Minister John Howard argued against the comparability of Timor-Leste and West Papua; stating that "West Papua is an integral part of the Indonesian republic. We have never advocated anything to the contrary and we won't because the circumstances... and the history [are] quite different from the history of East Timor" (cited in Gurry, 2010, p. 8). Australia's role in the Timor-Leste independence fight caused Indonesia to be suspicious of Australian motives in regards to West Papua (McGibbon, 2006). However, the Australian response to such suspicion was continued declarations of support for Indonesia's territorial integrity throughout the early 2000s and significantly following the granting of the temporary

protection visas in early 2006. Policy wise, there was very little effort made by the Australian government; save for an attempt at a migration amendment and a security treaty with Indonesia, which will be discussed in further detail in the following chapter.

The extent of the government's endeavour to soothe relations with Indonesia consisted of persistent reiteration of Indonesian sovereignty and territorial integrity over West Papua (Elmslie, 2007; Fernandes, 2006; "PM accepts Indonesian anger", 2006). In April 2006, Prime Minister Howard announced in a press conference that the government's position had remained the same and that his "message to the people of West Papua is simply this; I regard them as citizens of the Republic of Indonesia" ("Papuan asylum seekers in Aus", 2006) and that they are in no way welcome in Australia (Rimmer, 2006). In an interview on the doorstep of Kirribilli House in Sydney, Prime Minister Howard instructed an interviewer to "put Papua out of your mind" (Howard, 2006), as the situation was nothing like that of Timor-Leste and the government was still determined to move on to other issues in Australian foreign policy. The government's position towards West Papuan independence and asylum seekers, and its relationship with Indonesia following the visa grants mirrored that of the Australian government in 1968, prior to the Act of Free Choice; which suggested that ultimately, the human rights and well-being of West Papuans was unimportant compared to good relations with the government of a nation exceeding one-hundred million people (Neumann, 2006).

It has been suggested that the court cases and granting of Mr Wainggai's visa was prolonged as a mechanism to soothe Jakarta's anger over the previous forty-two visa grants ("Democrats slam Papua asylum claim denial", 2006). Essentially, the Australian government was determined, by any means possible, to maintain its relationship with Indonesia, which it so painstakingly built up after the Timor-Leste intervention of 1999. Greens Senator Kerry Nettle claimed that Mr Wainggai's case was unnecessarily prolonged and "a politically motivated attempt to placate the Indonesians" (Nettle, 2006, online). Senator Nettle advocated for Mr Wainggai's visa grant from the moment it was evident he would be the only asylum seeker in the group to not gain temporary protection. On multiple occasions throughout 2006, Senator

Nettle put to the Senate questions on issues to do with the West Papuan conflict, independence and asylum seekers, all of which were negated by the Senate, no doubt in an effort to quash any further debate on the subject and avoiding Indonesia's discontent (Australian Parliament. Record of Proceedings, February 8, 2006, p. 1833; Australian Parliament. Record of Proceedings, March 29, 2006, p. 2031; Australian Parliament. Record of Proceedings, May 11, 2006, p. 2171; Australian Parliament. Record of Proceedings, June 20, 2006, p. 2305; Australian Parliament. Record of Proceedings, November 9, 2006, p. 3041).

According to assessments made by the Refugee Review Tribunal there was found to be no legal basis for Mr Waingai's continued solitary detention on Christmas Island following his asylum claim denial (Nettle, 2006). Nevertheless, he was detained on Christmas Island for an extended amount of time, as the Australian Government fumbled together the Migration Amendment (Designated Unauthorised Arrivals) Bill 2006 (DUA Bill) as the first step in harsher policy action towards the arrival of West Papuan refugees. It was calculated to have cost more than half a million dollars for the government to hold Mr Waingai on Christmas Island instead of facilitating him on the mainland (Jackson, 2006); which the Australian Government would not do, as it would appear to the Indonesian Government that it was being lenient in its actions towards West Papuan asylum seekers. Senator Vanstone argued that the situation was sensitive because on one hand, Australia is a signatory of the UN Convention; and on the contrary, it also had responsibilities of border protection and good relations with neighbouring countries (Colvin, 2006).

Effectively, the entire West Papua asylum seeker debate demonstrated that the Australian government was caught between the need for a strong, working relationship with Indonesia and developing a refugee processing system that would still abide by international refugee laws. Australia's grant of temporary protection visas to the forty-two West Papuan refugees led the Indonesian Government to review its cooperation with Australia on a number of important issues such as military ties and illegal migration (Hawke, 2006b). To the Indonesian government, these visa grants symbolised Australian support for the West Papuan independence

movement, an issue very tender in the Indonesian public spectrum, and a betrayal of Indonesian trust. The Indonesian Ambassador to Australia was removed from Canberra following the grants, which demonstrated a breaking down of the Australian-Indonesian relationship that was built in the wake of the Timor-Lest intervention of 1999. The Australian Government addressed this issue with a “softly-softly” approach (Hawke, 2006a, online), which resulted in continued verbal affirmations of Indonesian territorial sovereignty over West Papua and very little satisfying policy action. Basically, the Australian government was talking the talk rather than walking the walk. However, the extent of the attempted policy action made by the Howard government did demonstrate how crucial a working Australian-Indonesian bilateral relationship is, which led to a number of key foreign policy decisions and quite a significant shift in Australian foreign policy-making.

Chapter Five: Australian foreign policy and realism throughout 2006

In 1999 the government amended the Migration Regulations 1994 Act through the Migration Amendment Regulations 1999 (No.12) to introduce what is known as the Temporary Protection Visa. To gain this class of visa, applicants were required to satisfy the primary criteria as outlined by the amendment in Schedule 2 Part 785.2. Not only was the applicant required to satisfy the primary criteria of the amendment but, by virtue of paragraph 785.227 of the Migration Amendment Regulations 1999 (No.12) (Aus), a visa applicant would only be successfully granted a visa if “the Minister is satisfied that the grant of the visa is in the national interest”. Just this paragraph alone demonstrates the realist approach to international relations the Australian government took during the 1990s. National interest is a crucial concept in realist international relations (D’Anieri, 2010) as it forms the basis for all actions states make in the international realm. Realism suggests that “states will never sacrifice their own national interests on the vital issues for the greater international good” (Firth, 2005, p. 18). The Migration Amendment Regulations 1999 (No.12) clearly establishes the realist perspective taken by the government at the time because it shows the Australian Government’s desire to place the Australian national interest ahead of those travelling to, or seeking asylum in Australia.

However, the government did not always adopt this realist perspective in regards to asylum seekers. On June 22, 1998, Pauline Hanson’s One Nation proposed temporary protection to refugees and asylum seekers arriving in Australia. Mr Ruddock, the former Minister for Immigration and Multicultural and Indigenous Affairs, responded with disbelief that an Australian party could propose such a scheme:

What One Nation would be saying is that they have no place in Australia. They are only here temporarily. Can you imagine what temporary entry would mean? It would mean that people would never know whether they would be able to remain here. There would be uncertainty, particularly in terms of attention given to learning English, in addressing the torture and trauma so they heal

from some of the tremendous physical and psychological wounds they have suffered. So I regard One Nation's approach as being highly unconscionable in a way that most thinking people would clearly reject. (Australian Parliament. Record of Proceedings, October 9, 2003, p. 16006)

This position held in response to One Nation's proposal was based on humanitarian ideals and international moral principles. Yet, the following year, the Migration Amendment Regulations 1999 (No.12) was introduced (Refugee Council of Australia, 2006), displaying a significant shift in Australia's approach to foreign policy and refugees.

Refugees, asylum seekers and migration during the 1990s constituted an issue that influenced the nation as a whole; denoting, visa grants were seen as an issue of national interest. As a single entity with, theoretically, a single interest, the State's main focus is its own survival (D'Anieri, 2010; Slaughter, 2011). Therefore, all policy made at an international level is strategically made to ensure the continuation of the state. The introduction of the Migration Amendment Regulations 1999 (No.12), arguably, was not an entirely new concept in Australian foreign policy (McMaster, 2006). However, as Don McMaster (2006) points out, Australia's temporary protection visas were introduced as a deterrent to refugees and asylum seekers travelling to Australia via sea without official documentation. Deterrence measures, such as the temporary protection visas, are disallowed by international refugee laws; the same refugee laws that Australia is a signatory to.

Mearsheimer (2002) suggests that states will definitely cooperate with each other at an international level, which is evident in the working relationship that was established between Australia and Indonesia when the Migration Amendment Regulation 1999 (No.12) was introduced and during the early 2000s. However, Mearsheimer further states that "at root they have conflicting interests, not a harmony of interests" (2002, p. 25). This kind of conflict of interest between States was whole-heartedly demonstrated in March of 2006 when the Australian government granted temporary protection to the forty-two West Papuan refugees. Whereas the Australian government believed it was acting in accordance with its international

human rights obligations and doing the right thing, the Indonesian government saw the grants as a demonstration of Australian support for West Papuan independence – although heavily denied – and a blow to the diplomatic relationship between Canberra and Jakarta.

Realist theory suggests that “ethical considerations must give way to ‘reasons of state’ (*raison d’état*)” (Donnelly, 2001, p. 31). Australia’s attitude towards asylum seekers during the 1990s and early-2000s was one of wary toleration. The Migration Amendment Regulations 1999 (No. 12) did not completely disallow asylum seekers from travelling to Australia; however, for reasons that held the state interest at heart, the government discouraged migration to Australia, but tolerated those who did make it to Australian shores. Donnelly explains that through a realist perspective to international relations “statesmanship thus involves mitigating and managing, not eliminating conflict; seeking a less dangerous world, rather than a safe, just, or peaceful one” (2001, p. 31). The Australian Government has demonstrated this element of a realist international relations perspective on a number of occasions throughout the past twenty years. The most significant examples are the enacting of the Migration Amendment Regulations 1999 (No. 12), the proposal of the Migration Amendment (Designated Unauthorised Arrivals) Bill 2006, and the signing of the Lombok Treaty in late 2006.

The beginning of 2006 saw a subtle shift in Australian foreign policies regarding refugees and asylum seekers with the granting of temporary protection to the West Papuan refugees. Jakarta’s reaction to the granting of temporary protection to the West Papuans was worrying for Australia. Not only did the Indonesian reaction constitute a tough situation for Australian-Indonesian political relations, but military and economic factors were also significantly influenced. Although there was continued reassurance of Australia’s support for the territorial integrity of Indonesia over West Papua, there was very little diplomatic action to soothe the crucial decline in good relations between the neighbouring countries. In mid-2006, Senator Bartlett introduced a Bill to the Australian Parliament; a Bill that “eliminates the Temporary Protection Visa... which was introduced in November 1999 via the Migration Regulations 1999 (No.12). All Protection Visas will provide permanent residency, as was the case prior to 1999”

(Migration Legislation Amendment (Temporary Protection Visas Repeal) Bill, 2006). Senator Bartlett, a member of the Australian Democrats, was granted leave to have the proposed Bill read a second time on Thursday June 22, 2006. In doing so, he outlined major humanitarian faults within the temporary protection system that was introduced in 1999 and urged the government to abolish the temporary protection visa legislation. The proposed repeal of the temporary protection visa system was argued by Senator Bartlett on the basis of several key points:

The TPV has done nothing to reduce asylum seekers arrivals, has cost the taxpayers millions of dollars in extra unnecessary re-processing of claims, has harmed Australia by reducing the ability of refugees to integrate into our communities, has separated and destroyed families, has led to more women and children being put in danger and has caused untold suffering to people who were already amongst the most vulnerable and damaged on our planet.
(Australian Parliament. Record of Proceedings, June 22, 2006b, p. 19)

In addition, Senator Bartlett claimed that “it is a clear breach of the Refugee Convention” (Australian Parliament. Record of Proceedings, June 22, 2006b, p. 19), as it was intended to act as a deterrent for asylum seekers.

Senator Bartlett voiced his disapproval of the temporary protection system, with mention of Senator Brian Harradine’s similar opinion in 1999 when the Migration Amendment Regulations 1999 was first introduced. As a Private Senators Bill the temporary protection repeal was fully endorsed by the Australian Democrats (Australian Democrats, 2006); however, the Bill was not passed until 2008 by the Rudd Labor Government. There are a number of reasons why the Bill was not passed in the Senate while the Howard Liberal Coalition was in government. First, the temporary protection visa system was enacted by the Howard Government in 1999, so it would have been highly unlikely that the same conservative government should vote on its repeal seven years later. Second, a new awareness of global terrorism after 911 and the Bali bombings meant that migration laws were tightening. Finally, the temporary protection repeal was,

arguably, the last resort for the Australian Government considering the situation with the West Papuan refugees and Australia's tender relations with Indonesia at the time.

In the Australian Senate on October 9, 2003, when the Liberal Coalition Government moved to broaden the scope of people who were to be covered by temporary protection visas with the Migration Amendment Regulations 2003 (No.6), Senator Nick Sherry, of the Australia Labor Party, stated that "the Howard Liberal government uses temporary protection as a type of visa to keep people in long-term limbo" (Australian Parliament. Record of Proceedings, October 9, 2003, p. 16005). Senator Sherry's speech foreshadowed Labor's later approval of the temporary protection visa repeal in 2008.

The temporary protection visa system, although at first glance appeared to be an appropriate mechanism for processing asylum seekers who arrived without official documentation, had faults that constituted significant breaches of international human rights law and moral principles. With the repeal of the temporary protection system, asylum seekers arriving in Australia were thereby entitled to permanent protection upon being afforded refugee status. As suggested by a number of critics of the temporary protection visa, the repeal of this class of visa meant that refugees could now participate in maintaining a safe and permanent livelihood within Australia (McMaster, 2006; Thom, 2006). Multiple reports curated by policy critics over the years have outlined exactly what the disadvantages of temporary protection for refugees entail (Barnes, 2002; Marston, 2003; Pickering, Gard & Richardson, 2003; Steele, 2003). In doing so, it has been made evidently clear how important the repeal of the temporary protection visa was to the lives of refugees:

The TPV obstructs their livelihood by denying help, such as social services and the resources needed to recover from the ordeal of asylum, preventing their recovery and ability to establish a 'normal' life. The disadvantages suffered by TPV holders serves to isolate them and make their prospects poor in settling, moving forward, finding employment and establishing a positive outlook for the future. The psychological effects of this prolonged disadvantage, especially given the very high levels of trauma and post-traumatic stress within the group

are an indicator that their livelihood, that is the ability of a normal life and the access to employment, education and social services, is being curtailed. (McMaster, 2006, p. 135)

The repeal of the temporary protection visa was successful humanitarian foreign policy on the part of the Australian government. Although the Bill was passed under a different government to that which was first presented with the original West Papuan refugee “crisis”, the repeal demonstrated the government’s ability to consider and apply international moral humanitarian principles in the process of forming legislation, regardless of practicality or influencing relations with other countries and our national self-interest.

It must be noted that although the temporary protection visa was repealed in 2008, it was officially reintroduced on October 18, 2013 by the Abbot Liberal Coalition (Australian Human Rights Commission, 2013). Yet, the temporary protection visa regulation was disallowed by the Senate in December of that year, which has resulted in no temporary protection visas able to be granted in the future. However, the disallowance of temporary protection visas was extremely uninfluential foreign policy in relation to the Migration Amendment (Designated Unauthorised Arrivals) Bill 2006 that was presented to parliament that same year.

On May 11, 2006 the Minister for Immigration and Multicultural Affairs, Mr Phillip Ruddock, introduced the Migration Amendment (Designated Unauthorised Arrivals) Bill 2006. This Bill was to “amend the Migration Act 1958... to expand the offshore processing regime introduced in 2001 currently applying to offshore entry persons and transitory persons” (Rimmer, 2006, p. 1). Senator Vanstone advised that “the new measures will mean that all unauthorised boat arrivals will be transferred to offshore centres for assessment of their claims... The changes will apply to all unauthorised boat arrivals regardless of their nationality” (Vanstone, 2006, online). The DUA Bill was introduced in response to the arrival of the forty-three West Papuans earlier that year and Indonesia’s negative response to the granting of temporary protection to the asylum seekers (Rimmer, 2006). The Bill was read a second time on August 9, 2006 by Mr

Cameron Thompson MP. Mr Thompson outlined several reasons as to why the Bill was introduced. First,

Given that the problems worldwide are much greater than we could hope to deal with ourselves and that the world community struggles to get anywhere near dealing with the problem, the most important thing has to be that we assist the most needy people first... We must also make sure that our program values the lives of refugees and puts them first. (Australian Parliament. Record of Proceedings, August 9, 2006, p. 84)

In other words, Mr Thompson claimed that the DUA Bill was drafted specifically with the livelihoods of refugees in mind, as these people are in need of Australian help and it is the least we can do to address this global problem. After mentioning the case of the forty-three West Papuans and detailing a number of other instances where Indonesian refugees have travelled to Australia via boat, Mr Thompson stated that,

Because of the laws that stand today, which I believe are flawed and dangerous in their logic, we have a position where we create a lure for them [refugees] to go onto the high seas and risk the lives of their children. (Australian Parliament. Record of Proceedings, August 9, 2006, p. 84)

Thompson argued that because of this, refugees who come to Australia via sea have obtained an unfair advantage over those refugees residing in refugee camps around the world who make formal applications, and wait many years for those applications to be considered and accepted. Inherently, he is referring to them as ‘queue jumpers’ and, by proposing this legislation, the government is eliminating the possibility of this unfair advantage; which is made evident when he states, “we need to have all refugees put on an equal footing: to make all their applications at exactly the same level and to make sure that they are properly assessed” (Australian Parliament. Record of Proceedings, August 8, 2006, p. 85).

In its second reading, it is extremely evident that the government claimed – if not completely believed – that the introduction of the DUA Bill was, at heart and on principle, humanitarian. Yet, as much as the government claims that the Bill is based on moral principles, it cannot be

denied that the continuation of the Australian diplomatic relationship with Indonesia was also a very influential factor for the proposal of this Bill. Supporters of the Bill argued that the politicisation of the refugee and asylum seeker issue was unavoidable and that the “relationship with Indonesia justifies making concessions in response to the difficulties that the nation faces in pursuing ongoing democratic reform” (Rimmer, 2006). Prominent Australian journalist and political commentator, Paul Kelly, voiced his very realist perspective and support for the Bill over a literal interpretation of the 1951 Refugee Convention as it was a step in the correct direction to mend relations with Indonesia following the West Papuan refugee crisis (Kelly, 2006).

Had the Australian Government been truly committed to upholding international human rights principles as it suggested it was when the forty-three asylum seekers reached Australian shores in early 2006, the government would have explained to the Indonesian Government that it recognised its anger over the granting of temporary protection visas yet, due to its obligations under international human rights and refugee laws, to behave in any other manner would be to betray fundamental moral principles (Manne, n.d.). However, this was not the case. The Australian Government’s introduction of the DUA Bill demonstrated the importance of a working Australian-Indonesian bilateral relationship rather than the upholding of human rights principles. According to realist theorists, this is exactly the behaviour that constitutes a realist perspective in foreign policy-making (Morgenthau, 1945; Korab-Karpowicz, 2010). In his final term, Prime Minister John Howard demonstrated an increasingly pragmatic, realist approach to Australian foreign policy. It has been argued that he believed that “political leaders should make their own judgements about major issues” (McDougall & Edney, 2010, p. 206), rather than obtain public consultation on the matter. Howard’s realist approach emphasised the Australian national interest over the international moral principles that aimed to protect future asylum seekers.

The realist approach adopted by the Australian Government through the DUA Bill came under scrutiny during a Senate inquiry on May 26, 2006 by the Legal and Constitutional Legislation

Committee. A submission was lodged by the UNHCR to the committee and the provisions of the Bill were assessed. Mr David Neill Wright, the Regional Representative for the UNHCR Regional Office for Australia, New Zealand, Papua New Guinea and the South Pacific, attended the inquiry and presented an opening statement that clearly outlined the UNHCR's concerns about the provisions of the DUA Bill and how it could potentially infringe on international human rights laws. Wright's statement addressed several areas in which the Bill was seen by the UNHCR to be in contradiction to the Refugee Convention. He stated that,

Under this Bill, Australia claims to be undertaking its responsibility to determine whether or not a person falling within the proposed class of 'designated unauthorised arrivals' is a refugee... However, the history of Australia's offshore processing makes it appear that what has taken place is in fact a transfer of responsibility to a third country. (Australian Parliament. Record of Proceedings, May 26, 2006, p. 2)

As Wright points out, the Bill specifically states that it will be used as a deterrent and penalisation of refugees, which is clearly a breach of Article 31 of the Convention. In addition, Wright voices a fundamental concern of the UNHCR that "removing a class of asylum seekers from the territory of a signatory state and providing them with inferior treatment to other classes of asylum seekers, processed on the mainland, is unprecedented" (Australian Parliament. Record of Proceedings, May 26, 2006, p. 2). The DUA Bill proposed that asylum seekers arriving in Australia via sea would be taken offshore to Nauru to have their claims processed. As stated earlier, Australia was one of the first signatories of the UN Convention for the Status of Refugees; however, it was not until mid-2011 that Nauru became a signatory of the Convention (Needham, 2011). In principle, the Australian Government wanted to send people, who were seeking asylum in a country that was, by international law, obligated to offer them asylum, to a country that had not yet recognised international human rights laws by signing the Convention, where they would receive inferior treatment to those being processed on mainland Australia.

Opposition to the Bill was extremely high. The most common argument among opponents was that the Bill was a clear breach of the United Nations Convention on the Status of Refugees 1951 (Rimmer, 2006; Thom, 2006; Minder, 2006). Following the Senate inquiry in May, further opposition and concerns began to be raised regarding the morality of the Bill. The Australian Labor Party saw the Bill to be a way of Australia allowing Indonesia to dictate our nation's foreign policies in an attempt to soothe relations after the West Papuan asylum seeker "crisis" (Rimmer, 2006; Kingsbury, 2007). The Democrats however, opposed the Bill on the basis that it did not comply with international human rights laws and that the crimes against humanity that are currently occurring in the province of West Papua should be addressed urgently, instead of proposing immigration laws that are fundamentally flawed (Rimmer, 2006). The Greens concurred, stating that "the Australian government should be seeking constructive engagement with Indonesia to prevent human rights abuses instead of trying to prevent asylum seekers from accessing Australian protection" (Nettle, 2006). Consequently, the Government's attempt to tighten migration laws through the Migration Amendment (Designated Unauthorised Arrivals) Bill 2006 was rejected in the Senate in late 2006.

In the wake of the failed Migration Amendment, the Australian Government was determined to grasp at any means of improving relations with the Indonesian government. The Agreement between the Republic of Indonesia and Australia on the Framework for Security Cooperation 2006 was a security treaty drafted prior to the arrival of the West Papuan asylum seekers in early 2006. This security treaty would allow bilateral nuclear cooperation between the two neighbouring countries for security, military and counter-terrorism means (Lombok Treaty, 2006). As a result of Australia's granting of temporary protection to the West Papuan refugees the treaty was almost aborted; however, the government was determined to improve relations with Indonesia and the Treaty was signed by Australian Foreign Minister Alexander Downer and his Indonesia counterpart Hassan Wirajuda in November of 2006 ("Aus signs security pact with Indonesia", 2006). At first glance, the Treaty is appealing and seems beneficial to both

sides; yet, on closer examination, it is evident that there will be serious ramifications for Australia's part in signing the Treaty.

In signing the Lombok Treaty 2006, in accordance with Article 2, Australia and Indonesia have agreed to,

- 2. Mutual respect and support of the sovereignty, territorial integrity, national unity and political independence of each other, and also non-interference in the internal affairs of one another;
- 3. The Parties, consistent with their respective domestic laws and international obligations, shall not in any manner support or participate in activities by any person or entity which constitutes a threat to the stability, sovereignty or territorial integrity of the other Party, including those who seek to use its territory for encouraging or committing such activities, including separatism, in the territory of the other Party...
- 5. The Parties shall refrain from the threat or use of force against the territorial integrity or political independence of the other (Lombok Treaty, 2006)

Evidently, the Lombok Treaty was designed to discourage any involvement by Australia in the West Papuan fight for independence. In signing the Treaty, the Australian Government again confirmed its support for Indonesia territorial integrity over West Papua. Once the Treaty was signed, Minister Downer stated that "it will be a part of law in Australia that Australia won't support the break-up of Indonesia" ("Indo, Aus sign security pact", 2006). It has been assumed that Australia was so eager to sign the Treaty because it needed to buy back the friendship of Indonesia that it lost due to the temporary protection visa grants (Kingsbury, 2006).

In terms of the continued fight for independence in West Papua, the Australian Government's reaffirmation of Indonesia's territorial integrity through the Treaty has completely destroyed any means for Australia to act on the human rights abuses occurring within the province should the government happen to change its position in the future, as it did towards the Timor-Leste situation in 1999. What this means for West Papua is that Australia can never intervene on a humanitarian basis if the Indonesian Government continues or increases human rights abuses.

Unlike that of Timor-Leste, the independence movement in West Papua is subject to a theoretical vote of no support from the Australian Government for the foreseeable future.

Although the temporary protection visa was repealed following the West Papuan asylum seeker “crisis”, the introduction of the DUA Bill and the signing of the Lombok Treaty effectively demonstrated Australia’s national self-interest for maintaining a diplomatic relationship with Indonesia over working to reduce human rights abuses and the denial of self-determination in West Papua. These policy actions were characteristic of pragmatic, realist international policy-making. Realist theory suggests that there is no place in international politics for international moral principles such as human rights (Morgenthau, 1948). Through these proposed policy amendments, the Australian Government clearly demonstrated its realist perspective to foreign policy, particularly in the case of West Papuan independence and human rights abuses. Had the government not signed the Lombok Treaty, relations between Australia and Indonesia would have no doubt plummeted; therefore, it was in Australia’s national interest to reaffirm Indonesian territorial integrity of the province of West Papua.

Chapter Six: Conclusion

West Papuans have been fighting for their independence from Indonesia for over fifty years (Jackson, 2006). Since the “sham” Act of Free choice in 1969, West Papuans have been evermore uncertain as to whether their strenuous – and increasingly violent – fight for territorial sovereignty will ever result in independence (Davidson, 2009). The prominent ethnic differences between the Melanesian of the West Papuan province and the Malays that make up a majority of the Indonesian population has led to a clash of values and cultures in West Papua (Kingsbury, 2005; McGibbon, 2006); resulting in the extremely violent treatment of the West Papuan population by Indonesian security forces over the years (Martinkus, 2002). In early 2006, forty-three West Papuan asylum seekers left the province via dug-out canoe and travelled to Australian shores in hope of seeking asylum. Upon their arrival, the asylum seeker debate again took flare in the Australia public spectrum. Due to their claims of human rights abuses in the province of West Papua by the Indonesian Government (Rimmer, 2006; “Howard to visit Indonesia”, 2006), each asylum application had to be assessed with great detail. The human rights abuse claims emphasised the need for Australia’s upholding of international refugee law; under which, Australia is obligated to provide asylum to any person who,

Owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself to the protection of that country. (UNHCR, 1951, p. 14)

Forty-two of the forty-three West Papuan asylum seekers were granted refugee status and temporary protection in Australia, which constituted significant humanitarian measures by the Australian Government. The beginning of 2006 suggested that the government would adopt a more principled approach to refugee and asylum seeker policies than had previously been adopted following the Timor-Leste intervention of 1999. However, the Indonesian Government’s reaction to the granting of temporary protection visas would result in a complete

backtracking and reassessment of Australian foreign policy regarding refugees, asylums seekers and West Papua; most importantly, it ushered in an era of realist-based decision-making in Australian foreign policy.

The Indonesian Government saw the temporary protection grants as an act of betrayal by the Australian government, and as a sign of Australia's support for West Papuan independence (Bruce, 2006). On March 25, 2006, the Indonesian Ambassador to Australia was recalled and relations between Australia and Indonesia declined rapidly ("Indonesia recalls ambassador", 2006; Rimmer, 2006). Indonesia is Australia's closest neighbour, this means that "our trade routes run through Indonesia, our border protection depends on Jakarta... our regional foreign policy is heavily Jakarta-dependent and our counter-terrorism has been built with Indonesia" (Kelly, 2006). Basically, much of the welfare and political interest of Australia was – and still is – dependent on good diplomatic relations with Indonesia. The crisis that the Australian Government was presented with was that it took a principled approach to a humanitarian issue; however, in doing so, the national interest and security (in the sense of political security, as opposed to actual national security) of the country was put at risk.

Australian foreign policy changed significantly as a result of Indonesia's reaction to the arrival of the West Papuan refugees in Australia. The Indonesian reaction threatened diplomatic, economic, social and political elements of the relationship that the Australian government had worked so hard to maintain since the Timor-Leste intervention (Chalk, 2001; Conley, 2005). In response to this, the Australian Government proposed new and amended legislation that would target migration laws and was aimed at rebuilding Australia's relationship with Indonesia. In addition, a private Senator's Bill was introduced, which proposed to amend the Migration Regulations 1994 by repealing the temporary protection visa category. Although the temporary protection visa system was argued to be inherently inhuman in practice, the granting of temporary protection visas to the West Papuans held more moral principle than if the Government had decided to reject their claims of asylum completely. At the time, this Bill was heavily debated and it was not until two years later that the Bill, which was introduced on the

basis that the temporary protection visa system was in breach of the UNHCR Refugee Convention 1951, would be passed in Parliament. The Bill was passed by the Australian Labor Government in 2008, yet the temporary protection visa system was again reinstated in 2013 by the Abbott Liberal Government. This demonstrates the continuation of the Howard Liberal Government's realist approach to Australian foreign policy into the Abbott era.

In an attempt to soothe relations with Indonesia, the Australian government introduced the Migration Amendment (Designated Unauthorised Arrivals) Bill 2006, which effectively, was to be used as a deterrent or punitive measure to those seeking asylum in Australia (Thom, 2006). Realist theory suggests that "universal moral principles cannot be applied to the actions of states" (Morgenthau, 1948, p. 12); also that in international relations states construct "policies that will best serve a state's interest" (Waltz, 1979, p. 117). To have introduced the DUA Bill, the government would have had to eliminate or exhaust all other alternative forms of migration legislation that would solve the so-called refugee "crisis". However, critics suggest that the introduction of the DUA Bill was not the best possible migration amendment, it was in fact the last resort in attempting to restore relations with Indonesia (Thom, 2006; Bruce, 2006). The introduction of the DUA Bill definitely demonstrated the government's use – if not complete adoption – of realism in its approach to foreign policy-making.

Likewise, the Lombok Treaty of November 2006 was a strong affirmation of the government's realist approach. The Lombok Treaty was drafted to draw the political and military ties of Australia and Indonesia closer together. By signing the Treaty, the Australian Government declared its full support for Indonesia's territorial integrity over West Papua. Although it is not explicitly stated, the proximity of the events – the granting of temporary protection visas to the West Papuans and the signing of the Treaty – indicates that the Treaty was clearly a by-product of Indonesia's distaste for Australia's temporary protection visa grants to the asylum seekers. Commentators in favour of the Treaty and its consequences for West Papua have expressed that supporters of the West Papuan cause and fight for independence are "well intentioned [sic] but naïve and potentially dangerous to Australia's strategic interests" (Elmslie, 2007), particularly

when it comes to the diplomatic relationship that is evidently hard to maintain with Indonesia. It has been argued that the Lombok Treaty was the Australian Government's most appropriate avenue for improved diplomatic relations with Indonesia. In many aspects, such as border security and nuclear cooperation, it was. However, from a humanitarian position, and considering that Australia was one of the first signatories of the UN Refugee Convention 1951, the provisions of the Treaty and basis upon which Australia signed the Treaty are questionable. The Treaty disallows any form of humanitarian action by the Australian Government that could potentially constitute support for the separatist movement in West Papua; effectively, declaring that the Australian Government, through its foreign policy, favours the nation's diplomatic relations and national interest over the lives of oppressed people.

Although 2006 was quite a significant year in terms of refugee policies and Australian international relations, very little assessment of the Australian Government's foreign policy decisions during that period has been made. This thesis provides an insight into the Australian Government's policies during 2006 and highlights the emergence of a realist era in Australian foreign policy-making. Embracing a realist perspective allows the Australian Government's actions throughout 2006 to be explained. After the arrival of the forty-three West Papuan asylum seekers the Government's approach to foreign policy shifted from an international, moral principle-based perspective to a realist approach. This realist approach saw the Government's prioritisation of Australian diplomatic relations with Indonesia for the sake of the nation's self-interest over the human rights of the independence-driven West Papuans. The proposal, introduction and ratification of several key pieces of legislation during 2006, clearly demonstrates the Australian Government's opposition towards the independence fight in West Papua; a struggle that has lasted for over fifty years, and will continue if our capable and resourceful nation fails to take humanitarian action.

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Appendix A – Migration Legislation Amendment (Temporary Protection Visas Repeal) Bill 2006

2004-2005-2006

The Parliament of the
Commonwealth of Australia

THE SENATE

Presented and read a first time

**Migration Legislation Amendment
(Temporary Protection Visas Repeal) Bill
2006**

No. , 2006

(Senator Bartlett)

A Bill for an Act to amend the Migration
Regulations 1994 to remove the category of
Temporary Protection Visas, and for related
purposes

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the Migration Legislation Amendment
(Temporary Protection Visas Repeal) Act 2006.

2 Commencement

This Act commences on the day on which it receives the Royal
Assent.

3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or
repealed as set out in the applicable items in the Schedule

concerned, and any other item in a Schedule to this Act has effect according to its terms.

4 Transitional

- (1) On the commencement of this Act, persons holding a Temporary Protection visa (Class XA, Subclass 785) will be deemed to hold a Protection visa (Class XA, Subclass 866).
- (2) On the commencement of this Act, the Minister must assess the applications of persons who have applied for a Temporary Protection visa (Class XA, Subclass 785) as though this Act had not commenced. If their application is successful, the applicant will then be deemed to hold a Protection visa (Class XA, Subclass 866).

Schedule 1—Amendment of the Migration Regulations 1994

1 Schedule 1, Part 4, subitem 1401 (4)

Omit “785 (Temporary Protection)”.

2 Schedule 2, Part 785

Repeal the Part.

3 Schedule 2, clause 866.228

Repeal the clause.

**Appendix B – Migration Amendment (Designated Unauthorised Arrivals)
Bill 2006**

2004-2005-2006

The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

Presented and read a first time

**Migration Amendment (Designated
Unauthorised Arrivals) Bill 2006
No. , 2006**

(Immigration and Multicultural Affairs)

**A Bill for an Act to amend the *Migration Act 1958*,
and for related purposes**

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Migration Amendment (Designated Unauthorised Arrivals) Act 2006*.

2 Commencement

This Act commences on the day after it receives the Royal Assent.

3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Amendments

Migration Act 1958

1 Subsection 5(1)

Insert:

designated unauthorised arrival has the meaning given by section 5F.

2 Subsection 5(1) (note to the definition of *excised offshore place*)

Omit “offshore entry persons”, substitute “certain designated unauthorised arrivals”.

3 Subsection 5(1) (definition of *offshore entry person*)

Repeal the definition.

4 Subsection 5(1) (paragraph (a) of the definition of *transitory person*)

Omit “an offshore entry person”, substitute “a person”.

5 Subsection 5(1) (definition of *transitory person*)

Omit all the words after paragraph (c), substitute:

but does not include a person who has:

- (d) been assessed to be a refugee for the purposes of the Refugees Convention as amended by the Refugees Protocol; or
- (e) become the holder of a substantive visa; or
- (f) left Australia (see subsection (4B)), other than as a result of being:
 - (i) removed under subsection 198(1A); or
 - (ii) taken under subsection 198A(1);
from Australia to a country in respect of which a declaration is in force under subsection 198A(3); or
- (g) left a country (see subsection (4C)), in respect of which a declaration is in force under subsection 198A(3), to travel to a country other than Australia.

6 After subsection 5(4A)

Insert:

(4B) For the purposes of paragraph (f) of the definition of *transitory person* in subsection (1) of this section, a person is taken not to have *left Australia* if the person has:

- (a) been removed under section 198 to another country but has been refused entry by that country; and
- (b) returned to Australia as a result of that refusal.

(4C) For the purposes of paragraph (g) of the definition of *transitory person* in subsection (1) of this section, a person is taken not to have *left a country* if:

- (a) the person has:
 - (i) departed the country to travel to one or more other countries; and
 - (ii) been refused entry by each of those other countries; and
 - (iii) returned to the first-mentioned country as a result of the refusal or refusals; or
- (b) the person has:
 - (i) departed the country for medical treatment in one or more other countries; and
 - (ii) returned to the first-mentioned country after receiving medical treatment.

7 Subparagraph 5A(3)(j)(ii)

Omit “an offshore entry person”, substitute “a designated unauthorised arrival”.

8 After section 5E

Insert:

5F Meaning of *designated unauthorised arrival*

(1) For the purposes of this Act, a person is a *designated unauthorised arrival* if the person:

- (a) is not an exempt person (see subsection (2)); and
- (b) became an unlawful non-citizen because the person:
 - (i) entered Australia at an excised offshore place after the excision time for that offshore place; or
 - (ii) entered Australia by sea (see subsection (8)) on or after 13 April 2006; and
- (c) has not, after that entry:
 - (i) become the holder of a substantive visa; or
 - (ii) left Australia (see subsection (10)), other than as a result of being taken under subsection 198A(1) from Australia to a country in respect of which a declaration is in force under subsection 198A(3); or
 - (iii) left a country (see subsection (11)), in respect of which a declaration is in force under subsection 198A(3), to travel to a country other than Australia.

(2) For the purposes of this section, a person is an *exempt person* if the person:

- (a) is a New Zealand citizen who holds and produces a New Zealand passport that is in force; or
- (b) is a non-citizen who holds and produces a passport that is in force and is endorsed with an authority to reside indefinitely on Norfolk Island; or
- (c) was brought to the migration zone, pursuant to subsection 185(3A) of the *Customs Act 1901* as a result of being found on a ship detained under section 185 of that Act, and no officer reasonably suspected that the person:
 - (i) was seeking to enter the migration zone; and
 - (ii) would, if in the migration zone, be an unlawful non-citizen; or
- (d) is in a class of persons declared by the Minister, under subsection (3), to be exempt; or
- (e) is declared by the Minister, under subsection (6), to be exempt.

Declarations – specified class of person

(3) The Minister may, for the purposes of paragraph (2)(d), declare, in writing, a specified class of persons to be exempt.

(4) A class of persons may be specified in a declaration made under subsection (3) even if ascertaining the membership of the class relies on a discretion being exercised or a particular opinion being held.

(5) A declaration made under subsection (3) is a legislative instrument.

Declarations – specified person

(6) The Minister may, for the purposes of paragraph (2)(e), declare, in writing, a specified person to be exempt if:

- (a) regulations made for the purposes of this subsection specify criteria that a person must satisfy before the person may be declared, under this subsection, to be exempt; and
- (b) the Minister is satisfied that the person satisfies those criteria.

(7) A declaration made under subsection (6) is not a legislative instrument.

Interpretation

- (8) For the purposes of this section, a person is taken to have ***entered Australia by sea*** if the person has:
- (a) travelled to Australia by sea and entered the migration zone (whether or not by sea); or
 - (b) entered the migration zone by air (see subsection (9)) pursuant to subsection 245F(9) as a result of being found on a ship detained under section 245F; or
 - (c) entered the migration zone by air (see subsection (9)) after being rescued at sea.
- (9) For the purposes of subsection (8), a person who enters Australia on an aircraft is taken to have ***entered the migration zone by air*** only if that aircraft lands in the migration zone.
- (10) For the purposes of this section, a person is taken not to have ***left Australia*** if the person has:
- (a) been removed under section 198 to another country but has been refused entry by that country; and
 - (b) returned to Australia as a result of that refusal.
- (11) For the purposes of this section, a person is taken not to have ***left a country*** if:
- (a) the person has:
 - (i) departed the country to travel to one or more other countries; and
 - (ii) been refused entry by each of those other countries; and
 - (iii) returned to the first-mentioned country as a result of the refusal or refusals; or
 - (b) the person has:
 - (i) departed the country for medical treatment in one or more other countries; and
 - (ii) returned to the first-mentioned country after receiving medical treatment.

9 Subsection 42(4) (note)

Repeal the note, substitute:

10 Subsection 46A(1)

Repeal the subsection, substitute:

- (1) An application for a visa is not a valid application if it is made by a designated unauthorised arrival who is in Australia.

11 Subsection 46A(2)

Omit “an offshore entry person”, substitute “a designated unauthorised arrival”.

12 Subsection 46A(2)

Omit “the person”, substitute “the designated unauthorised arrival”.

13 Paragraph 46A(5)(a)

Omit “offshore entry person”, substitute “designated unauthorised arrival”.

14 Paragraph 46A(5)(b)

Omit “offshore entry person”, substitute “designated unauthorised arrival”.

15 Subsection 46A(7)

Omit “offshore entry person” (wherever occurring), substitute “designated unauthorised arrival”.

16 Subsection 46B(1)

Repeal the subsection, substitute:

- (1) An application for a visa is not a valid application if it is made by a transitory person who is in Australia.

17 Subsection 189(2)

Omit “must”, substitute “may”.

18 Subsection 198A(1)

Omit “an offshore entry person”, substitute “a designated unauthorised arrival”.

19 Paragraph 198A(2)(a)

Omit “person”, substitute “designated unauthorised arrival”.

20 Paragraph 198A(2)(b)

Omit “person”, substitute “designated unauthorised arrival”.

21 Paragraph 198A(2)(c)

Omit “person”, substitute “designated unauthorised arrival”.

22 Subsection 198A(4)

Repeal the subsection, substitute:

- (4) A person who is a designated unauthorised arrival:
- (a) may be dealt with under this section even if the person is in immigration detention immediately prior to being dealt with under this section; and
 - (b) is taken not to be in immigration detention while the person is being dealt with under this section.

23 Paragraph 198C(8)(b)

Omit “section 46B does”, substitute “sections 46A and 46B do”.

24 Subparagraph 336F(3)(a)(ii)

Omit “an offshore entry person”, substitute “a designated unauthorised arrival”.

25 Subparagraph 336F(4)(a)(ii)

Omit “an offshore entry person”, substitute “a designated unauthorised arrival”.

26 Paragraph 336F(5)(c)

Omit “an offshore entry person”, substitute “a designated unauthorised arrival”.

27 After Part 8C

Insert:

Part 8D—Reports relating to designated unauthorised arrivals and transitory persons

486R Secretary’s obligation to report to Minister

- (1) The Secretary must, in respect of each financial year that ends on

- or after 30 June 2007, give to the Minister a report under this section not later than 30 September in the next financial year.
- (2) A report under this section in respect of a particular financial year must contain information about:
- (a) arrangements during that financial year for designated unauthorised arrivals, and transitory persons, seeking asylum, including arrangements for:
 - (i) assessing any claims for refugee status made by such designated unauthorised arrivals and transitory persons; and
 - (ii) the accommodation, health care and education of such designated unauthorised arrivals and transitory persons; and
 - (b) the number of asylum claims, by designated unauthorised arrivals and transitory persons, that are assessed during that financial year; and
 - (c) the number of designated unauthorised arrivals and transitory persons determined, during that financial year, to be refugees.
- (3) A report under this section must not include:
- (a) the name of any person who is or was a designated unauthorised arrival or a transitory person; or
 - (b) any information that may identify such a person; or
 - (c) the name of any other person connected in any way with any person covered by paragraph (a); or
 - (d) any information that may identify that other person.
- (4) The report may include any other information that the Secretary thinks appropriate.
- (5) The Minister must cause a copy of a report under this section to be tabled in each House of the Parliament within 15 sitting days of that House after the day on which the Minister receives the report from the Secretary.

28 Paragraph 494AA(1)(a)

Repeal the paragraph, substitute:

- (a) proceedings relating to an unauthorised entry by a person who, as a result of that entry, became a designated unauthorised arrival;

29 Paragraph 494AA(1)(b)

Omit “an offshore entry person”, substitute “a person”.

30 At the end of paragraph 494AA(1)(b)

Add “in relation to the person”.

31 Paragraph 494AA(1)(c)

Repeal the paragraph, substitute:

- (c) proceedings relating to the lawfulness of the detention of a person during the ineligibility period in relation to the person, being a detention based on the status of the person as an unlawful non-citizen;

32 Subsection 494AA(4) (definition of *ineligibility period*)

Repeal the definition, substitute:

ineligibility period, in relation to a person, means the period from the time the person made an unauthorised entry, which resulted in the person becoming a designated unauthorised arrival, until the

time when the person next ceases to be an unlawful non-citizen.

33 Subsection 494AA(4) (definition of *offshore entry*)

Repeal the definition.

34 Subsection 494AA(4)

Insert:

unauthorised entry means an entry into Australia that occurs:

- (a) if the entry occurs at an excised offshore place—after the excision time for that offshore place; or
- (b) if the entry occurs at a place other than an excised offshore place—on or after 13 April 2006.

35 Paragraph 494AB(1)(b)

Omit “transitory”.

36 At the end of paragraph 494AB(1)(b)

Add “in relation to the person”.

37 Paragraph 494AB(1)(c)

Repeal the paragraph, substitute:

- (c) proceedings relating to the lawfulness of the detention of a person who is brought to Australia, as a transitory person, under section 198B, being a detention based on the status of the person as an unlawful non-citizen;

38 Paragraph 494AB(1)(d)

Omit “transitory person”, substitute “person, who at the time of the removal was a transitory person,”.

39 Subsection 494AB(4) (definition of *ineligibility period*)

Repeal the definition, substitute:

ineligibility period, in relation to a person, means the period from the time when the person was brought to Australia, as a transitory person, under section 198B until the time when the person next ceases to be an unlawful non-citizen.

40 Application of amendments

The amendments made by items 28 to 39 of this Schedule apply to:

- (a) the institution of proceedings on or after the day on which this item commences; and
- (b) the continuation, after the day on which this item commences, of proceedings that were instituted before that day, being proceedings instituted on or after 13 April 2006.

41 Transitional

(1) If a person:

- (a) entered the migration zone (other than an excised offshore place) during the relevant period (see subitem (2)); and
- (b) made an application for a visa during the relevant period; and
- (c) was not granted the visa during the relevant period; and
- (d) on the commencement of section 5F of the *Migration Act 1958* is covered by the definition of *designated unauthorised arrival* because of the entry mentioned in paragraph (a) of this subitem;

then, for the purposes of the *Migration Act 1958*, the application for the

visa is taken, on and after the commencement of this item, not to be a valid application.

(2) In this item:

relevant period means the period starting on 13 April 2006 and ending immediately before the commencement of this item.

42 Saving

- (1) This item applies to an authorisation under section 336D or 336F of the *Migration Act 1958* that was in force immediately before the commencement of this item.
- (2) On and after the commencement of this item:
 - (a) any reference in the authorisation to an offshore entry person is taken to be a reference to a designated unauthorised arrival; and
 - (b) the authorisation is taken to authorise access to identifying information in relation to designated unauthorised arrivals to the extent that, immediately before the commencement of this item, the authorisation authorised access to identifying information in relation to offshore entry persons; and
 - (c) the authorisation is taken to authorise disclosure of identifying information in relation to designated unauthorised arrivals to the extent that, immediately before the commencement of this item, the authorisation authorised disclosure of identifying information in relation to offshore entry persons.

43 Compensation for acquisition of property

- (1) If the operation of this Act would result in an acquisition of property from a person otherwise than on just terms, the Commonwealth is liable to pay a reasonable amount of compensation to the person.
- (2) If the Commonwealth and the person do not agree on the amount of the compensation, the person may institute proceedings in a court of competent jurisdiction for the recovery from the Commonwealth of such reasonable amount of compensation as the court determines.
- (3) The Consolidated Revenue Fund is appropriated for the purposes of this item.
- (4) In this item:

acquisition of property has the same meaning as in paragraph 51(xxxi) of the Constitution.

just terms has the same meaning as in paragraph 51(xxxi) of the Constitution.

44 Regulations

- (1) The Governor-General may make regulations prescribing matters:
 - (a) required or permitted by this Act to be prescribed; or
 - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) The Governor-General may also make regulations:
 - (a) making provision (including provision by way of modification of any Act) for or in relation to matters consequential on amendments or repeals made by this Act; or
 - (b) prescribing matters of a transitional nature (including prescribing any saving or application provisions) relating to:
 - (i) the enactment of this Act; or
 - (ii) the amendments or repeals made by this Act.

- (3) A modification under paragraph (2)(a) must not change the penalty for an offence.
- (4) In this item:
modifications include additions, omissions and substitutions.

Appendix C – Agreement Between the Republic of Indonesia and Australia on the Framework for Security Cooperation

The Government of the Republic of Indonesia and the Government of Australia (hereinafter referred to as the 'Parties')

Reaffirming the sovereign equality of the Parties, their faith in the purposes and principles of the Charter of the United Nations and their desire to live in peace with all peoples and all governments;

Reaffirming the commitment to the sovereignty, unity, independence and territorial integrity of both Parties, and the importance of the principles of good neighbourliness and non-interference in the internal affairs of one another, consistent with the Charter of the United Nations;

Recognising that both Parties are democratic, dynamic and outward-looking members of the region and the international community;

Recognising also the new global challenges, notably from international terrorism, traditional and non-traditional security threats;

Recognising further the importance of continued and enhanced cooperation in meeting the challenges posed by international terrorism and transnational crime;

Determined to work together to respond to these new challenges and threats;

Determined also to maintain and strengthen bilateral cooperation and regular dialogue including established regular discussions on strategic, defence, intelligence, law enforcement and other matters;

Determined further to maintain and strengthen the long-standing political, economic, social and security cooperation which exist between the two Parties, and their common regional interests and ties, including the stability, progress and prosperity of the Asia-Pacific region;

Recognising the value of bilateral agreements and arrangements between the two countries since 1959 including the major bilateral instruments on security that have provided a strong legal framework for both countries in dealing with various security threats and issues as well as the importance of existing dialogues and cooperation through the Indonesia Australia Ministerial Forum (IAMF);

Emphasizing also the importance of working together through regional and international fora on security matters to contribute to the maintenance of international peace and security;

Determined to comply in good faith with their obligations under generally recognized principles and rules of international law;

Adhering to their respective laws and regulations;
Have agreed as follows:

ARTICLE 1

PURPOSES

The main objectives of this Agreement are:

1. to provide a framework for deepening and expanding bilateral cooperation and exchanges as well as to intensify cooperation and consultation between the Parties in areas of mutual interest and concern on matters affecting their common security as well as their respective national security.
2. to establish a bilateral consultative mechanism with a view to encouraging & intensive dialogue, exchanges and implementation of co-operative activities as well as strengthening institutional relationships pursuant to this Agreement.

ARTICLE 2

PRINCIPLES

In their relations with one another, the Parties shall be guided by the following fundamental principles, consistent with the

Charter of the United Nations,

1. Equality, mutual benefit and recognition of enduring interests each Party has in the stability, security and prosperity of the other;
2. Mutual respect and support for the sovereignty, territorial integrity, national unity and political independence of each other, and also non-interference in the internal affairs of one another;
3. The Parties, consistent with their respective domestic laws and international obligations, shall not in any manner support or participate in activities by any person or entity which constitutes a threat to the stability, sovereignty or territorial integrity of the other Party, including by those who seek to use its territory for encouraging or committing such activities, including separatism, in the territory of the other Party;
4. The Parties undertake, consistent with the Charter of the United Nations, to settle any disputes that might arise between them by peaceful means in such a manner that international peace, security and justice are not endangered;
5. The Parties shall refrain from the threat or use of force against the territorial integrity or political independence of the other, in accordance with the UN Charter;
6. Nothing in this Agreement shall affect in any way the existing rights and obligations of either Party under international law.

ARTICLE 3

AREAS AND FORMS OF COOPERATION

The scope of cooperation of this Agreement shall include:

Defence Cooperation

In recognition of the long-term mutual benefit of the closest professional cooperation between their Defence Forces,

1. Regular consultation on defence and security issues of common concern; and on their respective defence policies;
2. Promotion of development and capacity building of defence institutions and armed forces of both Parties including through military education and training, exercises, study visits and exchanges, application of scientific methods to support capacity building and management and other related mutually beneficial activities;
3. Facilitating cooperation in the field of mutually beneficial defence technologies and capabilities, including joint design, development, production, marketing and transfer of technology as well as developing mutually agreed joint projects.

Law Enforcement Cooperation

In recognition of the importance of effective cooperation to combat transnational crime that impacts upon the security of both Parties,

4. Regular consultation and dialogue aimed at strengthening the links between institutions and officials at all levels;
5. Cooperation to build capacity of law enforcement officials to prevent, respond to and investigate transnational crime;
6. Strengthening and intensifying police to police cooperation including through joint and coordinated operations;
7. Cooperation between relevant institutions and agencies, including prosecuting authorities, in preventing and combating transnational crimes, in particular crimes related to:
 - a. People smuggling and trafficking in persons;
 - b. Money laundering;
 - c. Financing of terrorism;
 - d. Corruption;
 - e. Illegal fishing;
 - f. Cyber-crimes;
 - g. Illicit trafficking in narcotics drugs and psychotropic substances and its precursors;
 - h. Illicit trafficking in arms, ammunition, explosives and other dangerous materials and the illegal production thereof; and
 - i. Other types of crime if deemed necessary by both Parties.

Counter-terrorism Cooperation

In recognition of the importance of close and continuing cooperation to combat and eliminate international terrorism through communication, cooperation and action at all levels,

8. Doing everything possible individually and jointly to eradicate international terrorism and extremism and its roots and causes and to bring those who support or engage in violent criminal acts to justice in accordance with international law and their respective national laws;

9. Further strengthening cooperation to combat international terrorism including through rapid, practical and effective responses to terrorist threats and attacks; intelligence and information sharing; assistance to transport security, immigration and border control; and effective counter-terrorism policies and regulatory frameworks;

10. Strengthening cooperation in capacity building in law enforcement, defence, intelligence and national security in order to respond to terrorist threats;

11. Cooperation, when requested and where possible, in facilitating effective and rapid responses in the event of a terrorist attack. In this regard, the requesting Party shall have primary responsibility for the overall direction, organization and coordination for such situation.

Intelligence Cooperation

12. Cooperation and exchange of information and intelligence on security issues between relevant institutions and agencies, in compliance with their respective national legislation and within the limits of their responsibility.

Maritime Security

13. Strengthening bilateral cooperation to enhance maritime safety and to implement maritime security measures, consistent with international law;

14. Enhancing existing Defence and other cooperation activities and capacity building in the area of aerial and naval maritime security in accordance with international law.

Aviation Safety and Security

15. Strengthening bilateral cooperation in the field of capacity building to enhance civil aviation safety and security.

Proliferation of Weapons of Mass Destruction

In recognition of the Parties' shared commitment not to develop, produce, otherwise acquire, stockpile, retain or use nuclear weapons or other weapons of mass destruction,

16. Co-operate to enhance measures for preventing the proliferation of weapons of mass destruction and their means of delivery including through strengthened national export controls in accordance with their respective national laws as well as international law;

17. Strengthening bilateral nuclear cooperation for peaceful purposes, including to further the objective of non-proliferation of weapons of mass destruction and strengthen international nuclear safety and security through enhanced standards, in accordance with international law.

Emergency Cooperation

18. Cooperation, as appropriate and as requested, in facilitating effective and rapid coordination of responses and relief measures in the event of a natural disaster or other such emergency. The

Party requesting the assistance shall have primary responsibility for determining the overall direction for emergency response and relief operation;

19. Cooperation in capacity building for disaster preparedness and response.

Cooperation in International Organizations on Security-Related Issues

20. Consultation and cooperation on matters of shared interest on security related issues in the United Nations, other international and regional bodies.

Community Understanding and People-to-People Cooperation

21. Endeavouring to foster contacts and interaction between their respective institutions and communities with a view to improving mutual understanding of security challenges and responses to them.

ARTICLE 4

CONFIDENTIALITY

1. The Parties shall protect confidential and classified information received pursuant to the framework of this Agreement in accordance with their respective national laws, regulations and policies.

2. Notwithstanding Article 10, should this Agreement terminate, each Party shall continue to comply with the obligation set out in paragraph 1 to information to which it had access under the Agreement.

ARTICLE 5

INTELLECTUAL PROPERTY

The Parties agree that any intellectual property arising under the implementation of this Agreement shall be regulated under separate arrangement.

ARTICLE 6

IMPLEMENTING MECHANISM

1. The Parties shall take any necessary steps to ensure effective implementation of this Agreement, including through conclusion of separate arrangements on specific areas of cooperation.

2. For the purpose of this Article, the Parties shall meet on a regular basis under the existing mechanism of the Indonesia-Australia Ministerial Forum (IAMF) to review and give direction to the activities under this Agreement.

ARTICLE 7

FINANCIAL ARRANGEMENT

Any expenses incurred in the implementation of this Agreement will be met by the Party incurring the expense, unless otherwise mutually decided.

ARTICLE 8

SETTLEMENT OF DISPUTES

Disputes arising in relation to the interpretation on implementation of this Agreement shall be settled amicably by mutual consultation or negotiation between the Parties.

ARTICLE 9

AMENDMENT

This Agreement may be amended in writing by mutual consent by both Parties. Any amendment to this Agreement shall come into force on the date of later notification by either Party of the completion of its ratification procedure for the amendment.

ARTICLE 10

ENTRY INTO FORCE, DURATION AND TERMINATION

1. The Agreement shall enter into force on the date of receipt of the last notification by which the Parties notify each other that their internal requirements for the entry into force of this Agreement have been fulfilled.
2. This Agreement shall remain in force until one Party gives written notice of its intention to terminate it, in which case this Agreement shall terminate six months after receipt of the notice of termination.
- 3 .Termination of this Agreement shall not affect the validity or the duration of any arrangement made under the present Agreement until the completion of such arrangement, unless otherwise decided by mutual consent.

IN WITNESS WHEREOF, the undersigned being duly authorized thereto by their respective Governments, have signed this Agreement.

Done at ... on this ... day of ... in the year of ... in 2 (two) original copies in both Indonesian and English languages, all texts being equally authentic. In case of divergence in the interpretation, the English text shall prevail.

For the Government of The Republic of Indonesia

For the Government of Australia