

## The Last Frontier: Australia's Maritime Territories and the Policing of Indonesian Fishermen

Ruth Balint

The stretch of water that divides Australia and Indonesia measures some 2000 kilometres in length. It incorporates two seas, the Timor and Arafura, and a number of reefs, islands and a continental shelf rich in oil and gas resources. The creation of seabed boundaries within this maritime zone has been the subject of discussions in Jakarta and Canberra for over three decades. These high level discussions, marked until recently by the political civility and decorum required for matters of such sensitivity, have been far removed from the stormy nature of relations at sea level. In ways reminiscent of the colonial process of territorial expansion on the mainland, these waters have been transformed into a frontier zone, a maritime site to be mapped, owned, exploited, militarised and policed. As a result, eastern Indonesian fishermen, who have fished in these same waters for centuries, have been subject to practices of eviction, containment and incarceration which are similar to the experiences marking European colonisation of Aboriginal populations.

Territory has always been a landed concept in the national imagination. Australia was an 'island nation', a concrete portion of continental earth, a 'land girt by sea'. The borders of the nation state stopped at, or just beyond, the water's edge. In 1908, the establishing of a three mile quarantine line, called the 'measures of defense at the frontier', created a strategic border zone around the periphery of the continent, staked out by imperatives of protection, security and control. It was the *fait accompli* of colonial endeavour, the geographic signifier of the nation as a unitary body, an integrated whole.<sup>1</sup> Beyond this intermediate maritime zone stretched the 'high seas', the oceanic 'no man's land' that was the dividing line of immunity between the diseased worlds of Asia and a white Australia.

The *terra nullius* debate, which has provided the framework for challenging the myths and discourses of Australian sovereignty has been equally tied to a particular geographic imagining of the 'island nation'. In this sense, ideas of colonised space, colonised peoples and the Indigenous experience of dispossession have been anchored to the island myth. Myth, because for over two decades new maritime borders have transformed Australia from an island in an international sea, to a country touching on the doorsteps of Indonesia and Papua New Guinea. Discussions between Indonesia and Australia over the mapping of exclusive economic zones led Australia in 1979 to officially declare a 200 nautical mile territorial limit, known as the Australian Fishing Zone (AFZ). The creation of this territorial limit brought within Australian jurisdiction the traditional fishing grounds which had been integral to the survival of the fishing communities of eastern Indonesia. Bruce Campbell has called maritime expansion 'Australia's last colonial act'.<sup>2</sup> It created massive displacement and impoverishment of the traditional seafaring communities of eastern Indonesia, and a new class of fringe-dwellers and dispossessed.

### Mare Nullius

Eastern Indonesian fishermen come from five main ethnic maritime groups, or *suku* that have settled throughout the south-east Indonesian archipelago: the Makassarese, Buginese, Madurese, Butonese and Mandarese. These groups make up what is a unique Indonesian maritime economy, based on their expert knowledge of the sea and the fishing trade and their traditional navigating and boat building skills. Eastern Indonesian fishing communities also have a strong cultural investment in the sea, which are commonly referred to ‘gardens in the ocean’. It is a life force to be accorded respect and deference and a life giver, the only source of survival for fishermen and their families.

Indonesian fishermen have traditionally fished for sedentary marine organisms, *trochus* shell, *trepang* (sea cucumber), tortoise-shell and pearl-shell, and some as well for shark, to sell through the Baubau or Ujung Pandang markets. The species targeted by the fishermen are determined by market demand, and in the past ten years fishermen fishing for reef products have almost exclusively focused attention on *trochus*.

In centuries past these peoples also visited the Australian mainland, conducting trade and relations with local Aboriginal people. Their presence in Australian northern waters has been recorded long before white settlement. Folklore, songs and cave paintings tell of links between Australia and Indonesia dating back at least 500 years. Visits to the area continued relatively freely up until the 1970s. But in 1974 the Australian government ran a preliminary series of surveillance patrols, and in 1975 launched Operation Trochus which was a massive military operation intending to evict the fishermen from the area.

The 1970s signified a change in the government’s approach to the presence of the fishermen, summed up by a senior fisheries official in 1980:

There was no problem off the WA coast about seven years ago. Till then the only known intruders had been the occasional apologetic fishing party swept off course by wind and currents. But from about 1973 Indonesian fishermen had begun to intentionally find their way to the fertile WA waters. They now constituted what was considered a commercially oriented invasion.<sup>3</sup>

The shift in maritime borders and the discovery of fuel resources gave new priorities to the region. Waters that had previously been imagined as ‘empty’ were suddenly classified as sovereign, fertile and desirable. The image of the fishermen shifted to fit into this schema. Before the maritime expansion, they were constructed as representing a few subsistence fishermen who occasionally strayed accidentally into Australian waters. It was an image that was strongly reminiscent of the dominant myth of Aborigines as itinerant and ‘wandering’, or lacking attachment to any specific region.

It was not a hard leap then to associate a public recognition of the fishermen’s presence with ideas of invasion. Those who had previously been classified as a ‘few storm-blown fishermen’ were suddenly transformed into ‘commercially oriented invaders’. From a myth of emptiness to the myth of invasion, from an image of the fishermen as harmless visitors to one of competitors for Australian resources, the moral and political justification, their eviction and criminalisation were swiftly established. The long association of the waters off the north west coast with the

threat of Asian invasions or the yellow peril helped ensure that Indonesian fishermen were easily assimilated into a popular stereotype of Asian illegality.

Bruce Campbell and Bu Wilson have traced how the myth of *terra nullius* has its modern maritime equivalent in the myth of *mare nullius*.<sup>4</sup> This article gives some background to this thesis but moves beyond the discourses that have legitimised the dispossession of Indonesian fishermen, to investigate the modern experience of eastern Indonesian fishermen in their interaction with the Australian state. The various stages of interception at sea, court cases, boat burning, and incarceration which Indonesian fishermen have to undergo if caught fishing ‘illegally’ are dramatic moments of confrontation between an industrialised nation state and a relatively powerless, fourth world population. The system of punishment and retribution in place since the 1970s illustrates an alarming late twentieth century example of intransigent and entrenched colonialist attitudes within Australian authorial institutions. A legacy of racism that runs deep in the politics and practices of national security and the courts becomes clearly evident.

In April 1998, a letter appeared in the *West Australian* written by nine Indonesian fishermen on behalf of over thirty others serving sentences of between 6 to 18 months in Broome Regional Prison.<sup>5</sup> It received little public reaction yet the fact that it was published at all was striking. It began:

WE, THE traditional fishermen of Papela, on the island of Roti, would like to tell our story ... Our ancestors told us not to take more fish than we needed so that there would always be plenty for future generations. Now we are allowed to fish only in a small area in the middle of our fishing grounds called the MOU. It is a poor fishing area so we must fish for most of the year.

In 1974, just prior to the launch of Operation Trochus, the Indonesian and Australian governments signed a Memorandum of Understanding (MOU), which outlined the division of seabed resources and maritime boundaries. It also designated a small ‘box’ area (known as the Timor Box, or MOU area) within the prescribed AFZ where Indonesian fishermen could have limited rights of access. The MOU area incorporates five reefs, the largest of which is Ashmore Reef, considered culturally and economically the most important to the fishermen, which they call *Pulau Pasir*, or Sand Island. It is also the closest to Indonesia’s island of Roti, about 80 kilometres away. Since 1983, however, it has been declared a national nature reserve from which no flora or fauna can be removed, making it out of bounds to the fishermen.<sup>6</sup>

In theory an act of compensation, the MOU has in reality proved to be an eviction notice. Confinement to a tiny part of what was once their fishing grounds has resulted in the area being dramatically overfished in the past two decades. This has also led to more fishing expeditions as the competition intensifies for fewer and fewer resources. The traditional methods of ecological preservation which have generally been acknowledged worldwide to be an integral part of most ‘traditional’ fishing systems, have been destroyed.<sup>7</sup> Indonesian fishermen have been displaced from their original resource domain and consequently traditional means of ensuring the area’s sustainability have been lost. What was once seasonal work of two fishing expeditions a year has become a year long bid to survive.

The MOU has not only restricted the fishermen spatially, it has locked them into a technological time warp. It was decreed that only ‘traditional fishermen’ can

legally enter the MOU area. This was described as meaning those individuals ‘who have traditionally taken fish by methods which have been the tradition over decades of time’.<sup>8</sup> In other words, it is *method* that is used to define tradition and determine right of entry, and not prior occupancy of the region. Thus, only fishermen in sail or paddle-powered wooden boats, known as *perahu*, are allowed within the MOU area. The Australian Law Reform Commission has since declared that: ‘There is no reason why the incorporation of new materials should be considered as ... not traditional’.<sup>9</sup> Yet in order to avoid prosecution, fishermen are being forced to go to sea in outdated and fragile craft without auxiliary motors, radios or other forms of safety and navigational equipment. This equation of ‘traditional’ with ‘primitive technology’ is not only historically and intellectually flawed, it has had major and tragic ramifications for the fishermen and their communities:<sup>10</sup>

Our sailing boats are not allowed to carry motors and because of this hundreds of our fishermen have drowned in the cyclone seasons. If the winds and currents are unkind to us and we drift out of the MOU we are arrested and towed into Broome.

One effect of the MOU has been to hamstring an Indonesian government-sponsored program to install small motors on traditional perahu. KIFA, the Kimberley Indonesia Friendship Association and one-time watchdog of the treatment of Indonesian fishermen, estimated that in the decade to 1996 at least 140 fishermen had drowned while fishing in waters designated by the MOU.<sup>11</sup> A report in the *Indonesian Observer* stated that 32 fishermen from the village of Papela on the island of Roti had not returned from expeditions undertaken in January and March 1994, during which time cyclones struck. In the report it was acknowledged that fishermen ‘had long wanted to use small engines to enable them to sail free of deadly cyclones which frequently hit their traditional fishing grounds’.<sup>12</sup>

Fishermen rely on the wind, stars, currents and prominent landmarks to negotiate their direction. Their knowledge embodies radically different conceptions of sea space and maritime boundaries from those so-called traditional dictated by law. While the west operates with maps and radar systems, the fishermen rely on oral histories and maritime experience. The MOU area, a box delineated by straight concentric lines on a map, and determined by precise western methods of navigation, is in this context an extremely foreign concept. The fishermen, many of whom cannot read maritime charts, often claim that they are unaware they stray outside the legal boundaries of the MOU. One fisherman, adamant that he had no intention of violating Australian law, argued: ‘how do you know as a person exactly where you are without all those modern equipment which could easily tell you, you’re here, you cross, and things like that’.<sup>13</sup>

The Australian legislation that authorises the interception of Indonesian fishing boats on the premise of trespass or illegal entry (using motorised boats) is the Fisheries Management Act 1991. Royal Australian Navy (RAN) patrol boats are commonly chartered to intercept and arrest the fishermen if they are deemed to be engaged in illegal fishing activities. Indonesian fishermen have reported incidents where they experience both physical harassment and intimidation at the hands of Australian personnel. There is general consensus that ‘the navy is really rough’.<sup>14</sup> One crew member reported what happened to his group when they were apprehended:

When the Navy boat come beside (us), with such force hit our boat it broke. This is the story. So this navy come in and tell Saryono to throw out these stones, what we use as a ballast at the bottom of the boat. But Saryono is sick, with malaria. He is shaking. So this navy man hit Saryono's head three times ... with that stick (baton). So after that, after he got hit three times, he vomited. So then he vomit and then he passed out. So I think for my feeling that navy is very vicious towards Indonesian fishermen.<sup>15</sup>

An ABC documentary *Below the Wind* (1995) showed a 110 metre navy patrol boat, powered by high speed turbines, with the latest in modern maritime technology including sonar, radar, torpedo systems and an armed crew, closing in on an Indonesian *perahu* while firing over the top of the crew's heads and at their boat hull. An Australian sailor turns to the camera and smiles: 'I love it when they try to get away'.

These encounters between *perahu* and navy frigates are vivid reminders of the different ways in which the ocean is perceived and utilised. For the Indonesians, the ocean is a source of survival, intimately connected to cultural traditions and lifestyle. One of the oldest ethnic seafaring groups of Indonesia, the Bajau Laut, have seven names for the sea: medicine, home, a road, food, friend, brother or sister, and it is the home of the Umba Made Lau, their ancestral god. The sea is talked of as a destiny and the increasing number of fishermen being arrested together with the increase in agencies and funds being poured into their apprehension, is testimony to the fact that they are not easily deterred.

The AFZ is disputed territory and it is a worldwide truism that tensions between Indigenous peoples and nation states take many forms, but none is quite so definitive as the question of resource sovereignty. The discovery of rich oil and gas fields in the Timor Sea has made these waters a site of profitability and power. It seems that the mainland theatre of colonial conquest, and the violent struggle for control of land and peoples is in some degrees being reenacted at sea.

Once fishermen have been intercepted and apprehended, Indonesian fishing boats are towed to the north west coast. Just north of Broome at Willie Creek, the fishermen are detained in a makeshift holding camp, under the jurisdiction of the Immigration Department, and await trial.<sup>16</sup> As they are not citizens, they automatically become classified as illegal entrants under the 1989 Migration Act. The federal ombudsman questioned the detention process: 'the fishermen have not sought to enter Australia but have been brought here, against their will'.<sup>17</sup> The current state of the detention facility at Willie Creek and standard of care was also criticised, as was the practice of long periods of confinement for fishermen awaiting trials:

We also worry that our families will go without food while we wait, so even if we know we are not wrong, we have to plead guilty. If we are arrested twice we get a big fine and because we have no money we are sent to prison.

The fishermen are commonly the sole breadwinners for their extended families. Yet pleading 'not guilty' has often led to detention of up to six months before fishermen even receive a hearing. Many change their pleas to guilty in order to expedite the process. In November 1997, the local Broome newspaper interviewed Captain Zakari Batuk, whose boat was sunk during arrest and towing by a RAN boat:

In this pressure situation I pleaded guilty because the judge in the Broome Court-house didn't give me a decision ... He also said that my case might have to be delayed

until 1998. Because of that I pleaded guilty because the delay was too long for me to bear. I was thinking about my wife and children who don't have any food ... If I pleaded not guilty my family would have to look after themselves as there is no one else to look after them because all the men in my family who could have helped have had to go to sea. They have probably become beggars already.<sup>18</sup>

Because of cutbacks, since 1989 the WA Legal Aid Commission has refused to provide legal counsel to the fishermen.<sup>20</sup> Broome Legal Aid ceased its intermittent assistance in October 1996. One Legal Aid lawyer argued that even if they did provide counsel, the presence of legal representation would only give 'a false impression of a fair trial'. He explained:

In reality, the presence of legal aid has no chance of affecting the outcome ... They do not speak English, have only their word against sophisticated Navy radar equipment, do not understand our system of law, and are destitute. It is, plainly speaking, a joke.<sup>20</sup>

The trial is a traumatic experience for the fishermen.<sup>21</sup> Lack of information about their legal rights intensifies their feelings of powerlessness and alienation. At the trial of one crew for illegal fishing offences, a member was asked if he had anything he would like to add to the proceedings. Speaking through the court interpreter who, as is commonly the case, did not speak his dialect, he answered: 'It would not matter what I said to you, you will not listen to me and you will not understand'.<sup>22</sup> Another fisherman, who had lost his nine month old daughter while in Broome prison, and had only just heard the news that his wife was sick, spoke his frustration: 'This magistrate doesn't know what it is like, *he has never ever been poor*. He locks up the breadwinners and crucifies our families'.<sup>23</sup>

Indonesian fishermen on their first offence are given a long term good behaviour bond. On their second offence they are handed down monetary penalties with no time to pay, and fines range according to the number of times the defendant has been arrested and the nature of the conviction. To these men, who represent one of the poorest sectors of a poor third world economy, fines of this nature are punitive. Without financial means, the fishermen are sent immediately to prison. Their terms are determined at the 'repayment' rate of \$50.00 per day. The justification for penalties of this kind was articulated by the Broome magistrate Col Roberts at one of many hearings with identical outcomes:

My only option is to impose a fine. If I impose a fine, it must reflect the seriousness of the offence. If I were to fine you on your level of income it would not be a deterrent.<sup>24</sup>

After imposing a \$20,000 fine on the fisherman, Roberts referred to the *La Ode Arafin* case as the legal precedent for his decision. A landmark case in the Supreme Court of Western Australia in 1991, *La Ode Arafin and Others v Colin Ostle and Others* was presided over by Justice Pidgeon. His conclusion, that to impose a fine beyond a defendant's means was not only legitimate but necessary in these cases, 'even though it is known that the defendant will serve a default term',<sup>25</sup> has become rule of thumb for the WA courts in sentencing fishermen.

However the commonwealth *Maritime Legislation Amendment Act 1994*, which amends the *Seas and Submerged Lands Act 1973*, states in part:

Coastal State penalties for violations of fisheries laws and regulations in the exclusive economic zone may not include imprisonment, in the absence of agreements to the contrary by the States concerned, or any other form of corporal punishment.<sup>26</sup>

This statement incorporates Part IX (Article 73) of the 1982 *United Nations Law of the Sea* (UNCLOS) to which Australia is a signatory. There is no agreement to the contrary with Indonesia and no provision between the two countries for the imprisonment of Indonesian nationals found guilty of fishing illegally in the AFZ. To impose fines beyond an offender's means, and to hand down *de facto* terms of imprisonment, is a direct contravention of the human rights obligations in UNCLOS. By the incorporation of Article 73 and its express removal of the right to imprison foreigners found guilty of fishing offences, the international agreement and obligations now have the force of domestic law in Australia.<sup>27</sup> Yet WA magistrates continue to circumvent these obligations by using the WA Sentencing Act and other state legal precedents to justify the harshest prison terms available. By contrast, in the Northern Territory there is no imprisonment of Indonesian fishermen.

The public prosecutors at these trials commonly base much of their evidence on the environmental damage inflicted by fishermen in Australian waters. Sedentary marine organisms and fish stocks are being severely depleted by Indonesian fishermen who, it is argued, take 'indiscriminately' and 'have no regard to preservation of any species'.<sup>28</sup> The accusation of environmental destruction encourages the labeling of Indonesian fishermen as plunderers and pariahs, images that stem from an official reasoning that they have forsaken their traditional 'subsistence' activities in favour of commercial ones. Such distinctions are superficial. Indonesian fishermen have always been commercial. Their fishing activities have always been geared towards the sale of their catch to the Chinese market. Yet the myth that the activities of the fishermen have evolved from being a small subsistence operation to a large and illegal commercial one lends weight to the ideas of threat and danger associated with the fishermen. For example, reporting on the 1998 trial of two crews caught fishing for shark outside the MOU boundaries, by 12 nautical miles and 35 nautical miles respectively, the local newspaper quoted acting prosecutor for Commonwealth Fisheries, Lisa Ward:

Ms Ward said there had to be a personal deterrent as it was a deliberate act for commercial gain which affected the sovereignty of Australia, the shark numbers in the ecosystem and was a high cost to the community ...<sup>29</sup>

Ward encapsulated all three of the fears manufactured in the modern version of the myth of invasion: that is, threats to Australian sovereignty, the Australian environment and the Australian taxpayer.

Of the sixteen crew of the boat Sirman Jaya, three were first offenders and were given good behaviour bonds of \$5000 for five years. For the rest, penalties for illegal fishing incursions handed down ranged from between \$5000 and, for the captain, \$20,000 (400 days in prison). In handing down the sentences, the magistrate concluded: 'Subsistence lives are far outweighed by the seriousness of the offence'.

The title of captain is a construct the fishermen are forced to adhere to in Australian courts, although commonly there is no such title on board *perahu*. Fishermen nominate one of their crew to take the role in dealing with Australian authorities. In

the case of the Sirman Jaya, the captain was La Bau, who comes from the small island of Maginti, situated about 250 kilometres off the north west coast of Australia. Maginti is one kilometre long and 400 metres wide. 5 000 people live on this island. There is no land to grow food, and this man's family has been fishing in these same waters for centuries.

In May 1990, La Bau was given 200 days in Broome Regional Prison on a charge of illegal trespass in the AFZ. In July 1991 he was caught again and sentenced to another 200 days. Three years later he was sent to serve 220 days and in February of the following year he was sentenced to ten months. In 1997, only three months after his return to the island, he was arrested again on a fishing trip and given another 12 month sentence. This year after the completion of his last term, he was sentenced to 400 days. In handing down this penalty, the magistrate said: 'I have no doubt you are unrepentant. The penalties in the past have not worked'. La Bau is 31 years old. During the time he has been detained his mother and two of his children have died.

The fishing communities of eastern Indonesia have been severely affected by the recent political and economic crises in Indonesia. There are food shortages and famine on the islands, and the cost of goods has risen dramatically. La Bau explained:

But what can I do? Everything at home, the price is going up ... So with this goods' rise, it's like forcing us to go to sea ... if we don't go fishing then we starve and maybe come to death. [And] there is no land available to do cultivation.<sup>30</sup>

The penalties imposed on the fishermen are not fines alone. Catch and equipment are confiscated and boats are declared forfeit by the court and burned. Elizabeth Morris, a barrister, notes that fines aside, this is already a very weighty penalty.<sup>31</sup> This extra punishment is supposed to act as a 'deterrent' to the fishermen.

Boat burning by Australian authorities has been devastating for fishing communities, for whom boat building is a traditional, time-consuming and costly craft. Each boat is named and hand painted by *perahu* craftsmen in special colours before being sent on its voyage. Professor Fox notes that the loss of any *perahu* represents a severe spiritual as well as economic loss, each boat being endowed with a special 'spirit' during the building and launching process to ensure it brings good fortune.<sup>32</sup> Destruction of boats spells the destruction of the spirit of good fortune. Moreover fishermen usually purchase their fishing boats on a loan system. Costs are shared communally between members of the crew and repayment of loans is made once they have returned and sold their catch. The loss of the boat has a serious impact on the livelihoods of a minimum of thirty to forty people from the community.<sup>32</sup>

We are also told that the Australian government burns our boats to teach us a lesson but this is cruel because it leaves us with big debts and no means of making a living.

Together with imprisonment and the confiscation of catch and equipment, boat burning makes up for a cycle of debt most fishermen cannot foresee escaping in their lifetime. Without boat, catch, equipment or the freedom to fish, debts become unmanageable. Any money earned in prison is confiscated to pay for the fishermen's repatriation. Whilst in prison, their families are reduced to penury and must borrow

to survive. To repay their debts, most fishermen believe they have no option once they return home but to borrow finance and go fishing again.

Broome Prison held on average forty Indonesian fishermen at any one time during 1998 and Roebourne Prison is now also being used to house long-term Indonesian prisoners. Roebourne is 700 kilometres south of Broome and this is the first time Indonesian fishermen have been sent to another prison, where access to Indonesian language speakers or any support network is absent. One older man spoke of his personal anguish:

I just want to die. Thinking of these people I left behind and one of them already died. Dead. And if I die, then who else will look after these people?<sup>34</sup>

Exactly one year later, and only six months after his release from Broome Prison, this man died.

In 1974 during the MOU negotiations between Indonesia and Australia, Australia agreed to undertake to donate aid resources towards assisting those directly affected by the Australian appropriation of 200 nautical miles of sea space. To date this has not happened, despite repeated assurances from various governments fulfil the undertaking.<sup>35</sup> Instead the number of government agencies and the amount of funds involved in the apprehension, prosecution and detention of Indonesian fishermen has increased enormously in recent years. Punishment of Indonesian fishermen has become a growth industry. The federal ombudsman lists fourteen major government departments and agencies now involved in the development and carrying out of policy towards Indonesian fishermen.<sup>36</sup>

Despite this (or, depending on how one looks at it, because of it) the current punitive tactics of arrests, boat burning and incarceration are not working. Since 1992, intrusions into the AFZ have continued to increase and with them the number of fishermen in Australian prisons. All apprehensions have led to convictions, apprehensions and forfeiture. One speculation as to why a clearly inadequate approach continues to be adhered to, is that given the number of agencies now involved, there is an even greater need to ‘prove’ their viability. Another is that Indonesian fishermen are so absent from the mainstream public eye, so ‘other’ as to be almost invisible and that there has not been enough interest or protest to motivate change.

There is another reason which is rooted in the history of modern European nation building. The appropriation of maritime space as sovereign territory is a colonial act. The brutality of Aboriginal dispossession on the frontiers of the mainland is being quietly and efficiently reenacted on the new maritime frontiers of the Australian state. Evicting indigenous peoples from traditional hunting grounds without compensation, forcing them into reservations, impoverishing their communities and criminalising them for continuing to endeavour to maintain contact with a way of life in defiance of what are seemingly incomprehensible laws, is a familiar colonial sport. It is also the sport of western industrial capitalism. Local, particularly indigenous peoples are marginalised in the bigger game of ‘resource management systems’ and ‘resource-based national development’. Richard Howitt *et. al.*, writes:

For most industry participants, resource management strategies founded upon justice, equity, sustainability and empowerment for the communities affected by industrial operations is hard to imagine, let alone concede in practice. These individuals,

*Ruth Balint*

and the corporate and bureaucratic structures which support and nurture them, have grown used to being able to exercise power in ways which produce unevenness, inequity and unsustainability. For them, entrenched patterns of injustice have become invisible.<sup>37</sup>

In terms of money and resources, the cost to Australia of the surveillance, apprehension, arrest and detention of Indonesian fishermen has been enormous, if calculable. Yet the psychological, economic, social and human costs to the eastern Indonesian fishing communities are irreducible.

We are now desperately concerned for the welfare of our families and this is why we wanted to tell our story to the people of Australia.

## **The Last Frontier**

**Ruth Balint**

- 1 Alison Bashford, 'Quarantine and the imagining of the Australian nation', *Health*, vol 2, no 4, October 1998, p 396.
- 2 Bruce Campbell, 'The last colonial act: The expulsion of Indonesian fishermen from the North West coast', in Jan Gothard (ed.), *Asian Orientations: Studies in Western Australian History*, Centre for Western Australian History, Department of History, University of Western Australia, no 16, 1995.
- 3 Quoted in Bruce C Campbell and Bu V E Wilson, *The Politics of Exclusion. Indonesian Fishing in the Australian Fishing Zone*, Indian Ocean Centre for Peace Studies, No 5, 1993, p 36.
- 4 Chapter 3, *ibid*.
- 5 *The West Australian*, 5 April, 1998. Please note: This letter is quoted at intervals throughout the rest of the article. It is written in italics in order to distinguish it from other quotes, and is not further referenced.
- 6 Ashmore Reef National Nature Reserve.
- 7 See James Fox, 'Reefs and shoals in Australia-Indonesia relations: traditional Indonesian fishermen', in Anthony Milner and Mary Quilty (eds), *Australia in Asia: Episodes*, Melbourne, Oxford University Press, 1996, p 135.
- 8 'Memorandum of Understanding Between the Government of Australia and the Government of the Republic of Indonesia Regarding the Operations of Indonesian Traditional Fishermen in Areas of the Australian Exclusive Fishing Zone and Continental Shelf', signed Jakarta, 7 November 1974.
- 9 Quoted in Campbell and Wilson, *op. cit.*, p 78.
- 10 The treatment of PNG fishers is radically different to their Indonesian counterparts. Their fishing activities have been defined in terms of the purpose rather than the method. Their 'traditional' way of making a living has not been restricted to a 'subsistence' level but also includes rights to commercial fishing, which in the 1984 Torres Strait Treaty Act is called 'community fishing.'
- 11 Kimberley Indonesia Friendship Association, Broome. See also Jill Elliott, 'Indonesian Fishermen: A Western Australian Perspective', unpublished, Broome; Jill Elliott, 'Fishing in Australian Waters', *Inside Indonesia*, no 46, March 1996.
- 12 *Indonesian Observer*, 2 July 1994.
- 13 Interview, Broome, 28 May 1998.
- 14 Interview, Broome, 14 May 1998.
- 15 Interview Broome, 28 May 1998.
- 16 The Department of Immigration and Multicultural Affairs (DIMA) have contracted out its detention function to the private sector. The Willie Creek Detention Centre where the fishermen are held is privately owned.

- 17 'Administration Arrangements for Indonesian Fishermen Detained in Australian Waters', *Report Under 35A of the Ombudsman Act 1976*, August 1998, p 6.
- 18 *Broome Advertiser*, 12 November 1997.
- 19 See the *West Australian*, 10 January 1998.
- 20 Interview Broome, May 1998.
- 21 All fishermen interviewed agree to feeling humiliated or 'ashamed' during court proceedings. Many also said they can barely hear the interpreter because there is no pause for translation, and that many speak a different dialect to the Fisheries interpreter which increases their sense of powerlessness and alienation.
- 22 The trial of the 'Sirman Jaya' from Maginti, Broome Court of Petty Sessions, 21 May 1998.
- 23 Interview Broome, 13 May 1998.
- 24 Magistrate Col Roberts, Broome Court of Petty Sessions, 21 May 1998.
- 25 *La Ode Arafin and Others v Colin Ostle and Others*, unreported, Fct Sct of WA, Library No 8923AC, 18 June 1991, p 22.
- 26 Article 73, Part 3, *Maritime Legislation Act* 1994.
- 27 Submissions with Respect to the Sentencing of Good Behaviour Bonds and Entreatment of Indonesian Nationals Toto and Samah', unpublished, undated manuscript, Broome Legal Aid Office.
- 28 *ibid.*
- 29 *Broome Advertiser*, 9 September 1998.
- 30 Interview Broome, 28 May 1998.
- 31 Elizabeth Morris, 'Hooked, Line and Sink'er', unpublished manuscript, NT Legal Aid Commission, June 1995, p 7.
- 32 James Fox, op. cit., p 131.
- 33 *ibid.*
- 34 Interview Broome, 28 May 1998.
- 35 KIFA notes that where alternative methods of subsistence have been established with the help of private individuals, no fishermen from these islands have been jailed.
- 36 *Report Under 35A of the Ombudsman Act 1976*, August 1998, op. cit.
- 37 Richard Howitt, John Connell and Philip Hirsch (eds), 'Resources, nations and indigenous peoples', in *Resources, Nations and Indigenous Peoples: Case Studies from Australasia, Melanesia and Southeast Asia*, Melbourne, Oxford University Press, 1996, pp 20-1.