

Lesson still waiting to be learnt

By Clinton Fernandes

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The NSW Coroner's inquest concluded yesterday into the deaths of five journalists at the border town of Balibo in East Timor in October 1975 was the first independent judicial inquiry with the power to compel witnesses. Technically, the inquest was into the death of 26-year-old Brian Peters, who possessed the residential connection required to give the Coroner jurisdiction because he lived in Sydney. Since his death was so intimately connected with the deaths of the other four Greg Shackleton, Gary Cunningham, Tony Stewart and Malcolm Rennie, also in their 20s the court heard evidence concerning their deaths too.

The relevant background is that in October 1975 the Indonesian military was conducting a terror and destabilisation campaign in the border regions of East Timor. Its aim was to generate atrocities which could be falsely attributed to pro- independence East Timorese forces. It would then be able to disguise its invasion under the pretext of "restoring order". The Indonesian government claimed in public that it did not want to invade East Timor. Privately, Indonesian strategists gave details of their military plans to Australian diplomats, compromising them and ensuring they would go along with the charade. The strategy depended on an information blackout about the Indonesian military's involvement.

If the journalists had obtained film footage of the military campaign and conveyed it to the outside world, the cover story would have been blown. The five were killed within days of arriving at Balibo. (A sixth journalist, Roger East, was killed a few weeks later in front of more than 100 witnesses.) Were the Balibo Five shot accidentally in the heat of battle or were they executed deliberately? In 1996, an inquiry by Tom Sherman, a former Australian government solicitor, endorsed the crossfire or accidental death scenario by

concluding that the killings probably occurred in circumstances of continuing fighting. Sherman's conclusions relied heavily on the testimony of one witness from Lisbon (L1). It bore a striking resemblance to the version put forward in 1975 in a statement by a pro-Indonesian fighter.

That statement was later disavowed by its signatory, who revealed that it had been written by Indonesians who had forced him to sign it. L1's evidence was at odds with a range of other testimonies from 1975 onwards. Andrew McNaughtan, an Australian medical practitioner and activist, travelled to Portugal and tried to track down the mysterious L1. It was in the course of looking for L1 that he was introduced to Loreno Hornay, a commander of pro-Indonesian forces. Hornay informed McNaughtan that Indonesian military personnel had planned to kill the journalists so that they could not inform the world about the terror and destabilisation campaign. McNaughtan wrote a devastating critique of the Sherman Report. The journalist Hamish McDonald pointed out other problems, such as Sherman's claim that he had read all the relevant intelligence files on Balibo in one day, and his reticence when it came to examining the conduct of Australian diplomats.

Controversially, Foreign Minister Alexander Downer asked Sherman to mount a second investigation. In 1999, Sherman once again reported that the journalists had been killed in circumstances of continuing fighting. But the case would not die. In December 2000, Brian Peters' sister, Maureen Tolfree, made a formal complaint about the killing at the NSW Coroner's Court. In 2005, the Coroner accepted her legal team's argument that Peters' death came within the court's jurisdiction.

The inquest began in February 2007. Sixty-six witnesses were listed, including a dozen East Timorese who had originally fought on the Indonesian side. The Coroner found that the journalists could not have been and were not mistaken for combatants. In addition, they clearly identified themselves as Australians and as journalists. They were unarmed and dressed in civilian clothes. They all had their hands raised in the universally recognised gesture of surrender. They were shot and/or stabbed to death by the Indonesian military in a deliberate act to prevent them from revealing the truth. The

Indonesian military tactical commander gave the order to kill. He was almost certainly acting as part of a plan that emanated from the highest levels of the Indonesian military. The five corpses were dressed in military uniforms, guns placed beside them, and photographs taken in an attempt to portray them as legitimate targets. Since the killings were associated with, and occurred in the context of, an international conflict, the coroner has referred the case to federal authorities for possible war crime prosecutions.

War crimes can be prosecuted wherever they occur and regardless of the nationality of the victims or perpetrators. There is no statute of limitations. The Attorney- General can make an extradition request under the 1995 extradition treaty with Indonesia. Indonesia may refuse to extradite, but must then submit the case to its prosecutors. Australian law also provides the right to prosecute crimes privately even if the Commonwealth Director of Public Prosecutions has decided to not prosecute the matter. This private prosecution may, however, be taken over by the DPP, who can then discontinue it if he deems it contrary to the public interest.

But upholding international law can hardly be against the public interest or Indonesia's democratic transition, despite the Indonesian military's opposition. The case has important lessons for the future. It shows how policymakers think they can dismiss public opinion but are later defeated by it.

More than a year before Indonesia's invasion, a senior official warned that it would not be possible to conceal Indonesian brutalities from the Australian public, nor to conduct a good working relationship with Indonesia in the face of sustained public condemnation. He argued Australia should support self-determination for East Timor despite Indonesia's objections. This might have given then-president Suharto firmer grounds for resisting his military's desire to invade East Timor. Instead, policymakers chose a supposedly pragmatic, hard-headed realism, and, according to a key Indonesian general, "helped Indonesia crystallise its own thinking".

As a consequence, negative public opinion bedevilled the Australia- Indonesia relationship for more than two decades. Civil society groups in Australia and overseas

took up the cause of East Timor. They held rallies, disrupted press conferences, blockaded military bases, sabotaged military equipment and raised awareness wherever they could.

A continuum of activism developed between campaigners on the outside, armed freedom fighters in the mountains, and clandestine networks in the towns and villages. This movement of non-state actors grew in strength over the years, ultimately capitalising on the Suharto regime's diplomatic vulnerability during the Asian financial crisis. The liberation of East Timor in 1999 represented a major crisis in Australia-Indonesia relations. Australian diplomacy, often criticised on moral grounds, had failed even by its own standards of pragmatism, practicality and hard-headedness.

In this context, the incipient West Papua solidarity movement in Australia should not be dismissed by policymakers. Indonesian personnel who were indicted for war crimes and crimes against humanity in East Timor have not been punished but promoted and in some cases (Colonel Burhanuddin Siagian and Colonel Timbul Silaen, for example) posted to West Papua. Their impunity encourages the commission of more crimes. It may be possible to dismiss the views of the solidarity movement for the moment, but difficulties may arise if more Australians realise the extent of problem.

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