

Chapter 1: Contested Rights of Access

This study considers contested rights of access to fisheries resources between Indonesian fishermen and the Australian government in the Timor and Arafura seas. The imposition of international maritime borders between Australia and Indonesia has created a situation of conflict between various groups of Indonesian fishermen seeking access to traditional fishing grounds and the sovereign integrity of Australia's border regime. This conflict is exemplified by the many Indonesian fishing vessels apprehended for illegal incursions into Australian waters each year.

This book is an ethnographic study of the sailing and fishing voyages undertaken by one group of eastern Indonesian maritime people who operate in waters now claimed by Australia. It concerns Bajo people (also known as 'Bajau' or 'Bajau Laut' and by the generic terms 'sea nomads' or 'sea gypsies') who originate from the villages of Mola and Mantigola in the Tukang Besi Islands, Southeast Sulawesi, as well as Bajo from these communities who have recently migrated and settled in the village of Pepela on the island of Roti in East Nusa Tenggara. These Bajo belong to a much larger ethno-linguistic group known as the 'Sama-Bajau' who are found in scattered settlements in Indonesia, the Philippines and Malaysia.

For at least three centuries diverse groups of fishing peoples from islands now part of the archipelagic nation state of Indonesia have engaged in seasonal voyages to fish in the plentiful coastal and offshore waters, reefs and islands in the Timor and Arafura seas off northern Australia. This activity is focused on the collection of a range of marine products including trepang, shark fin, turtle shell, trochus shell and reef fish, some of which command high prices on international markets in Southeast Asia.

Since the early decades of this century, but particularly since the 1950s, Australia has successfully carried out a series of maritime territorial expansions culminating in the establishment of a 200 nautical mile Australian Fishing Zone (AFZ), legitimated under the 1982 United Nations Convention on the Law of the Sea (UNCLOS). These claims have gradually encroached on the traditional fishing grounds of a number of distinct groups from Indonesia and turned Indonesian sailors of the open seas into trespassers and illegal fishermen.¹

The Australian government has taken measures to recognise some form of prior fishing rights and to regulate ongoing access for Indonesian fishermen in offshore waters now under Australian control. Under a Memorandum of Understanding (MOU) signed with Indonesia in 1974, Australian authorities

¹ All voyages to Australia are undertaken by males. Thus the term 'fishermen' is used in preference to the term 'fishers'.

allow traditional Indonesian fishermen to operate within an area incorporating a number of offshore reefs and islands in the western region of the Timor Sea, located in the outer part of the AFZ. According to the minutes of a bilateral government meeting held in 1989, access to the area is limited to 'Indonesian traditional fishermen using traditional methods and traditional vessels consistent with the tradition over decades of time, which does not include fishing methods or vessels utilising motors or engines'. However, this arrangement has largely failed to address issues of marine resource management, recognition of fishing rights and prevention of illegal activity outside the permitted areas.

Australia's response to these illegal incursions has been to adopt a series of policy strategies aimed at deterring Indonesians and protecting fisheries resources. These policies take the form of: apprehension of boats and crew found operating illegally in the AFZ; prosecution; confiscation of boats, catch and equipment; jail terms for repeat offenders; and repatriation of fishermen to Indonesia at Australia's expense. Complementary to this approach, a series of educational visits by Australian officials to provinces of eastern Indonesia has been undertaken to inform Indonesians of the maritime boundaries existing between the two countries and the areas where Indonesian fishing is permitted inside the AFZ. This response costs Australian taxpayers millions of dollars each year. However, more controversial than the cost is the burning of the confiscated Indonesian fishing boats by Australian authorities (Fox 1998). Despite these strategies, Indonesian fishing continues.

The issues are part of a complex, tangled web of legal, political, economic and historical trajectories. Since the late 1980s, the problem has at times posed a serious impediment to diplomatic relations between Australia and Indonesia (Campbell and Wilson 1993: 6). It will continue to pose a serious challenge for both countries until a suitable and appropriate policy and management response is devised.

For some years a number of Australian commentators have argued that the shortcomings of Australia's policy and treatment of Indonesian fishermen are due, at least in part, to a lack of culturally sensitive insight and understanding (Campbell and Wilson 1993; Van der Spek 1995; Fox 1998). This argument has been supported in the report of the Joint Standing Committee on Foreign Affairs, Defence and Trade: 'if there are deficiencies in some aspects of Australia's handling of the problem of illegal fishing they were probably caused in part at least by a lack of knowledge about complex social and economic situations in eastern Indonesia' (JSCFADT 1993: 129).

Commentators have suggested that there is a limited acknowledgment and understanding of the diversity of ethnic groups fishing in Australian waters. Generally, Indonesian fishermen 'assume an inherent, inalienable Indonesian identity' in Australia (Pannell 1993: 72). They are categorised as one homogeneous

group and all prosecuted in the same fashion without any regard to their historically specific activities in northern Australia (Fox 1998: 134). In fact, Campbell and Wilson (1993) demonstrated that at least five different Indonesian fisheries were operating in the early 1990s. These involve a number of ethnically distinct populations using a range of technologies with differing historical antecedents.

It has further been argued that there are serious problems with the MOU arrangements and the definition of traditional fishing encapsulated within it. This definition restricts access to the allowed areas based on 'traditional' technology and ignores the dynamic aspects of culture change (Campbell and Wilson 1993; Fox 1998). Furthermore, Australian authorities continue to develop and enforce their policies without a clear understanding of the complexities of the situation, the social and economic impacts of the policies themselves, and the relationship of these to continued legal and illegal fishing activity (Campbell and Wilson 1993; Fox 1995a, 1998).

The issue of traditional Indonesian fishing has been further complicated since the late 1980s by a series of waves of illegal fishing activity involving a number of opportunistic groups of people from Indonesia who generally do not demonstrate a history of fishing activity in the Timor and Arafura seas. Consequently, the Australian Government's focus since the mid-1990s has been on the 'problem' of illegal fishing, 'solutions' to minimise or prevent illegal intrusions (Fox 1992; Reid 1992; JSCFADT 1993; Wallner and McLoughlin 1995a: 33), and the current impact of Indonesian fishing on Australia's marine resources (Wallner and McLoughlin 1995a, 1995b). While over-exploitation of some resources in the Arafura and Timor seas is a matter of concern, the problems faced by the fishermen have generally been ignored. Attention has focused on surveillance, apprehensions, prosecution and boat forfeiture, rather than on alternative management responses.

Alternative approaches involving both short- and long-term strategies are required (Russell and Vail 1988; Campbell and Wilson 1993; JSCFADT 1993; Fox 1998). These include identification of different groups of Indonesian fishermen in order that individual arrangements and treatment can be devised for each group, since the different fisheries 'present separate problems for which different measures are needed' (JSCFADT 1993: 117). Such an approach calls for investigation of the historical, social, cultural and economic organisation of each fishery active in Australian waters (Campbell and Wilson 1993: 193; JSCFADT 1993: 117; Fox 1995a: x). The absence of detailed ethnographic research has continued to mar Australian policy decisions (Van der Spek 1995). This study will begin to fill the gap by examining 'what is actually happening on the water' (Cordell 1989: 5) with regard to Bajo fishermen from Southeast Sulawesi.

The aim of this study is to examine the social, cultural, economic and historic conditions which underpin legal and illegal Bajo activity in the AFZ. It presents an analysis of the history and economics of voyaging, identifies elements of continuity and change in the patterns and organisation of voyaging, examines the material culture of fishing, and illustrates Bajo world views and rituals associated with boats and fishing. It also considers issues arising from Australian maritime expansion and Australian government policies regarding the treatment and understanding of Indonesian (especially Bajo) fishing activity.

The first question posed in this study concerns the effect of Australian maritime expansion and the 1974 MOU on Bajo fishing activity. As a result of area restrictions, Bajo fishing activity underwent considerable change from the late 1980s. However, the changes did not happen in isolation. This dynamism is examined through analysis of the interrelationship between Bajo responses to Australian maritime expansion and the wider impacts of the domestic and international trade in marine products. The Bajo are now firmly tied to the wider maritime economic patterns in Southeast Asia. They have adopted new technology and interact with the wider domestic and international economies in a creative and enterprising fashion.

Marcus and Fischer have stated the need for anthropology to embed local cultural worlds in larger impersonal systems of political economy. They argue that ““outside forces” are integral to the construction and constitution of the “inside”, the cultural unit itself, and must be so registered’ (Marcus and Fischer 1986: 77). The Bajo are a people attempting to accommodate cultural continuity within broader processes of influence (ibid.: 78). Transformations in material culture provide insights into issues of encapsulation and culture change among peoples previously categorised as ahistoric (Wolf 1982), Oriental (Said 1979), or ‘traditional’. A central theme of this study is the opposition of ‘tradition’ to ‘modernity’ in relation to Bajo fishing activity in the AFZ, because access to the 1974 MOU area for Indonesian fishermen is defined by the use of ‘traditional’ technology.

The second question posed in this study is thus about the immediate and long-term consequences of this concept of ‘traditional’ fishing contained in the 1974 MOU. While Australia and Indonesia continue to enforce policies towards ‘traditional’ fishermen as if they were people frozen in time, the Bajo are in fact demonstrating a form of cultural dynamism in response to a range of local and international forces. Because of changes in Bajo fishing activity, an adherence to entrenched notions of ‘traditional’ fishing activities as static, subsistence-oriented and non-commercial means that the Bajo are no longer considered to be operating ‘traditionally’ but ‘commercially’. Yet Bajo fishing activity in the AFZ has ‘traditionally’ been a commercial activity. Misunderstandings and inconsistencies have thus arisen in Australia’s treatment

of Indonesian fishermen. Furthermore, it appears that this has hindered attempts at providing solutions to the issues concerning traditional Indonesian fishing activity in the AFZ.

This leads us to the third question, which is why the Bajo continue to fish both legally and illegally in the AFZ. For as long as illegal fishing continues, the effectiveness of the Australian policy of deterrence is minimised. The apprehension and prosecution of Bajo fishermen, and the confiscation and destruction of their boats, not only fail to deter illegal fishing, but through the creation of indebtedness, result in further illegal fishing activity. There are also other historical, socio-cultural and economic motivations for continued fishing and sailing despite the loss of access to traditional fishing grounds, and despite technological restrictions, boat apprehensions and confiscations. The evidence counters claims that fishing activity is driven only by the prospect of monetary gain and the fact of resource depletion in Indonesian waters (JSCFADT 1993: 128).

A final question concerns future management of Indonesian fishing activity in the AFZ. Previous research by social and natural scientists, working in both academia and government, agrees that the most suitable options for sustainable management of marine resources and equitable arrangements for traditional fishermen in the MOU area rest on a re-negotiation of the MOU itself, a revised definition of traditional fishing, and more appropriate ways of regulating or licensing access for the different groups of traditional fishermen (Russell and Vail 1988: 139–43; Reid 1992: 8; Campbell and Wilson 1993: 186; Wallner and McLoughlin 1995a: 34, 1995b: 121; Fox 1996: 174, 1998: 130). The first step in this process involves identifying the fishermen 'who can demonstrate an historic interest in these waters' to whom 'priority access rights should be granted' (Wallner and McLoughlin 1995a: 34). This study therefore asks whether the Bajo have an historic interest in the AFZ.