

**Crossing Borders:
Implications of the Memorandum of Understanding on Bajo fishing
activity in northern Australian waters**

by

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Abstract

The 1974 Memorandum of Understanding (MOU) between Australia and Indonesia was a goodwill attempt to recognise the long-standing interests of Indonesian fishermen in the northern Australian region. Bajo originating from the villages of Mola and Mantigola in the Tukang Besi Islands, Southeast Sulawesi, are one group of fishermen who have a historic interest in the region and currently operate in and around the MOU area. This paper examines the effectiveness of the MOU in providing for recognition of indigenous Bajo fishing rights, sustainable marine resource conservation and management, and in curbing illegal Bajo fishing activity in the Australian Fishing Zone. An analysis of the key concept of “traditional” fishing encapsulated in the 1974 MOU shows it to be problematic with direct and far reaching consequences for Bajo fishermen. It is argued that until the problems of the MOU are addressed, by way of new arrangements incorporating a more culturally informed inclusive approach with respect to traditional Indonesian fishermen, other Australian policy responses to address illegal activity and marine resource conservation in the AFZ will be undermined.

Key Words

Bajo, fishing, traditional, fishing rights, Indonesia, Tukang Besi Islands, perahu, marine resource management.

Introduction

The Australian government endeavoured to recognise the long and continuous presence of traditional Indonesian fishing activity in waters off its northern shores through the signing of a Memorandum of Understanding (MOU)¹ with Indonesia in 1974. The MOU recognises limited fishing rights and provides a framework for regulating ongoing access and marine resource exploitation for traditional Indonesian fishermen in an area now under Australian jurisdiction. However, in the words of Fox (1998:114) “numerous problems have arisen as a result of this seemingly well-intended endeavour” and led to a succession of “unintended consequences”.

This paper examines the implications of the key concept of “traditional” regulating access for Indonesian fishermen to the MOU area and the effectiveness of the MOU in providing for recognition of indigenous Bajo fishing rights, sustainable marine resource conservation and management, and in curbing illegal Bajo activity in the Australian Fishing Zone (AFZ). In doing this paper focuses on Bajo fishermen originating from the villages of Mola and Mantigola in the

¹ The full title is ‘Memorandum of Understanding between the Governments 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’.

Tukang Besi Islands, Southeast Sulawesi, who are one group of fishermen who have a historic interest in the region and currently operate in and around the MOU area. Information on which sections of this paper are based was collected during ethnographic field research in Tukang Besi Island Bajo communities during 1994-1995. This research was conducted as part of a PhD in anthropology undertaken at the Northern Territory University (NTU).²

It is argued in this paper that until the problems of the MOU are addressed, by way of new arrangements incorporating a more culturally informed inclusive approach with respect to traditional Indonesian fishermen, Australian policy responses to address access rights for fishermen, illegal fishing activity and marine resource conservation in the northern AFZ will be undermined.

Background to Bajo activity

Bajo from the villages of Mola and Mantigola have since the early decades of this century, engaged in seasonal commercial voyages in wooden sailing boats to the shallow waters of the north and northwest coast of Australia and offshore islands and reefs in the Timor and Arafura Seas to fish for a variety of marine products including turtle shell, trepang, trochus shell, reef fish and shark fin. An approximate date of between 1908 and 1924 can be assigned to the beginning

² A detailed account of the social, cultural, economic and historic conditions which underpin Bajo fishing voyages in the AFZ and issues concerning Australian maritime expansion and government policies, treatment and understanding of Bajo activity can be found in Stacey (1999).

³ Three other Bajo settlements are located in the Tukang Besi Islands: Sampela and La Hoa at Kaledupa Island and the hamlet of La Manggau on Tolandono Island (near Tomea Island). Although it is predominantly fleets of boats from Mola and Mantigola that engage in voyages to the northern Australian region some Mola and Mantigola boats crews include men from these other settlements.

of this activity. Since then, Bajo have continued to voyage periodically to fishing grounds in the north Australian region (Stacey 1999).

A series of maritime expansions by Australia since the 1960s has resulted in increasing loss of access to fishing grounds for Bajo and other Indonesian fishermen. The expansion of the AFZ from 3 to 12 nautical miles (nm) in 1968 meant that fishermen lost access to fishing grounds within 12 nm of the Australian coast. Under the 1974 Memorandum of Understanding between Australia and Indonesia, fishing was permitted only within 12 nm of specified offshore islands and reefs claimed by Australia in the Timor Sea. In 1979 with the expansion of the AFZ to 200 nm, Indonesian fishermen lost access to fishing grounds stretching in a wide arc along the shallow waters of the continental shelf. The banning of fishing at Ashmore Reef in 1988 and the 1989 amendments to the 1974 Memorandum of Understanding which confined “traditional fishing” to a box area, resulted in further loss of access to fishing grounds (See Figure 1). As a result of Australian maritime expansion and MOU policy responses to Indonesian fishing activity, as well as a convergence of other interrelated social and economic events and forces, Bajo fishing methods and voyaging patterns altered significantly from the late 1980s (Stacey 1999).

Currently most Bajo fishing activity in the region is for shark fin caught using long line gear from wooden sail powered boats called perahu *lambo*. Fishermen are regularly apprehended for fishing outside the permitted areas by Australian authorities. Taken to Darwin and Broome for processing, fishermen are charged with illegal fishing under the Australian *Fisheries Management Act* 1991. In nearly all cases, fishermen are found guilty and punished through

boat, catch and gear forfeiture. Fishermen are repatriated to Indonesia while their boats are destroyed by burning. This dramatic, and as Stacey (1999) has shown, largely ineffective policy of deterrence has failed to curb ongoing illegal Bajo activity in the AFZ. This, in part, is related to the regulations of the MOU and conditions governing access for fishermen in Australian waters.

The Implications of “Traditional” and the Effectiveness of the MOU

The Australian governments’ first official attempt to regulate Indonesian activity in the north Australian region occurred in 1968 when a decision was made to permit traditional Indonesian fishing to continue within the 12 nm territorial sea adjacent to Ashmore and Cartier Islands, Seringapatam Reef, Scott Reef, Browse Island, and Adele Island, provided operations “were confined to a subsistence level” (DFAT 1988:1). This decision to allow “subsistence” fishing to continue was influenced by official perspectives of Indonesian fishing activity in the north Australian region at the time, that prior to the 1970s, Indonesians were engaged in subsistence fishing (Campbell & Wilson 1993; Stacey 1999).

This arrangement led to the signing of the 1974 MOU which allowed some Indonesian fishing activity to continue to operate in designated areas under certain regulations. In the 1974 MOU, no direct reference was made to the mode of production. Instead, “Indonesian traditional fishermen” were defined as “fishermen who have traditionally taken fish and sedentary organisms in Australian waters by methods which have been the tradition over decades of time” (1974 MOU).

Then, under amendments to the 1974 MOU in 1989, the original definition allowing access for fishermen in Australian waters is qualified with further reference to vessel and fishing technology permitted. Under the 1989 amendments, access to the MOU box 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 (Practical Guidelines for Implementing the 1974 MOU, 1989).

Traditional fishing is defined by the methods and vessels which have been used “traditionally”- that is “over decades of time”, the minimum period being two decades, qualified by the exclusion of “modern” methods and vessels. The direct reference to fishermen with a history of Indonesian activity in the AFZ is dropped, but it is actually implied by inference that fishermen have been fishing “over decades”. It is not clear whether “decades of time” is meant to apply to the two decades preceding 1974 when the original MOU was signed or two decades preceding the signing of the 1989 amendments. Implicit in the MOU, is the notion of traditional societies operating in a static and unchanging fashion over a long period of time. Following on from this, traditional rights of access are determined by continuing use of “traditional” - that is, unchanging technology.

The notion of “traditional” in the 1974 MOU reflects essential elements of a popular, prevailing, everyday view of indigenous tradition in Australia and elsewhere as ancient and unchanging

(Handler & Linnekin 1984; Merlan 1991; Hovelsrud-Broda 1997; Ewins 1998; Ritchie 1999). An everyday definition of tradition is “those beliefs and practices that have been handed down from generation to generation” (Ewins 1998:3). This view presumes that “an unchanging core of ideas and customs is always handed down from the past” (Handler & Linnekin 1984:273); in the case of the MOU “over decades of time”. A connected prevailing view of this notion of “traditionalism” (Merlan 1998) is that changes in tradition, such as the adoption of new methods as a result of adaptation to changing circumstances, are considered to be “inauthentic”, “modern” and therefore not “traditional”. Until recently challenged, these everyday views of tradition in the anthropological and historical literature, were widespread. They remain dominant in popular discourse and in the media.

These interpretations of “traditional” are formed and informed by now discredited Western assumptions and dichotomies stemming from 19th and 20th century social theories of cultural evolution. Nineteenth century evolutionary schemes saw a series of stages of social and cultural progress along which all societies advanced from “primitive” to “civilised”, or from “traditional” to “modern”. Terms such as “primitive” or “savage” refer to less technologically developed societies, characterised by subsistence economies and simple technology considered to be “out of time” (Fabian 1983) or non-contemporary, with western civilisation. More technologically advanced, capitalist or “modern” societies are characterised by commercially based economies. A direct effect of such notions is a corresponding practice of dichotomising “traditional” against other terms. Since “modern” often means “commercial”, “traditional” is equated with “subsistence” (Campbell & Wilson 1993:75).

While such notions and dichotomies are now rejected in social theory, and have been reconsidered in anthropological and historical literature, they still remain powerful, continue to inform the operation of the MOU and regulate Indonesian activity under the agreement. As a consequence, the regulations in the 1974 MOU effectively lock Indonesians and their material culture of fishing into a time bound past, resulting in a technological freeze (Campbell & Wilson 1993:185). Fishermen are denied cultural dynamism and the broader processes of influence in which they exist (Marcus & Fischer 1986:78).

Furthermore, the MOU does not specifically identify who is allowed access into the MOU area. Access is determined not by historically recognised use rights for specific groups who operated in the region prior to Australian maritime expansion, but by the technology used: any Indonesian “traditional” fishermen using a sail powered boat (or “traditional” methods and vessels) is allowed to fish in the region. In not identifying the specific groups who historically accessed the AFZ, the effectiveness and original intention of the MOU has been undermined, and its outcomes severely attenuated.

Another consequence of the MOU regulations restricting access by use of “traditional” technology is the resultant overexploitation of marine resources in the MOU area. One intention behind excluding the use of motorised vessels and methods by Indonesian fishermen in the face of increasing motorisation in the small-scale perahu sector in Indonesia in the 1970s was to limit the number of boats entering the MOU area. This in turn would control the level of resource exploitation and act as a form of resource management. The technology was unsophisticated or “primitive” enough to offer some protection for marine resources. But this technological freeze

failed to achieve the desired outcome. By not restricting the numbers of vessels or the amount of product taken, it has opened the area up to an unlimited number of fishermen in sail powered vessels, of which there is no shortage in Indonesia, and resulted in over-exploitation of resources in the MOU box area, particularly sedentary species at reefs and islands.⁴

Technological restrictions on motor power has led to other consequences for Bajo fishermen. By not permitting the use of motorised vessels, (which can also assist fishermen in times of bad weather and cyclones), fishermen must rely on sail power for propulsion. Sail power offers minor assistance in times of little or no wind, or strong currents, in keeping boats within the MOU borders. In such conditions when it is impossible to make any headway, it is possible to unintentionally drift outside the allowed areas. Engaging in fishing activity outside the MOU area can, if caught, result in apprehension.

Apart from a few areas around reefs and islands and along the edges of the MOU borders, the box is a relatively poor shark fishing ground (Wallner & McLoughlin 1995a:34). According to the Bajo, the best traditional shark fishing grounds are located outside the MOU box. Fishermen are forced to fish illegally outside the box area in an attempt to obtain an adequate catch in order to settle debts and secure adequate returns. Therefore, illegal fishing and consequent boat apprehensions occur in direct response to the ineffectiveness of the MOU to incorporate appropriate historic fishing grounds.⁵

⁴ Further pressures on existing limited resources at other reefs in the MOU area has also occurred as a result of the banning of fishing by Indonesian fishermen at Ashmore Reef National Nature Reserve (ARNNR) within the MOU area from 1988 onwards.

⁵ The declaration of Cartier Island as Marine Reserve in 2000 and a future probable ban on fishing within the Reserve as is the situation with ARNNR will result in further overexploitation of resources on other

The borders of the MOU box area are not marked or sign posted. They only exist as lines on maps, unconnected to any geographical features. Bajo navigation is based on reference to familiar landmarks, prevailing wind directions, stars and sea features. Their sailing and fishing activities have, until recently, never been confined to areas bounded by lines on maps. Even for the most experienced navigators it is difficult to determine *exactly* where the boundaries of the MOU box are. The MOU restricts access to fishermen using “traditional methods”, but expects high-tech accuracy. They are required to know border latitude and longitude coordinates to determine the location of the MOU boundaries that can only be accurately located using marine charts and sophisticated navigational equipment such as a Global Positioning System (GPS). Fishermen are required to know where modern borders lie but are denied the use of motors and sophisticated equipment under the MOU. However, once they cross the border, modern legislation applies; they are treated in the same fashion as any other illegal foreign fishing vessel and charged under the same sections of the Australian *Fisheries Management Act 1991*. Restricting fishermen to such conditions is not only inappropriate to the technology allowed to be used, but contributes to fishermen being outside the permitted areas.

New Approaches to Managing a Traditional Indonesian Fishery in the AFZ

The MOU is a simple document designed to deal with a complicated situation. Despite its failings, it does recognise limited fishing rights. However, an open access fishery system, which determines entry by technology rather than specific user rights, is informed by a defunct

reefs in the region. This too will contribute in forcing fishermen to fish illegally outside the MOU box area.

interpretation of traditional, confines fishermen to inappropriate fishing grounds, and applies European Cartesian notions of borders to restrict an activity based on completely different notions of borders, is unable to achieve sustainable resource management of the area, fair and equitable allocation of resources, or prevent illegal activity in the AFZ.

A new agreement in line with the “spirit of cooperation and good neighbourliness” of the original 1974 MOU should be negotiated. A number of new approaches and regulations have been suggested (Russell & Vail 1988:139-142; Reid 1992:8; Campbell & Wilson 1993:186; JSCFDAT 1993:132-133; Wallner & McLoughlin 1995a:34, 1995b:121; Fox 1992, 1996:174, 1998:130; Stacey 1999).

Australia and Indonesia should move to: 1) abandon the current definition of traditional fishing that defines access based on the technology used and assumes traditions cannot change; 2) identify specific groups of fishermen who have historically fished in the AFZ and provide appropriate rights of access for them; 3) introduce some form of management intervention in order to limit the number of vessels fishing to regulate access and to avoid over-exploitation of stocks; and 4) provide access to an area that better fits with cultural practices, previous fishing grounds of Indonesian fishermen and resource availability.

Recent research has identified the Bajo as one group of Indonesian fishermen who historically fished in the AFZ prior to Australian maritime expansion and continue to do so (Stacey 1999). A detailed analysis of the other groups operating in the MOU needs to be undertaken. Like the Bajo, the various groups of fishermen from the villages of Pepela and Oelaba, as well as

Madurese, who have operated in the AFZ for decades, also have legitimate claims for ongoing access to the AFZ.

The MOU requires renegotiation consistent with an approach based on contemporary circumstances and fishery management principles and practices, not those of 25 years ago. Future strategies need to excise out-dated assumptions and come into line with national and international standards. Contemporary approaches to fisheries management around the world are moving away from biological management, scientific modelling and centralised government responses. They are moving to partnerships between people, decentralisation, co-management between government and local communities, including local peoples' participation in decision making. It is now clear that fisheries management will not succeed without involvement of the fishermen themselves (Pomeroy 1994:2; White et al 1994; Hviding & Baines 1996:80; Mace 1997:2). More specifically, fishermen must have a recognised "stake" in resource management in the form of rights in order to provide incentives for resource protection (Bailey & Zerner 1992:11; White et al 1994:14). Management also needs to take into account the social, cultural, and economic dimensions of resource use and exploitation (White et al 1994:9). Given the applicability of these approaches, it is high time the Australian government addressed the "unintended consequences" of the MOU.

Conclusion

The 1974 MOU arrangement has failed to adequately and fairly address the issues of marine resource management, and recognition of fishing rights for groups who operated in the region

prior to Australian maritime expansion. Furthermore, rather than halting illegal fishing activity, the MOU regulations contribute to ongoing illegal incursions in the AFZ by Indonesian fishermen.

While the Australian government continues to support the implementation of an out-dated, ineffective and inappropriate agreement in its current form, marine resource conservation and management will be undermined, illegal border crossings will continue, and the rights of Indonesian fishermen to pursue their livelihood will be ignored. A more inclusive culturally informed approach should be taken to devise new agreements for specific groups with a historic interest in the area prior to Australian maritime expansion.

The challenge for Australian and Indonesian policy makers is to implement a flexible arrangement that incorporates the cultural dynamics of a traditional Indonesian fishery while at the same time maintaining legal, territorial, commercial and environmental principles and objectives of the nation state.

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