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The Hon Justice Michael Kirby AC CMG*

Timor is the easternmost of the Lesser Sunda Islands between the Savu and Timor Seas. That is what a geographer would tell you. An historian, on the other hand, would have to unravel the skeins of colonial history to explain what happened to the island and its peoples in the past five hundred years.

The Portuguese came first, looking for sandalwood in the 1520s. By 1613, the hardy traders from the Netherlands had established themselves on a sheltered bay at the south-western tip of the island. Their advent eventually drove the Portuguese north and east. Treaties of 1860 and 1914 finally set the final boundaries which divided the island in a way which profoundly affected its culture. There was a short British *interregnum* during the Napoleonic Wars from 1812 to 1815 when Western Timor was occupied. There was an equally short Japanese occupation during World War II

* Chairman, Executive Committee, International Commission of Jurists. Personal views.

when the contact with Australian soldiers occurred in the darkest days of the Second War. Briefly, between 1946 and 1949 West Timor was part of a Netherlands-sponsored State which was later absorbed into Indonesia in 1950. In 1975 Indonesia seized the eastern half of the island. It purported to incorporate it into the Republic as that country's twenty-seventh province.

No act of self-determination on the part of the people of East Timor acceptable to them or to the United Nations Organisation, took place in 1975, or since. To this day, the Indonesian conquest has not been recognised by the United Nations. But it has been accepted by the Government of Australia and reaffirmed in a treaty with Indonesia for the exploration and exploitation of the off-shore resources in the Timor Gap.¹ Somewhat belatedly, Portugal has commenced proceedings against Australia in the International Court of Justice contending that the treaty with Indonesia violates Portugal's rights as the competent authority in East Timor, as well as the rights of the people of East Timor. That claim remains unresolved at this time.

This is not a book of law. It is a book of stories. But these are no ordinary stories. They are homespun tales of the suffering of the Timorese people over the past fifty years. Most of them are told by ordinary chroniclers. Like Caesar's Gaul, the book falls into three parts. The parts collect the stories of particular suffering at different moments of East Timor's recent history. The first is the story of the Second World War. The second is of the days of peace between the end of that War and 1975 when hell broke loose. The third recounts what is called the "Javanese invasion and occupation" after September 1975. Doubtless now a fourth chapter of suffering could be written to tell of the events which have occurred since the shooting of dozens of people at the Santa Cruz Cemetery,

Dili, East Timor on 12 November 1991.²

It is difficult to describe the impact which the first part had on me. Like many Australians born just before or during the War, I had no direct knowledge or memory of the valiant support which the Timorese people gave to Australian troops in forward camps standing against the seemingly invincible forces of the Empire of Japan. Vague recollections of unheralded, unexpected courage were there, it is true. But it takes the tales of actual participants, recounted in their own modest ways, to bring home the enormity of the suffering. In these pages can be found the stories of faithfulness of the *creados*: the Timorese youths who latched onto Australian soldiers and showed them faithfulness unto death. The stories of quiet dependability, ungrudging devotion and loyalty in the face of terrible risks shine forth from these pages. It is good that these personal records have been captured and recorded. They speak with a directness that no historian, synthesising a mountain of data to a paragraph or two, could ever capture. It is right that succeeding generations of Australians should be reminded of the support their beleaguered soldiers and country had at a critical time for this nation's history from the ordinary people of Timor who owed them no loyalty yet gave their trust and fidelity.

What did they receive in return? A decoration was pinned on the tunic of at least one Timorese supporter who saved precious lives at the front. Letters and promises of money were handed over and treasured, but rarely redeemed. An occasional visit during halcyon days of peace resulting in the tracking down of a *creado* of old. A small number of personal relationships were kept or reaffirmed. But for the most part, the Australian response to the Timorese - during the War and after - was one of callous indifference and later cynical disregard. What has happened to our adherence to the

cornerstone of the United Nations Charter and its promise to the colonial people of the precious right of self-determination? Why have we not stood by these friends in their demand for that precious right?³

When the War became hot, the boats sailed away from Timor carrying their Australian cargo. The *creados* and their families were left waving from the shoreline. They clutched their letters of recommendation and kept them for many years later. Such East Timorese as did escape to this country were interned near Newcastle. Their tales are also caught in this book. Indifference and complacency set in as Portuguese rule was restored in 1945. The new state of Indonesia gradually flexed its muscles. And then in September 1975, it occupied East Timor in a flagrant violation of international law.

"Indonesia" was defined by the former colonial possessions of the Netherlands. History also was its precise definition. The myriad of islands over which it took control, in succession to the Netherlands, spread from Malaya to Papua. A multitude of races and languages, of creeds and different cultures. But the common thread of Netherlands rule afforded at least an historic basis for unity to justify the new, sprawling republic. Unsatisfied with such a vast realm, East Timor was seized. Its history had been quite different. Its languages were different. Its religion was different - and became more markedly so after "Javanese" hegemony began. The horrors of the takeover: the killing and the cruelty are reported here in the melancholy words of eye-witnesses. This is a living history, recounted by those who saw that history unfold. It is a tale told simply but with the vividness of direct involvement. It is not, of course, the whole story. Experience teaches the importance of always harkening to the other side. But the other side has the mighty

organs of the controlled media of a populous state to spread its message. This book contains nothing more than the simple stories of ordinary human beings. The tales of cruelty are legion. They are discouraging for those who hope that humanity can rise above its barbaric tendencies.

I have to warn the reader that the impact of these narratives is likely to produce a sense of shame, at least in Australians. For a people who liked us and responded so bravely to the perils of our soldiers in our time of threat, the East Timorese have good reason to feel betrayed. When their moment of peril came we stood quietly by as a large and powerful neighbour swallowed up a separate people with a distinct personality and without an act of self-determination. The East Timorese must still feel betrayed. But at least there are many voices now lifted in Australia and elsewhere to tell their stories and to remind distracted humanity of the promise to them, still unfulfilled.

In the midst of the gloom, we can have reason for hope. Hope springs from the courage and good humour of the Timorese themselves, telling their stories. It arises from the resolute refusal of the United Nations to accept the invasion of East Timor and its purported incorporation into the Republic of Indonesia without a referendum. It derives from the growing ascendancy of the spirit of independence in the hearts of the Timorese people themselves. As so many colonial empires of the past demonstrate (and as the Indonesian leaders themselves should by their own experience have known) it is impossible to hold down forever the spirit of a people who thirst for liberty.

We can also derive hope from the moves in the international community to assert and defend the right of the peoples of East Timor to an act of self-determination. I do not refer only to the Portuguese proceedings in the International Court of Justice, for to

them Indonesia is not a party. It does not accept the jurisdiction of that Court.⁴ Nor do I refer to the more recent evidence of flexibility on the part of some Indonesian leaders who have come to recognise, in the words of the Foreign Minister, that Timor is a "stone in the shoe of Indonesia". I refer rather to the phenomenon of the assertion of so many peoples of the right to self-determination which the United Nations Charter guarantees. The occupation of Tibet by the Peoples' Republic of China has never been accepted by the Tibetan peoples. There are many other instances throughout the world. The peoples of the varied lands along the spine of the former Soviet Union are rekindling their awareness of their histories, languages and cultures. This great movement has produced a number of happy outcomes so recently thought improbable. The Baltic States of Estonia, Latvia and Lithuania for example have reasserted their independence. They now control their own destinies. Of course, some outcomes are not so happy, as the unfolding drama of the states of Yugoslavia daily shows on our television screens.

There will be some who will say: wait for changes of liberalism and democracy to emerge in Indonesia itself. Wait until some new kind of federal arrangement emerges to permit the Timorese to live in loose association with the vast republic around them. Wait, alternatively, until the forces of explosion in Aceh, West Papua and other islands of this heterogeneous nation blow it asunder. Just wait. Yet, for some, each day is painful. Each day of liberty denied is a whole people in a national prison of discontent. For such people the demand to wait is unconvincing.

The attempt to stamp out group identity and to deny the peoples' right to self-determination guaranteed by international law is doomed, ultimately, to fail. Self-rule may be inefficient. It

may even be painful to revive historical notions of separateness. But these are deep currents, not easily redirected. The will of the people, in a territory with a distinct history, religion, culture, tradition, economy and political viewpoint will ultimately prevail. Let there be no doubt of that.

What, then, do these tales tell us in Australia - the neighbour to Timor and to Indonesia? Set aside the reminder of human cruelty, greed, courage, valour and love. There is an even larger lesson. It is the one Thomas Paine gave as a warning to the fledgling American revolutionaries:⁵

"He that would make his own liberty secure must guard even his enemy from oppression; for if he violates this duty he establishes a precedent that will reach to himself."

If such a duty is owed to an enemy, how much more is it owed to a people who were faithful and true? The new world order cannot rest upon unconsensual seizures of one people by another. Still less can it rest upon convenience, economy and mutual economic advantage of neighbouring states. It must rest upon the rule of law: international law safeguarded against the cancer of the denial of basic rights.

The denial of the right to self-determination of the people of East Timor is a fundamental breach of the United Nations Charter and of international law. That must be plainly and repeatedly stated. One day, that breach will be repaired. The stories in this book tell Australians why they must make a choice - a choice of principle. They leave no doubt where that choice must lie. In justice unrepaired a precedent exists which, one day, unless corrected, may reach even to ourselves.

ENDNOTES

1. See Treaty between Australia and the Republic of Indonesia on the Zone of Cooperation in an Area between the Indonesian Province of East Timor and Northern Australia, Timor Sea, 11 December 1989, in force 9 February 1991. *Aust Treaty Series* No 9, 1991. See G J Evans, Statement, (1991) 62 *Monthly Record* 73.
2. See International Commission of Jurists, Australian Section, *Timor Tragedy*, Report on the Incident at Santa Cruz, 12 November 1991.
3. The right of self-determination is reflected in Article 1 of the *International Covenant on Civil and Political Rights* and also in Article 1 of the *International Covenant on Economic, Social and Cultural Rights*. It reserves to all peoples the power to "freely dispose of their natural wealth and resources".
4. See J-P Fontaine, "The Portuguese Timor Gap Litigation Before the International Court of Justice: A Brief Appraisal of Australia's Position" (1991) 45 *Australian Journal of International Affairs* 170.
5. Thomas Paine cited in *United States v Humberto Alvarez-Machain* 60 LW 4523 (1992) at 4532 (Justice Stevens).