

# 'The Republic is Ours': The Indonesian response to the so-called 'War on Terror'



Indonesia is no stranger to terrorism. In a true sense Indonesia has been living and dealing with terrorism for much of its life as a republic since 1945. How Indonesia has dealt with terrorists, particularly in recent years, is potentially instructive to us in Australia and the West. In many important respects, the Indonesian

approach stands in contrast with the rhetoric-burdened war paradigm of intervention opted for by the United States of America and its allies, including Australia. The following paper was delivered by Colin McDonald QC at the Northern Territory Criminal Lawyers' Conference at the Bali Hyatt Hotel, Sanur, Bali, Indonesia, 4 July 2005.\*

There is no other choice. We must  
Go on

Because to stop or withdraw  
Would mean destruction

Ought we sell our certitude  
For meaningless slavery

Or sit at table  
With the murderers  
Who end each sentence  
'As your majesty wishes'

There is no other choice. We must  
Go on

We are the people with sad eyes, at the edge of the road  
Waving at crowded buses

We are the tens of millions living in misery  
Beaten about by flood, volcano, curses and pestilence

Who silently ask in the name of freedom  
But are ignored in the thousand slogans  
And meaningless loud-speaker voices

There is no other choice. We must  
Go on <sup>1</sup>

## Introduction

Whilst the military interventions in Afghanistan and Iraq have left the 'Coalition of the Willing' bogged down defending guerrilla wars with no exit strategies, Indonesia's approach has been to focus internally and use its ordinary criminal justice processes in both detecting and apprehending criminal terrorists and bringing them to open, public justice. In so doing, just as Indonesia has probably been more effective than any other nation in dealing with modern terrorism, it has done so without discarding new democratic values reclaimed with determination in 1998 after the fall of Soeharto.

In this essay, I look at the Indonesian response to the so-called War on Terror by adverting briefly to Indonesia's history and how Indonesia has responded to the phenomenon of extremist terrorism in more recent times since the bombing of the

Philippine Embassy and the Jakarta Stock Exchange in 2000. In contrast Indonesia's response, again briefly, with that of the United States, the United Kingdom and Australia. I set out by way of example how the use of open ordinary court processes in the trials of Amrozi and Abu Bakar Ba'asyir has helped win the so-called 'war' in the battle for the hearts and minds of believers. As the prosecutors in the Bali bombing trials readily perceived, the real conflict is the ongoing struggle in Islam between moderate and progressives on the one hand and the fundamentalist extremists on the other.

The Indonesian experience is steeped in a turbulent history. It is helpful to get some sense of this history.

## Background

Soon after the agreement to a ceasefire with Dutch colonial forces on the American ship *USS Renville* in January 1948, militant Islamic guerrillas rallied around a Javanese mystic, S M Kartosuwirjo.<sup>2</sup> Kartosuwirjo had a background of radical political ideas and, when convalescing from serious illness, studied Islam under various mystic teachers. He disliked leftist ideas, distrusted the new republican leaders and became head of a band of Hezbollah guerrillas in west Java. In May 1948, Kartosuwirjo waged the first rebellion against the new Republic of Indonesia.<sup>3</sup>

Kartosuwirjo proclaimed himself *imam* (head) of the new Indonesian Islamic state often referred to by its Arabic name, *Darul Islam* (literally *dar al-Islam*, territory or house of Islam). This *Darul Islam* proclaimed state was based on Islamic law and administered by *kyais* (teachers of Islam) at first in western Java.<sup>4</sup>

Kartosuwirjo was a proponent of the mystical Sufi stream of Islam. Amongst many things, he wrote:

It seems not enough filth of the world was eliminated and chased away in the First and Second World wars... We are obliged to foment the Third World War and World Revolution (because) God's kingdom does not yet exist on earth.<sup>5</sup>

He went on putting what the choices there were for his Muslim followers:

Eliminate all infidels and atheism until they are annihilated and the God-granted state is established in Indonesia, or die as martyrs in a Holy War.<sup>6</sup>

Thus, by the logic Kartosuwirjo created, those who fitted into the infidel and atheist categories (necessarily so many unknown persons in the world) were ordained for annihilation. Hatred, intolerance and inhuman sentiment were at the root of this extreme world view.

Much of *Darul Islam's* support was ascribed to the charismatic Kartosuwirjo whose followers believed he had supernatural power. As the years progressed, *Darul Islam* attracted disaffected elements and, contrary to the image of a grand

religious movement, it degenerated into large groups of bandits, extortionists who committed 'terrorism on a grand scale'.<sup>7</sup> They bombed cinemas, poisoned water supplies and engaged in hold-ups. The peasants became the subject of forced exactions.<sup>8</sup> Failure to comply with *Darul Islam's* regulations and demands was met with brutality.<sup>9</sup>

The *Darul Islam* movement spread regional rebellion from West to Central Java, Sumatra and Central Sulawesi right up until 1962 when Kartosuwirjo was captured and summarily executed by republican forces. When Kartosuwirjo was executed in 1962, the *Darul Islam* movement was crushed. The Islamic State of Indonesia collapsed.<sup>10</sup>

However, the execution of Kartosuwirjo proved to be a pivotal event. For a generation of young Muslim activists, including one Abu Bakar Ba'asyir, Kartosuwirjo's execution by the secular Republic was 'a profoundly galvanising event'. Leaving aside doctrinal differences, the dead rebel leader was given martyr status and his movement, *Darul Islam*, was to be an inspiration for Muslim radicals for the next forty years.<sup>11</sup> *Darul Islam's* true and dark history was ignored.

In 1959, supported by the military, President Sukarno dumped the 1945 Republican Constitution and opted for an authoritarian style of government which he termed 'guided democracy'. Part of Sukarno's assertion of authority was the banning of the Muslim party, Masyumi, for supporting regional rebellion. The Republicans were seen by *Darul Islam* members as atheists contaminated by new republican ideas and communism. Sukarno pursued them relentlessly, gaoling *Darul Islam* leaders or forcing others into exile.

The guided democracy experiment failed. An abortive coup led by leftist generals was put down with Muslim political support. The Communist Party was blamed on flimsy evidence and a tragic bloodbath was unleashed across Indonesia. Some of the most senseless slaughter took place a short distance from this room. To quell the crises a new military strongman emerged, Major General Soeharto. Gradually Sukarno was stripped of his powers. An embattled President Sukarno reluctantly handed formal power over to him on 11 March 1966.

The New Order brought in by President Soeharto had initially attracted a new generation of revolutionary youth ('*pemuda*'). They were keen to set aside the guided democracy controlled by the ousted President Sukarno and see a society in which the law would reclaim a role as the 'normative machinery of social equilibrium mediating between citizen and between citizen and state'.<sup>12</sup>

However, these revolutionary hopes were dashed not just with the deaths of hundreds of thousands in that year of living dangerously in Indonesia – 1965. General Soeharto also sustained the model of government initiated by Sukarno in 1959 whereby law was subordinated to executive policy.<sup>13</sup> Political and religious groups were watched closely. Any gathering of a group of more than five people required a permit – as early

organisers of this biennial conference well know. There were 'blacklists' preventing movements of Indonesians out of the country and on certain foreigners into the country. Lawyers could be and were arrested and sometimes gaoled in the discharge of their professional duties. Political activists were taken to court. Journals like the prestigious national *Tempo* magazine were banned. Politics of resentment simmered under the surface as did racial and sectarian issues.<sup>14</sup> The idea of an Islamic state (although suppressed) was not extinguished in the minds of some fundamentalist Muslims. Again, to avoid gaol, many zealots fled Indonesia and went into exile in Malaysia.

There being no central organisational authority in Islam, zealots were free to come together and be nurtured in a stream of Islam that hearkened back to Kartosuwirjo and his philosophy. One very material congregation was the establishment of a *pasantren* (religious school) at Ngruki in East Java by Abu Bakar Ba'asyir. As was revealed in police raids at the school and in neighbouring houses after the Bali bombings, the school provided military training at night and attracted followers from the severe Saudi Arabian imported Wahhabi school of Islam, as well as dissidents involved in sectarian conflict in Sulawesi, East Timor, Ambon and the Moluccas.<sup>15</sup>

In Soeharto's time, the Ngruki school came under official scrutiny. Its founders, Abu Bakar Ba'asyir and Abdullah Sungkah, were arrested along with about 200 others in November 1978. They were accused of plotting to overthrow the government by parading and campaigning for an Islamic state. Ba'asyir and Sungkah were convicted and sentenced to nine years gaol for subversion, which sentence was reduced to three years then months on appeal.<sup>16</sup> To those responsible for maintaining security in the New Order, the human successors to the *Darul Islam* movement had once again been thwarted. Not so!



Students of Muslim cleric Abu Bakar Ba'asyir pray at Ngruki boarding school in Solo, Central Java, 2 September 2003. Photo: AAP Image / Susilo Hadi

During the New Order regime, there was a resurgence in Muslim faith across Indonesia. Many were disillusioned with materialism and corruption and the apparent moral depravity of 'the West'.<sup>17</sup> Hard line, self proclaimed clerics, like Ba'asyir, became heroes to some.

Among those who went into exile, some ended up as fighters in Afghanistan inspired by the desire to rid Afghanistan of the infidel Russians. Ironically, the support for the Mujahaddin from over the Islamic world came from the United States at that time caught up in Cold War politics. Those Indonesians who fought in Afghanistan developed links with Arabic groups such as Al Qaeda – a national global network of committed terrorists was rapidly forming.

### The fall of Soeharto and the democracy revolution

On 21 May 1998, President Soeharto was driven from office. Seventy two days later, after his unanimous re-election as president for his seventh term in office, Soeharto resigned amidst the worst rioting seen in Indonesia since the fall of President Sukarno thirty two years earlier. It was the end of the New Order regime in Indonesia.<sup>18</sup> What ensued was a democratic revolution. In the last fifty years there has hardly been a nation where the transition from military dictatorship has been so swift, so determined and so peaceful, where Taufik Ismail's 1966 poem of the justification for change, *The Republic is Ours* was brought out of mothballs and recited publicly again with new hope. The people were reclaiming their republic; they were reclaiming the republic in a manner that had profound implications for the future of Indonesia and its role in the region. The lessons learnt from two previous revolutions and two virtual dictatorships which had spanned almost the entirety of Indonesia's brief political history since 1945 fired a new national resolve for change, democratic change in the world's most populous Muslim nation.

The fall of Soeharto spawned a new, committed democracy movement imbued with new determination. Those who drove the revolution were determined to restore the principle of '*negara hukum*' ('a nation of law'), literally the equivalent of the western concept of the rule of law. Executive power was reigned in. Political power moved from the president to the House of Representatives (the DPR). Indonesia gained a new, more democratic constitution containing a Bill of Rights. The judiciary was restored as a meaningful institution and given real judicial power including the power to review and declare laws invalid.

Law number 14 of 1970, which denied Indonesian courts the power to review the constitutionality of statutes, was rescinded and a new Constitutional Court was given the power to strike down laws on constitutional grounds. Peaceful, genuinely democratic elections occurred across the vast archipelagic country for the national and regional parliaments. Executive power transferred peacefully and today, Susilo Bambang Yudhoyono is the fourth Indonesian president since Soeharto, the third to be democratically elected. Indonesia has re-

emerged almost Phoenix-like as the world's newest and certainly one of its most determined democracies.

When Soeharto fell there was not just freedom for those (the huge majority of Indonesians) who championed or supported a *negara hukum* nation. New freedom of expression was also given to those who deplored democracy, who advocated an Islamic state and who harboured violent and passionate ambitions to save Indonesia from the evils of democracy and a secular constitution.

### The bombings in Jakarta 2000

So when the first bombs went off at the Philippine Embassy on 1 August 2000 and at the Jakarta Stock Exchange on 13 September 2000, it was at a time when the nation was focused on forging its new identity and committed to its new democratic direction. And it is remarkable that Indonesia kept this democratic focus despite being beset with so many internal problems: a war in Aceh; sectarian violence in Ambon, Maluku and Sulawesi; endemic corruption; the loss of East Timor; inflation; a sluggish economy; and poverty everywhere. At first there was denial of there being a problem with internal terrorism. Then, there was doubt in many circles as to who were the true culprits. Some blamed rogue elements in the military. Others blamed Acenese separatists. There was a period of indecision.

We in Australia and the West hardly reacted to the first fanatical violence that ripped through Indonesia in 2000 at the cost of so many innocent Indonesian lives – drivers, security guards, cleaners, workers, innocent passers-by. The profound changes taking place next door and the challenges to the *negara hukum* and the secular constitution which the detonations posed went almost unnoticed in Australia. We did not know that we had an enemy and those blasts were harbingers of more to come.



Indonesian bomb squad team looking for clues amidst the debris of a damaged car in front of the residence of Philippine ambassador to Indonesia, Leonides Caday, who was injured in the blast, in downtown Jakarta, 1 August 2000. Photo: AFP Photo / WEDA / News Image Library

Insofar as most Australians thought about Indonesia in 2000, it was, I suggest, at best impressionistic: a 'beaut holiday spot' in Bali, otherwise a primitive country in every sense, without a real legal system and a system of law entirely at the whim of executive government and its cronies. And as with so much of Australia's sense of its northern neighbours, there has been a dangerous disposition to stereotype. One size fits all. The complexities of Indonesia were not understood. Apart from some very gifted Australian academics, expatriates and analysts, the implications of the revolution in post-Soeharto Indonesia did not fully register, if they registered at all among the general public.

As Sally Neighbour's book *In the Shadow of Swords*<sup>19</sup> reveals, and an interview for *Inside Indonesia* in 2004 with Irfan Awwas, the chairperson of the Executive of the Indonesian Council of Mujahiddin bluntly records – democracy and the secular state were and are loathed by certain Islamic fundamentalists and seen as the biggest obstacles to an Islamic state and the dominance of Islamic law.<sup>20</sup> The fundamentalists included the Jakarta bombers, as was later discovered.

Soon after 11 September 2001, Bush officials and the Australian Government claimed Indonesia as a partner in the struggle against terrorism. Indonesia did not involve itself in any 'coalition of the willing' or approach the issue of Islamic fundamentalist violence as if it could be dealt with by the rules of military engagement. Indonesia was a cautious and necessarily careful ally given that 90 per cent of its 220 million population were Muslim. More importantly, it had an appreciation by reason of its history of the difficulty of battling by conventional war methods, ignorance, hatred and bigotry which was at the core of the fundamentalists credo.

However, even a cursory reading of Indonesian newspapers over the period 2001 to 2004 reveals an active appreciation in the Indonesian Government and intellectual elite that the sources of fundamentalist violence were complex, had historical connotations and had to do with the divisions in Islam itself.

### The Bali bombings

It was not until 12 October 2002, when bombs ripped through the Sari Club and Paddy's Bar claiming the lives of 202 people, including 88 Australians, that the awareness was triggered that terrorism existed inside Indonesia and that fanatical Indonesian nationals were connected to an international terror network.

The bomb blasts in Kuta were evidence that the new democracy movement and the constitutional structure based on a secular state were being challenged. Saturday, 12 October 2002 was a dark day in the history of both Indonesia and Australia. It was nevertheless a day when the nation's respective futures coalesced.

In the week after the bombing, the Australian foreign minister and justice minister were despatched to Jakarta. What followed would have been unthinkable prior to 12 October 2002.

Antagonisms arising from Australia's participation in September 1999 in UN intervention in East Timor were set aside. Indonesia welcomed Australian police and intelligence officers to work alongside their own police and intelligence services on Indonesian soil.

A joint police task force was created to investigate the bombings and bring the perpetrators to account. Australia moved, at least in Indonesia, from a military to a civilian, forensic model of counter-terrorism.

Slowly the investigation drew leads, names and faces. Relentlessly, Indonesian police and undercover agents tracked down most of the Bali bombers gaining valuable intelligence in respect of the nature, scope and dimensions of the terrorist network inside Indonesia and beyond. These investigations in turn led to arrests and charges laid against the bombers in Jakarta in 2000.

Under pressure from the West, President Megawati Sukarnoputri decreed anti-terrorist laws that were shortly afterwards passed in the new democratic national assemblies. The laws were designed to retrospectively cover the events at Kuta on 12 October 2002.

Defendants were charged and quickly brought to trial. The criminal procedure in Indonesia from the time of arrest to trial is usually three to four months. The defendants who faced trial for the Bali bombings were numerous. It is instructive to look at the trial of two – Amrozi bin Nurhasyim and Abu Bakar Ba'asyir – for they demonstrate well the Indonesian approach.

### The trial of Amrozi

Whilst in America, citizens are used to televised criminal trials, Indonesia is not. Nevertheless, a component of the lasting notoriety of the trial of Amrozi was that it was televised and had the nation glued to its television sets awaiting daily the presentation of evidence and antics in the Nari Graha courthouse in Denpasar.

The stark simplistic medium of television captured and magnified Amrozi's smile into the homes of Indonesia and the world. Amrozi gained the sobriquets of the 'smiling assassin' and the 'smiling bomber'.

The trial had most of the components that make for famous trials. The nature and enormity of the charges, 202 people killed, 325 wounded and 423 separate properties destroyed or damaged were grisly by any world standard. There was intrigue and treachery, meticulous detective work and a manifest lack of remorse.

The trial was in depth and carefully crafted to make a point to the majority Muslim population in Indonesia.

Beyond the usual ingredients of famous trials, the trial of Amrozi had an extra and compelling element. Like the trial of Eichmann in Jerusalem and the Kosovo trials in the Hague, the trial of Amrozi involved the exposé of the uncivilized devastation of extremism and bigotry. What the trial of Amrozi

did was canvass, sometimes in graphic detail, the major contemporary political issue confronting Indonesia, all modern Islamic nations and the world – the threat of criminals who espouse extremist Islamic views. The trial confirmed that the conflict sparked off by the Bali bombings and the earlier bombings in Jakarta in 2000 concerned itself more with the world of ideas than the battle plans of generals and military interventions.

In a civil law system most evidence is admitted and it is a matter for the judges what weight is to be given to it later. Also, given the Indonesian civil law system, the trial was not characterised by decisive, or triumphant cross-examinations. However, in exploring the issue of political terrorism and in the battle of ideas, the trial was sensational. Under the calm guidance of the Chief Judge I Made Karna, a Balinese Indonesian, the five member court examined the evidence carefully and made gentle points concerning religious values, respect for human beings and freedom that was a foil to the irrational bigotry often mouthed by Amrozi.

The trial of Amrozi was important because it demonstrated in the normal public court forum the persuasive capacity of objective evidence and the importance of reason. In selecting witnesses for trial, the prosecutors no doubt had their eye on the wider national and international issues of the threat posed by Islamic extremists. In their presentation of evidence and the mix of witnesses, the prosecutors quietly, deftly proved their case both legally and in the forum of public opinion.

In providing the statement of Mrs Endang Isnani and calling her testimony, the prosecutors exposed the criminal lie behind the politico/religious slogans of Amrozi and the other Bali bombers. Mrs Isnani was a mother of three young boys, a Muslim, widowed and left destitute by the bomb blasts. Her husband, Aris Manandar, was incinerated outside the Sari Club. She was quoted as saying – and no doubt a Muslim nation listened to what she said:

I wanted to show him that he had not only killed foreigners, but Muslims as well. We were also the victims of his terrible crime. But he showed no remorse or regret for his actions, and just sat smiling, and he really broke my heart that day.

The testimony of Ms Isnani and other Muslim witnesses was compelling, not in the way the ample forensic evidence pointed to guilt, but in the wider war of ideas and morals. The testimony reminded Indonesians of all faiths that Amrozi was no freedom fighter. Amrozi's smile and comments were shown for what they were – banal and evil. The smile and the slogans failed to convince the national jury. A sceptical Muslim nation was convinced by the power and weight of the evidence. The Indonesian prosecutors produced a decisive victory in the battle for the hearts and minds of believers and non-believers alike. If lack of public protest and the Indonesian national press was any guide, the nation by and large accepted the death penalty as just. The death penalty is a rarity in Indonesia.

Like those who attacked the World Trade Centre in New York on 11 September 2001, the criminals involved in the Bali bombings had three aims: firstly, to terrorize Americans and other westerners; secondly, to polarise the world and separate Muslim from non-Muslim; and thirdly, to undermine the Indonesian Government and the secular state. In acting as they did, they certainly achieved their first aim. But the detection and bringing to trial of Amrozi and others helped thwart them in their other two aims.

An appeal by Amrozi and others to the Indonesian High Court failed. Then, appeals were launched in the new Constitutional Court. As events transpired, the first case to get to the Constitutional Court was an appeal brought by another one of the Bali bombers, Masykur Abdul Kadir.

In a majority of 5-4 decision, the Constitutional Court used its review powers and struck down Law No. 16 of 2003. Law number 16 purported to authorize police and prosecutors to use Indonesia's *Anti-Terrorism Law* introduced urgently in the tumultuous aftermath of the Bali bombings. The anti-terrorism laws (Interim Law Number 1 of 2002 which later became Law No. 15 of 2003 and interim Law Number 1 of 2003, which later became Law No. 16 of 2003) did not exist on 12 October 2002 when bombs blew away the Sari Club and Paddy's Bar in Kuta.

Argument before the Constitutional Court was vigorous and well presented. Again the nation watched the case on TV and the extensive print media covered counsels' arguments thoroughly.

Mr Kadir's case was that Law Number 16 of 2003 conflicted with a new provision in the recently amended Indonesian Constitution. Mr Kadir argued that Article 28(1) of the Constitution gives every Indonesian a constitutional right not to be prosecuted under a retrospective law. Article 28(1) is contained in the new Bill of Rights in the Indonesian Constitution. Mr Kadir sought and obtained, by a majority, a declaration that the *Anti-Terrorism law* was invalid.

It is important to note that, of the thirty or so persons convicted in relation to the Bali bombings, many were also convicted and sentenced to death or given heavy gaol terms for the possession of firearms and explosives under the old Emergency Law No. 12/1951. The more senior and culpable defendants like Muklas and Samudra fell into this category.

#### Bombings in Jakarta 2004

The Bali bombings of 12 October, 2002 were followed by further bombings in Jakarta of the JW Marriott Hotel and on 9 September 2004 outside the entrance of the Australian Embassy. Again, intense detective work and coordinated investigation followed leading to many arrests and trials. It is estimated that in the wake of the Bali and Marriott bombings about two hundred and fifty Jemaah Islamiah ('JI') members were arrested. The rate of arrest dug deep into the ranks of JI

in Indonesia, estimated in May 2004 to have an organisational membership of between 500 to 1000 members.<sup>21</sup>

That JI still had lethal strike capacity was brought home in the second wave of bombs which were ignited in Bali, this time by suicide bombers in restaurants and eating areas of Kuta and Jimbaran on 1 October 2005. The second wave of Bali bombings had a personal message for the Balinese. Unlike the first Bali bombings which were at entertainment venues predominantly patronised by Westerners, the Jimbaran beach restaurant area is heavily frequented also by Balinese and other Indonesian tourists. This was seen as an attack on the Balinese economy as well as the other JI aim of destabilising the secular democratic republic. Thousands soon after demonstrated clamouring for the death penalty, at Bali's Kerobokan Gaol where Amrozi and the after first wave of Bali bombers were being held.

Again the Indonesian Government response was measured, emphasising efficiency and determination to track down the culprits by the normal police criminal investigative. Unlike the Western media response, Indonesian investigators remained unwilling to publicly conclude the motives behind the second Bali bombings.<sup>22</sup> Made Pastika called for calm and reminded his angry ethnic Hindu brothers and sisters not to usurp the state processes and have rule by the mob. He emphasised the need for restraint, patience and to allow the last stages of the first Bali bombers' appeal processes to be completed. General Pastika's message to his fellows was blunt: an unlawful or mob inspired expedition of the death penalty could be disastrous for Bali and turn Amrozi and the others into public martyrs in the huge ranks of Muslim Indonesia.

Like after the first wave of bombs, relentless detective work by police and the newly formed Anti Terror Police Squad ensued. So too, there was Australian Federal Police cooperation. Arrests also followed across Java and a spectacular shoot out in early November 2005 at Batu in East Java where one of JI's leaders and bomb masters Azahari Bin Husin ultimately detonated himself and his colleagues in a police trap.

Again, the ordinary criminal investigative and prosecution processes were followed utilising the existing criminal procedure laws.

### The trials of Abu Bakar Ba'asyir

The trials of Abu Baker Ba'asyir were altogether different trials from those of the Bali bombers. The trials of Abu Baker Ba'asyir also demonstrated the capacity of Indonesian justice to protect openly the interests of the secular state and thereby, Indonesian citizens.

Abu Bakar Ba'asyir's trials have been much misunderstood in the West. The frail, bearded cleric from Solo, east Java with white skull cap and prominent glasses was arrested a week after the 2002 bombings. He was anecdotally linked to Jemaah Islamiyah, the extremist terrorist group linked to al-Qaeda.

Ba'asyir was accused and detained in connection with not just



Abu Baker Ba'asyir on trial in Jakarta, 28 October 2004. Photo: AFP Photo / Choo Youn-Kong / News Image Library

the 12 October, 2002 Bali bombings, but also the JW Marriott hotel bombings in 2003 and a series of church attacks in Java. However, the cases mounted against Ba'asyir were largely circumstantial. The prosecutors had much less hard evidence to tender at his first trial in 2004.

Defended very ably by Jakarta senior counsel AW Adnan (better known as Adnan Wirawan) Ba'asyir was acquitted of being JI's spiritual leader. The Indonesian prosecutors had sought and were refused by the United States Government the evidence of captured senior JI figure Hambali. Hambali had been captured in 2003 in Thailand and Thailand had handed him over to the United States Government. Hambali's CIA interrogation material was seen as potentially crucial to Ba'asyir's first trial. Ba'asyir dispute his acquittal remained in detention to face other accusations that had been the subject of intense investigation.

In December 2004 Ba'asyir was charged as head of Jemaah Islamiyah inspiring his followers to launch in the 12 October 2002 Bali bombings and the JW Marriott Hotel bombing in 2004. Again the case was largely circumstantial. However, this time prosecutors called evidence from Nasir Abbas a former JI operative who, which not able to give direct evidence relevant to the charges of inspiring followers to perpetrate the bombings, did rail home earlier activities of Ba'asyir as being a leader of Jemaah Islamiyah.

Abbas swore that Ba'asyir 'headed Jemaah Islamiyah' and had sworn him in as a member of the group in Solo in 2000. Abbas's evidence was again used strategically by Indonesian prosecutors to good effect before a huge Muslim television audience. One bracket of evidence, indefensible under the well known criminal laws of Islam exposed Ba'asyir as a fanatic. Abbas swore that Ba'asyir had been asked by a new recruit whether stealing money from non-Muslims was *Halal* or permissible under Islamic law. 'Shedding their blood is *halal*, so of course taking their money is,' Abbas quoted Ba'asyir as saying.<sup>23</sup>

Ba'asyir's credibility as an influential figure in the Muslim community was undoubtedly diminished by his second public trial. This is a fact seemingly not appreciated in Australia or the West.

At the conclusion of his second trial in March 2005, the panel of judges found that, although not involved in the Bali attacks, he had given his approval. Ba'asyir was sentenced to 30 months imprisonment for being part of 'an evil conspiracy.'

The sentence was denounced by senior political leaders in Australia. This criticism was forthcoming in very strident terms. Yet the public trials and gaoling of Abu Baker Ba'asyir and his public humiliation in terms of his credit nevertheless asserted the power and dominance of the secular state apparatus. In every sense, the trial and sentence was a delicate national balancing exercise of bringing a criminal to justice and not making him a dangerous, inspiring martyr. The state prosecutors, although thwarted in making all of their charges stick, had reasserted the Indonesian Republic as belonging to the public and not that of the extremists like Ba'asyir.

The engagement with Indonesia over the two Bali bombings has been in contrast to Australia's other responses to the events of 11 September 2001.

### September 11 and the 'War Against Terrorism'

Even before the events of 11 September 2001, the political conditions were in place in America and Australia for the promotion of policies that were not respectful of international law and established international conventions. Both America and Australia were at loggerheads with the United Nations. To the consternation of each country's neighbours both the president of the United States and the prime minister of Australia espoused the new doctrine of pre-emptive strike.

When a hijacked American Airlines 767 bound for Los Angeles crashed into the north tower of the World Trade Center in New York and then a second United Airlines jet ploughed into the south tower of the center on 11 September 2001, the western world reacted with alacrity to the menace of international terrorism. Under the leadership of US President George Bush, America and its allies, including Australia, committed themselves to a 'war on terrorism'.

The horrible events of 11 September 2001 unleashed an immediate and sustained new language of terrorism – rhetoric that allowed no possibility for analysis and operated almost as a new vernacular. It was a vernacular that preyed on and manipulated community fear and relegated reason. President Bush's description of the 11 September events as 'terrorist acts against all freedom loving people everywhere in the world' left no room for debate. The language of terrorism provided over-simplified choices: 'Either you are with us or you are with the terrorists'<sup>24</sup> and 'The nations of the world face a 'stark choice': join in our crusade or face the certain prospect of death and destruction'. The discourse on terrorism fed community fear, anger and the argument that anything is justified in countering

terrorism. This language of terrorism paved the way for striking back using Western military might. Operation Infinite Justice and Operation Enduring Freedom followed. But who were we operating against?

The characterisation of the response to the events of 11 September 2001 as a 'war on terrorism' has had the effect of taking deeply evil acts outside of existing criminal laws and into the rules of armed conflict. The response of America and its allies has been that of waging a war – the attack on Afghanistan and the change of regime in Iraq. Stripping aside the rhetoric, the military response has in so many ways rejected the complexity of what gave rise to the dreadful bombings and slaughter of innocent people in New York. The War on Terror option and the language of terrorism set a construct of good against evil and, in doing so, deny not just causal complexities, but also reason. The conviction of the language and the spectre of the war option has allowed for the more ready acceptance of measures that otherwise would have been regarded with deep concern and resistance. Important freedoms and domestic civil liberties have been potentially outflanked.

What has occurred is the development of a type of Western holy war against evil. As Jenny Hocking quotes in her absorbing book *Terror Laws*:

The notion of a holy war against evil – a war in which normal restraints do not apply – has all but disappeared from international law... But it has had a revival in a special form thanks to the struggle against terrorism. This notion leads, all too easily, to a view that in the struggle between the legitimate authorities on the one hand and terrorists on the other, anything goes: neither ethical nor legal restraints should be allowed to hamper the pursuit and extermination of terrorists.<sup>25</sup>

This notion leads to the normal criminal laws being by-passed, and established international norms, such as the rights of prisoners of war, being relegated or neglected.

The point that concerns Ms Hocking and others is that the evil of terrorism is tackled in a manner that rejects the value and importance of ethical or legal constraint. The appalling degradation of prisoners at Abu Ghraib Prison in Iraq is the tragic, some might say inevitable, result of this approach which relegates the principles and constraints of ordinary criminal laws and international law to the primacy of the pursuit of terrorism.

Tragically, there is evidence that this notion has come to pass. It is evidence that cannot be ignored. Thus, the world's most advanced democracy acting unilaterally and with no international or legal sanction and contrary to the Geneva Convention set up a detention centre at Guantanamo Bay whereby detainees could be held indefinitely and outside the protections of the law. This issue is explored more expertly by other participants in this conference and there is no need for me to descend into too much particularity in this paper on this important issue. However, two references, one from

distinguished Australian senior counsel, Ian Barker QC, and the other from the English Court of Appeal, are apposite in this context.

In the Summer 2003/2004 edition of *Bar News*, Ian Barker QC wrote:

The US Government, followed by our own government, seeks to justify the process by invoking President Bush's Military Order of 13 November 2002 by which any foreign national designated by the president as a suspected terrorist, or as aiding terrorists, can potentially be detained, tried, convicted and executed without a public trial or adequate access to counsel, without the presumption of innocence, without proof beyond reasonable doubt, without a judge or jury, without the protection of reasonable rules of evidence and without a right of appeal. Whether or not a person detained is tried, he can be held indefinitely, with no right under the law and customs of war, or the US Constitution, to meet with counsel or be told upon what charges he is held.<sup>26</sup>

The second reference I allude to comes from the English Court of Appeal in an application brought by the mother of Feroz Ali Abassi, a British national captured by the United States in Afghanistan.<sup>27</sup> In January 2002, he was transferred to Guantanamo Bay in Cuba, a naval base on territory held on a long lease by the United States pursuant to a treaty with Cuba. By the time the appeal application came to be heard before the court, Mr Abassi had been held captive for eight months without access to a court or any other tribunal or even to a lawyer. The application was founded on the contention that one of Mr Abassi's fundamental rights, the right of not being arbitrarily detained was being infringed. The mother sought to compel the British Foreign Office to make representations to the United States Government or take other appropriate action to have Mr Abassi dealt with and the merits of his situation addressed.

The Court of Appeal dismissed the mother's appeal on grounds relating to the conduct of relations between foreign sovereign states. But the court dismissed the application not without registering its deep concerns: After extensive review of English and American texts and authorities dealing with civil liberty and the writ of habeas corpus, at paragraph 64 of its judgment the court said:

For these reasons we do not find it possible to approach this claim for judicial review other than on the basis that, in apparent contravention of fundamental principles recognised by both jurisdictions and by international law, Mr Abassi is at present arbitrarily detained in a 'legal black-hole'.

At paragraph 107, toward the end of its reasons, the court further said:

We have made clear our deep concern that, in apparent contravention of fundamental principles of law, Mr Abassi may be subject to indefinite detention in territory over

which the United States has exclusive control with no opportunity to challenge the legitimacy of his detention before any court or tribunal.

The court also referred to and endorsed the speech (at paragraph 60) of Lord Atkin written in one of the darkest periods of the Second World War:

In this country, amid the clash of arms, the laws are not silent. They may be changed, but they speak the same language in war as in peace. (*Liversidge v Anderson* [1942] AC 206, 245 at p.244).

The plight of Mr Abassi and others at Guantanamo Bay highlight the dangers of dealing with terrorism on a war paradigm or without regard for the ethical and legal rules fundamental to a democracy. The timely historical review of important cases in the history of civil liberties in the United States and the United Kingdom and the expressions of the court's concerns were a contemporary reminder of Albert Einstein's reflection in his old age:

Democratic institutions and standards are the result of historical developments to an extent not always appreciated in the lands which enjoy them.<sup>28</sup>

The 'war on terrorism' and its war paradigm has led to problematical interventions seeking to strike and eliminate an elusive terrorist enemy. No doubt well motivated, the policy to strike out at this enemy as if he/them were tangible and identifiable warriors or regimes has led many to doubt the efficacy of the 'war' approach. In my own case it occurred when, at a friend's home, I watched and heard the United States Secretary of Defense Donald Rumsfeld describe in confident, serious terms the dimensions of this war on terrorism:

As we know, there are known knowns. There are things we know we know. We also know there are known unknowns. That is to say we know there are some things we do not know. But there are also unknown unknowns, the ones we don't know we don't know.<sup>29</sup>

Even given the erosion of public language, in modern times, these words from the western world's chief war officer are calculated to leave a deep sense of unease. The jury remains out on whether the West's current leaders fully appreciate the nature and the dimensions of the conflict they are dealing with.

This is why the relevant example of Indonesia can be so important. Whilst there is police cooperation on their ground in Indonesia, at a policy and political level concerning the issue of terrorism, it is as if Indonesia and Australia are moving in opposite directions.

## Conclusion

What Indonesia's history and its response to the bombings inside its national borders since 2000 show is that the violent extremism and fundamentalism demonstrated in the terrorist bombings can be countered only from within the faith of



Islam. No amount of military interventions will roll back the hatred, bigotry and ignorance displayed by Amrozi and his cohorts. Indeed, as we see in Iraq, it can radicalise a community even more.

Indonesia, for all its upsets and political troughs since 1945, has been a Muslim country which as adapted to and embraced new and alien forces – *democracy* is but one of them. In Indonesia, commerce, economics, science and technology, as well as the political constructs of democracy and human rights are dealt with face-to-face in authentic discourse within its Muslim population.

There are rich traditions of scholarship in Indonesia and huge moderate mass movements in Indonesian Islam which have embraced new ideas and sought to interpret the Koran in a way compatible with democracy and human rights and social justice. Indonesia has the tools in its own historical experience to overcome the threat of extreme fundamentalism.

Indonesia's recent history of near dictatorship and the peoples' loss of political power and subjugation has also given Indonesia a passion for democracy of which we in the West need to be reminded. The passion and the good sense of those American founding fathers who wrote *The Federalist* is alive and active in Indonesia today.

The world has been made more complex and potentially unsafe with the emergence of technologies which permit the spread of weapons of mass destruction. Similarly, the world order has had to adjust to transnational terrorist groups capable of posing a potentially global threat. These developments and the number of failed states or rogue states provide challenges to the rules of international law premised on an assumption of sovereign states having a monopoly on the use of force and control over technology. So no-one should deny the enormity or the difficulties facing world leaders. Nevertheless, lessons can be learnt from history.

Both America and Australia have recent experience in costly, ill-considered intervention and war in Vietnam. The practical example of moderate Muslim nations, like Indonesia, in dealing with terrorism comes at a critical time when America and Australia seek to find peace and security. If lessons are not learnt from nations like Indonesia there is a danger of fulfilling by ignorance George Santayana's famous adage: 'Those who forget the lessons of history are bound to relive them'.

\* This paper is dedicated to Agus Sardjana, first secretary in the Republic of Indonesia embassy to the European Union and formerly vice-consul in the Indonesian Consulate in Darwin and his example of intelligence, compassion and tolerance – the true enemies of terrorists.

- 1 Taufik Ismail, *The Republic is Ours*, translated into English by Harry Aveling in *Contemporary Indonesian Poetry*, University of Queensland Press, 1975 Reprinted 1985, p.169.
- 2 M.C. Ricklefs *A Modern History of Indonesia*, Macmillan, 1985, p.215.
- 3 *ibid.*
- 4 *ibid.* p.215-216.
- 5 Greg Fealy, 'Darul Islam and Jemaah Islamiyah: An Historical and Ideological Comparison' ANU 2004, quoted in S Neighbour, *In the Shadow of Swords: On the Trail of Terrorism from Afghanistan to Australia* p.10.
- 6 *ibid.*
- 7 M.C. Ricklefs, *op. cit.*, p.216.
- 8 G. McTurnan Kahin, *Nationalism and Revolution in Indonesia*. Cornell University 1952, reprint 1970 pp.330-331.
- 9 *ibid.*
- 10 M C Ricklefs, *op. cit.*, pp.215-216.
- 11 S Neighbour, *op. cit.*, p.11.
- 12 T. Lindsey, *Indonesian Law and Society*, p.13.
- 13 *ibid.*
- 14 B. Grant, *Indonesia*, p.68.
- 15 S Neighbour, *op. cit.*, p.1.
- 16 S. Neighbour *op. cit.* pp.16-17. This followed a rich world tradition. See Ian Buruma & Avishai Magralit, *Occidentalism: The West in the Eyes of its Enemies*, The Penguin Press, New York 2004.
- 18 Geoff Forrester and RJ May (eds) *The Fall of Soeharto*, p.1.
- 19 S Neighbour, *op. cit.*, Chapter 7.
- 20 Imam Subkahn 'Islam and Democracy Cannot Meet', *Inside Indonesia*, July-September 2004, pp. 4-6.
- 21 Zachary Abuza, 'Militant Islam in Indonesia' USINDO Open Forum 6 May 2004, Washington DC; <http://www.org/Briefs/2004/Zach%Abuza%205-6-04.htm>
- President GW Bush, 'Address to the joint session of Congress and the American people' 20 September 2001, <http://www.whitehouse.gov/news/releases/2001/09/print/20010920-8.html>
- 22 *The Jakarta Post*, Thursday, 20 October 2005, p.2.
- 23 *The Nation*, Wednesday, 22 December 2004, p.7A.
- 24 President G W Bush, 'Address to the joint session of Congress and the American people' 20 September 2001, <http://www.whitehouse.gov/news/releases/2001/09/print/20010920-8.html>
- 25 J Hockey, 'Terror laws ASIO counter terrorism and the threat to democracy' p.7, quoting A Roberts 'Ethics, terrorism and counter-terrorism' *Terrorism and Political Violence*, no. 1 January 1989, p.948.
- 26 Ian Barker QC 'The Guantanamo Bay scandal' in *Bar News: The Journal of the NSW Bar Association*, Summer 2003/2004 pp. 21-25.
- 27 *The Queen (on Application of Abassi & Another) v Secretary of State for Foreign and Commonwealth Affairs and Another* [2002] EWCA Civ 1598 Case No: 2002/0617A; 0617B delivered 6 November 2002 by English Court of Appeal comprising Lord Phillips MR, Waller and Carnwall LJ.
- 28 *Einstein: A Portrait*, Pomegranate Art Books, Corte Madera, California, USA 1984, p.87.
- 29 I could not remember the exact words I heard, but mercifully, they are preserved in Don Watson's *Death Sentence: The Decay of Public Language*, at p.45.