

INQUEST INTO THE DEATH OF BRIAN RAYMOND PETERS

EXECUTIVE SUMMARY

Few events have become as poignantly etched into the Australian psyche as the deaths of five Australian journalists in Balibo, Timor-Leste (or Portuguese East Timor, as it was then known), who have become known in Australian folklore as “the Balibo Five”. It is more accurate to refer to them as Australian-based journalists. Brian Raymond Peters (29) and Malcolm Rennie (28), who comprised the Channel 9 team, were British born. Of those who comprised the Channel 7 team, Gary James Cunningham (27) was a New Zealander while Gregory John Shackleton (29) and Anthony John Stewart (21) were Australian. They all worked as journalists in Australia and, on 16 October 1975, they all sought protection by identifying themselves to Indonesian Special Forces as “Australian” and “journalists.”

As a coroner in New South Wales, my jurisdiction extends only to the death of Brian Peters. At the conclusion of this inquest I have a statutory duty under section 22(1) Coroners Act 1980 to record a finding as to whether he has died, and, if so, the date and place of his death as well as the manner and cause of his death. However, to investigate the death of one of the Balibo Five was to investigate the deaths of all. It would have been artificial, and nigh impossible, to separate one from the others in terms of the parameters of the investigation.

In recognition of the indivisible nature of the evidence, the families of all of the journalists were invited to participate in this inquest and I was pleased to receive variously submissions in writing and/or evidence on oath from them.

While my formal finding under section 22(1) *Coroners Act 1980* can be given in respect only of Brian Peters, I can assure the families that my findings in respect of the deaths of Messrs. Rennie, Shackleton, Cunningham and Stewart would be in exactly the same terms.

The deaths of the Balibo Five were inextricably intertwined with the events that they were reporting. To hear evidence about their deaths entailed hearing evidence about the political situation that existed in East Timor in 1975, particularly in regard to Indonesian policies and military plans to incorporate East Timor as part of its own territory and Australia's position in relation to that.

Witnesses

The centrepiece of the inquest was the sworn evidence from Timorese witnesses who formerly belonged to warring factions. Their combined evidence charted the movements of the journalists from the time the attack on Balibo started at 4:30 a.m. and concluded at 6:45 a.m. on 16 October 1975. Some of these witnesses, from the UDT and Apodeti parties, who had fought alongside the Indonesian Special Forces at Balibo, had previously participated in the campaign of disinformation orchestrated by the Indonesian military immediately after 16 October and continuing through to the present time. It was particularly helpful to be able to identify and discard previously fabricated versions of their evidence.

The one group of witnesses who, although invited to attend, declined to do so were the members of the Indonesian Special Forces involved in the covert military activities in East Timor codenamed Operation Flamboyan. Prior to the commencement of the inquest, formal letters were sent through the Indonesian Ambassador in Australia seeking the attendance of particular witnesses. I received no response. In the course of the inquest, I sent a letter directly to the Indonesian officer whose evidence I considered crucial to the inquest because he was the Commander of the Indonesian Special Forces for the attack on Balibo, namely retired Lieutenant General Yunus Yosfiah. Again I received no response. Towards the end of the inquest I invited the present Governor of Jakarta, and former member of the Indonesian Special Forces in East Timor at the relevant time, Mr Sutiyoso, to give evidence at the inquest. I regret that I did not have the benefit of his evidence.

In order to address pertinent issues such as the knowledge of the Indonesian military about the presence of the journalists at Balibo prior to the 16 October 1975 and what

orders may have been given in respect of them, the inquest relied on three major sources of information:

- a) communications between Indonesian military officers/citizens and Australian Embassy staff in Jakarta before and after 16 October;
- b) media interviews given after 16 October by Indonesians military officers; and
- c) intercepted internal communications between the members of the Indonesian military forces for the relevant periods before, on, and after 16 October.

Background

Since the sixteenth century, East Timor had been a Portuguese colony. On 25 April 1974, the Government in Portugal was overthrown, which heralded a change of policy in relation to its colonies. The new regime was committed to a process of decolonisation. Under the old Portuguese regime political activity had been banned in East Timor. In the months following the coup, various political parties emerged, each with a particular perspective on the future of the colony. Three of those parties, which featured prominently in the events of 1975, were:-

FRETILIN - the Revolutionary Front for an Independent Timor – which advocated self-rule;

UDT – the Timorese Democratic Union – which favoured independence but with strong links to Portugal; and

Apodeti – the Timorese Popular Democratic Association – which wanted integration with Indonesia.

Over time, the division became one of Fretilin and anti-Fretilin, with the latter comprising not only UDT and Apodeti but also other groups including KOTA and Trabalista.

A timetable had been set providing for elections in October 1976 with a view to handing over sovereignty in October 1978. In the interim each of the internal political parties attempted to enhance its own prospects. On 10 August 1975 UDT occupied the police headquarters and other administrative buildings in Dili in a concerted bid for power. Portuguese and Timorese troops were confined to barracks. However, most of the Timorese troops were Fretilin supporters and by 20 August they had managed to

leave their barracks, taking their weapons with them. Heavy fighting ensued and by the end of August 1975 Fretilin was in control of Dili and began moving westwards. Many refugees fled to Australia while UDT forces and their supporters moved progressively westwards until, after losing Batugade, they crossed into Indonesian territory.

Indonesian Ambitions for East Timor

In July 1975 the Australian Ambassador, Mr Woolcott, was advised by one Harry Tjan that Indonesian policy was firmly in favour of the incorporation of East Timor into Indonesia. Mr Tjan was the Head of the Centre for Strategic and International Studies (“CSIS”) – an organisation closely connected with key Indonesian military figures. In the period prior to 16 October 1975 Mr Tjan kept Australia apprised of developments in Indonesian policy and activities. A similar, but separate role was performed by Major-General Murdani. The result of this leaking of information was that, in the words of the former Defence Minister, Bill Morrison, the Australian Government knew more about Indonesia’s foreign policy than did the Indonesian Foreign Minister.

Through mid-August and September 1975 Indonesian Special Forces supplemented Operation Komodo, essentially an intelligence and propaganda operation, with hit and run missions in the company of Partisan troops. These were not particularly successful. From October 1975 a new phase of increased covert military activities commenced. This new phase was termed Operation Flamboyan and was under the direction of Major-General Benny Murdani, Head of Kopassandha (the special forces) and the senior intelligence officer within the Department of Defence and Security (“HANKAM”). As the Field Commander for Operation Flamboyan he appointed Colonel Dading Kalbuadi.

Members of the Special Forces who “volunteered” for Operation Flamboyan were divided into three teams – Team Susi, Team Tuti and Team Umi. Team Susi was under the command of Yunus Yosfiah. One of the tasks of these teams was to train militia forces comprised of the anti-Fretilin groups, principally UDT and Apodeti, who had crossed the border. The idea was that any military activities in East Timor

would be undertaken, nominally, by these Partisan militias under their own commanders so as to disguise the fact that Indonesian forces were involved. At this stage President Suharto, perhaps uncertain of international reaction, had not approved an outright military invasion. Hence, it was of paramount importance that the presence of Indonesian troops remained secret. On 7 October 1975, the first major initiative to seize border enclaves in the name of the pro-integration Partisan forces was launched with a successful attack on Batugade. Fretilin forces withdrew into the hills towards Balibo and Maliana.

First, 15 October, and then 16 October 1975 was selected as the date to launch synchronised attacks on Balibo, Maliana and Palaka. Team Susi, under Captain Yosfiah was to lead around 800 troops in the attack on Balibo. As important as the military objective of driving Fretilin soldiers from the town, was the objective of keeping secret the leading role of members of the Indonesian Special Forces in the attack. Major-General Murdani expressed this to Ambassador Woolcott over dinner on 15 October. In furtherance of deniability, members of Team Susi wore civilian clothes. The red berets of Rajawali Company B wore their uniforms but no insignia.

Indonesian Knowledge of the Presence of the Journalists in Balibo

There is indisputable evidence that the senior Indonesian military figures, specifically Major-General Murdani and Colonel Dading Kalbuadi, who planned the Balibo attack, were aware of the presence of the journalists in Balibo prior to the attack. Major-General Murdani himself made that admission in a taped interview with journalist David Jenkins in 1995 that became an exhibit in these proceedings. There was also evidence before the inquest that spies had observed the journalists in Balibo. Further, Fretilin radio communications in which the journalists were mentioned had been intercepted in Batugade and had been draw specifically to the attention of Colonel Dading.

Indonesian plans for the Journalists

Major-General Murdani spent about a week in Batugade to oversee personally the final preparations for the assault on 16 October, returning to Jakarta on 14 October.

The presence of journalists who could witness, and then tell the world about, the presence of the Indonesian troops must have been factored into the plans for the attack. It is inconceivable that in the course of the week he spent at Batugade, Major-General Murdani did not give instructions about them.

There is the evidence from Timorese witnesses about their conversations with some of the junior Indonesian officers to the effect that plans were in place to kill the Australian journalists. These plans were variously expressed before the attack as “We know they are there and we have good medicine for them” and “anyone found in Balibo is to be killed”. In the aftermath of the deaths, one of the East Timorese witnesses was told that the journalists had been shot by Indonesian soldiers because they had previously been seen taking photographs of Indonesian helicopters and other war equipment.

Appreciation of the danger

I have set out the various instructions and warnings given to the journalists prior to leaving Australia in Section 6. Irrespective of any warnings received before arriving at Balibo, the journalists knew that the Indonesian forces were building for an attack. They were also aware that the Fretilin soldiers would be vastly outnumbered and that they could not expect any reinforcements. In an unfinished letter of 15 October Brian Peters wrote,

“If the Indonesians stage an all-out attack, the Fretilin troops here would not stand a chance.”

He continued,

“The main worry for the Fretilin forces at the moment (and me) is the fact that the Indonesians have 6 ships just on their side of the Border, a couple of Destroyers, a few patrol boats and what looks like supply boats. We can quite clearly see them signalling to Batugade, but if the Indonesians decide to get really involved and they start shelling from a ship there will be no chance for this place. Our main worry if that happened (apart from being blasted apart) is how to get out of Balibo (there are five Aussie persons here) because of the

shortage of transport, if the Indonesians start shelling I am sure that these Fretilin troops would panic and head straight back to Dili.”

In one of his broadcasts Greg Shackleton was filmed painting the Australian flag and the word “Australia” on two of the outside walls of the house that was, thereafter, referred to as Australia House. He explained that he did this in the hope that it would give him and his companions some protection in the event of an attack. The house was on the corner of the road from Batugade and, assuming that any attackers entered from that direction, the signs should have been visible before entering the square.

I should note that at least one person from each of the Channel 7 and Channel 9 crews had spoken to ABC journalist, Tony Maniaty. He relayed the ABC team’s experience of being fired upon at Balibo on 11 October and then chased by an Indonesian helicopter as they departed. He also told them his opinion that his team had been targeted because they were journalists.

In assessing the danger of their position the one thing the Balibo Five did not know to factor into the equation was the plan to kill them. **I emphasise that outside the Indonesian military, no one in Australia or East Timor was aware of that plan either. I am aware that there has been speculation that government agencies in Australia had forewarning that the journalists were to be killed. All of the evidence before this inquest is to the contrary.**

The Battle

While senior Indonesian military officers have been loath to speak publicly about the fate of the journalists, they have not been as reticent in discussing the military strategy of the battle itself. Colonel Dading has confirmed in an interview other evidence before the court that the attack on Balibo commenced as scheduled at 4.30 a.m. Dading’s strategy was to create noise and movement around Batugade, thus convincing the Balibo defenders that the attack would come from that direction. After naval bombardment and artillery fire, at 6 a.m. the ground troops started an assault from the rear along the roads from Maliana and Cova and a road in between them. At

6.45 a.m. the Indonesian communications base at Batugade was informed that Indonesian forces had taken Balibo.

Opportunities to Leave

Irrespective of the chances of leaving Balibo prior to 16 October, the journalists were invited on two occasions by Fretilin soldiers to accompany them out of Balibo. The first was when the bombardment started. The second was when the last group of five Fretilin soldiers left. At that time each team was engaged in filming and recording the attack and indicated that they wanted to stay a little longer. One man, who from the description of a witness was probably Brian Peters, had positioned himself on the road between the Maliana and Cova Roads and was filming the leaders of Team Susi as they ran towards the square. The evidence shows that Fretilin did not abandon the journalists. Rather the journalists chose to stay, presumably to record as much information as possible about Indonesian involvement in the attack, and allowed insufficient time to leave before the troops arrived. I have addressed their possible motivation in remaining after the Fretilin soldiers departed in Section 6.

While there is no indication that they intended to place themselves in Indonesian hands, the journalists did express to Fretilin soldiers that morning their belief that they would not be harmed by the attacking force in the following terms,

“We are international journalists, so they will not kill us.”

Residence

Evidence from some of the Fretilin soldiers indicated that they spent the night of the 15 October in a house, referred to in this inquest as “the Chinese house”. They gave evidence that the journalists also spent the night there in another room. This was not the house with the Australian flag and the word “Australia” written on it, referred to in the as “the Australia house”. This supports the evidence that the journalists ran towards the Chinese house when the Indonesian troops entered Balibo.

Casualties

Initial reports after the battle suggested that heavy losses were sustained by Fretilin. However, contrary to this information, casualties for both sides were comparatively light. Witnesses, including the commander of the Fretilin forces in Balibo, gave evidence that one Fretilin soldier had been killed and one had been wounded. Estimated casualties for the attacking side were also light. Two Partisans were wounded as were two of the Indonesian troops. One Indonesian soldier, a friend of Glebe 11, was killed. This list of casualties indicates that the official Indonesian version that the journalists died alongside eleven Fretilin soldiers cannot be correct.

Deaths of the Journalists

In section 5, I have analysed in detail the various eyewitness accounts of what happened to the journalists once the Indonesians entered Balibo. No one witness purported to see everything that happened. However, most of the accounts can be pieced together to make a more or less coherent picture of events.

Glebe 5, who was with the last group of Fretilin fighters to leave Balibo, was only 50 metres away near a banyan tree when he made his final observations of the journalists before leaving Balibo. According to his account, one journalist had walked down the middle road, presumably to film the advancing troops. The others were outside the CNRT house. They called to the fifth journalist to join them as they ran towards the Chinese house. As Team Susi advanced, all of them had their hands in the air shouting “Australia”. Glebe 5 saw the last man fall down but whether he fell because he was shot or tripped, Glebe 5 was unable to say. The other journalists ran inside the Chinese house still shouting “Australia”. (He did not hear the word “journalist”.) However, the attacking force comprising Indonesian and Timorese soldiers kept firing at the house. Glebe 5 then ran to the fort to save himself and did not see what happened to the journalists from then on.

Glebe 5 described the man who had fallen as bald-headed. He also noted a resemblance when he was shown a photograph of Brian Peters. Glebe 5 did not see this man carrying a camera, although it may well have been discarded by that time.

Glebe 5 confirmed that the journalists were in civilian clothes and they were unarmed. In the two days he had been in Balibo he had not seen them with any weapons.

Glebe 2, the commander of the Apodeti forces in Balibo, entered the square just behind Team Susi. He heard yelling of words like “There’s white people here.” He then saw four white men, with their hands raised in the air in a gesture of surrender, emerge from the Chinese house. They were all wearing civilian clothing. One, a tall man with a beard, was in front of the others. Glebe 2 identified this man as Brian Peters. Glebe 2 heard voices yelling “attack”. Glebe 2 stated that he clearly saw Yunus Yosfiah about a metre in front of the rest of his team facing the bearded man when the shooting started although he did not see Yunus Yosfiah actually open fire. Nevertheless, he considered that the troops would not have opened fire without his orders. Furthermore, the troops would not have fired unless he did so first.

I should point out that the Partisan forces, although armed, were under orders not to fire their weapons unless specifically ordered. Glebe 2 stated that they did not fire their weapons. Only the Indonesian troops were armed with AK-47 assault rifles. Hence, an inspection of the bodies would reveal whether or not they had been shot by Indonesian troops.

In another eye-witness account, the journalist at the front was stabbed with a knife. The others were then herded into the front room of the Chinese house. Partisan witnesses on the verandah observed three of the journalists in that front room. They (the journalists) were confronted by several of the Indonesian officers including Captain Yosfiah and a Red Beret Commander identified as Christoforus Da Silva or “Chris”. One of the witnesses saw Chris shoot one of the journalists who was standing in the room with his hands raised repeating the word “journalist”. This journalist was described as short and strong. Other witnesses described seeing those same Indonesian officers firing their weapons through the window to the journalists inside. There is also evidence that those in the front room were stabbed as well as shot.

There are several accounts which, while different on some of the details, suggest that one of the journalists fled to the rear of the house. On one version, he was found in the bathroom by Christoforus Da Silva who threatened to use a grenade if he failed to come out. The man emerged with his hands in the air, repeating a word that I am satisfied was “journalist”. He was stabbed in the back as he walked towards the front room. The bodies of all five journalists were brought into the front room where they were viewed later that morning by Colonel Dading, photographed in Portuguese uniforms and then burnt. There is evidence before the inquest of those Partisans who participated in the burning exercise to ensure that the bodies were “reduced to ashes”. Those Partisans who had witnessed the killings were sworn to secrecy. They were also told to say that the bodies were found in the Australia house, not the Chinese house.

It is important to note the strands common to the witness accounts:-

- 1. The journalists were basically all together in or outside the Chinese house at the time they died, not scattered about the town, such that they could be mistaken for members of Fretilin;**
- 2. The journalists clearly identified themselves as Australians and as journalists;**
- 3. They were not with any Fretilin soldiers;**
- 4. Most of the Fretilin soldiers had left Balibo or were about to leave when the Indonesian forces entered;**
- 5. The last area of Fretilin resistance was from the fort, some considerable distance from the Chinese house, and that was the only place from which Fretilin shooting occurred when the attacking force entered the square;**
- 6. The journalists were not killed in any cross-fire between Fretilin and Indonesian soldiers;**
- 7. The journalists were not in the Australia House and were not killed when a mortar shell hit that building, as the official Indonesian version claimed;**

- 8. They were not armed;**
- 9. They were dressed in civilian clothes;**
- 10. All of them at one time or another had their hands raised in the universally recognised gesture of surrender;**
- 11. They were not killed in the heat of battle;**
- 12. They were killed deliberately on orders given by the field commander, Captain Yunus Yosfiah.**

Indonesian Cover-Up and Denial

The full details of the cover-up are set out in Section 11.

The cover-up entailed the following components:

- a) completely destroying the journalists' bodies to eradicate all signs that they had been shot with AK – 47 assault rifles, which were used by Indonesian but not UDT or Apodeti forces;
- b) portraying the journalists as communist combatants who were supporting Fretilin;
- c) to add verisimilitude to that portrayal, dressing the bodies in Portuguese army uniforms and photographing them with (defunct) weapons;
- d) orchestrating official statements from the leaders of the anti-Fretilin factions as to their responsibility for the deaths in the course of combat;
- e) utilising false media reports in the Indonesian press;
- f) prevaricating about providing details of the deaths to the Australian embassy in Jakarta;
- g) deliberately misleading investigators sent by the Australian government in the first six months following the deaths; and
- h) continuing to deny any Indonesian involvement in their deaths at the time and even up to the present time some thirty years after the event.

On 22 October 1975, allegedly in response to a “request” from the Indonesian Government, a joint Statement was released by the leaders of Apodeti, UDT and KOTA, quoting information ostensibly received from the military commander at Balibo, Glebe 2. The account recorded that the anti-Fretilin forces were on their way

up to the Balibo fortress when, suddenly, there was a counter-attack launched from the rear. They responded with heavy fire as a result of which the house burst into flames. When they entered the house, they found that 15 people had been killed, including some white people.

That fabrication was reiterated by an account of Colonel Sunarso to Ambassador Woolcott on 25 October 1975. He claimed that the five journalists had died in a house in Balibo that had been hit by mortar fire. Because there had been a considerable amount of fuel in the house, the ensuing conflagration had incinerated the bodies. The house was described as a Fretilin command post. The documents of the journalists purportedly found nearby were explained by stating that they had been blown out of the house by the explosion.

A later version stated that one of the journalists had been found with the body of a Fretilin soldier behind the Chinese house. He also was carrying documents. In this version these two bodies were burnt in situ. That is not correct. Eyewitnesses saw five dead bodies in the Chinese house.

In the versions dating from the 1990's, Indonesian military figures have continued to reinforce the notion that the journalists were operating as combatants, not civilians. Major-General Murdani emphasised that the journalists were transmitting radio messages for Fretilin. He stated that they had been killed in cross-fire in the heat of battle. Colonel Dading went further and stated that one of the journalists had been operating a sub-machine gun. He also emphasised that they had been killed in the heat of battle. I note that for the first time members of Team Susi, who were interviewed by author Ken Conboy, stated that the journalists had been killed when they (members of Team Susi) fired through the windows of the Chinese house.

These versions are patently fabrications. The evidence before me quite clearly demonstrates that:

1. The journalists did not have a radio and they were not transmitting messages on behalf of Fretilin.
2. None of the journalists were operating a sub-machine gun.

Australian Knowledge

Knowledge by members of the Australian Government and Government agencies and Departments about the journalists before 16 October and subsequently about the manner of their deaths is addressed in Sections 8, 9, 10 and 12.

The first point I wish to make is in relation to the timing of what was, after Batugade, the first major covert assault by Indonesian troops in East Timor. The time chosen in mid-October was one of intense political crisis for the Australian Government. Specifically, on 15 October there were announcements in both Houses of Parliament that the Senate intended to defer voting on the Appropriation Bills to supply funds to the Government. As is well documented in other sources, this crisis eventually led to the dismissal of the Labor Government on 11 November 1975. There is evidence before me that Major-General Murdani was well aware of the internal political crisis, which meant that the attention of the Government as well as the media was focused on domestic rather than foreign issues. The timing may have been coincidental. On the other hand, Major-General Murdani was a skilful military strategist, who may have set the timing of the assault to coincide with the internal political distractions and take attention away from events in East Timor.

The evidence discloses that the attention and the activities of the former Prime Minister, Mr Whitlam, were focused almost exclusively on the political crisis. He gave evidence that although he knew there were journalists in East Timor he was unaware that there were journalists in Balibo. He was unaware that the Australian Embassy had been informed on 13 October that Balibo would be attacked on 15 October although he knew that such an attack was imminent. The first time anyone drew to his attention information that the journalists had been killed was on 21 October. His evidence is confirmed both by oral evidence of other witnesses and his movements as documented in his official diary.

The Australian Embassy in Jakarta had been informed on 13 October that Indonesian Special Forces would attack Balibo and Maliana on 15 October and then move towards Dili. That information was sent to Canberra either on the evening of the 13th or the morning of the 14th. Documents before the inquest show that work had started

on plan to assist Australian citizens in East Timor, perhaps similar to that of August when Australians had been airlifted out of Dili. The evidence from all of the officials in the Department of Foreign Affairs as well as the Ambassador in Jakarta was that they were unaware that there were journalists in Balibo on 15 October, although the former Head of the Department, Mr Renouf, agreed that he was aware that some journalists were outside Dili. The former Minister of Defence as well as senior officers in the Department of Defence also gave evidence that they were unaware that there were any journalists in Balibo.

I am aware that there is speculation that Australian Governments have known the circumstances of the journalists' deaths since 1975 and that this information is contained in secret intelligence material. On all of the evidence before me, including the intelligence material, reports based on it and the evidence of those who saw or knew of it, there is nothing to indicate how the journalists were killed eg. whether they were shot or stabbed, and whether they were killed deliberately or accidentally. The sigint material did confirm the evidence of eyewitnesses that the bodies were burnt. However, as a source of information for this inquest the intelligence material was far less helpful than either the witnesses' accounts and or the Foreign Affairs cablegrams from the period published by the Department of Foreign Affairs.

There is evidence that there was a difference of opinion between the late Senator Willesee, former Minister for Foreign Affairs on the one hand and Mr Morrison and Defence officials on the other about whether to inform the families when the initial sigint information was received. Senator Willesee wanted to inform the families immediately. The others wished to protect the source of the information. However, Mr Morrison in his oral evidence commented that after the first couple of days there was collateral information in the public domain so this was no longer an issue. The delay thereafter was to confirm the identity of those who had been killed. For the reasons set out in Section 12 I place the responsibility for the delay in confirming the identities of the journalists squarely on the Indonesian Government. The Indonesian military had recovered the documents, including some passports, of the journalists on the day they died and were in a position to provide confirmation of identity as soon as the Australian Embassy made inquiries about the journalists.

Legal Position

I have dealt with the legal issues of this case in Section 13 and I acknowledge the very detailed legal advice that I have received from my Senior Counsel, Mr Tedeschi QC. I have concluded that there is nothing to preclude my referring the papers in this matter for consideration by the Commonwealth Attorney General if I have formed the opinion as to the sufficiency of the evidence in accordance with the tests set out in section 19(1) *Coroners Act 1980* that an indictable criminal offence may have been committed. However, I consider that I am bound by the provisions of section 22(3) *Coroners Act* in that I cannot indicate, or in any way suggest, that a particular person has committed a criminal offence.

I am formed the view after applying the requisite evidentiary tests, that war crimes may have been committed and I intend to refer the matter to the Commonwealth Attorney General who has the jurisdiction to prosecute such offences as breaches of Division 268 of the Commonwealth *Criminal Code*.

Recommendations

There are two areas in respect of which I will make recommendations. As set out in section 12 the families of the journalists consider that they did not give their “informed” consent to the burial of the remains in Jakarta. From the material presented to me by the families at the inquest it is quite clear that the fact that the journalists are buried in Jakarta has become more offensive over time as the details of their deaths have emerged. Hence, I intend to make an appropriate recommendation to the Australian Government to have the remains returned to Australia.

I head evidence from Mr Christopher Warren, President of the International Federation of Journalists and Federal Secretary, Media, Entertainment and Arts Alliance. While it was outside the scope of this inquest to undertake a detailed comparison between the preparedness of journalists in 1975 and now to enter armed conflict zones, from the information available to me it seems as if some of the issues that I note in Section 14 are on-going and need to be systemically addressed.

I accept the Media Alliance submission that there is scope for a national industry-wide safety code of practice which could be developed in conjunction with, and endorsed by, Australia's media organisations. I will make the appropriate recommendation.

FINDING – SECTION 22(1) CORONERS ACT 1980

Brian Raymond Peters, in the company of fellow journalists Gary James Cunningham, Malcolm Harvie Rennie, Gregory John Shackleton and Anthony John Stewart, collectively known as “the Balibo Five”, died at Balibo in Timor-Leste on 16 October 1975 from wounds sustained when he was shot and/or stabbed deliberately, and not in the heat of battle, by members of the Indonesian Special Forces, including Christoforus da Silva and Captain Yunus Yosfiah on the orders of Captain Yosfiah, to prevent him from revealing that Indonesian Special Forces had participated in the attack on Balibo. There is strong circumstantial evidence that those orders emanated from the Head of the Indonesian Special Forces, Major-General Benny Murdani to Colonel Dading Kalbuadi, Special Forces Group Commander in Timor, and then to Captain Yosfiah.

RECOMMENDATIONS

- 1. In light of the dissatisfaction about the status quo expressed by some of the families in the course of the inquest, I recommend that, as a matter of priority, the Australian Government liaise with the next-of-kin of the Balibo Five to ascertain, and facilitate, their wishes in respect of the continued internment of the remains of the journalists in Jakarta, Indonesia.**
- 2. A national industry-wide Safety Code of Practice for journalists should be developed in conjunction with, and endorsed by, Australia’s media organisations.**

Magistrate Dorelle Pinch

Coroner

16 November 2007

