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# **Pacific Regional Order**

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**Dave Peebles**



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# **Dedication**

To Justine, Mum and Dad

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# Foreword

This book shows that a new strategic vision is needed for the Pacific to realise its potential as a prosperous, dynamic region. The Pacific currently lacks a vision that marries forward-looking goals with the depth of regional integration needed to resolve the current underlying causes of regional disorder.

The book proposes that members of the Pacific Islands Forum should pursue five goals: sustainable economic development; security; the rule of law; democracy; and integration with the wider region. To realise these goals, Forum members must commit to far more substantive regional integration in these critical areas. To this end, the Forum needs to evolve into a new body, the Oceania Community, that follows, and improves on, the European Union model. The Pacific's challenges can only be addressed through the shared sovereignty and leverage possible in such a Community.

The book begins by outlining the Pacific's current challenges, policy settings and institutions, to identify the need for such a new vision. Next, the guiding philosophy of a new vision is considered, and the overarching features of the Oceania Community outlined. The book then details the new agreements and institutions needed to promote the five goals through the Oceania Community. These plans involve: a common market; a regional commitment to inflation targeting and, in many instances, monetary union; a security centre and standing peace monitoring group; a human rights commission; a regional court; and a regional parliament. Further, the Community needs to seek out integration actively with other states in the wider Pacific.

A regional community dedicated to the promotion of sustainable economic development, security, the rule of law, democracy and wider integration through these agreements and institutions represents an integrated new strategic vision for the Pacific. This vision is necessary, it is achievable, and it is the best way, perhaps the only way, for the Pacific to realise its potential as a prosperous, dynamic region.



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## Key to tables

n.a.	not applicable
..	not available
-	zero
.	insignificant

# Abbreviations

ACTU	Australian Council of Trade Unions
ADF	Australian Defence Forces
APEC	Asia-Pacific Economic Cooperation
ASEAN	Association of South East Asian Nations
ASX	Australian Stock Exchange
BRA	Bougainville Revolutionary Army
BSDP	Business Skills Development Program
CARICOM	Caribbean Community and Common Market
CCPR	Covenant on Civil and Political Rights
CER	Australia-New Zealand Closer Economic Relations Agreement
CESCR	Covenant on Economic Social and Cultural Rights
CMT	Cut, Make, Trim (Factories)
CRTA	(World Trade Organization) Committee on Regional Trade Agreements
DFAT	(Australian) Department of Foreign Affairs and Trade
DWFN	Distant Water Fishing Nation
ECP	Enhanced Cooperation Program
EMEAP	Executives Meeting of East Asia Pacific Central Banks
ESCAP	United Nations Economic and Social Commission for Asia and the Pacific
EU	European Union
FICS	Forum island countries
FEMM	Forum Economic Ministers Meeting
FTA	Free Trade Agreement
GATS	General Agreement on Trade in Services
GATT	General Agreement on Tariffs and Trade
GDP	Gross Domestic Product
ICC	International Criminal Court
IFM	Istabu Freedom Movement
ILO	International Labour Organization
IMF	International Monetary Fund
IPMT	(Solomon Islands) International Peace Monitoring Team
ISO	International Standards Organisation

IT	Information technology
LDC	Least-developed country
MAI	Multilateral Agreement on Investment
MEF	Malaita Eagle Force
MFAT	(New Zealand) Ministry of Foreign Affairs and Trade
MFN	Most-favoured nation
MSG	Melanesian Spearhead Group
NGO	Non-government organisation
NLTB	Native Land Trust Board
NZ	New Zealand
OAS	Organisation of American States
OAU	Organisation of African Unity
OECD	Organisation for Economic Cooperation and Development
OSCE	Organisation for Security and Cooperation in Europe
PACER	Pacific Agreement on Closer Economic Relations
PATCRA	Papua New Guinea-Australia Trade and Commercial Relations Agreement
PICTA	Pacific Islands Country Trade Agreement
PMC	(Solomon Islands) Peace Monitoring Council
PMG	(Bougainville) Peace Monitoring Group
PNG	Papua New Guinea
PNGDF	Papua New Guinea Defence Forces
RAMSI	Regional Assistance Mission to Solomon Islands
RBA	Reserve Bank of Australia
ROOS	Rules of Origin
RTA	Regional Trade Agreement
SME	Small to medium-sized enterprise
SPARTECA	South Pacific Regional Trade and Economic Cooperation Agreement
SPARTECA–TCF	South Pacific Regional Trade and Economic Cooperation Agreement—Textiles Clothing and Footwear Agreement
TMG	(Bougainville) Truce Monitoring Group
TNC	Transnational Corporation
UN	United Nations
UNCITRAL	United Nations Commission on International Trade Law
UNCTAD	United Nations Committee on Trade and Development
UNDP	United Nations Development Programme
VAT	Value-added tax
WTO	World Trade Organization

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# 1

## A strategic vision

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### **Pacific 2020**

In 1993, The Australian National University's National Centre for Development Studies initiated a series of studies under the banner 'Pacific 2010' (Callick 2000a; Cole 1993; Tait 1994). Based on the available data and policy settings then, the series considered what the Pacific may look like in 2010. The vision was a bleak one.

Population growth in the Pacific islands is careering beyond control: it has doubled to 9 million; malnutrition is spreading and is already endemic in squatter settlements...there are beggars on the streets of every South Pacific town...levels of unemployment are high...deaths from AIDS, heart disease and cancers have greatly increased, government services have been privatised or in many cases have lapsed...aid donors have turned their attention elsewhere...crime has increased...pollution and land degradation has spiralled...much of the surviving rainforest has been logged...coastal fisheries have been placed under threat from over fishing...skills shortages in the labour market yawn wide (Cole 1993:i).

Although the series was criticised for being overly pessimistic (see, for example, Fry 1996), on current trends the Pacific in 2010, particularly Melanesia, will more closely resemble the projections of the pessimists than the optimists (see, for example, United Nations Development Programme 1999a). If the timeframe were lengthened to 2020, the projections would be equally bleak, or more so—and would most likely include a number of failed states (see Australian Strategic Policy Institute 2003).

I prefer a different Pacific 2020 scenario. One where the region's citizens enjoy good standards of health and education, long lives and a wealth of opportunities;

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where economic growth is constantly improving, driven by environmentally sustainable service industries; where coups, civil wars and the dangers of failed states have been relegated to the past; where the Pacific is integrated into the wider region, and is an influential voice in world affairs.

Yet the Pacific currently lacks a comprehensive strategic vision that would enable it to realise its potential as a prosperous, dynamic region by 2020. This book aims to make an original contribution by presenting a new vision for achieving Pacific regional order, weaving together previous proposals for Pacific integration, as well as the most recent developments in Pacific regionalism.

This chapter introduces the central goals of Pacific regional order: sustainable economic development, security, the rule of law, democracy and integration with the wider region. I believe the pursuit of these goals through regional integration is essential for addressing the region's challenges, and for winning the benefits of a stable and prosperous Pacific.

### **The beginnings of a strategic vision**

The Pacific Islands Forum, formerly the South Pacific Forum, is regarded as the pre-eminent political grouping in the Pacific (Pacific Islands Forum 2004b), and is the key international institution considered in the book. There have been a number of important developments in Pacific regionalism in recent years. The sixteen members of the Forum—Australia, the Cook Islands, the Federated States of Micronesia, Fiji, Kiribati, Marshall Islands, Nauru, New Zealand, Niue, Palau, Papua New Guinea, Samoa, Solomon Islands, Tonga, Tuvalu and Vanuatu—have added economic reform to the region's agenda (South Pacific Forum 1995). Forum institutions have been invested with greater sovereignty to manage security crises (Pacific Islands Forum 2000a). Various Forum members have contributed to a successful peace monitoring operation in Bougainville and a peacekeeping operation in the Solomon Islands (Regan 2002; Wainwright 2003). Australia has abandoned its hands-off approach to the Pacific and is pursuing a number of high-impact initiatives (Australian Strategic Policy Institute 2003; Howard 2003a).

Yet there have also been a number of disturbing developments in recent years, and a failure to address some of the region's long-term challenges. Sustainable economic growth continues to elude many of the Pacific island states (Asian Development Bank 2002). There have been coups in Fiji and violence in the Solomon Islands. Governments have violated domestic and supranational law (see Chapter Two). The Bougainville peace monitoring operation was precipitated by a civil war that cost 10,000–20,000 lives (Australian Parliament Joint Standing Committee on Foreign Affairs, Defence and Trade, 1999:6);<sup>1</sup> the Solomon Islands peacekeeping operation

by fears that the Solomon Islands was about to collapse as a functioning nation-state (Australian Strategic Policy Institute 2003). Fears have been expressed, too, that other Pacific states exhibit some of the symptoms of failing states (Ashton 1990; Australian Strategic Policy Institute 2002; Dobell 2003; Windybank and Manning 2003). More broadly, the Pacific has been isolated from the substantive regional integration that many other regions in the world are pursuing (see Chapter Two).

The Pacific currently lacks a strategy for drawing together and maximising the benefits from positive developments, and for addressing the manifestations and long-term causes of regional disorder.

However, there is cause for optimism, because the beginnings of a new strategic vision for the Pacific are evident, particularly in the Australian Foreign Affairs, Defence and Trade References Parliamentary Committee's 2003 report, *A Pacific Engaged: Australia's relations with Papua New Guinea and the island states of the south-west Pacific*, and the Auckland Declaration made by Forum Leaders in April 2004 (Pacific Islands Forum 2004b).

### **A Pacific economic and political community**

The Australian Foreign Affairs, Defence and Trade References Parliamentary Committee's (hereinafter 'Australian Parliamentary Committee') key recommendation was that 'the idea of a Pacific economic and political community which recognises and values the cultural diversity in the region, and the independent nations within it, and takes into account differing levels of growth and development, is worthy of further research, analysis and debate' (Australian Parliamentary Committee 2003:xiii). The Committee envisaged that such a community would involve, over time, establishing a common currency, a common labour market and common budgetary standards (Australian Parliamentary Committee 2003:xiii). These proposals largely followed ABC journalist Graeme Dobell's submission to the Committee (Dobell 2003).

The idea of a Pacific 'economic and political community' is not a new one. Mike Moore, former New Zealand Prime Minister and WTO Director-General, proposed an economic and political community for the South Pacific in 1982, the key feature of which would be a Pacific parliament (Moore 1982). As Moore argued, the Forum needs to 'provide the unity and vision...to make the region function' (1982:42). The New Zealand government has previously commissioned a report, *Towards a Pacific Community*, which in 1990 proposed further discussion of the development of 'a community of countries working together to help meet the needs and concerns of the region' (South Pacific Policy Review Group 1990:224).<sup>2</sup> Nonetheless, the Australian Parliamentary Committee's recommendation represents a significant development: for the first time, a group of Australian politicians from all parties

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acknowledged that closer integration with Pacific states may form a meaningful part of Australia's future, and be an essential vehicle for addressing the region's challenges. Since Australia is the largest and richest member of the Forum, its commitment to such a venture is critical.

Whilst acknowledging the Australian Parliamentary Committee's vital contribution to the evolving debate about Australia's Pacific relations, it is necessary to remain realistic about the status of its recommendation. As the Committee itself wrote, it had 'taken the approach of putting forward the idea of an economic and political community for public debate. We have done so because insufficient evidence and analysis has been received by our inquiry to enable us to be categorical about all of the likely issues such a community raises' (Australian Parliamentary Committee 2003:7). Thus, the Committee was not making a categorical recommendation for immediate government implementation.

Some of the Committee's other comments suggested that the benefits of a *true* economic and political community, and the level of commitment needed to realise them, are yet to be fully appreciated. For instance, at one point the Committee states that, while it 'did not receive specific evidence on the advantages or disadvantages of the development of such a community in the Pacific region, the Committee suspects that...economies would need to be similar in structure in relation to trade, industry and financial development' (Australian Parliamentary Committee 2003:79). This is untrue, as the experience of the less-developed countries that have joined the European Union demonstrates. As a result, one of the greatest benefits of European integration has been that the real GDP per capita of less-developed members converged toward those of more-developed members between 1960 and 2001 (see Kaitila 2004).

Further, when considering the idea of a regional court, the Committee suggested that 'if such a court or tribunal were to become a reality, it could only be at the instigation of Pacific islands governments themselves' (Australian Parliamentary Committee 2003:116). This ignores the fact that a legal mechanism is a vital part of any substantive regional integration project, not an optional extra. As the European, Caribbean and Inter-American experience demonstrates, it would be impossible to have an 'economic and political community' without a regional court to interpret and enforce the underlying agreements (see Chapters Five and Ten). Thus, while the Committee has advanced an important ideal, it has not dwelt on the practical steps needed to realise it. Nor has it recognised that integration cannot be a piecemeal effort, that certain key institutions and processes are needed for it to be effective.

More generally, parliamentary committee reports are not government policy. The Australian Parliamentary Committee's report makes the worthy recommendation

that a Pacific labour mobility scheme be trialled (Australian Parliamentary Committee 2003:xviii); in 1989 the Parliamentary Joint Committee on Foreign Affairs, Defence and Trade also recommended a Pacific work experience program be trialled (Parliamentary Joint Committee on Foreign Affairs, Defence and Trade 1989:137), however this recommendation was not taken up. Thus, governments are free to ignore committee recommendations.

### **The Auckland Declaration**

In August 2003, the heads of government attending the Forum Leaders' meeting agreed that the 'serious challenges, both old and new, facing the countries of the region warranted serious and careful examination of the pooling of scarce regional resources to strengthen national capabilities' (Pacific Islands Forum 2003: para 54). To this end, leaders agreed to carry out a review of the Forum (Pacific Islands Forum 2003: para 58). This led to a Special Leaders' Retreat in April 2004, where leaders adopted a new vision for the Forum as part of the Auckland Declaration.

Leaders believe the Pacific region can, should and will be a region of peace, harmony, security and economic prosperity, so that all its people can lead free and worthwhile lives...We seek a Pacific region that is respected for the quality of its governance, the sustainable management of its resources, the full observance of democratic values, and for its defence and promotion of human rights. We seek partnerships with our neighbours and beyond...to ensure a sustainable economic existence for all (Pacific Islands Forum 2004b:1).

The Auckland Declaration is a highly encouraging development: it is the type of forward-looking vision that has been missing from the Forum's recent deliberations. Its explicit recognition of the importance of democratic values, and the defence and promotion of human rights is commendable, as the Forum has avoided these issues for much of its history.

Yet the Auckland Declaration's vision, like the Australian Parliamentary Committee's vision, is an incomplete one. The Forum has had vision statements and reviews before—and, as the Pacific's recent upheavals demonstrate, these alone have not resolved the region's challenges.<sup>3</sup>

Collins and Porras (1991) usefully suggest two necessary components of a comprehensive vision: a guiding philosophy, and the detailed plans, or tangible images, of the vision. In the Auckland Declaration, the leaders have provided a vision of how they would like to see the Pacific develop, but we do not yet see a guiding philosophy, and, lacking this, there is clearly no comprehensive plan to realise this vision.

This shortfall can be made clearer by a consideration of the founding treaties of the European Union<sup>4</sup> and the Caribbean Community and Common Market

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(CARICOM). The preamble to the European Union's founding treaty states that members are

...resolved to substitute for historical rivalries a fusion of their essential interests; to establish, by creating an economic community, the foundation of a broad and independent community among peoples long divided by bloody conflict; and to lay the bases of institutions capable of giving direction to their future common destiny (Treaty of Paris, Preamble).

In the preamble to CARICOM's founding treaty, members announced their 'common determination to fulfil the hopes and aspirations of their peoples for full employment and improved standards of work and living' (Chaguaramas Treaty establishing the Caribbean Community. Hereinafter 'CARICOM Treaty'). CARICOM members believed these objectives could 'most rapidly be attained by...accelerated, coordinated and sustained economic development' and 'a common front in relation to the external world' (CARICOM Treaty, preamble). Thus, CARICOM's key objective was 'the economic integration of the Member States through the establishment of a common market regime' (CARICOM Treaty, Article 4).

The European Union promoted its vision of bringing together peoples divided by conflict, but it also identified the vehicles for accomplishing this goal—an economic community and the needed institutions. CARICOM promoted its vision of fulfilling the aspirations of Caribbean citizens for better development, but it too identified the vehicle for accomplishing its goal—economic integration through a common market.

The Auckland Declaration provides a vision, but not a vehicle for achieving this vision. Although Forum leaders have indeed established a planning process to help the Forum realise the vision (Pacific Islands Forum 2003: para i), it is not clear that they share underlying assumptions about how this vision may be achieved. For example, Australian Prime Minister John Howard has said that Australia sees the Forum review process leading to 'pooled governance approaches...to better assist [small] island countries' (Howard 2004:1), because these countries...should integrate their education, police and transport services (O'Callaghan 2003a). On this reading of the declaration, deep integration between all Forum members is not on the agenda. Instead, Howard refers to the small island countries as 'look[ing] to Australia and others for practical advice, cooperation and assistance' (Howard 2004:1). This implies that Australia can be a catalyst for change by providing advice and assistance, but without changing any of its own policy settings. If the leaders' vision is to be realised, Australia must be an intimate partner in the process, and there are areas where Australia must do better by its Pacific partners.

### **An integrated strategic vision**

It is my contention that a Pacific economic and political community is the best vehicle for addressing the Pacific's challenges, and for realising the leaders' vision

of the Pacific as a region of peace, harmony, security and economic prosperity. The realisation of this integrated strategic vision requires a new guiding philosophy: *all* Forum members need to pursue greater levels of shared sovereignty through the Pacific Islands Forum, to develop a regional community that follows, and improves on, the European Union model. For the purposes of this book, shared sovereignty is defined as those areas of relations between community members that are governed by regional agreements and institutions.

Thus, this book aims to respond to the challenge presented by the Australian Parliamentary Committee and the Forum Leaders: to demonstrate the critical importance of an economic and political community as a vehicle for resolving many of the problems facing Pacific states; and to detail the agreements and institutions needed to pursue regional integration and realise such a community.

### **The five goals**

It is appropriate to identify the goals that such proposals should aim to realise. Pacific regional order should promote

- sustainable economic development
- security
- the rule of law
- democracy
- integration with the wider region.

The first four goals are interconnected and mutually reinforcing. This interconnection is vital. The Pacific's security crises, for example, should be properly understood as a manifestation of the other challenges, such as lack of economic development and poor governance, rather than viewed in isolation. Promoting sustainable economic development will improve the Pacific's security environment; but sustainable growth is likewise dependent on a benign security environment, and institutions to promote the rule of law and democracy.

As New Zealand's South Pacific Policy Review Group suggested in 1990, the challenge is to develop 'a comprehensive and integrated approach...which encompasses the whole range of security issues, which extends far beyond the narrow military sense to include political, economic, trade, social, environmental, resource and natural disaster issues' (South Pacific Policy Review Group 1990). As Esben-Oust Heiberg has argued in the European context, 'strong economic development is difficult to achieve without security and security is difficult to achieve without a well-functioning economy' (1988:193). In considering prospective European Union members from Central and Eastern Europe, Heiberg argued

[t]hese countries need help to develop their economies and democracy...The stability and economic development that is likely to come from EU

## **Pacific Regional Order**

membership will enhance the strength and stability of those countries and, with economic development and a higher standard of living, their internal stability will be improved (1988:194).

*Ad hoc*, reactive initiatives cannot replace the long-term strategy that is needed to address the Pacific's current challenges. A comprehensive plan is needed to promote sustainable economic development, security, the rule of law and democracy through permanent commitments and institutions. Jean Monnet, one of the founders of European integration, believed in the transformative influence of regional institutions: states 'subject to the same rules will not see any change in their nature, but they will see a transformation of their behaviour' (Wright 1998:2). European integration has, in effect, encouraged governments to behave responsibly ('Converging hopes', *The Economist*, 13 February 1999). The experience of the Caribbean is also instructive in this regard—promoting regional integration through CARICOM has resulted in the Caribbean being a far more prosperous and secure region than the Pacific (Fairbairn and Worrell 1996).

Promoting the first four goals involves deepening the Pacific integration process. Such integration is vital for addressing the underlying causes of Pacific disorder, for ensuring the shared sovereignty necessary to pursue common solutions.<sup>5</sup>

In the past, when the Forum has sought to pursue one or more of these same goals, members have not been prepared to commit to the necessary depth of integration. In some instances, the Forum has made declarations focused on national initiatives, rather than shared regional initiatives. For example, the Honiara Declaration on Law Enforcement Cooperation, which sought to promote the goal of security, encouraged Forum members to implement various national legislative initiatives.<sup>6</sup> Forum Communiqués for the next decade then encouraged members to implement these initiatives.<sup>7</sup> Clearly this regional declaration was ultimately unsuccessful in addressing the underlying causes of regional disorder.

Where a Forum declaration has proposed regional initiatives to promote one of these goals, the subsequent follow-through has typically lacked the necessary shared sovereignty. For example, the Forum's Madang Action Plan on 'Securing Development Beyond 2000' proposed various measures to promote regional trade integration.

- [Forum members have] agreed to review existing patterns of trade, investment and other aspects of regional economic relations with a view to broadening, deepening and diversifying regional economic cooperation.
- Particular attention should be given [to] strategies for increasing national and regional competitiveness by cooperating in reducing both tariff and non-tariff barriers to trade in the region.
- The Forum agrees that the various measures outlined in this Plan for promoting regional cooperation in trade, transport and tourism should be implemented without delay (South Pacific Forum 1995: paras 3, 4, 17).



Conceivably, such measures could have led to the creation of a Pacific common market. Instead, Forum members eventually settled on the Pacific Closer Economic Relations Agreement–Pacific Islands Country Trade Agreement framework (PACER–PICTA). This framework does not promote deep trade integration between all Forum members. It could evolve, but as it currently stands it cannot be an effective vehicle for sustainable economic development.

The important exception in this brief survey is the Biketawa Declaration, which did actually promote a regional sovereignty, and a deepening of the integration process, by committing the Forum to act collectively in addressing the region’s security challenges (Pacific Islands Forum 2000a). The Biketawa Declaration led to the Forum’s comprehensive intervention in Solomon Islands, to rescue the country from becoming a failed state. A distinction can be drawn, then, between regional cooperation and regional integration at a deep enough level to accomplish necessary change and successfully promote the goals of regional order.

Thus, a deepening of the integration process is needed to provide the impetus, the shared commitment and the shared resources necessary to address the underlying causes of Pacific disorder.

The fifth goal relates to widening the Pacific integration process to other states. The purpose of this goal is partly defensive—a dynamic community, seeking out integration with other states, may assist Forum members to address their isolation from the nascent Asian regionalism and other regional integration efforts around the world. More positively, though, integration with the wider region will further promote economic development and security. It will also allow Forum members to win the benefits that are possible in a larger and more powerful organisation, ensuring they have a greater impact in other international organisations such as the United Nations and the World Trade Organization.

The Forum Leaders, in the Auckland Declaration, named economic growth, sustainable development, good governance and security as the Forum’s key goals (Pacific Islands Forum 2004b:1). As can be appreciated, there are slight differences to the goals I have proposed. Good governance is indeed vital to Pacific development, but in terms of what a regional community can contribute, I believe this is more usefully stated in the explicit goals of promoting the rule of law and democracy, and the agreements and institutions that flow from these goals. The leaders did not suggest wider integration as a Forum goal, although their vision did state that they would ‘seek partnerships with our neighbours and beyond’ (Pacific Islands Forum 2004b). For the reasons above, it is vital that integration with the wider region should also be made explicit.

The Australian Parliamentary Committee also produced a similar but expanded list, including additional objectives such as ‘health, welfare and educational goals’ (Australian Parliamentary Committee 2003:xiii). However, we need to remain realistic

## **Pacific Regional Order**

about what regional integration can achieve, and to consider carefully where integration can bring the most benefit, compared to areas that are best managed by national and local governments. In European terms, this is described as the debate about 'subsidiarity'—deciding which level of governance is best suited to carrying out a particular function (Bermann 1993; Van Kersbergen and Verbeek 1994; Cass 1992; Toth 1992). More generally, it is a feature of the debate between 'inter-governmentalists', who see the European Union as about cooperation between a group of nation-states, and 'institutionalists' or 'neofunctionalists', who view the European Union as a nascent super-state, or, in some cases, as a federation already (see Pachala 1999; Moravcsik 1993). My own approach to Pacific integration falls into the inter-governmentalist camp. My hope is that Pacific states will embrace what Lister defines as a 'confederation', similar to, but more developed than, the relationship between the United Nations and its member states. Lister writes that the distinction between federation and confederation is that 'a federation is a union of peoples in a single state, whereas a confederation is a union of states (and secondarily of peoples) that lock together carefully specific sovereign functions under an intergovernmental treaty-constitution' (Lister 1996:106; see also Hirst and Thompson 1999).<sup>8</sup>

This distinction is an important one. Chand (2003), for example, has discussed whether the Australian Parliamentary Committee's proposal for a Pacific economic and political community could be taken to mean 'political unification'. I do not believe this was the Committee's intent, and it is not mine here: a regional community can exist by sharing sovereignty in particular areas—allowing these areas to be governed by regional agreements and institutions—without the need for separate nation-states to merge into one.

## **Conclusion**

This chapter has advocated an integrated strategic vision for drawing together recent positive developments in Pacific regionalism, and addressing some of the critical challenges confronting the region. The recent recommendation from the Australian Parliamentary Committee for a Pacific economic and political community, combined with the Forum Leaders' Auckland Declaration, represents the beginnings of such a strategic vision.

To ensure a prosperous, dynamic Pacific in 2020, I have proposed that Pacific states should pursue regional integration through the Pacific Islands Forum: developing an economic and political community that follows, and improves on, the European Union model. The central goals of Pacific regional order should be sustainable economic development, security, the rule of law, democracy and integration with the wider region. As can be appreciated, the first four goals are interconnected and mutually reinforcing, and relate to deepening the Pacific

integration process. The fifth goal relates to widening the process to encompass other states. These criteria also serve as my framework for assessing the region's past policies and current challenges. For example, a regional trade agreement cannot be judged successful if it has failed to promote sustainable economic development.

This chapter has introduced the guiding philosophy of Pacific integration and what it should aim to achieve. Chapters Two through Four consider various aspects of the present state of the Pacific, suggesting why such a new guiding philosophy is important and necessary. Chapter Two, 'Challenges to regional order', provides an overview of the considerable gap between the Pacific's current policies and trends, and the vision of a prosperous, dynamic Pacific in 2020. Challenges to sustainable economic development, security, the rule of law and democracy are considered, as well as the challenge affecting all Forum members—regional integration in the wider region, and the rest of the world.

Since Australian leadership would be critical in any substantive Pacific integration effort, Chapter Three, 'Australia and regional order', considers Australia's Pacific interests, its evolving Pacific policy, and why Pacific integration would be in Australia's interest. Chapter Four, 'The Pacific Islands Forum', examines the Forum's efforts thus far to promote the five goals of regional order. It provides a case study of the negotiations for the Forum's trade agreement, PACER–PICTA, to highlight the policies of Forum members and Forum bureaucrats that would need to change for more substantive integration to occur.

Chapter Five, 'From a Forum to a Community', further details the guiding philosophy. The European Union is assessed to examine the degree to which an existing regional integration project has succeeded in realising the five goals. The European Union is considered because it is the most advanced model of a regional integration project; where successful, its institutions and policies can serve as a template for Pacific initiatives. CARICOM is also considered throughout the book as a basis for comparison with the Pacific Islands Forum. CARICOM provides an example of what a group of small, developing island countries have been able to achieve through regional integration, demonstrating that the benefits of integration are not restricted to large, developed countries. This chapter proposes that the Forum should evolve into a more substantive body; and to advertise the creation of a shared, more powerful sovereignty it should be renamed the Oceania Community.

Chapters Six through Twelve then provide the detailed plans for how the guiding philosophy should be realised. Chapter Six, 'Free trade', considers how a Pacific common market could be created to promote sustainable economic development. Chapter Seven, 'Monetary cooperation and integration', likewise proposes various measures to promote sustainable economic development through monetary policy.

## **Pacific Regional Order**

Chapter Eight, 'Security', advances the measures necessary to prevent and manage conflict in the region. Chapter Nine, 'Human rights', and Chapter Ten, 'The rule of law', propose the regional mechanisms needed to promote the rule of law, including a regional human rights commission and a regional court. Chapter Eleven, 'Democracy', proposes a regional parliament to assist in addressing the region's challenges to democracy.

Chapter Twelve, 'Evolution', argues that the Oceania Community should be a dynamic organisation, seeking integration with the wider Pacific. Various phases in the Community's development are proposed, and the Community's potential impact in other international fora is also considered.

A regional community dedicated to the promotion of sustainable economic development, security, the rule of law, democracy and wider integration through these agreements and institutions represents an integrated new strategic vision for the Pacific. This vision is necessary, it is achievable, and it is the best way—perhaps the only way—for the Pacific to realise its potential as a prosperous, dynamic region by 2020.

## **Notes**

- <sup>1</sup> Regan suggests that it is difficult to know with certainty how many people died without more detailed investigation (Regan 1999).
- <sup>2</sup> In 1979, Jack Ridley, a former New Zealand parliamentarian, also argued for a 'South Pacific federation', which would involve political unification (Ridley 1989).
- <sup>3</sup> 'Forum members [will] cooperate in efforts to maintain security, improve living standards and ensure sustainable development throughout the region' (South Pacific Forum 1995b:2, 20).
- <sup>4</sup> The Treaty of Paris established the European Coal and Steel Community in 1951. In accordance with the Treaty of Rome, 1957, this body was renamed the European Economic Community. In 1967 this became the European Community and its current name, the European Union, was acquired in accordance with the Maastricht Treaty of 1992. For ease of understanding, 'European Union' will be used throughout the book to refer to these three bodies.
- <sup>5</sup> The World Bank, for example, notes in relation to trade integration between Australia, New Zealand and developing Pacific states that 'greater benefits will flow from deeper integration' (World Bank 2002:33).
- <sup>6</sup> See Paras 4, 6 and 9 of the Declaration by the South Pacific Forum on Law Enforcement Cooperation, Attachment to the Twenty-Third South Pacific Forum Communiqué. Available at <http://www.forumsec.org.fj> [accessed 12 October 2002].
- <sup>7</sup> See Forum Communiqués at <http://www.forumsec.org.fj> [accessed 18 September 2003].
- <sup>8</sup> Jean Monnet, regarded by many as the father of European integration, was clear that federation was his ambition, writing in 1950 that 'Europe must be organised on a federal basis' and announcing in 1952 that '[w]e are not forming coalitions between States, but union among people' (*Time*, 13 April 1998; see also Fontaine 1995).

# 2

## Challenges to regional order

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This chapter provides an overview of the present state of the Pacific. The purpose is to highlight the gap between the present state, and the vision of a prosperous, dynamic Pacific in 2020. This considerable gap demonstrates why a comprehensive program of regional integration is so critical for the Pacific.

The challenges currently confronting Pacific states are grouped according to the five goals of regional order and cover: challenges to sustainable economic development; to security; to the rule of law; to democracy; and the challenge represented by the rise in regionalism elsewhere in the world, a development that has so far excluded Pacific states.

Although the Pacific Islands Forum is comprised of sixteen unique members, the intention is to provide a regional overview, rather than a comprehensive treatment of any individual Forum member. The focus in this chapter is largely on the challenges confronting the Forum's smaller and poorer members, known as Forum island countries (FICs). Although technically Australia and New Zealand are island countries as well, the intention is to distinguish between the Forum's richer and poorer members. Yet the final challenge considered—that of Pacific states' isolation from wider integration—concerns all Forum members.

Some key features of Forum members are outlined in Table 2.1. With the exception of Australia, Papua New Guinea and New Zealand, all other Forum members have a population under 1,000,000. Of the 14 Forum island countries, seven have a population of around 100,000 or under, and four have a population of 20,000 and under. Five have some type of shared sovereignty arrangement with the United

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Table 2.1 Key data for Forum members

	Political status	Population ('000)	Land area (sq. km.)	Sea area ('000 sq. km.)
<b>Australasia</b>				
Australia	Independent	19,800.0	7,713,000	10,000
New Zealand	Independent	3,900.0	271,000	4,053
<b>Melanesia</b>				
Papua New Guinea	Independent	5,100.0	462,243	3,120
Solomon Islands	Independent	500.0	27,556	1,340
Vanuatu	Independent	200.0	12,190	680
<b>Polynesia</b>				
Fiji	Independent	800.0	18,272	1,290
Samoa	Independent	180.0	2,935	120
Tonga	Independent	100.0	747	700
Cook Islands	Free association with NZ	17.8	237	1,830
Tuvalu	Independent	10.2	26	900
Niue	Free association with NZ	1.7	259	390
<b>Micronesia</b>				
Fed. States of Micronesia	Compact with the US	112.6	701	2,978
Kiribati	Independent	88.1	690	3,550
Marshall Islands	Compact with the US	54.0	181	2,131
Palau	Compact with the US	20.3	488	629
Nauru	Independent	12.1	21	320

Source: Australian Department of Foreign Affairs and Trade, 2004a. *Country Fact Sheets*, Commonwealth of Australia, Canberra. Figures are for 2002, or nearest available year; Henningham, S., 1995. *No easy answers: Australia and the Pacific islands region*, Commonwealth Parliamentary Research Paper No. 5, Commonwealth of Australia, Canberra.

Table 2.2 1999 Human Development Index—Forum island country rankings

Country	Ranking
Palau	46
Cook Islands	62
Niue	70
Fiji	101
Nauru	103
Tonga	107
Samoa	117
Tuvalu	118
Federated States of Micronesia	120
Marshall Islands	121
Kiribati	129
Vanuatu	140
Solomon Islands	147
Papua New Guinea	164

Source: United Nations Development Programme, 1999. *Pacific Human Development Report*, United Nations Development Programme, Suva:13.

States or New Zealand. These factors suggest that all Forum members would benefit from closer cooperation to address these issues of capacity.

As can be appreciated, Melanesian states account for the vast majority of the collective population and landmass of Forum island countries, and also have the most economic potential. With the exception of Fiji, the Polynesian states have less landmass, and their resource bases less depth (Fiji is ethnically Melanesian but culturally Polynesian and so can be placed in either group). The Micronesian states are small, scattered and generally have less resource potential (Fairbairn et al. 1991).

## Challenges to sustainable economic development

### Overview

Most Forum island countries have struggled to achieve sustainable economic growth for their citizens. Of the fourteen Forum island countries, five are among the world's least developed countries, according to the United Nations: Kiribati, Samoa, Solomon Islands, Tuvalu and Vanuatu. To provide a fuller picture of a country's state of development, the UNDP's Human Development Index measures a country's development level in terms of whether its citizens can enjoy a long and healthy life, a decent standard of living, and whether they have good levels of education (UNDP 2002). In its *Pacific Human Development Report*, the United Nations Development Programme (UNDP 1999a) ranked the Forum island countries against 175 other countries (Table 2.2). Only Palau, the Cook Islands and Niue have reasonable rankings. The largest Forum island country, Papua New Guinea, was ranked near the bottom of the scale.

Economic growth in these countries has generally been poor, averaging around 2 per cent a year in the 1980s (World Bank 1998). It rose to 3.5 per cent in the early 1990s, but, through 1996–2001, fell to an average of 1.38 per cent a year (this figure was obviously not helped by coups in Fiji and Solomon Islands in 2000) (Asian Development Bank 2002). Many Forum island countries have continued to struggle to produce an even, sustainable rate of economic growth in recent years (with honourable exceptions in Tuvalu, Samoa and Kiribati). The Solomon Islands economy contracted by 14 per cent in 2000, then by a further 3 per cent in 2001, following the coup (Table 2.3).

Unfortunately, the economic development that does take place is often unsustainable (Waddell 1997). The Solomon Islands has suffered considerable deforestation because of short-term deals with overseas companies (Chevalier 2000; Fairbairn and Worrell 1996; Liloqula and Pollard 2000). Concerns have also been raised about forestry policies in Papua New Guinea, Fiji, Vanuatu and Samoa (Barber 1995; World Bank 1998). A further issue is unsustainable tuna fishing by

## Pacific Regional Order

Table 2.3 Forum island countries: real growth in gross domestic product, 1996–2001 (percentage change year on year)

	1996	1997	1998	1999	2000	2001
Cook Islands	-0.2	-2.8	-4.2	5.8	9.8	..
Fiji	3.1	-0.9	1.4	9.7	-2.8	2.6
Kiribati	3.0	5.7	5.0	6.2	0.2	..
Marshall Islands	-15.9	-9.4	1.1	0.1	-0.9	1.7
Fed. States of Micronesia	-1.8	-5.1	-2.1	0.9	2.1	1.5
Nauru	..	..	..	..	..	..
Niue	..	..	..	..	..	..
Palau	7.8	0.7	-5.2	..	..	..
Papua New Guinea	7.7	-3.9	-3.8	7.6	-0.8	-2.5
Samoa	7.3	1.2	2.4	2.6	6.9	6.5
Solomon Islands	3.5	-2.3	1.1	-1.3	-14.0	-5.0
Tonga	-0.4	0.1	2.4	3.1	6.7	3.0
Tuvalu	10.3	3.5	14.9	3.0	3.0	4.0
Vanuatu	2.5	1.5	2.2	-2.5	3.7	-0.5
Average FIC growth	2.24	-0.98	1.27	3.2	1.26	1.26

Sources: Asian Development Bank, 2002. *Key Indicators of Developing Asian and Pacific Countries*, Asian Development Bank, Manila:59; Palau data from Australian Department of Foreign Affairs and Trade, 2004a. *Country Fact Sheets*, Commonwealth of Australia, Canberra.

Table 2.4 Economically inactive population in Forum island countries, 2000 (per cent of population aged 15–64)

	Female	Male
Cook Islands	52	30
Fiji	62	17
Kiribati	22	9
Marshall Islands	69	20
Federated States of Micronesia	68	41
Nauru	54	35
Niue	..	..
Palau	..	..
Papua New Guinea	32	14
Samoa	60	23
Solomon Islands	20	14
Tonga	59	17
Tuvalu	14	15
Vanuatu	21	11

Source: Asian Development Bank, 2002. *Key Indicators of Developing Asian and Pacific Countries*, Asian Development Bank, Manila:54.



various distant-water fishing nations ('Making waves in the Pacific', *The Economist*, 21 August 1993; World Bank 1998). These are examples of poverty-related pressures causing environmentally unsustainable practices (Australian Department of Foreign Affairs and Trade 2000).

Poor economic growth results in less government revenue, often leading to lower levels of medical care and fewer educational opportunities. For example, a male born in Papua New Guinea in 2000 can only expect to live 55 years; and the infant mortality rate in that country is 79 per 1,000 births (Asian Development Bank 2002). The UNDP has also expressed concern that HIV/AIDS will become the major development problem in the region (UNDP 1999b). The poor economic growth also limits opportunities for employment in the formal cash economy (Table 2.4).

Yet even though economic growth is often stagnant, and job opportunities in the cash economy poor, Forum island populations continue to grow, in some cases rapidly (Table 2.5). Papua New Guinea has one of the highest rates of population growth in the world, and on current estimates its population will reach 10 million by 2025 (Sheridan 2002; Downer 2003a). Solomon Islands and Marshall Islands also have population growth rates above 3.5 per cent a year. At least 40 per cent of the population in these countries, and Vanuatu, is under 15 years old (UNDP 1999a). Much of the population growth flows to urban areas, where there is not the same subsistence safety net as may exist in rural areas (Tait 1994).

Table 2.5 Forum island countries: annual population growth rates, 1985–2001 (per cent)

	1985–1990	1995–2000	2000–2001
Cook Islands	–0.2	–1.6	1.7
Fiji	1.1	1.0	2.7
Kiribati	2.3	2.3	2.2
Marshall Islands	2.6	2.1	3.6
Federated States of Micronesia	2.8	0.2	2.0
Nauru	2.0	2.4	2.1
Niue	..	..	..
Palau	..	..	..
Papua New Guinea	2.1	4.9	..
Samoa	0.1	0.8	2.0
Solomon Islands	3.6	3.7	3.7
Tonga	0.5	0.3	0.3
Tuvalu	1.9	1.9	2.0
Vanuatu	2.7	2.6	2.7

Source: Asian Development Bank, 2002. *Key Indicators of Developing Asian and Pacific Countries*, Asian Development Bank, Manila:52.

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To put these figures in perspective, it has been estimated that from 1978 to 2001 the size of Papua New Guinea's formal workforce grew from 124,000 to only 146,000, but there are now 50,000 school leavers attempting to enter the labour market each year (Windybank and Manning 2003:6; Australian Department of Foreign Affairs and Trade 1996a). At the time of the first coup in Fiji, 72 per cent of urban Fijians aged 15–24 were unemployed (Knapman 1990). According to the 1996 census in Fiji, of a population of 775,000, two-thirds were under 30, and half under 20, with many experiencing unemployment.<sup>1</sup> Lieutenant Colonel Filipo Tarakinikini, the chief army spokesman after the third Fijian coup, spoke of a 'moral recession' and said 'I see those in the parliamentary compound who cannot find a job. I see young men who flock into urban areas and cannot make a living. And they have to take their frustration out on someone' (Mottram 2000:17). The same thing happened in Bougainville in the 1980s and 1990s—young unemployed people drifted into the Bougainville Revolutionary Army (BRA) and were convinced of the merits of destroying the Panguna mine (Regan 1998, 1999).

Globalisation means island populations are aware of, and aspire to, a better lifestyle (Tait 1994). Yet a key theme of the UNDP's *Pacific Human Development Report* was the region's 'poverty of opportunity' (UNDP 1999a:vii).<sup>2</sup> The lack of economic growth and employment opportunities contributes to regional disorder.

## **Trade**

Forum island countries' exports typically consist of a narrow range of commodities (UNDP 1999a). Until now, these have depended on preferential access to the Australian and New Zealand markets through the SPARTECA agreement; the European Union market through the Lomé and Cotonou agreements; and in the case of Micronesia, Palau and the Marshall Islands, the US market through the Compact agreements.

However, these exports are uncompetitive on global markets because their trade has been dependent on non-reciprocal trade agreements which are being phased out, and because Pacific island governments have tended to adopt an 'import substitution' approach to industrial development. With import substitution, a domestic firm receives favourable treatment from the national government, and high tariffs make overseas products uncompetitive.<sup>3</sup> However, few industries can get all the component products they need from within the borders of their own country, especially when the population of the relevant country is small. So industries source their components from overseas, but these imports attract high tariffs. Each time a domestic industry uses an imported component product, it inflates the price of its own final product, making its exports less competitive.<sup>4</sup> Generally, high tariffs on imports raise the cost of living—they are indiscriminate, regressive taxes (Centre for International Economics 1998).

Given falling tariff margins around the world,<sup>5</sup> preferential access for goods to the Australian, New Zealand, European Union and, in some cases, US markets will not give Forum island countries a sufficient comparative advantage (Mellor 1997; United Nations 1999). Thus, current Forum island country trade policies are unsustainable in terms of developing competitive industries. Without sufficient specialisation and value-adding, the Fiji garment industry, for example, is unlikely to last long if the Indonesian garment industry receives similar access to the Australian market (Duncan 1996). Forum island countries must develop competitive economies—though not necessarily in manufactured goods—or risk losing market share to ASEAN.<sup>6</sup>

In terms of developing alternative policies, Fiji and Mauritius are often compared. Fiji and Mauritius are of similar size, in terms of land mass and population, and have similar economic potential. Mauritius achieved independence a few years before Fiji; its economy at the time was dependent on sugar and other commodities. Today Mauritius still relies in part on sugar, but it also exports manufactured goods and tourist services and is looking to develop exports in financial and information technology services. More than 480 overseas companies in Mauritius employ over 80,000 locals. Mauritius seeks integration with the world economy and offers overseas investors political stability; it has delivered economic growth and rising health standards to its citizens.

E-commerce could be an important vehicle for Forum island countries to overcome their isolation and develop service industries to diversify their economies. Poor telecommunications infrastructure and telecommunications monopolies, however, have left many areas of most Forum island countries without telephone access, let alone internet access (Table 2.6).

Fiji aimed to raise telephone penetration to 13 per cent nationally by 2000; but this still left rural penetration at 4 per cent. In 1999, Fiji's largest internet service provider had only 2,000 personal and business customers. Those areas of the Forum island countries with internet access often suffer from low bandwidth, a problem that will have to be rectified if e-commerce is to become an export tool (Australian Department of Foreign Affairs and Trade 1999a).

### **Investment**

Investment is considered here as a special sub-set of Forum island countries' overall trade relations, given its potential importance in driving development (World Bank 1999). Foreign direct investment in Forum island countries has remained static or decreased (Table 2.7). No Forum island country has managed to achieve a steadily growing level of foreign direct investment. Papua New Guinea, for example, attracted US\$455 million in investment in 1995; this fell to US\$130 million in 2000.

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Table 2.6 Information and communication technology levels in Forum island countries

	Internet users 1999	Main telephone lines 2001 (per '000 households)	Total estimated personal computers 2001 (per '000 persons)
Cook Islands	..	..	..
Fiji	8,000	110	61
Kiribati	1,000	40	25
Marshall Islands	1,000	60	50
Fed. States of Micronesia	2,000	83	..
Nauru	..	..	..
Niue	..	..	..
Palau	..	..	..
Papua New Guinea	135,000 <sup>a</sup>	14	61
Samoa	1,000	56	7
Solomon Islands	3,000	16	48
Tonga	1,000	99	..
Tuvalu	..	..	..
Vanuatu	3,000	34	..

<sup>a</sup> 2000 figure.

Source: Asian Development Bank, 2002. *Key Indicators of Developing Asian and Pacific Countries*, Asian Development Bank, Manila:81.

Table 2.7 Foreign direct investment in Forum island countries, 1991–2000 (US\$ million)

	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000
Cook Islands	..	..	..	..	..	..	..	..	..	..
Fiji	5.2	103.6	91.2	67.5	69.5	2.4	16.0	107.0	-33.2	-
Kiribati	0.4	0.4	-0.8	0.4	..	..	..	..	..	..
Marshall Islands	..	..	..	..	..	..	..	..	..	..
Fed.States of Micronesia	..	..	..	..	..	..	..	..	..	..
Nauru	..	..	..	..	..	..	..	..	..	..
Niue	..	..	..	..	..	..	..	..	..	..
Palau	..	..	..	..	..	..	..	..	..	..
Papua New Guinea	117.0	104.0	62.0	57.0	455.0	111.3	28.6	110.0	296.5	130.0
Samoa	3.0	5.0	5.0	3.0	3.0	4.0	4.0	3.0	2.0	-
Solomon Islands	15.0	14.0	23.4	2.1	2.0	5.9	33.8	8.8	9.9	9.9
Tonga	0.4	1.0	2.0	2.0	2.0	2.0	3.0	2.0	2.0	2.0
Tuvalu	..	..	..	..	..	..	..	..	..	..
Vanuatu	25.0	26.0	26.0	30.0	31.0	33.0	30.0	20.0	20.0	20.0
Total	166.0	254.0	208.8	162.0	562.5	158.6	115.4	250.8	297.2	161.9

Source: Asian Development Bank, 2002. *Key Indicators of Developing Asian and Pacific Countries*, Asian Development Bank, Manila:71.

To put the importance of foreign direct investment in perspective, by 2005, worldwide investment in travel and tourism may total US\$1.6 trillion (World Tourism Organisation 1995). Forum island countries need attract only a fraction of this to transform their economies and societies. Foreign investment is particularly important in the Pacific context because none of the Pacific countries, including Australia, have enough domestic savings to fund the investment they need for economic growth (Australian Department of Foreign Affairs and Trade 1999c).

Yet the Forum island countries' approach to foreign direct investment is curious. They realise they need investment and want to attract it, but some of their policies repel it (World Bank 2002; Price Waterhouse 1999; Ashton 1990). Complicated approval procedures, onerous requirements and changing legal frameworks add to the sovereign risk of investing in these countries (Duncan et al. 1999). For example, Papua New Guinea complains that Australia is not doing enough to facilitate foreign investment under the Papua New Guinea-Australia Trade and Commercial Relations Agreement (PATCRA) and the bilateral agreement on the Promotion and Protection of Investments. But at the same time, Papua New Guinea prohibits foreign investment in many sectors, and has not done much to address specific issues like taxation, repatriation of earnings and financial stability.<sup>7</sup> Bougainville provincial government leaders want to attract foreign investment, but locals will assault potential investors.<sup>8</sup>

One reason for the Forum island countries' hesitation when it comes to foreign investment is concern about the activities of transnational corporations. Without regulation, such corporations are capable of terrible abuses. The Australian-owned Panguna mine in Bougainville was a major cause of the conflict in Bougainville, when Bougainville Copper Limited failed to provide enough compensation to local landowners for the damage the mine was causing.<sup>9</sup> The Ok Tedi mine, in which BHP had a 52 per cent controlling share, is the third largest open-cut copper mine in the world. It dumped 100,000 tonnes of waste tailings into the Fly River, with devastating environmental consequences (Gordon 1995). Before the mine was opened, 40,000 indigenous people had been sustained by the forests, fish and fertile soil of the Ok Tedi–Fly River area (Imhof 1996). Some 30,000 landowners launched a class action in Australia in response to the pollution, and the case was eventually settled by BHP paying out US\$500 million.

### **Investment and communal land**

A major impediment to investment is the lack of a comprehensive and transparent system of property rights in Forum island countries (World Bank 1998). In Fiji, for example, the British froze communal land tenure into blocs that did not necessarily reflect the reality of ownership, so 83 per cent of the land in Fiji is communal land (Lawson 1991; World Bank 1998). That land is administered by the Native Land

## **Pacific Regional Order**

Trust Board (NLTB) which redistributes the rent according to a formula that sees 25 per cent going to the Board, 30 per cent to chiefs, and only 45 per cent to the 'commoners' (Lawson 1991).

Land is the commoners' main asset, even if it is not of much value because of the amount they lose to the Board and their inability to sell it. Land is also tied up with cultural and spiritual validation (Bole 1992).<sup>10</sup> Even so, many Fijians will rent out the land or sell when there are clear benefits in doing so.

High chief Maivalili is known for his scrupulous attention to the views of his people. 'We are not happy with they way the NLTB is running things', he says. 'How can we move forward when the official people aren't looking after us? I feel we should do our own negotiations, because these people are sleeping—they are sitting on their backside'. Chief Tawakelevu is just as wary of the board's protective hand. 'Most of the top chairs, they just want to fill their own pockets' (Feizkhah 2001:37).

Thus, many landowners seek private arrangements: those with money seem happy to purchase freehold land for themselves rather than share communal land.<sup>11</sup>

For investors, particularly foreign investors, 'lack of security of tenure is the major constraint to investment, especially large-scale investments' (World Bank 1998:15). Leases are 'vulnerable to challenge and renegotiation' and there can be 'numerous disputes over ownership' (World Bank 1998:15). Often the national government lacks credibility in the eyes of the locals, so the locals do not recognise its sovereignty to make such deals (Larmour 1997a; Cole 1986).

This undermines sustainable development. Since locals might forcibly remove them at any time, investors get in and out as quickly as they can turn a profit, often with devastating environmental consequences (Duncan and Duncan 1997). Communal land problems have ramifications throughout the whole economy: lack of accommodation holds back tourism, for example, and Forum island countries have less than 10 per cent of the room supply of their Caribbean counterparts (King and McVey 1998).

So foreign investors and domestic enterprises do not enjoy easy access to land, and locals cannot access capital because they are unable to put up their communal land as security (World Bank 1998; UNDP 1999a).

## **Investment and corporate welfare**

A further problem with many Forum island country investment regimes is the indiscriminate use of corporate welfare. Corporate welfare refers to those measures, such as tax breaks and subsidies, which aim to provide artificial incentives for a particular transnational corporation to invest in a particular country or region. This is to be distinguished from research and development grants, which have more general

benefits. Fiji's Rabuka encouraged investment with a thirteen-year tax holiday for businesses close to the regime (Howard 1991). These policies have been continued by the Qarase government, in its *Blueprint for the Protection of Fijian and Rotuman Rights and Interests* (Callick 2000b). Such tax breaks deplete government revenue and do not encourage sustainable development. Rather than making a long-term commitment to a country, transnational corporations are encouraged to get in, make their profit and get out again within the period of the tax break.

An example from the Cook Islands is instructive. In 1987, the government guaranteed a loan taken out by an Italian construction company. The company was to build a luxury hotel to promote tourism to the islands. The result was that A\$60 million disappeared through crooked Mafia dealings within a few years. 'The project was 80 per cent complete when the insurance firm cut off funding to the builders. The country's finances were crippled as the government's liability ballooned to A\$122 million. The issue of who owns the hotel has been stuck in the courts for years' (Dusevic 2001:14).

### **Aid**

In per capita terms, Forum island countries have been among the highest aid recipients in the world (UNDP 1999a; OECD 2003). The combination of high aid levels and low economic growth led the World Bank to refer to a 'Pacific paradox' (World Bank 1993, 1995; Tarte 1989). Attempts to explain the Pacific paradox suggested that overseas aid had bloated the public sector in these countries, causing governments to become too involved in the domestic economy (Chand 1999; Duncan et al. 1999). Many began undertaking business activities best left to the private sector and consequently crowded out private sector initiatives (Chand 1999).<sup>12</sup> Aid disbursement also sometimes led to the employment of expatriates and overseas consultants, rather than the development of indigenous skills (UNDP 1999a).

The inflow of foreign aid money has also artificially inflated exchange rates, making Forum island country exports less competitive—a phenomenon known as 'Dutch disease' (Laplagne 1997). Another symptom of Dutch disease is that it bids away resources from other sectors to the favoured sector, which is the public sector in the case of the Forum island countries (Duncan et al. 1999). For example, skilled labour goes to where the money is, putting pressure on wages in other sectors.

Aid dependence also has political consequences. Henningham writes that Forum island leaders 'believe donor states have an obligation to provide aid', but that they simultaneously 'resent the dependence of their countries on aid' (Henningham 1995:20).

All this is not an argument against foreign aid, though such aid should always be directed to strategic goals. Rather, it suggests that Forum island countries need to do more to become self-reliant by attracting capital from private investors, instead

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of relying to such a large degree on other governments, and that aid alone has not promoted economic growth in these countries.

### **Inflation**

Some Forum island countries still tolerate high inflation, either through lack of will or perhaps through a (mistaken) belief that high inflation equals high growth (Table 2.8).<sup>13</sup>

The Reserve Bank of New Zealand lists the following examples of the ill-effects of high inflation

- the usefulness of money is significantly reduced if the value of money is rising (or falling) unpredictably
- assessing what to produce and consume becomes difficult, and using money to store value becomes risky
- doing business becomes more uncertain, and the economy and living standards suffer
- people's savings fall capriciously in value
- it may lead to an asset price-boom, with the price of physical assets escalating sharply. Eventually, however, these asset prices fall. People can risk ruin, and the banking system may be damaged as loans go bad
- the poor, and those on modest or fixed incomes, will only lose from inflation (Reserve Bank of New Zealand 1998, 1999).

Further, 'contracts and investments that span time, such as those which determine what a firm should pay its employees for the coming year, become harder to make' (Reserve Bank of New Zealand 1999:6). Wage claims are often made in response to high inflation, which in turn increases the cost of goods and services in an inflation spiral. If high inflation were eliminated, wage claims could instead be based on improvements in productivity.

Finally, 'when savers and investors put their money into asset speculation, then the economy is often starved of investment in its longer-term productive capacity' (Reserve Bank of New Zealand 1999:7). Generally, high inflation repels investors. For example, an overseas investor might expect to make 12 per cent on an investment in a particular Forum island country. If inflation is running at 10 per cent a year in that country (as it did in Solomon Islands in 1999), however, the real return is only 2 per cent, making the investment less attractive. With high inflation, a government must raise interest rates to ensure investors receive a reasonable return, which hurts domestic borrowers. Those relying on domestic savings (such as the elderly) can also be devastated if inflation erodes the value of their savings.



Table 2.8 Forum island country inflation rates, 1992–2001 (percentage change year on year)

	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001
Cook Islands	3.5	7.3	2.6	0.9	-0.6	-0.4	0.7	1.4	3.1	8.7
Micronesia	4.9	5.2	0.8	2.2	3.0	3.4	5.7	2.0	1.1	4.3
Fiji	4.0	6.1	5.3	3.6	1.1	1.9	3.7	1.8	0.4	8.8
Kiribati	10.3	5.0	5.7	8.3	9.6	4.7	2.4	1.7	1.6	..
Marshall Islands	..	6.0	4.0	4.0	3.0	2.2	1.5	2.6	3.2	2.6
Nauru	10.0	-3.7	-36.7	1.8	4.1	6.1	3.9	6.7	..	..
Niue	..	..	..	..	..	..	..	..	..	..
Palau	..	..	..	..	..	..	..	..	..	..
Papua New Guinea	4.3	5.0	2.9	17.3	11.6	4.0	13.6	14.9	15.6	9.3
Samoa	8.5	1.7	12.1	-2.9	5.4	6.8	2.2	0.2	1.0	4.0
Solomon Islands	10.8	9.2	13.3	9.6	11.7	8.1	12.3	8.3	4.8	1.8
Tonga	8.0	0.9	1.2	0.4	2.8	1.8	2.9	3.9	4.9	6.3
Tuvalu	2.2	2.3	1.8	5.6	-	1.6	0.6	7.0	..	..
Vanuatu	4.8	4.2	2.7	1.8	1.1	3.3	3.3	2.2	2.7	3.2

Source: Asian Development Bank, 2002. *Key Indicators of Developing Asian and Pacific Countries*, Asian Development Bank, Manila:65.

### Caribbean comparison

The challenges to sustainable economic growth in the Pacific are not common to island regions generally. A 1996 study by Fairbairn and Worrell comparing the Pacific and Caribbean island economies found that growth rates in the Caribbean were higher, and income per capita was several times higher in the Caribbean and growing more quickly, and growth was spread widely among Caribbean economies. As a result, Caribbean health and education standards were decidedly superior. They found that the Caribbean attracts large amounts of foreign investment, and has established various regional companies. The Caribbean has a buoyant tourism sector, and this appeared to have made the greatest contribution to growth for most Caribbean economies (Fairbairn and Worrell 1996). Thus, the poor economic growth found in the Pacific island countries cannot be solely attributed to their small island status.

There are many challenges to sustainable economic development in Forum island countries. Yet the Caribbean experience, which will be explored again in Chapter Four, suggests that a different set of policies may serve as an impetus for reform, and address the issues of capacity with which many Forum island countries are grappling.

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### **Challenges to security**

Two of the region's key security challenges in recent years have been vicious internal conflicts—in Bougainville in Papua New Guinea, and in Solomon Islands.

#### **Bougainville**

Bougainville, closer geographically and ethnically to the Solomon Islands, has always been ambivalent about being part of Papua New Guinea (Regan 1998). Bougainvilleans considered striking out for their own independence before Papua New Guinea as a whole was declared independent from Australia on 1 July 1975; it was only the promise of extra provincial powers that brought Bougainville back into the fold (Australian Parliament Joint Standing Committee on Foreign Affairs, Defence and Trade 1999). Yet one critical issue remained outstanding—the Panguna gold and copper mine was a sore point between Bougainvilleans and the national government, and between Bougainville and Australia. The mine was the catalyst for conflict when combined with the latent desire for independence and growing concerns about economic inequality, environmental degradation, 'outsiders' overrunning Bougainville, and the loss of traditional ways (Regan 1998, 1999).

The crisis began in 1988. Francis Ona, a former employee of Bougainville Copper Limited, put in a claim of K10 billion to compensate for the problems the mine had caused. When this was refused, Ona began sabotaging the mine. The quest for economic justice quickly transformed into a secessionist crusade (Regan 1998). The Bougainville Revolutionary Army (BRA) was formed, and found ready recruits among uneducated, unemployed young men and criminal raskol gangs (Regan 1997, 1998). A vicious cycle of violence erupted when Papua New Guinea's defence forces, with little oversight, committed atrocities in combatting the BRA (Regan 1998).

The Bougainvilleans expelled the Papua New Guinea Defence Force (PNGDF) in 1990, but the PNGDF retaliated by blockading Bougainville using boats supplied by Australia through the Pacific Patrol Boat program (Australian Parliamentary Committee 2003). In response, Ona declared Bougainville independent in May 1990 and renamed it the Republic of Me'ekamui, with himself as president (Australian Parliament Joint Standing Committee on Foreign Affairs, Defence and Trade 1999; Regan 1998). Victory was within the Bougainvilleans' grasp; with a unified approach, their unilateral declaration of independence could have worked. Instead, they turned on each other (Regan 1998; Australian Parliament Joint Standing Committee 1999), prompting a crisis estimated to have killed 10,000–20 000 people.<sup>14</sup> Many died because the PNGDF blockade prevented food and medical supplies reaching non-combatants (Australian Parliament Joint Standing Committee 1999).

As part of Ona's 'back to basics' approach, Bougainvilleans who had an education, or a government job, were targeted (Regan 1998). The Bougainville Revolutionary Army's atrocities drove some parts of Bougainville to invite the PNGDF back. In 1992 a Bougainville Resistance force was formed to help the PNGDF fight the BRA (Australian Parliament Joint Standing Committee 1999; Regan 1998). The resulting conflict was marred by atrocities on all sides, and there often seemed little distinction between the BRA, the Resistance and the raskol gangs (Regan 1997, 1998, 1999). Sixty thousand Bougainvilleans were displaced, becoming refugees in 'care centres' throughout Bougainville and the Solomon Islands (Regan 1997).

Australia was discredited in the eyes of the Bougainvilleans because of the assistance it provided the PNGDF. In one of the worst incidents of the crisis, the Valentine's Day Massacre in 1990, Australian-supplied Iriquois helicopters were used in the murder of a number of Bougainvilleans (Australian Parliament Joint Standing Committee 1999; Fry 1991). When, in 1989, Australia agreed to Papua New Guinea's request for helicopters, it had made the Papua New Guinea government promise that the helicopters would only be used for patrol, surveillance and medivac purposes, to little effect (Joint Standing Committee 1999; Rosewarne 1997). Papua New Guinea also used its Australian-supplied patrol boat to raid villages in the Solomon Islands in 1992 (Bergin 1994).

Various Papua New Guinea national governments vacillated between peace overtures and escalating the violence (Australian Parliament Joint Standing Committee 1999; Regan 1998). Some Bougainville leaders, aware of the deep war-weariness amongst ordinary Bougainvilleans, were receptive to the peace overtures (Regan 1997). The conflict was eventually resolved through the efforts of New Zealand, Australia and several Forum island countries.

### **Solomon Islands**

Solomon Islands gained independence in 1978 but, like Papua New Guinea before it, its citizens were often more focused on their immediate province, faction or ethnic group than on the nation-state.<sup>15</sup> Solomon Islands also started life as an independent state with great potential, until economic mismanagement, corruption and high birthrates through the 1990s exacerbated inequalities and led to falling living standards (O'Callaghan 2000a).

Residents of Guadalcanal province felt particularly aggrieved by the settlers from the neighbouring island of Malaita. The Malaitans were believed to have taken communal land, jobs and business opportunities at the expense of locals. This led to the formation of the Guadalcanal Revolutionary Army, later renamed the Isatabu Freedom Movement (IFM), which demanded compensation for the injustices they felt they had suffered. There were close links between the IFM and the Bougainville

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Revolutionary Army, with the latter supplying surplus arms (Daley 2000b). Some 9,000 Bougainvilleans had fled to Solomon Islands during their own crisis, and they grew sympathetic to what they saw as an analogous campaign for economic justice (Smellie 2000). From December 1998 the IFM embarked on a campaign of harassment of Malaitan communities. Some 20,000 Malaitans had to flee Honiara, and more than 60 people were killed (Australian Department of Foreign Affairs and Trade 2003a).

The violence spilled over from rural areas into Honiara, the capital, and became increasingly brutal. Key investments, such as the Australian-owned Gold Ridge Mine, and Solomon Islands Plantations, closed because of the conflict. By early 2000 a rival militia force had been established, the Malaita Eagle Force (MEF), which tried to counter IFM efforts to push Malaitans off Guadalcanal. The MEF likewise demanded compensation for the suffering and loss of property for which the IFM were responsible (Australian Strategic Policy Institute 2003).

The Solomon Islands government asked Australia for 50 federal police to train and support the Solomon Islands police.<sup>16</sup> Australia refused, because it could not see an exit strategy, and wanted to avoid being drawn into a 'Bougainville-style' situation (Dobell 2003; Daley 2000c).

Solomon Islands then looked elsewhere for assistance. The Commonwealth appointed former Fijian Prime Minister, Sitiveni Rabuka, to resolve the problem and it also facilitated the establishment of a Multinational Police Assistance Group made up of Fijian and ni-Vanuatu police (Australian Department of Foreign Affairs and Trade 2003a). The group attempted to work with Solomon Islands police to restore order, and Australia contributed some A\$500,000 to increase the group's presence from 10 to 50 personnel. Australia itself did not provide personnel, and the extra police never arrived because of the third coup in Fiji ('Renewed hope for Solomons ceasefire', *The Age*, 17 May 2000:13). Increasingly desperate, the Solomon Islands government asked Cuba for assistance with a 'military solution', possibly in return for mineral rights ('Solomons to seal Cuban alliance', *The Age*, 19 May 2000:14).

By mid 2000, the MEF had teamed up with various members of the Solomon Islands police force. On 5 June, they took Prime Minister Bartholomew Ulufa'alu and Governor-General John Ini Lapli hostage at gunpoint, cut communications and seized strategic points around Honiara. The MEF's key demand was that Ulufa'alu should resign (Australian Department of Foreign Affairs and Trade 2003a).

The Bougainville Revolutionary Army entered Gizo, in the northwestern province of Solomon Islands, and took over a police station to protect it from the MEF, but subsequently withdrew (Daley and Skehan 2000a; 'Next moves in Solomons', *The Sydney Morning Herald*, 12 June 2000:16). The MEF used an Australian-supplied

patrol boat to shell IFM-controlled areas indiscriminately (Smellie 2000; O'Callaghan 2001a). On 13 June, Ulufa'alu duly submitted his resignation. Australia and the region's attempts to resolve the conflict from this point on will be explored in Chapter Eight.

### **The risk of failed states**

Helman and Ratner identify the following features of failed states: civil strife, government breakdown and economic deprivation. Ultimately, the failed nation-state is 'utterly incapable of sustaining itself as a member of the international community' (Helman and Ratner 1993:3).

It is not difficult to make the argument that Solomon Islands was, until 2003, a failing state (Wainwright 2003). Weber suggested a key definition of a nation-state is that it has a monopoly on the legitimate use of force (Gerth and Wright-Mills 1970; Wainwright 2003). The Solomon Islands national government had no monopoly on the use of force. Its use of force was regarded as illegitimate by many citizens, because the police and prison officers had been severely comprised: 'the two supposedly disciplined forces were more loyal to their tribes than to the state' (Tuhanuku 2000:iv). The government was unable to assert control over areas of the country (Field 2003). Chand suggests the country's fiscal and monetary positions were 'being sustained on "borrowed time"' (Chand 2002:154–55)<sup>18</sup> and Chevalier notes that government revenue collection had collapsed (Chevalier 2000). Basic government functions, such as health and education, were dependent on donor support (Chand 2002). Schools were closed for most of 2002 (Wainwright 2003). Some foreign government donors simply bypassed the national government to work directly with communities (Dobell 2003).

Papua New Guinea is not a failing state, but there are some troubling signs (Windybank and Manning 2003).<sup>19</sup> Like Solomon Islands, it had no central authority until imposed by outsiders (Tuhanuku 2000). Polynesian and Micronesian states are typically populated by people of one language and culture; Melanesian states are far more fragmented (Crocombe et al. 1992b). Papua New Guinea, for example, has over 700 different language groups (Australian Department of Foreign Affairs and Trade 1996a). Thus, there is a strong identification with the local tribal and ethnic group, but weak national cohesion (Henningham 1995). Bougainville's secessionist struggle is well-known, but within Bougainville itself many Bougainvilleans want a very weak national government (if independence is achieved) so they can levy taxes and provide services at a sub-provincial (or tribal) level.

Like Solomon Islands, Papua New Guinea has, at times, suffered economic stagnation. Law and order remains a significant problem (Larmour 1996; Dinnen 1999), with crime rates among the worst in the world (Pitts 2001). Violence against

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women is particularly widespread (Dinnen 1999).<sup>20</sup> Police numbers have remained largely unchanged since independence, even though the population has increased 70 per cent in that time (Windybank and Manning 2003). The national government also has weak or no control over some parts of the country (Windybank and Manning 2003). For example, violence in the Central Highlands, including political assassination, caused considerable disruption to the 2002 elections (Forbes 2002). In all, 30 people were killed in ethno-political disputes during the 2002 elections (Reilly 2002). Tribal fighting is common, notably around large-scale resource development initiatives (Dinnen 1999; Ashton 1990).

Papua New Guinea has also suffered two army revolts in recent years. The first followed the Sandline affair, when the government engaged mercenaries to force a military resolution to the Bougainville situation (Dinnen 1999). The second came in response to proposals for military reform (Windybank and Manning 2003; Australian Department of Defence 2002).

Pitts (2001) argues that corruption is 'rampant' in Papua New Guinea. Former Prime Minister Mekere Morauta admitted that corruption in Papua New Guinea is both 'systemic and systematic' (Windybank and Manning 2003:4). Reilly suggests Papua New Guinea politicians 'do not see their role as part of a national government but rather as delegates chosen to deliver resources back to their own group of tribal supporters' (Reilly 2002:134–35; Ashton 1990). Thus, the local, rather than the national interest is prosecuted, and one symptom is decreased investment in public infrastructure.

The national government's failure to provide many basic services leaves many Papua New Guinea citizens with a weak attachment to the state. Douglas (2000:3) refers to 'the invisibility of the nation' in many areas.<sup>21</sup> It would be a mistake to presume that all Bougainvilleans, for instance, intrinsically wanted independence. What radicalised ordinary people to support independence during the peace process was the failure of the national government to provide basic services, such as roads, education and medical supplies.

In sum, Papua New Guinea cannot perform some of the essential acts of a nation-state: it cannot ensure security and law and order, nor provide basic services, for many of its citizens. Thus, there are weak ties between the national government and many citizens.

A large failed state in the region would have security consequences for most Forum members. Helman and Ratner suggest that a failed state imperils its own citizens and threatens its neighbours through refugee flows, political instability, illicit arms traffic and random warfare (Helman and Ratner 1993). In the Pacific context,

we could add the dangers of non-state actors taking advantage of a lawless environment (Windybank and Manning 2003). Wainwright argues that

[f]ailed or failing states are often Petri dishes for transnational criminal activity such as money laundering, arms smuggling, drug trafficking, people trafficking, and terrorism...A bankrupt or illegitimate government representing the state can obtain money from many sources by selling aspects of its sovereignty. This is one of the factors which transforms state failure from a human tragedy into a security issue for neighbouring states (2003:486).

Yet the situation is not irretrievable. As Helman and Ratner (1993) argue, the United States' commitment and aid following World War II rescued Western European states, which were so ravaged by war as to constitute failing states.

### **Further security challenges**

Non-state actors pose significant challenges to Forum members. Indonesia is not a Forum member, but the two Bali bombings, and the murder of 90 Australian citizens, demonstrate the devastating effects terrorism can have on one Forum member, Australia (Flitton 2003). It is clear that terrorists are operating in the region, and a number of Forum island countries may be facilitating their work through their passport schemes and offshore banking services (Wainwright 2003; Chulov and Stewart 2003; Stewart et al. 2003). The OECD and other organisations were targeting these havens prior to the terrorist attacks of 11 September 2001 (OECD 1998),<sup>22</sup> but there is now an even greater impetus for reform (Chulov and Stewart 2003; Stewart et al. 2003).

There are further security challenges in the near region which have the potential to impact greatly on Forum members (Kerin and Videnieks 2003). The West Papua independence movement, which includes a small but dedicated band of fighters, has the potential to cause friction between Papua New Guinea and Indonesia (Hartcher 2000; Daley 2000a; Worth 2000; O'Callaghan 2003c). In addition to terrorists, other non-state actors, such as drug smugglers and people smugglers, contribute to the deteriorating security environment (Australian Parliamentary Committee 2003).

This region is now sometimes referred to as the 'arc of instability' (Australian Parliamentary Committee 2003; Dobell 2003). The scale and viciousness of the internal conflicts in the largest and third-largest Forum island countries, and the dangers of failing states and non-state actors, demonstrate the seriousness of the region's security challenges.

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**Challenges to the rule of law**

Challenges to the rule of law can be considered in two categories: failures to respect or uphold supranational law, created by the global system; and Forum island countries' failures to uphold their own domestic laws.

**Supranational law**

In terms of supranational law, the Pacific region has one of the lowest rates of ratification of the key human rights and humanitarian law instruments. Table 2.9 shows that it is only the Convention on the Rights of the Child that has enjoyed widespread support among these countries.

The low rate of ratification of humanitarian law instruments is also of concern, given the viciousness that has been displayed in the region's internal conflicts.

This reluctance to engage with, and commit to, supranational law also applies in the trade sphere. If Forum island countries are to diversify from their commodity-

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Table 2.9 Forum island country ratifications of key human rights instruments

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	Covenant on Civil and Political Rights	Covenant on Economic, Social and Cultural Rights	Convention Against Torture	Convention on the Elimination of Racial Discrim.	Convention on the Elimination of Discrim. Against Women	Convention on the Rights of the Child
Cook Islands	•	•	•	•	•	•
Fiji				•	•	•
Kiribati						•
Marshall Islands						•
Fed. States of Micronesia						•
Nauru						•
Niue						•
Palau						•
PNG				•		•
Samoa						•
Solomon Islands	•			•		•
Tonga				•		•
Tuvalu						•
Vanuatu					•	•

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Source: Office of the UN High Commissioner for Human Rights, 2002. *Status of Ratifications of the Principal International Human Rights Treaties*, United Nations, Geneva, 10 July.

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Table 2.10 Forum island country ratifications, accessions and successions to key humanitarian law instruments

	Geneva Conventions	Geneva Conventions Protocol I	Geneva Conventions Protocol II	Statute of the International Criminal Court
Cook Islands	•	•	•	
Fiji	•			•
Kiribati	•			
Marshall Islands				•
Fed. States of Micronesia	•	•	•	
Nauru				•
Niue				
Palau	•	•		
Papua New Guinea	•			
Samoa	•	•	•	•
Solomon Islands	•	•	•	
Tonga	•			
Tuvalu	•			
Vanuatu	•	•	•	

Source: International Committee of the Red Cross (<http://www.icrc.org>)

based economies, they need to develop competitive service industries, most obviously in the tourism sector (UNDP 1999a). However, in the Uruguay Round, the global trade agreement that created the World Trade Organization, Fiji made commitments in only one of the twelve services sectors: tourism and travel-related services. Of the four sub-sectors in tourism, Fiji made commitments in only one: hotels and restaurants. So Fiji has made commitments in only one of the 155 sub-sectors in the General Agreement on Trade in Services (GATS), and then only to spell out existing restrictions. Solomon Islands made commitments in four sectors, and Papua New Guinea made commitments in six sectors.

Part of the problem is the failure of many Forum island countries to be plugged into international organisations generally. To take one example, only three Forum island countries are currently WTO members (Table 2.11). In contrast, thirteen of the fourteen members of CARICOM are WTO members (World Trade Organization 2000). One explanation might be that individual Forum island countries do not have the resources to engage properly with international organisations; in which case they need another vehicle through which to prosecute their interests.

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Table 2.11 Forum island country membership of select international organisations

	United Nations (UN)	World Trade Organization (WTO)	International Labour Organization (ILO)	Asia-Pacific Economic Cooperation (APEC)	UN Economic and Social Commission for Asia and the Pacific (ESCAP)
Cook Islands					
Fiji	•	•	•		•
Kiribati	•				•
Marshall Islands	•				•
Micronesia	•				•
Nauru	•				•
Niue					
Palau	•				•
Papua New Guinea	•	•	•	•	•
Samoa	•	Currently acceding			•
Solomon Islands	•	•	•		•
Tonga	•				•
Tuvalu	•				•
Vanuatu	•	Currently acceding			•

Sources: Individual organisations' websites (see <http://www.un.org>; <http://www.wto.org>; <http://www.apec.org>; <http://www.ilo.org>; <http://www.unescap.org>).

### Domestic law

In terms of failing to uphold the domestic rule of law, the most egregious example is, of course, Fiji. The constitution has been overthrown three times; Fiji has been governed through military decrees; arbitrary arrests have frequently been made; and key judges have often abandoned judicial impartiality.

The first Fijian coup occurred on 14 May 1987, when an élite unit of the Fijian army under the command of Lieutenant-Colonel Sitiveni Rabuka stormed parliament and kidnapped the government. The government had been led by a Fijian, Timoci Bavadra, and was made up of the Labour Party (which drew its support from Fijians and Indo-Fijians) and the National Federation Party (largely supported by Indo-Fijians). The Coalition had promised to look into the land rights of Indo-Fijian farmers leasing communal land, and to investigate the claims of corruption that had surrounded the previous government (Lawson 1991). This was of great concern to the Alliance Party, led by Ratu Sir Kamisese Mara, Fiji's 'founding father' and prime minister

since independence (Howard 1991). The Alliance Party was largely supported by Fijians, and represented the interests of chiefs in eastern Fiji (Lawson 1991).

Rabuka declared martial law, and set up an interim government under Governor-General Sir Penaia Ganilau. Ganilau eventually tried to broker a deal, the Deuba Accords, that would allow a return to civilian rule pending new elections (Howard 1991). But when Rabuka began to think he would be sidelined in any power-sharing arrangement, and that there might not be an express provision in the Accords granting him immunity, he launched his second coup on 25 September 1987 (Lal 1998).

Rabuka revoked the constitution and declared Fiji a republic on 7 October in Interim Military Government Decree No.1. The Chief Justice and other judges were dismissed, with Rabuka claiming he would appoint judges loyal to the regime. Ganilau wrote to the Queen and resigned as Governor-General. He was then appointed President and pardoned Rabuka (Howard 1991). As Rabuka asserted control, several hundred people—cane farmers, Labour Party supporters, unionists, journalists, academics, even judges—were arrested (Clements 2001).

Various decrees, notably Decree No.12, the Fundamental Freedoms Decree, gave the army absolute power to break up meetings, impose curfews and detain people. Strikes were outlawed and the courts were authorised to hold trials *in camera* (Ghai 1990). A member of the extremist Taukei movement said '[i]t is simply our way of getting what we want. If we can't get it legally we will have to get it illegally' (Howard 1991:319).

Fiji eventually returned to a constitutional democracy in July 1997.<sup>23</sup> At the elections in May 1999, the Labour Party was elected and Mahendra Chaudhry became Fiji's first Indo-Fijian prime minister. However, on 19 May 2000, George Speight, a frustrated businessman, overran parliament with his supporters, who included members of an élite unit of the Fijian army. As he took 38 hostages, Speight announced, 'I am asserting executive power over Fiji. We have revoked the constitution and have set that aside' (Speight 2000:7).

Fiji's Great Council of Chiefs endorsed the coup and granted Speight an amnesty, without clarifying their legal basis for doing so. When various attempts to resolve the crisis failed, the head of the army, Commodore Frank Bainimarama, announced on 29 May, 'all the nation has been saddened by the extent to which the country has fallen during the last week. I have therefore, with much reluctance, assumed executive authority' (Conway 2000:1).

Some judges surrendered any pretense of impartiality during the third coup. Chief Justice Timoci Tuivaga and other judges drafted the decrees for Ratu Mara (by then, Fiji's President) to dismiss the prime minister and abrogate the constitution, and continued to assist with drafting military decrees (Australian Broadcasting Corporation 2001a). Later, when the military's actions were tested in the courts,

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Tuivaga tried to shift the case from Justice Gates to a more compliant judge. The Chief Justice wrote to Gates accusing him of 'judicial perversity in breach of the judicial culture of this country' (O'Callaghan 2001b:9).

Fiji provides an extreme and violent example of a more general ambivalence among the Forum island countries about the rule of law. Various authors suggest that Forum island countries generally favour consensus and 'the Pacific Way' in dispute resolution, rather than appeals to the rule of law and binding rulings (White 1997; Mataitoga 1992). Henningham writes that 'island leaders mostly set great store in traditional ways of...conflict management, although at times appeals to tradition and customs provide a convenient rationale for the protection of vested interests' (Henningham 1995:8). The Pacific Way was first promulgated by Ratu Mara prior to Fiji's independence when he was chief minister.<sup>24</sup> It is now frequently invoked by all Forum island politicians and officials, and refers to the process of talking through issues 'in an unhurried fashion in informal meetings, in pursuit of a consensus acceptable to all involved' (Henningham 1995:10). Howard argues, though, that

...the Pacific Way has served as an ideological support for the maintenance of chiefly rule in Fiji based on a distorted view of Fiji's peaceful past and an emphasis on consensus in such a way as to mean consenting to the wishes of those in authority...In practical terms, the Pacific Way has meant support for conservatism (Howard 1991:129).

Addressing these challenges to the rule of supranational and domestic law is critical in its own right, but also as a means for addressing the challenges to sustainable economic development, security and democracy.

## **Challenges to democracy**

Democracy can take many forms. In the Pacific context, colonial powers often implemented an imperfect model of Westminster democracy, which in some cases has been further corrupted rather than improved by Forum island countries. These challenges to democracy have disenfranchised wide sections of some Forum island country populations, removed a check on executive power, and have prevented a more equitable distribution of the benefits of development.

### **Fiji**

Fiji's three coups obviously represent significant challenges to democracy, as well as to the rule of law. Two key British policies during the colonial period diminished Fiji's chances of developing a pluralist democracy.

First, the British fostered communal politics, in part to cover up the privileged position of Europeans in the colony. Fiji, gaining independence on 10 October 1970, inherited what was termed a communal constitution, an imperfect model of

Westminster liberal democracy. Indo-Fijians had pushed for a common electoral roll, but lost (Lawson 1991). Thus, the 1970 constitution allocated 22 seats each for Fijians and Indo-Fijians—12 were to be elected by each race and 10 by both races voting together (Larmour 1997b).

There was an understanding that the use of separate rolls would be a temporary situation. However, the Alliance Party rejected the findings of a Royal Commission held shortly after independence, which had recommended a move to a common roll. Because the British had done little to encourage a domestic polity, in this time of confusion parties formed around the most obvious point of division—race. The communal system of politics has exaggerated and distorted an imagined cleavage of interests, and in turn has reinforced differences and racial segregation at the grassroots level (Lawson 1991).

Second, the Great Council of Chiefs, or *Bose Levu Vakaturaga*, was an artificial colonial creation, established to facilitate the British colonial system of indirect rule (Lawson 1991, 1993). The system eased British rule, but it reinforced and froze traditional structures, obstructing dynamism and evolution (Lawson 1991). Through the Great Council of Chiefs, the British set the chiefs up to play a political role that removed them from the neutral and impartial role that chiefs need to play to unite their communities. There is nothing inherently wrong with a Great Council of Chiefs in theory, as a means of encouraging indigenous culture and as a point of identification for indigenous Fijians or, indeed, all Fijians. In Fiji, though, the authority of the Great Council, and its potential to be a unifying force, has been undermined by its entry into partisan politics and its efforts to protect the interests of chiefs in one part of Fiji, the east (Lal 1992; Lindstrom 1997).<sup>25</sup> In contrast, the Federated States of Micronesia rejected the creation of a Chamber of Chiefs as part of the political system so as to uphold the impartiality of chiefs.<sup>26</sup> The juncture between the chiefs and the political system in Fiji has damaged both, robbing the chiefs of their moral authority and traditional standing, and corrupting the political process (Lawson 1991).

Stephanie Lawson argues democratic politics failed in Fiji because wide sections of the population did not view the opposition as a legitimate alternative government (Lawson 1991). Each time the party representing chiefly interests lost, it assumed that the constitution was flawed, rather than realising it deserved to lose. After 30 years of independence, Fiji has yet to survive a change of government from the party representing chiefs. Communalism has usurped class politics, and any critique of the chiefly party is regarded as an insult from 'guests' abusing the hospitality of 'hosts' (Lal 1992).

Cultural relativists may argue that democracy and the rule of law are alien, Western concepts in the Fijian context and, indeed, other Forum island countries (Lal 1992; Lawson 1997a, 1997b), but so too are many of the other constructs in Fiji's neo-

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traditional political landscape, such as communal politics, the Great Council of Chiefs and communal land tenure (Lal 1992).<sup>27</sup> Britain's failure was to introduce these other constructs and not the rule of law and full democracy, leaving Fiji and other Pacific societies caught awkwardly between traditional and Western systems of governance.

### **Tonga**

Fiji is not the only Forum island country where there are challenges to democracy. In Tonga, under the structure of government established in 1875, the Privy Council assists the King in the discharge of his duties. The Privy Council consists of the Cabinet and anyone else appointed by the King. The twelve-member Cabinet is appointed by the King and holds office at his pleasure (the King has previously appointed his youngest son prime minister). Tonga's legislative assembly consists of the Cabinet, nine nobles elected by the holders of Tonga's 33 hereditary noble titles, with the remaining nine elected by the general population (Helu 1992; Australian Department of Foreign Affairs and Trade 1998; Montgomery 2000). Thus, it would be impossible for the government to change following a general election (Lawson 1997a).

A pro-democracy movement has slowly grown in Tonga, but the government frequently uses criminal prosecution and civil actions to stymie its effectiveness (James 1997; Helu 1992; Lawson 1997a).

### **Democracy and traditional authority**

Most Forum island countries include chiefs, or indigenous representation, as part of their domestic polity. The situation in Fiji has been discussed above, but in the Cook Islands, for example, the House of Ariki is a forum for high chiefs to make recommendations to parliament on customary issues (Ingram 1992). The Vanuatu parliament includes seats for chiefs, and the parliament can also call on an advisory body of chiefs. In Palau the president has an advisory body of chiefs (Helu 1992; Lindstrom 1997). Only those with chiefly titles can stand for parliament in Samoa, and before 1990 only those with chiefly titles could vote (Lindstrom 1997). Both Solomon Islands and Micronesia have chambers of chiefs at the provincial level (White 1997; Petersen 1997).

To suggest that there are challenges to democracy in the Pacific is not to attack the role of traditional authority and chiefs in Pacific societies generally.<sup>28</sup> Rather, what has been identified is the problem of imbuing traditional authority with political power. The political systems in Fiji and Tonga, where chiefly privilege is entwined with political power, represent a challenge to democracy.

Ultimately, sustainable development is dependent on democratic governance, because stability is needed to attract investors (World Bank 1994; Iqbal and Jong-

Li You 2001; Gradstein and Milanovic 2002; Dethier et al. 1999), and democratic governance also ensures that the benefits of economic growth are more evenly and easily spread among all sectors of the population (Crocombe et al. 1992b).

### **The rise in regionalism**

Around the world, there has been an increasing interest in exploring regional arrangements to tackle common problems. To take one example, regional free trade agreements have become a prominent feature of the international trading system. Half of all global trade takes place through such arrangements and over 250 agreements have been notified to the World Trade Organization. Most of Europe now forms a single market for trade in goods, and at its core is a common market for goods, services, investment and labour covering 25 countries. NAFTA is to be subsumed by the Free Trade Area of the Americas, which will cover the whole continent except for Cuba.

Yet the importance of regionalism needs to be understood in more than just trade terms. Regional arrangements are an expression of political solidarity and shared interests, as we see in the European Union, the Organisation of American States, the African Union, CARICOM, and so on. Unfortunately substantive regionalism is a phenomenon from which Pacific states have largely been excluded.

There has been a renewed interest in Asian regionalism following the financial crisis of 1997 (Pearson 2000; Dieter and Higgot 2000; Bergsten 2000). Following the financial crisis, Japan proposed an Asian Monetary Fund. Central banks in the ASEAN Plus Three (Japan, Korea and China) group would make a percentage of their reserves available to each other in the event of a financial crisis (Li Lin and Rajan 2001; Rajan 2000). Eventually the name 'Asian Monetary Fund' was dropped, but the substance largely remained when ASEAN Plus Three members signed the Chiang Mai agreement in May 2001 (Li Lin and Rajan 2001). Australia was not invited to participate, despite being a member of the Executives' Meeting of East Asia Pacific Central Banks (EMEAP), which encompasses all these countries,<sup>29</sup> and despite being one of only two countries to participate in all three IMF bail-out packages during the Asian crisis, contributing A\$3 billion (New Zealand is also a member of EMEAP). Another example is that Forum members continue to be excluded from the Asia-Europe summit ('Continental drift', *The Economist*, 20 January 1996).

ASEAN Plus Three countries have invited Australia and New Zealand to the initial 'East Asia Community' summit, but there has been no discussion about including the other 14 Forum members. Some Forum members are members of APEC, the ASEAN Regional Forum security dialogue and the Asia Pacific Forum of National Human Rights Institutions. But these bodies are not part of an agenda for regional

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integration. APEC is a useful forum for discussing trade facilitation and for allowing ministers and leaders from diverse countries to meet annually,<sup>30</sup> but it has not evolved into the force for trade liberalisation that its instigators envisaged (Ravenhill 2000; Rudner 1995; Elek 1996; Hawke 1992; Hay 1994).

So many regions around the world are pursuing regional integration, and Pacific states have largely been excluded from the nascent Asian regionalism. Forum island country government representatives and Forum officials often express fears about the Forum island countries being left behind and isolated. To address their isolation and influence others, the challenge for Pacific states is to devise their own attractive regional integration project.

## **Conclusion—challenges and opportunities**

This chapter has provided an overview of the present state of the Pacific, outlining the key issues facing the region. Although the Pacific is made up of 16 unique states, many of the challenges considered in this chapter have resonance across many Forum island countries. To summarise, they include

- poor economic performance, reliance on commodity exports and declining trade preferences
- aid dependency
- growing urban populations and, in some cases, unsustainable population growth
- communal land issues
- weak central authority, leading to security issues, from money laundering to civil war
- a poor understanding and commitment to the rule of supranational law, and sometimes domestic law as well
- the legacy of the colonial era
- the politics of dealing with populations that are not ethnically homogeneous
- conflict between traditional authority and Westminster-style democratic politics
- concerns about 'being left behind'.

In addition, Forum members face the challenge of isolation from the wider region.

The severity of the challenges confronting Pacific states demonstrates the critical need for new policies, and should be a catalyst for collective action. That no Forum member is adequately realising all five goals of regional order, and that several members are failing to meet many of the goals, is an indictment of the region.

Regional integration will not solve all of these challenges directly, nor will progress in resolving these challenges be immediate. Further, some challenges faced by



Forum island countries, such as rising sea levels, can only properly be resolved through global mechanisms. Yet promoting the five goals of regional order would create a new framework for encouraging and facilitating change. In the rest of the book, the focus shifts from the challenges to regional order, to developing the policies and institutions necessary to address these challenges and build regional order.

The following chapter considers the role Australia may play in addressing these challenges. The resolution of these challenges requires Australia to embrace a new phase in its Pacific policies, and the constructive leadership role it has often avoided.

## Notes

- <sup>1</sup> In Samoa, young people are three times more likely to be unemployed than older workers, and unemployment for urban youth in the Marshall Islands is around 50 per cent (UNDP 1999; Jones and Pinheiro 1999).
- <sup>2</sup> Poverty of opportunity 'embraces a lack of education or health, a lack of economic assets or access to markets or jobs that could create them, and various forms of social exclusion or political marginalisation. [It] is a term that rings true for too many Pacific island people, especially the young. The waste of human and social capital is not only an economic loss but is manifest in various negative ways, such as rapid emigration from some countries, unemployment, and a subculture of youthful crime and despair'.
- <sup>3</sup> Most Forum island countries have high tariffs, ranging from effective nominal *ad valorem* rates of 10–40 per cent (World Bank 1999).
- <sup>4</sup> The World Bank argues that Forum island countries' tariffs 'have had protective effects for some import-competing activities and have raised the cost structure of the economy, consequently, reducing the competitiveness of exports' (World Bank 1999:13).
- <sup>5</sup> See, for example, APEC (2000).
- <sup>6</sup> The World Bank has suggested that, rather than attempting to directly compete with Southeast Asia for markets for manufactured goods, Forum island countries should attempt to diversify their economic bases into services and tourism (World Bank 1999).
- <sup>7</sup> The World Bank notes generally that 'where there is market potential, foreign investors' main problems are access to land, enforcement of contracts, freedom to repatriate capital and selling ownership rights' (World Bank 1999:17). The UNDP has stated that '[f]oreign and domestic investment is encouraged by governance systems that are legitimate and transparent, that encourage broad-based participation and the efficient use of resources, and that rest firmly on the rule of law' (UNDP 1992:92).
- <sup>8</sup> While I was in Bougainville, a Coca-Cola manager considering the establishment of a new plant was assaulted.
- <sup>9</sup> The mine, though a major cause of the conflict, was not the only cause (see Regan 1999, 1998).
- <sup>10</sup> See also Overton and Scheyvens (1999), which discusses the idea of *vanna*—the links between land, the environment, culture and society in Forum island countries.
- <sup>11</sup> This became clear from my discussions with a number of Fijians throughout the course of research for this book.

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- <sup>12</sup> See also World Bank (1998:xiii), which notes that ‘the government markets agricultural goods and operates fishing fleets, mines, plantations, timber mills, aviation services, and hotels, plus engages in a wide range of other quasi-commercial activities’.
- <sup>13</sup> In the short-term, high inflation means that producers make large profits and may re-invest in the economy and employ more people. But the profits have to be paid for—high inflation means high prices for consumers and high interest rates, which leads to a bust. High inflation is more likely to result in boom–bust cycles rather than steady growth.
- <sup>14</sup> Regan (1999) suggests that it is difficult to know with certainty how many people died, without more detailed investigation.
- <sup>15</sup> Liloqula and Pollard (2000:6–7) suggest that ‘[s]ince we became one country, Solomon Islanders have yet to accept each other as one people...Whilst educated people may have some ideas about the purpose of being one nation, the vast majority of Solomon Islanders see the nation state as threat to their resources, their cultural identity and culture, their environment and the basis of their sustained community living’. See also Liloqula (2000).
- <sup>16</sup> The request came from the Solomon Islands’ Prime Minister, the Leader of the Opposition, the Chief Justice and the Governor of Western Province. Interview with Laurie Brereton, *Sunday Program*, 11 June 2000. Available at [http://sunday.ninemsn.com.au/04\\_political\\_interviews/article\\_516.asp](http://sunday.ninemsn.com.au/04_political_interviews/article_516.asp) [accessed 13 June 2000].
- <sup>17</sup> Wainwright elaborates that failing states are ‘characterised by a breakdown in law and order, the collapse of service delivery such as education and health, and a sharp decline in living standards. The economic situation deteriorates and people lose their sense of loyalty to the government...People transfer their allegiances away from the central authority towards their clan, group or warlord’ (2003:485).
- <sup>18</sup> Government budgets were not adhered to. For example, from January–July 2003, the police force spent four times its permitted budget (Downer 2003a).
- <sup>19</sup> Even in 1990, Ashton was asking whether Papua New Guinea was a ‘broken-backed state’ (1990:35). The Australian Strategic Policy Institute (2002:28) believes that Vanuatu and Papua New Guinea constitute ‘failing neighbour[s]’.
- <sup>20</sup> According to the United Nations, Papua New Guinea had the highest incidence of sexual assault in the world, with nearly 12 per cent of women 16 years and over victim to sexual assault at least once in the previous year; and more than 32 per cent in the preceding five years (Pitts 2001).
- <sup>21</sup> See also Dinnen (1999). Ashton (1990) suggested that in the future the ‘Papua New Guinea’ government would continue in Port Moresby, funded in part by foreign aid, but with little sovereignty outside the capital.
- <sup>22</sup> The OECD and the G7’s Financial Action Task Force expressed concerns about Nauru, Vanuatu, Samoa, the Cook Islands, Marshall Islands, Tonga and Niue (Cornell 2000; Randall 1999).
- <sup>23</sup> See Lal (1998) and Lal and Larmour (1997) for details on the gradual return to constitutional democracy.
- <sup>24</sup> The first enunciation of the ‘Pacific Way’ was at the UN General Assembly in 1970 (Howard 1991).

- <sup>25</sup> See Lindstrom (1997) for a discussion of the 'modern functions' that chiefs can safely and usefully perform.
- <sup>26</sup> Petersen suggests that most Micronesians felt that 'their chiefs can more effectively serve them by remaining outside the national government' (1997:183).
- <sup>27</sup> Chiefs had an explicit role in the British colonial administrations in Fiji, Solomon Islands and Vanuatu, and in the French administrations in Vanuatu and New Caledonia (White 1997).
- <sup>28</sup> Churney complains of the 'disparaging and unfair "bad chief" stereotype where chiefly systems are judged ineffective due to a belief that all chiefs are prone to greed, corruption and abuse of power' (1997:124). Any leadership group in any society has its bad elements, but this has certainly not been my experience from the many chiefs I have worked with and met; and I do not mean to suggest it in this book.
- <sup>29</sup> See <http://www.emeap.org> [accessed 7 July 2003].
- <sup>30</sup> See <http://www.apecsec.org.sg>

# 3

## Australia and regional order

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As the largest member of the Pacific Islands Forum—in terms of population, economy, defence and diplomatic resources—it is vital that Australia demonstrate leadership if the Forum is to evolve. This chapter considers the important threshold question of whether Australia could be convinced of the merits of pursuing regional integration through the Pacific Islands Forum.

This chapter first considers the history of Australia–Pacific relations and the degree to which each phase has promoted the five goals of regional order. The argument is then made that there are indeed challenges that call for a new phase in Australia’s Pacific relations. Further, pursuing comprehensive regional integration through the Pacific Islands Forum would benefit Australia because of Australia’s broad interests in the Pacific, the deteriorating security environment in Australia’s local region, and the rise in regionalism around the world.

To meet these challenges will require a new boldness in Australia’s foreign policy, and recognition of the need for a new vehicle through which to pursue Australia’s national interest.

### **Australia as the pivotal player**

Pacific regional integration depends on Australian leadership and engagement. Australia should be regarded as the pivotal player for the following reasons.

First, Australia has the largest population, and the largest economy, as the following table demonstrates. Australia is also the hub for Pacific regional trade, and the largest source of private investment in Forum island countries (Australia-Fiji Business Council

et al. 2002; World Bank 2002; Asian Development Bank 2002). Australia is the largest aid donor to the region, both bilaterally and regionally (Tables 3.1 and 3.2).

There is already a degree of monetary integration among Forum members based on the Australian dollar. Kiribati, Tuvalu and Nauru use the Australian dollar, and a possible future president of an independent Bougainville told me that Bougainville may also end up using the Australian dollar (the Cook Islands and Niue use the New Zealand dollar, and the Marshall Islands, Palau and Micronesia use the United States dollar).

Australia also has the largest military in the region.<sup>1</sup> Through the Defence Cooperation Program, Australia underwrites a significant element of Forum island countries' defence capabilities—their Pacific Patrol Boats. From 1985 to 1997, Australia provided the Forum island countries with 22 patrol boats, which are specifically built for these countries to patrol their exclusive economic zones. Australia meets the cost of the vessels, ongoing maintenance, logistics, Australian advisors, and, in some cases, fuel—a commitment totalling A\$475 million by 2000. In August 2000, Australia agreed to meet the A\$350 million cost of doubling the life of the patrol boats (Australian Department of Defence 2002). In terms of regional operations, the sustainability of the Bougainville peace monitoring operation was

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Table 3.1      Size of Forum members' populations and economies

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	Population (‘000)	GDP (US\$ billion)
Australia	19,800.0	398.69
Cook Islands	17.8	0.08
Federated States of Micronesia	112.6	0.23
Fiji	800.0	1.60
Kiribati	88.1	0.05
Marshall Islands	54.0	0.01
Nauru	12.1	..
New Zealand	3,900.0	58.20
Niue	1.7	..
Palau	20.3	0.12
Papua New Guinea	5,100.0	2.90
Samoa	180.0	0.28
Solomon Islands	500.0	0.24
Tonga	100.0	0.14
Tuvalu	10.2	0.01
Vanuatu	200.0	0.21

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*Source:* Australian Department of Foreign Affairs and Trade, 2004a. *Country Fact Sheets*, Commonwealth of Australia, Canberra. Figures are for 2002, or nearest available year.

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Table 3.2 Lead donors to Forum members, 2000 (A\$ million)

	Amount (A\$ million)
Australia	461.6
Japan	260.8
New Zealand	84.1
United States	29.3
France	22.5
Germany	8.7
United Kingdom	6.9
Canada	4.4
Netherlands	2.2
Other European countries	2.3
Total bilateral aid	882.8

*Source:* Australian Agency for International Development, 2002. *Submission to the Senate Foreign Affairs, Defence and Trade Committee Inquiry into Papua New Guinea and the Island States of the South West Pacific*, Australian Agency for International Development, Canberra.

dependent on high-level Australian involvement, and the Solomon Islands peacekeeping operation was dependent on Australian leadership and involvement.

Finally, Australia has the most extensive diplomatic network in the region, giving it the capacity, should it choose to exercise it, to be an effective advocate of new proposals (Smyth et al. 1997).

### Phases in Australia's Pacific relations

Australia's relations with Forum island countries can be broadly divided into four phases: the colonial period, the strategic denial phase, the constructive commitment phase, and the current phase of cooperative intervention.<sup>2</sup> Each phase continues to provide an important context for Australia's current and future policymaking.

#### Phase One: the colonial period

For the first half of the twentieth century, the Pacific states enjoyed a much higher profile in the Australian consciousness. For much of this period, Australia's focus was on promoting the goal of security. The islands' security was seen as crucial to Australia's security, as was demonstrated in World War II. Following World War II, Australia's relations with Pacific states were largely conducted with other colonial powers through the South Pacific Commission. What is often forgotten is that Australia, too, was a colonial power during this period, with responsibility for Papua

New Guinea from 1883 to 1975 and, along with the United Kingdom and New Zealand, for Nauru until 1968.

Australia's record as a colonial power was, at times, less than honourable. Henningham refers to Australia's 'decades of neglect' in Papua New Guinea, and a bipartisan parliamentary report on Australia's relations with that country concluded that Australians were 'diffident colonisers who governed with casual practicality and who departed with alacrity and too little care' (Joint Parliamentary Committee 1991:1). Phosphate mining during the colonial period left two-thirds of Nauru a blasted, unproductive landscape. Australia only provided compensation for this damage after Nauru initiated an action in the International Court of Justice ('Making waves in the Pacific', *The Economist*, 21 August 1993; Evans and Grant 1995).

Dobell believes Australia suffers from a 'popular amnesia' about its role as a colonial power (Dobell 2003). Australians may have short memories in this regard, but the Forum island countries do not—after all, this is the era in which many of their current leaders grew up.

### **Phase Two: strategic denial**

Following the Forum island countries' independence, Australia pursued a policy of strategic denial, acting on behalf of the Western Alliance and working to deny the Soviet Union a presence in the Pacific (Herr 1986). The fear was that any Soviet involvement in the region could lead to political influence, a military base, and threats to Australia's sea lines (Fry 1991). Again, promoting the goal of security was Australia's most critical goal, with a hint of interest in sustainable economic development.

The strategic denial policy led, at times, to some misjudged diplomacy (Fry 1996). Grave concern was expressed, for example, about the Soviet Union entering a fishing agreement with Kiribati (and later Vanuatu), and Australia pressured Kiribati to abrogate the agreement. We can be thankful for the passing of the Soviet Union, but Kiribati's interest in a Soviet fishing agreement at a time when the United States was refusing to pay fishing fees was understandable. Australia also worked to ensure that Vanuatu and Solomon Islands resisted Soviet offers to conduct hydrographic research and negotiate Aeroflot landing rights. Another concern during this period was a Libyan proposal to establish a bureau in Vanuatu, which Australia likewise resisted (despite the presence of such a bureau in Australia) (Fry 1991).

The policy of strategic denial did ensure some ongoing Australian interest in the region, and resulted in significant increases in aid and the creation of the South Pacific Regional Trade and Economic Cooperation Agreement (SPARTECA) (Fry 1991; Rosewarne 1997). However, there was also a lack of substantive engagement: Bill

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Hayden, for example, did not visit the region in his first three years as Australian Foreign Minister (Rosewarne 1997).

### **Phase Three: constructive commitment**

A new policy of constructive commitment was announced by Gareth Evans shortly after he became Foreign Minister in 1988 (Evans 1988). Australia, he said, was 'a part of the region and we wish to be a helpful neighbour ready to use our resources for the common good' (Evans and Grant 1995:32). In an effort to draw a line under the excesses of the strategic denial period, Australia would 'approach the region within a framework of regional partnership, not dominance' (Evans and Grant 1995:31–32). During this phase, Australia's interest in promoting the goal of security continued, but there was heightened interest in promoting sustainable economic development, and the beginnings of interest in promoting the rule of law and democracy.

The government later appointed a Minister for Pacific Island Affairs, Gordon Bilney. The engagement of Bilney (see Bilney 1994), and Prime Minister Keating, led to the adoption of the Forum's Madang Action Plan, which aimed to improve governance and economic growth in the region (South Pacific Forum 1995).

The policy of constructive commitment was continued, with little change in emphasis, under the Coalition government elected in 1996. The new Foreign Minister, Alexander Downer, spoke of Australia's 'deep and long-term commitment to the region' (Downer 1997) and the Coalition government's foreign policy cautioned, 'whilst Australia is able to exercise a leadership role, it must do so through assistance and constructive advice, rather than through assuming the role of pious lecturer' (Australian Department of Foreign Affairs and Trade 1997c). The initiative of a Minister for Pacific Island Affairs was, however, not continued under the Coalition government, and the Prime Minister, John Howard, missed various Forum meetings (Australian Parliamentary Committee 2003). Downer, however, seemed to have a genuine interest in the Pacific and was responsible for the deployment of two Pacific peace-monitoring operations (Australia-Fiji Business Council et al. 2002).

The policy of constructive commitment was sufficiently broad and flexible enough to be somewhat schizophrenic as well. It covered Bilney and Keating's explicit criticisms of Pacific economic management, which led to the Madang Action Plan, and Downer's two deployments of peace monitors. But it also covered frequent protests by policymakers, as in the 2003 Foreign Affairs and Trade White Paper, that 'Australia cannot presume to fix the problems of the South Pacific countries. Australia is not a neo-colonial power. The island countries are independent sovereign states' (Commonwealth of Australia 2003:93). The lack of engagement apparent in Australia's approach to the PACER–PICTA negotiations, to be discussed in the next



chapter, is evidence of this approach; as is Australia's refusal of the Solomon Islands' initial request for assistance in 2000 (Australian Strategic Policy Institute 2003).

There are two elements to statements such as 'Australia cannot presume to fix the problems of the South Pacific countries' as in the 2003 White Paper. On the one hand, they reflect a genuine desire to avoid Australia being characterised as an interfering, neo-colonial power. Yet such lines can also become bureaucratic mantras, avoiding more creative and strategic thinking on the part of policymakers. Most insidiously, they become the excuse for a hands-off approach and a failure to engage. Dobell, for instance, quotes a senior official in the Australian Department of Foreign Affairs and Trade as saying Australia's objective in the Pacific was merely to 'cleverly manage trouble' (Dobell 2003:4).

By 2003, some policymakers were realising that the hands-off approach was not working and, indeed, constituted a threat to Australian interests.

#### **Phase Four: cooperative intervention**

In June 2003, the Australian Strategic Policy Institute released a report, *Our Failing Neighbour: Australia and the future of the Solomon Islands*. It warned that the 'process of state failure' in the Solomon Islands was 'far advanced', and that it had 'virtually ceased to function as an effective national entity' (Australian Strategic Policy Institute 2003:1, 3). The report warned that Australia's

...present cautious policy approach offers no real prospect that the Solomon Islands can be turned around. The most likely outcome is therefore...the cessation of effective government. It would be a very serious step for Australia to decide that this was an acceptable trajectory for our immediate neighbourhood (Australian Strategic Policy Institute 2003:4).

Without intervention, the Solomons Islands could become a 'post-modern badlands, ruled by criminals and governed by violence' (Australian Strategic Policy Institute 2003:13). The consequences for Australia could include terrorism and the fall-out from transnational criminal operations.

The report correctly identified Australia as the only country with the interest, and the capacity, to act. It was time, then, for 'new policy approaches' (Australian Strategic Policy Institute 2003:1). The report proposed a multi-nation police force to stabilise the security situation, and the re-building of the Solomon Islands' 'political structures and security institutions', to help address the 'underlying social and economic problems' (Australian Strategic Policy Institute 2003:4). The report envisaged that the operation would last ten years, and that Australia would have to meet half the cost.

Despite rejecting such an intervention as late as January 2003,<sup>3</sup> Downer and Howard had apparently been re-thinking their approach to the Solomon Islands, and the Pacific, for some time (O'Callaghan 2003b; Kelly 2003a). In a major foreign-

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policy speech on 1 July, Howard said '[a] number of our friends in the Pacific are experiencing economic collapse, corruption and lawlessness to a degree which threatens their very sovereignty...Our friends and neighbours in the Pacific are looking to us for leadership and we will not fail them' (Howard 2003a). Downer had earlier labelled the new policy 'cooperative intervention' (Downer 2003; Kelly 2003a).

By the end of July 2003, 2,250 Australian police, military and civilian personnel had been deployed to the Solomon Islands (the Solomon Islands force will be discussed further in Chapter Eight).

The focus in the cooperative intervention phase is again on promoting the goal of security; the threat this time is failing states, and the risk of transnational terrorists taking advantage of them.

### **The need for a new phase: regional integration**

The policy of cooperative intervention is, for the most part, an encouraging development. As the Australian Strategic Policy Institute proposed, 'a major threshold' has been crossed (Australian Strategic Policy Institute 2003:3), where the 'hands-off' paradigm, a core element of Australia's approach to the Pacific states since Papua New Guinea's independence (Kelly 2003a), has been abandoned. This considerably broadens the range of options available to Australian policymakers.

Australia needs a mix of courage, commitment and strategy if it is to facilitate the resolution of the Pacific's challenges. In the Solomon Islands intervention, we see the requisite courage, and the beginnings of greater commitment on the part of Australian policymakers. However, the problem with Australian policymaking in the security phases of Australia's Pacific policy—the strategic denial phase, and now the cooperative intervention phase—is that Australian interest wanes when the perceived threat, whether the Soviets or failed states, recedes. Immediate crises may be handled, sometimes admirably, but without a long-term strategic vision for avoiding future crises. Further, viewing Forum island countries solely through a security prism risks damaging Australia's relations with those countries. During the strategic denial phase, Forum island countries came to resent Australia's heavy-handed attempts to counter Soviet influence (Henningham 1995; Rosewarne 1997; Fry 1991); unless properly handled, Forum island countries may come to resent Australia's current, more assertive, role.<sup>4</sup> This danger is exemplified by the difficulties surrounding Australia's Enhanced Cooperation Program with Papua New Guinea (the program involved Australian police and public servants working in line positions in Papua New Guinea).

The case for regional integration certainly rests in part on the need to address the region's security challenges. Yet the policy of cooperative intervention does not represent a holistic response to the challenges of the Pacific. Security challenges are only one part of the wider challenges confronting the Pacific.

My hope is that the risk of failed states, and Australia's current policy of cooperative intervention, will serve as an impetus for a fifth phase in Australia's Pacific policy: regional integration.<sup>5</sup> A policy of regional integration would represent a more sustainable, balanced, long-term basis for Australia's Pacific relations, and would better address the range of challenges facing Pacific states.

The issues of sustainability and balance are important. As discussed in Chapter One, Prime Minister John Howard has announced that Australia will encourage smaller Forum island countries to pursue economic union, integrating their education, police and transport services (O'Callaghan 2003a). Such proposals are sensible—this, after all, is what the Organisation of Eastern Caribbean States has pursued—but it is more likely to come about through a process of wider regional integration rather than bilateral lecturing. I fear that this latest initiative risks echoing the PACER–PICTA negotiations to be discussed in the next chapter: that it will be another case of Australia encouraging an otherwise worthy policy goal (such as free trade), but without itself offering any concession to provide impetus for change.

Australia cannot dictate the nature of Forum island country legislation and electoral systems, but it can facilitate a regional climate that speeds these internal changes. It also represents a safer approach for Australia: a regional intervention in a failing state, for example, better shares the responsibility and burden of such endeavours—and the blame when, inevitably, setbacks occur.

A new policy of regional integration would be justified by Australia's Pacific interests, and by wider foreign policy challenges.

### **Australia's current interests in the Pacific**

Australia currently has broad, substantive interests in the Pacific. Australia's security, commercial and aid interests all highlight the need for Australia's involvement.

In terms of security interests, the government's decision to intervene in Solomon Islands is clear evidence of the seriousness with which Australia views the risks of failed states and terrorism in the region.

The Solomons intervention needs to be seen, too, in its wider context. Government ministers and the Australian Strategic Policy Institute were clear that the cooperative intervention policy could apply to other Forum island countries, most particularly Papua New Guinea, if they were on the verge of collapse. The Institute's report stated that the Solomons Islands has 'implications for Australia's responses to the wider problems of the Southwest Pacific...The Solomon Islands is a small country. If we cannot help there, it is doubtful that we can help any of our neighbours if and when they fall into serious trouble' (Australian Strategic Policy Institute 2003:7). Where Australia is not robustly engaged, there are 'opportunities for others with interests potentially contrary to Australia's to become involved' (Wainwright 2003:485).

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Papua New Guinea's Foreign Minister, Sir Rabbie Namaliu, asked Downer about the wider application of the cooperative intervention policy, 'code for whether it applied to Papua New Guinea' (Kelly 2003b:1). Downer responded '...if a country got into grave difficulty and asked Australia for help then I hope that we would respond' (Kelly 2003b:1).<sup>6</sup> Trevor Kennedy, formerly chair of Papua New Guinea's largest company, has suggested that Australia needs to be clear about the consequences if it does not act: it would not be implausible, given Papua New Guinea's proximity to the Australian mainland, for 500,000 Papua New Guineans to attempt to canoe across to escape chaos or violence in their country (Kennedy 2003).

Australia has also made explicit and implicit commitments for the mutual defence of all Forum island countries (Dobell 2003). Under the Australia-Papua New Guinea Joint Declaration of Principles Guiding Relations, signed in 1987, Australia is obliged to consult with Papua New Guinea 'about matters affecting their common security interests [including] in the event of external armed attack'.<sup>7</sup> Papua New Guinean leaders understand this to be 'an effective guarantee of Australian commitment' (Mokis 1990:309).<sup>8</sup> The 2000 Defence White Paper states that 'in the highly unlikely event of unprovoked armed aggression against any of our immediate neighbours, Australia would want to be in a position to help our neighbours defend themselves'; Australia would, in fact, be very likely to 'provide substantial support' to any Southwest Pacific country in these circumstances (Commonwealth of Australia 2000:44). Further, Australia has 'a key interest in helping to prevent the positioning in neighbouring states of foreign forces that might be used to attack Australia' (Commonwealth of Australia 2000:33).

Civil strife, lawlessness and the potential for terrorism all endanger the many Australian citizens living in the region. There are around 10,000 Australians living in Papua New Guinea (Australian Parliament Joint Standing Committee 1999). Prior to the collapse of governmental authority, Solomon Islands was home to 100 Australian companies and thousands of Australians (Australian Strategic Policy Institute 2003). Following the 2000 coup, Australia engaged in a high-profile military evacuation to ensure their safety.

In the Pacific region, Australia clearly has considerable security interests which should encourage policies to minimise the regional disorder that contributes to terrorism, the flow of asylum seekers, small arms, illicit drugs and money laundering. Australian citizens, investments overseas and company tax returns are put at risk if there is a culture of lawlessness in the region; and preventive action is preferable to dangerous and expensive deployments.

Australia also has considerable commercial interests in the Pacific. Australia's goods exports to the Pacific total A\$9.5 billion annually, accounting for some 8 per

cent of Australia's total goods exports (Australian Department of Foreign Affairs and Trade 2001a). Moreover, Austrade, the Australian government's export promotion agency, encourages small businesses and first-time exporters to export to the Pacific.

The strong links that exist between the countries of the South Pacific and Australia make it relatively easy to do business, and many successful Australian exporters first gained their export skills in the region. Almost anything that sells successfully in Australia can find a market in the South Pacific (Austrade 1998:2–3).

Given small to medium-sized enterprises account for almost half of all Australian jobs (Australian Department of Employment, Workplace Relations and Small Business 2000), Australia has a considerable interest in protecting and developing their Pacific trading interests. Yet the European Union, the United States and China all have trade interests in the Pacific, and the various Australian Business Councils in the region have warned that 'these market shares are long standing, but should not be taken for granted as they are constantly under threat' (Australia-Fiji Business Council et al. 2002:5). Thus, Australia has an interest in promoting economic development in the region to increase its exports, and in promoting secure trading arrangements to protect its current market share.

Australia also gives some half a billion dollars in aid to Forum island countries annually (AusAID 2003). In today's terms, Australia has donated some A\$50 billion dollars over the last 30 years (Hughes 2003). According to AusAID, the Australian government aid agency, the aim of Australia's aid program is 'to advance Australia's national interest by assisting developing countries to reduce poverty and achieve sustainable development' (AusAID 2002:1). Chapter Two outlined the severe challenges to sustainable economic growth in the region, demonstrating that Australia's aid policy is not succeeding in its second objective. Chapter Four, in a consideration of the Forum's recent trade negotiations, provides an example of the limitations on Australia's influence in the Pacific, so Australia's aid policy is also failing to advance Australia's national interest. One think-tank has even suggested that Australia should cease all aid to the Pacific (Hughes 2003). I do not endorse this course, but it is surely in Australia's interests to explore new and better ways of utilising its aid.

Many politicians and academics also suggest another reason for Australia's active Pacific engagement: that outside powers, particularly the United States, will judge Australia on how well it is perceived to have 'managed' the Pacific.<sup>9</sup> This may be a useful argument for marshalling the interest of Australian decision-makers, but policymaking based solely on this reason will be self-defeating. I believe Australia has the capacity to exercise leadership in the region, by promoting a persuasive

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policy package designed to realise a prosperous shared future; but management implies a degree of control that Australia either does not have or could not usefully exercise (Fry 1991, 1999). In any event, the imperative for regional integration is real enough, independent of external perceptions.<sup>10</sup>

### **A time for boldness**

The previous chapter introduced the challenge of the rise in regionalism, including in Asia. Australia's Pacific links, and its membership of the Pacific Islands Forum, have the potential to be an important vehicle in addressing this challenge.<sup>11</sup> Australia needs to put far more effort into its Pacific relations, and utilise this grouping for wider leverage. In the Pacific, Australia has the standing to exercise creative diplomacy and to maximise a strategic opportunity.

Thus, as a matter of urgency, I believe Australia must launch a regional integration initiative that follows and improves on the European Union model. Australia must establish a position of policy leadership that can place it at the centre of a new regional order, rather than standing on the sidelines of emerging regional groupings and relying on *ad hoc* bilateral initiatives.

Australia's current position in the Pacific gives it the capacity to establish the guiding principles for a new phase in the development of the Pacific Islands Forum. The advantage of a proactive approach to regional integration is that Australia would design the new architecture in which it would invest its sovereignty. The alternative is to stand by and rely on participating in regional institutions created by others.

The Pacific Islands Forum offers Australia an existing regional architecture from which to proceed—but Australia must aim to both develop the Forum's sovereignty and expand its membership, to transform a Forum into a Community.

### **New Zealand and regional order**

New Zealand, as the Forum's other richer member, is likewise a key actor—it too is a founding member of the Forum and indeed hosted the initial meeting—and the Forum's evolution would be dependent on its commitment and resources.

New Zealand, like Australia, has considerable security, commercial and aid interests in the Pacific.<sup>12</sup> It also faces the challenge of isolation from the wider region, and has been disappointed with Australia's unwillingness so far to pursue a joint approach to free trade agreements.<sup>13</sup>

Unlike Australia, however, New Zealand has demonstrated a consistent interest in the Pacific, and greater comfort about its Pacific links. This additional interest can be explained in part by its demography, its special responsibility for the two Forum

members in free association with New Zealand (the Cook Islands and Niue) as well as Tokelau, and perhaps by a greater sensitivity to the needs of smaller states (Henderson 1996; Australia-Fiji Business Council et al. 2002). Unlike Australia, New Zealand has never promoted a 'hands-off' policy to the Pacific as justification for a lack of involvement.

New Zealand has therefore been a fertile source of ideas for promoting further Pacific integration: notably in Norman Kirk's proposal for a Pacific Council (Moore 1982), Jack Ridley's (1989) proposal for a South Pacific federation, Mike Moore's (1982) proposal for a South Pacific economic and political community, and the New Zealand Government Report, *Towards a Pacific Community* (South Pacific Policy Review Group 1990). An important practical example of New Zealand interest is that it led the initial Truce Monitoring Group in Bougainville, at a time when Australia's standing with Bougainvilleans was low. New Zealand, thus, hardly needs convincing of the merits of greater integration and cooperation.

Of course, Australia cannot take New Zealand's support for specific proposals for granted. It can proceed, though, knowing that the Forum's other developed member has the interest in and commitment to developing its Pacific links. The reverse has not always been true.

## Conclusion

As the largest and richest member of the Pacific Islands Forum, Australian leadership is essential in the pursuit of further integration. There has been a gradual evolution in Australia's relations with the Pacific, from the colonial period to the policy of strategic denial, to the policy of constructive commitment, to the current approach of cooperative intervention. The challenges facing Australia and other Forum members, however, suggest it is time for a dynamic, new phase in Australia–Pacific relations: the pursuit of regional integration.

For Australia, these challenges include the growing importance of regional arrangements around the world, the Pacific arc of instability and the threat this poses to Australian citizens, the need to protect Australia's commercial interests, and the need to improve the effectiveness of Australia's aid program. These challenges also largely apply to the Forum's other rich member, New Zealand, which, to its credit, has consistently devoted high-level interest to Pacific issues.

Only by embracing a bold new plan can Australia and New Zealand meet these challenges. Ultimately the Forum's two richer members can only gain from a regional community that seeks to promote sustainable economic development, security, the rule of law, democracy and integration with the wider region.

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Due to its size and economic weight, Australia has the capacity to be the nominal leader of the Pacific Islands Forum, but its position is certainly not that of a hegemon able to dictate the course of the Forum. Australia's leadership will come through offering attractive policy packages and an aid partnership conditional on the pursuit of regional order. Essential is a new strategic vision for Australia's relations with its neighbours, and a detailed plan for how Australia and other Forum members can achieve this.

## **Notes**

- <sup>1</sup> New Zealand, Papua New Guinea, Fiji and Tonga also have military forces, and Vanuatu and the Solomon Islands have paramilitary forces (Australian Department of Defence 2002).
- <sup>2</sup> These classifications draw on and extend those suggested by Fry (1991).
- <sup>3</sup> In possibly the last official expression of the hands-off, 'Australia cannot do anything' approach, Downer wrote: '[t]he fundamental problem is that foreigners do not have answers for the deep-seated problems afflicting the Solomon Islands' (Downer 2003:11).
- <sup>4</sup> Following Australia's decision to intervene in the Solomon Islands, former Solomon Islands Prime Minister Manasseh Sogavare accused Australia of having colonial ambitions, saying that the Solomon Islands was being 'deliberately used as a puppet for overseas agendas' and that the intervention would 'be nothing short of re-colonising this country' (O'Callaghan and Walters 2003:5); Vanuatu's Foreign Minister, Serge Vohor, also accused Australia of adopting a colonial attitude to Pacific states (O'Callaghan and Walters 2003; Kerin and Walters 2003).
- <sup>5</sup> Fry (1996) has critiqued Australian attempts to frame the islands, then to prescribe solutions for them, benevolent or otherwise, as expressions of Australian leadership. However, it depends on one's conception of leadership. Leadership is to be welcomed if it involves the leader living up to its responsibilities, and recognising its own faults and rectifying them. Fry does approve, for instance, of Evans' attempts to establish a more genuine partnership with the Forum island countries through his policy of constructive commitment. A regional integration project could be seen as the ultimate expression of constructive commitment, to be approached in a spirit of partnership and common endeavour, not dominance.
- <sup>6</sup> Howard also said the Solomon Islands operation 'sent a signal to the region that help would be available to other troubled states should they ask' (Walker 2003:6).
- <sup>7</sup> Article 3(d), Australia-Papua New Guinea Joint Declaration of Principles Guiding Relations. Available at <http://www.austlii.edu.au> [accessed 27 February 2004].
- <sup>8</sup> Although the language is mild, it is nonetheless stronger than the US commitment given to Australia through ANZUS, on which much of Australia's defence planning rests (Buckley 1989).
- <sup>9</sup> See, for example, Howard (2003a, 2003b); Australian Strategic Policy Institute (2003); Evans and Grant (1995); Wainwright (2003). Some figures in New Zealand also



apparently believe that external players will judge it according to how it discharges its Pacific responsibilities (Fry 1990).

- <sup>10</sup> In the European context, Britain has excellent bilateral relations with the United States, but pursues regional integration through the European Union because of the benefits it brings—its views on the European Union are independent of its bilateral relationship with the United States.
- <sup>11</sup> Consider Australia's existing assets in terms of international political groupings, other than the United Nations (where Australia's effectiveness is hamstrung by its membership of the West Europe and Others Group anyway). The two political bodies to which Australia belongs are the Forum and the Commonwealth (the WTO and APEC are economic bodies and the ASEAN Regional Forum and ANZUS are security arrangements). The Commonwealth helps Australia maintain contacts with African states, but it is otherwise too dispersed for Australia's needs.
- <sup>12</sup> See <http://www.mfat.govt.nz/foreign/regions/pacific/pacific.html> and [http://www.nzaid.govt.nz/programmes/r\\_pac\\_regional.html](http://www.nzaid.govt.nz/programmes/r_pac_regional.html) [accessed 17 March 2004].
- <sup>13</sup> This has been made clear in my various discussions with New Zealand diplomats. See also Harvey (2004).

# 4

## The Pacific Islands Forum

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The Pacific Islands Forum is the Pacific's pre-eminent regional organisation. As such, it is the most obvious vehicle through which Pacific states can work together to address the challenges they face.

Nonetheless, a clear-eyed approach is needed in considering the Forum's potential to evolve. This chapter recounts the background to the establishment of the Forum, and provides an overview of its current institutional structure before surveying the Forum's efforts to promote the five goals of regional order. Often, Forum members have resisted developing a shared sovereignty and a framework is provided to explain the Forum's missed opportunities.

The chapter then outlines the achievements of CARICOM, which demonstrates that island states can achieve a great deal through high-level regional integration, and that the Forum still has some way yet to develop. To highlight how the Forum needs to change so that it can pursue this more substantive integration, a detailed case-study is presented of the Forum's Pacific Closer Economic Relations–Pacific Islands Country Trade Agreement (PACER–PICTA).

### **The beginning of the voyage to regional order**

In 1947 the six colonial governments with administrative responsibilities in the South Pacific established the South Pacific Commission. Representatives of the colonial powers controlled the Commission's activities, and its agenda was limited to development matters—'no politics were to be discussed' (Moore 1982:19; Howard 1991:131). For example, island countries could not discuss French nuclear testing

at the Commission because it was a 'political matter' (Tarte 1989:181, 184). In 1965, the head of Fiji's colonial legislature, Ratu Mara, led the 'Lae rebellion', demanding that the Commission give island countries a greater say in their own affairs (Tarte 1989:183). Ratu Mara continued to agitate for a regional organisation indigenous to the South Pacific.

Australia was sympathetic to these demands for more participation and, in 1971, Australia, the Cook Islands, Fiji, Nauru, New Zealand, Samoa and Tonga established the South Pacific Forum (South Pacific Forum 1971) as an organisation with a potentially wider ambit than the South Pacific Commission. The Forum was established without a founding charter or treaty; rather, there was simply a commitment to informal, annual meetings of heads of government.

The South Pacific Commission, now renamed the Pacific Community, will not be considered further because it includes members that are not indigenous to the region, and so it cannot be a vehicle for regional integration.<sup>1</sup>

### **Institutional structure**

The Forum is still centred around the annual leaders' meetings, where heads of government meet in an informal setting to discuss regional issues. The leaders release a non-binding Forum Communiqué at the conclusion of their meeting. The themes in recent years' communiqués have been economic reform, security issues, fisheries, nuclear testing, radioactive waste and environmental issues (from sea turtles to reefs to forests to biological diversity in general).<sup>2</sup> Communiqués will often note and discuss problems, or note progress, or lack of progress, on particular issues. More rare is a program to solve the problems. Former Australia Prime Minister Paul Keating has written that 'each year's meeting took the previous year's agenda as its starting point and many of the same comments were recycled. There was a good deal of routine business which did not require the attention of heads of government and, to my mind, too great a tendency to blame other people for the region's ills' (Keating 2000:196).

Forum economic ministers now hold annual meetings in addition to the Leaders' meetings, and there are also regular meetings of trade, foreign, aviation, communication and education ministers. There is also a Forum Regional Security Committee, made up of officials from members' law enforcement agencies.

The Forum's attendant bureaucracy has grown over the years. The South Pacific Bureau for Economic Cooperation was established in 1972 to encourage trade and economic development. In 1988, the Bureau became the Forum Secretariat and is now the chief vehicle for implementing the Forum's agenda. The Forum Secretary-General is the head of the Secretariat and the chief regional bureaucrat.<sup>3</sup>

## Pacific Regional Order

Table 4.1 Pacific Islands Forum members' assessed contributions

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Country	Per cent of regular Secretariat budget
Australia	37.16
New Zealand	37.16
Papua New Guinea	5.49
Fiji	2.24
Federated States of Micronesia	1.98
Palau	1.98
Samoa	1.98
Solomon Islands	1.98
Tonga	1.98
Vanuatu	1.98
Cook Islands	1.01
Kiribati	1.01
Nauru	1.01
Niue	1.01
Marshall Islands	1.01
Tuvalu	1.01

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*Source:* Australian Agency for International Development, 2003. *Aid Budget Summary 2003–04*, Australian Agency for International Development, Canberra.

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The Forum Secretariat itself is funded by a regular budget, for which all Forum members are responsible through assessed contributions (detailed in Table 4.1)

The Forum Secretariat's programs and activities are funded through an extra budget, which is funded by Australia, New Zealand, non-Forum members and international organisations. The Forum Secretariat's combined regular and extra budget in 2003 was F\$12,932,000. Australia is the biggest donor.<sup>4</sup>

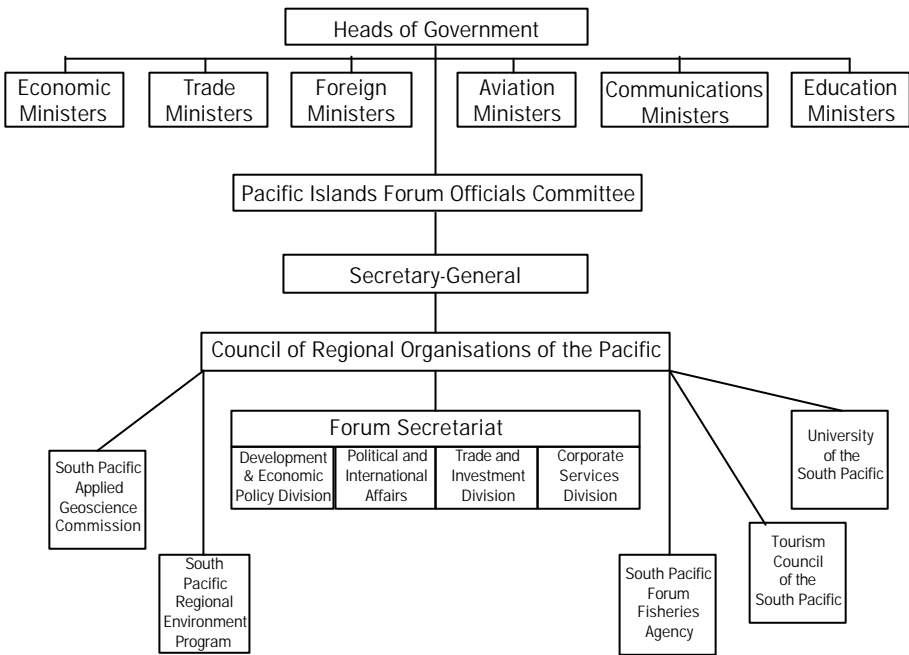
A number of specialised agencies are also attached to the Forum. There is a nominal division of responsibilities between the Forum Secretariat and the specialised agencies: the Forum Secretariat is responsible for providing policy advice, and the other agencies implement technical programs (Pacific Islands Forum 2004a: para 28). To manage natural resources, the South Pacific Forum Fisheries Agency was established in 1979, the South Pacific Applied Geoscience Commission in 1984 and the South Pacific Regional Environment Programme in 1991. These organisations, together with the Forum Secretariat, the Tourism Council of the South Pacific, the University of the South Pacific and the Pacific Community, form the Council of Regional Organisations of the Pacific (CROP).<sup>5</sup> Figure 4.1 sets out the structure of the Pacific Islands Forum.

I turn now to a consideration of the Forum's efforts to promote the five goals of regional order.

## The Forum and goal one: sustainable economic development

For much of its history, the Forum made little substantive effort to promote sustainable economic development. The Forum initially made some effort to promote trade cooperation between its members. The Papua New Guinea-Australia Trade and Commercial Relations Agreement (PATCRA) entered into force in February 1977.<sup>6</sup> PATCRA was the genesis for the South Pacific Regional Trade and Economic Cooperation Agreement (SPARTECA),<sup>7</sup> as other Forum island countries lobbied for the same preferential access. SPARTECA entered into force in January 1981. SPARTECA provides Forum island country products with preferential, non-reciprocal access to Australia and New Zealand—that is, Forum island country goods enter the Australian and New Zealand markets duty free, but Australian and New Zealand goods still face high tariffs in Forum island country markets. Like PATCRA, SPARTECA was intended to encourage economic and industrial cooperation, expand and diversify trade, stimulate investment in exports, provide cooperation in marketing, and promote other forms of commercial cooperation (Robertson 1986).

Figure 4.1 Structure of the Pacific Islands Forum



## **Pacific Regional Order**

SPARTECA was initially cause for celebration (Sutherland 1986); but, as suggested in Chapter Two, the agreement is flawed because of its non-reciprocal nature and trade diversion effects. Thus, it has failed to promote the goal of region-wide sustainable economic development.

In recent years, Forum island countries have realised the importance of undertaking more measures to promote sustainable economic development, given the current challenges to economic growth in the region. In 1997, the Forum instituted a new annual meeting, the Forum Economic Ministers Meeting (FEMM), to discuss economic difficulties, identify new policies and serve as an impetus for further reforms. Forum Leaders endorsed the FEMM Action Plan, which contemplates a range of economic reforms (South Pacific Forum 1997a: para 5). The reforms are mostly aimed at liberalising trade and investment policy, and encouraging a more disciplined fiscal policy. Monetary policy, though, has not been a focus.

Forum island countries, from small to large, have embraced the reform agenda to varying degrees. Samoa has committed itself to moving beyond aid dependency within 25 years. Vanuatu has instituted a Comprehensive Reform Program, following consultations with all parts of its society. Vanuatu's reform plans, like Samoa's, include seeking membership of the World Trade Organization. Former Papua New Guinea Prime Minister Sir Mekere Morauta showed tremendous commitment to reforming Papua New Guinea's economy and polity. Nonetheless, the Forum can do more to create an enabling regional environment.

Arguably, the most important aspect of the economic reform process thus far has been the conclusion of a framework that could facilitate free trade in the region. At the 2001 Forum, leaders adopted two agreements to govern trade relations between members for the foreseeable future: PACER, a head, or umbrella agreement, covering all Forum members, and PICTA, covering Forum island countries only. This framework will be considered in detail below.

## **The Forum and goal two: security**

After a slow start, the Forum has begun to pursue more substantive joint security measures in recent years.

In 1992, the Forum agreed to the Honiara Declaration on Law Enforcement Cooperation (South Pacific Forum 1992). The Honiara Declaration was an effort to combat transnational crime, particularly financial crime and drug smuggling. In the declaration, leaders recognised that 'an adverse law enforcement environment could threaten the sovereignty, security and economic integrity of Forum members and jeopardise economic and social development' (South Pacific Forum 1992: para 1). The Honiara Declaration contemplated a range of legislative initiatives, and enhanced cooperation between law enforcement officials (South Pacific Forum 1992).

Yet Forum members were not ready to embrace fully a joint approach to security issues in the early 1990s. Implementing the Honiara Declaration proved problematic. Successive Forum Communiqués noted the lack of progress in implementing the Honiara Declaration and stressed its importance.<sup>8</sup>

The Forum also played little role in addressing, let alone resolving, the Bougainville conflict (Tarte 1998). The 1998 Forum Communiqué, for example, simply welcomed 'positive developments', whilst noting Papua New Guinea's territorial integrity (South Pacific Forum 1998). The Forum's lack of response to a major civil war in Papua New Guinea—which spilled over at times into another Forum member, the Solomon Islands—was a clear indictment of the Forum's lack of institutional capacity, and its unwillingness to tackle difficult, though necessary, issues. Ultimately, four Forum members supported Papua New Guinea in resolving the conflict, but there was no exercise of regional sovereignty through the Forum.

Perhaps in response to these concerns, leaders passed the Aitutaki Declaration in 1997. In it, leaders 'acknowledged that existing arrangements have not provided explicit mechanisms to facilitate consultations that would enable members to respond promptly and effectively to requests for assistance'; and 'accepted the need for the region to take on a more comprehensive approach to regional security' (South Pacific Forum 1997b). The Aitutaki Declaration contemplated developing preventive diplomacy mechanisms in the future. The importance of the Aitutaki Declaration was in broadening the Forum's interest in security matters from law enforcement cooperation (as in the Honiara Declaration), to the broader arena of 'natural disasters, environmental damage and unlawful challenges to national integrity and independence' (Forum Secretariat 2000b).

The twin coups in Fiji and the Solomon Islands in 2000 proved to be the real catalyst in the Forum's approach to security issues. The response differed markedly from the Forum's previous attitude to regional disorder. The Forum's Biketawa Declaration of October 2000 commits the Forum collectively to 'constructively addressing difficult and sensitive issues including underlying causes of tensions and conflict', such as 'ethnic tension, socioeconomic disparities, lack of good governance and land disputes' (Pacific Islands Forum 2000a: para 1).

That the coup in Solomon Islands followed the Fiji coup by a mere three weeks probably shocked many Forum members out of their complacency.<sup>9</sup> As a result of the Biketawa Declaration, the Forum established an Eminent Persons Group to visit the Solomon Islands and report on what role the Forum could play (Pacific Islands Forum 2002a: para 15). The Biketawa Declaration allows the Forum Secretary-General to act in a 'good offices' capacity to help resolve future security crises through a number of mechanisms (Pacific Islands Forum 2000a: para 2). In August 2002, Forum Leaders passed the Nasonini Declaration on Regional Security, which

## **Pacific Regional Order**

commits Forum members to 'act collectively' in response to 'security challenges including the adverse effects of globalisation such as transnational crimes' (Pacific Islands Forum 2002b: para 1). The Nasonini Declaration also commits members to 'good governance practices as a key fundamental strategy for addressing some of the difficult and sensitive issues underlying the causes of tension and conflict in the region' (Pacific Islands Forum 2002b: para 2). Forum members are encouraged to introduce legislation and national strategies to combat money laundering, drug trafficking, terrorism and people smuggling (Pacific Islands Forum 2002b: para 8). Forum members also re-commit themselves to implementing the legislation required by the Honiara Declaration by the end of 2003 (Pacific Islands Forum 2002b: para 7).

All these efforts laid the groundwork for the remarkable evolution in the Forum's role that occurred in 2003. The Forum agreed to an intervention force for the Solomon Islands, consisting of Australia, New Zealand, Papua New Guinea, Fiji, Vanuatu, Tonga, Cook Islands and Kiribati, and to Australia and others assuming responsibility for much of Solomon Islands' governance. The comprehensive nature of the intervention is explicitly acknowledged in the Outcome Statement from the Forum Foreign Affairs Ministers' Meeting.

- Ministers agreed that the extent of the problems facing Solomon Islands called for a concerted regional response, as envisaged in the Biketawa Declaration.
- Ministers welcomed the assistance package proposed by Australia. In particular, they noted its comprehensive nature, encompassing law and order, the justice and prison systems, rebuilding the Solomon Islands institutions and establishing conditions under which Solomon Islands could achieve economic recovery.
- Ministers endorsed the provision of a package of strengthened assistance to the Solomon Islands, including a policing operation to restore law and order, supported, as required, by armed peacekeepers (Forum Foreign Affairs Ministers' Meeting 2003b: paras 5, 7, 10).

This suggests the Forum and its members have entered a new era, with members embracing the shared security and shared sovereignty that they have shunned in the past.

## **The Forum and goal three: the rule of law**

Most of the Forum's impressive achievements have come through efforts to promote the rule of law (between states, rather than within states), when it has banded together to negotiate international agreements. For example, the Forum had a victory at the UN Law of the Sea negotiations between 1973 and 1982. After sustained



joint advocacy by Forum members, the world community recognised the justice of allowing them to manage their marine resources, and granted each Forum island country an exclusive economic zone of 200 nautical miles.<sup>10</sup> These states, with their limited land resources, now have an interlocking series of exclusive economic zones covering one-sixth of the Earth's surface—the largest fisheries in the world.

But with the right to the exclusive economic zones came the responsibility to police them from distant-water fishing nations that sought to continue exploiting the marine resources without paying fees. The United States refused to recognise the exclusive economic zones. The situation was finally resolved in 1987 when the United States signed a multilateral fisheries agreement with Forum members.<sup>11</sup> This outcome demonstrates what the Forum can achieve when united. It also demonstrates the outcomes that are possible when Australia is fully engaged. Through the Pacific Patrol Boat program, Australia provided the practical support Forum island countries needed to enforce their legal rights. This is backed up by the Treaty of Niue,<sup>12</sup> which provides a framework for regional maritime surveillance and fisheries law enforcement, and the Convention for the Prohibition of Fishing with Long Driftnets in the South Pacific.<sup>13</sup> In 2000, Forum members, together with distant-water fishing nations, concluded the Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean, which aims to ensure sustainable stocks for highly migratory species.<sup>14</sup>

Caring for the environment has been a Forum theme, from its initial concern over the effects of nuclear testing, to more recent concerns about global warming. Three conventions give effect to these environmental concerns. The Treaty of Rarotonga in 1985 established the South Pacific Nuclear Free Zone.<sup>15</sup> This treaty dealt with Forum concerns to prevent nuclear testing, storage or dumping in the region, whilst still allowing nuclear-armed US warships to visit ports. The following year, the Forum established the Convention for the Protection of the Natural Resources and Environment of the South Pacific Region, designed to control pollution.<sup>16</sup> This was further refined in the Waigani Convention 1995, which regulates and minimises transboundary movements of hazardous and radioactive wastes.<sup>17</sup>

These various conventions demonstrate that Pacific states will embrace the supranational rule of law when such legally binding commitments are in their interests.

## **The Forum and goal four: democracy**

Until recently, the Forum has been ambivalent about any efforts to promote or uphold democracy. In 1987, despite Australian Prime Minister Bob Hawke's advocacy, the Forum refused to include the Fijian coup as a formal agenda item: other Forum members accepted the coup as a legitimate reassertion of indigenous rights (Alley

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1990; Howard 1991). The coups were seen as an internal problem, and most Forum members believed it was better to abide by a policy of non-interference (Alley 1990). Tonga even sent a congratulatory telegram to the coup leaders (Howard 1991). The Forum statement simply noted the 'complexity of the problems' and hoped 'for a peaceful and satisfactory solution' (South Pacific Forum 1987: para 3) Fiji's Governor-General refused to accept a delegation led by Hawke (Alley 1990). When Ratu Mara attended the Forum the following year, he was successful in ensuring the situation in Fiji was not discussed (Alley 1990).

However, under the Biketawa Declaration, Forum members commit themselves to 'belief in the liberty of the individual under the law, in equal rights for all citizens regardless of gender, race, colour, creed or political belief', and to 'upholding democratic processes and institutions which reflect national and local circumstances, including the peaceful transfer of power' (Pacific Islands Forum 2002a: para 15). The Biketawa Declaration led the Forum to establish its first Elections Observer Mission, to observe the 2001 elections in the Solomon Islands and provide support for the democratic process there.

## **The Forum and goal five: integration with the wider region**

The Forum has continued to expand from its initial seven members, to cover sixteen states. Although the Forum has expanded, there has been a clear understanding until now that expansion should be restricted to independent or self-governing small Pacific islands (Tarte 1998). For example, Article 27 of PICTA, the trade agreement between Forum island countries, states that by unanimous agreement the Parties may permit non-Forum states, territories or self-governing entities to accede to the agreement. This would be encouraging, but for the fact that it was intended to be limited to non-Forum small Pacific islands (namely the United States and French territories in the region) (Forum Secretariat 2002). From the discussions at the PACER–PICTA negotiations, it was not intended to be a vehicle for wider integration.

Thus, the Forum has occasionally had an *ad hoc* involvement with other small Pacific islands, but the Forum has not pursued a long-term vision of wider integration. Forum Leaders' 2004 vision of seeking 'partnerships with our neighbours and beyond to...ensure a sustainable economic existence for all' may provide the basis for a change in approach (Pacific Islands Forum 2004b:1).

## **Explaining missed opportunities**

For much of its history the Forum has done little to promote the five goals of regional order. Nonetheless, the Forum has successfully promoted the rule of law between states, even if not within states, and has recently pursued more substantive measures to promote sustainable economic development and security.

As a result of the Forum's slow development as a regional institution, there have been various missed opportunities. More radical innovations, such as economic union (discussed at the first Leaders' Meeting in 1971; see South Pacific Forum 1971), Sir Julius Chan's suggestion for the establishment of a regional peacekeeping force (Fry 1990) and Mike Moore's proposal for a Pacific Parliament (Moore 1982), fell by the wayside, perhaps because the Forum was established without a charter setting out any goals (South Pacific Forum 1971). Perhaps the crises in Bougainville, the Solomon Islands and Fiji would have been avoided or muted if a regional human rights commission and a regional security mechanism had been established.

Pharand (1994) distinguishes between external and internal sovereignty, where external sovereignty refers to a state's interaction with other states and international organisations, and internal sovereignty refers to a state's authority to determine its own governmental institutions and the law governing the lives of its citizens.<sup>18</sup> Until recently, Forum members resisted any measure that would impact on their internal sovereignty. This is why they could band together to promote the rule of law between states, but oppose any measure to promote the rule of law within their own states. The Forum's approach is changing, as evidenced by the Biketawa Declaration and the Solomon Islands operation, which involved Solomon Islands surrendering much of its internal sovereignty. However, the fact is that Pacific regionalism will stagnate without further initiatives that will impact on internal sovereignty.

One obstacle to such initiatives is the negative side to the 'Pacific Way'. Like the phrase 'Asian values', the Pacific Way can also be code for intransigence, avoiding difficult issues by blaming others and, in extreme cases, glossing over human rights abuses (see, for example, Alatas 1993:81; Chan 1995:25; Howard 1991:129). Sometimes the Pacific Way in the Pacific Islands Forum seems to be the direct descendant of the 'no politics' rule at the South Pacific Commission, used by colonial governments to avoid discussion of substantive, sensitive issues. We all seek consensus and the peaceful settlement of disputes. But the Pacific Way, as currently formulated, is not enough and there is no safety net when it falters. Bougainville is evidence of the devastation that occurs when consensus fails: tens of thousands of lives lost and a shattered infrastructure, with Melanesians killing fellow Melanesians and Bougainvilleans killing each other (Joint Standing Committee 1999:6).

According to the Forum's Secretary-General, Greg Urwin, the Pacific has only recently concluded its 'immediate post-colonial phase' (Forum Secretariat 2004: para 5). This phase represented another obstacle to more dynamic initiatives: it is understandable that initial Forum island country leaders, having achieved independence from colonial rulers, did not immediately seek out a shared regional sovereignty. This attitude will probably change as new leaders emerge. Indeed, the Secretary-General has noted the 'generational change as younger leaders, who did not inherit their power from colonial

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rules, take the helm of their nations' (O'Callaghan 2004:10). The Caribbean is more advanced in its regional integration efforts, possibly because the Caribbean states achieved independence much earlier than the Pacific states.

## **New hope**

Forum members need to be convinced that pooling their sovereignty in regional order lifts their political status and power in a wider structure. Regional cooperation, even where it impacts on internal sovereignty, is needed to prevent isolation and irrelevance. The Pacific Way needs to stand for more than politeness—it needs to stand for strength and unity in diversity, for innovation and openness and a willingness to overcome the challenges outlined in Chapter Two.

The Forum's recent initiatives to promote sustainable economic development and security better, and the Auckland Declaration outlining Forum Leaders' vision of the future, give cause for hope that Forum members are realising the benefits, and the necessity of pursuing regional integration as the Caribbean and many other regions in the world have done. This is a promising start—marking the end of the first phase of the Forum's development, which lasted some 30 years—but much more comprehensive integration is needed to promote all five goals of regional order.

## **Caribbean comparison**

A Caribbean comparison is again instructive, because it demonstrates that not all island groupings resist measures that impact on internal sovereignty, and the outcomes that are possible when a group of island states pursue regional integration.

CARICOM was established in 1973. Its founding charter had three explicit goals: economic integration through the establishment of a common market, the coordination of members' foreign policies, and functional cooperation (CARICOM Treaty, Article 4). CARICOM countries viewed regional integration 'as an essential element in their strategies for survival and development' (Andriamananjara and Schiff 1998:27).

As with the Forum, CARICOM heads of government are at the top of the institutional hierarchy; however, CARICOM heads of government meet twice a year rather than once a year. The Community Council of Ministers, meeting four times a year, is responsible for strategic planning and coordination between members, as well as external relations (World Trade Organization 2000; Fairbairn and Worrell 1996). CARICOM also has four ministerial councils which meet regularly: the Council for Trade and Economic Development, the Council for Foreign and Community Relations, the Council for Human and Social Development, and the Council for Finance and

Planning (World Trade Organization 2000). Like the Forum, CARICOM is served by a Community Secretariat, and has a number of specialised agencies.<sup>19</sup>

Thus, to a large extent, CARICOM has a similar institutional structure to the Pacific Islands Forum. The key difference in the organisations is that CARICOM members have been willing to pursue legally binding measures which will impact on their internal sovereignty, as its founding treaty makes clear. As an example of this commitment to shared sovereignty, CARICOM's Council for Finance and Planning is responsible for coordinating economic policy, and the financial and monetary integration of members. CARICOM also has a Council of Central Bank Governors, to monitor members' monetary and economic policy (Fairbairn and Worrell 1996).

Most importantly, CARICOM members agreed in 1989 to pursue more comprehensive economic integration (World Trade Organization 2000). Whilst regional trade in goods had been largely liberalised, members decided to pursue a comprehensive common market, with free trade in services, investment and labour, as well as goods. Further, members pursued greater harmonisation of the laws and regulations affecting commerce, including customs procedures, intellectual property, competition policy and corporate taxation (World Trade Organization 2000). Subsequently, members decided to institute measures to coordinate macroeconomic policy, develop a common currency, pursue capital market integration and harmonise fiscal and other incentives (World Trade Organization 2000).

The Organisation of Eastern Caribbean States (OECS) is a sub-set of CARICOM, consisting of the Caribbean's smallest states. The OECS has pursued deeper integration at a faster pace than the rest of CARICOM, and already has its own common currency and central bank (Fairbairn and Worrell 1996). The bank's constitution allows it to discipline members, to ensure currency stability and low inflation; a collective decision by members can overrule an individual government which may be tempted to overspend (Fairbairn and Worrell 1996). Members of the OECS also share a Supreme Court.<sup>20</sup>

CARICOM has been the more dynamic, successful organisation; and we can draw a link, too, between CARICOM's dynamism and the higher economic growth of Caribbean states compared to Pacific states (see Chapter Two).

## **PACER–PICTA**

A number of the Forum's current aspects need to change before it can better emulate CARICOM's success. This is usefully demonstrated by a consideration of the negotiations for the Forum's most recent trade achievement, the Pacific Closer Economic Relations Agreement–Pacific Islands Country Trade Agreement (PACER–

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PICTA), which occurred between 1997 and 2001. The following case study provides various lessons for future efforts to develop the Forum's sovereignty. The case study also highlights the approach of some of the players in Pacific regionalism and demonstrates that, in large part, it is for Australia to display innovative leadership if it hopes to maximise the Forum's potential. Yet the Forum Secretariat must also do better in harnessing the Forum's potential, and doing so means accepting the merits of closer integration between the Forum's richer and poorer members.

### **Key features**

The key features of PACER are

- a commitment by all Forum members to work towards a common market
- a non-binding commitment to general trade liberalisation
- a commitment to commence free trade arrangement negotiations with Australia and New Zealand eight years after PICTA enters into force
- a commitment to commence 'consultations' with Australia and New Zealand in the event of Forum island countries commencing free trade agreement negotiations with any other OECD country, or any other country with a GDP higher than New Zealand's.<sup>21</sup>

The key feature of PICTA is a plan to establish free trade in goods among Forum island countries by 2010, or by 2012 in the case of least developed countries and small island states.<sup>22</sup>

PACER–PICTA is a potentially important framework for facilitating future efforts at closer integration. Nonetheless, it is a second-best outcome. It delays, possibly until 2011,<sup>23</sup> the comprehensive integration all Forum members need to pursue for economic and political reasons (Australian Parliamentary Committee 2003). The agreements split the integration efforts of the Forum into two streams: between Forum island countries alone, and between these countries and Australia and New Zealand.

### **Beginnings**

Following sustained advocacy by the Forum Secretariat, the idea of a Pacific Free Trade Agreement was discussed at the Forum Economic Ministers' Meeting in 1997, and in 1999 Forum Trade Ministers included Free Trade Agreement negotiations in their action plan. Such negotiations were subsequently endorsed at the Forum Leaders meeting (South Pacific Forum 1999b: para 8).

Unfortunately the new-found interest in a free trade agreement was the result of external developments, rather than an initiative from a Forum member keen to pursue regional integration amongst all Forum members. The European Union wanted Forum island countries to work together so it could more easily negotiate its own

trade agreement with them (the European Union's then agreement with Forum island countries had been found to be illegal under WTO law).<sup>24</sup> The Forum Secretariat wanted to promote a Forum island countries-only free trade agreement as a first step to negotiating a Regional Economic Partnership Agreement with the European Union.

Thus, from the outset of the PACER process, the Forum Secretariat did not want to facilitate a Forum-wide free trade agreement that would include Australia and New Zealand. Australia's initial reaction to the Secretariat's proposal for a free trade agreement was to stall further progress,<sup>25</sup> reinforcing the Secretariat's position.

Australia's response demonstrated a lack of historical insight. The Forum had been talking on and off about economic union since its inception (South Pacific Forum 1971). Australia had commissioned a study in the 1980s on extending its Closer Economic Relations (CER) agreement with New Zealand to the Forum island countries (Drake and Hall 1987), and the Forum island countries had said in 1986 they would 'give further consideration to the advantages of moving to a CER type relationship' (South Pacific Forum 1986: para 26). So the idea had been around, if inert, for 30 years. Australia's response should have been an enthusiastic endorsement of an opportunity to tackle high Forum island country tariffs and create a world-class developed–developing country free trade agreement. Instead, Australia's approach was that of an outsider looking in on developments in an external region,<sup>26</sup> when it should have been reacting as a vital member of a regional grouping, keen to pursue a regional integration initiative.

When Australia realised there was some momentum behind the PACER proposal, it changed its argument—if a free trade agreement was to go ahead, it wanted to be included as a full member, as befitted its status as a founding member of the Forum. Australia suggested that PACER should be viewed not just in economic terms but as a political statement about the Forum banding together. Australia was also concerned that if Forum island countries negotiated an agreement with the European Union, the European Union would receive duty-free access to Forum island country markets before Australia.

### **The economics of an agreement**

Economic modelling supported Australia's inclusion. A Forum Secretariat study showed that there were few economic benefits to be had in a Forum islands-only free trade agreement<sup>27</sup> Australia and New Zealand examined the implications of a Forum-wide free trade agreement and found that although the adjustment costs would be higher, the gains would be much higher.<sup>28</sup> Such an agreement would match existing trade patterns, as well as being more likely to lead to trade creating outcomes, and to allow members to exploit complementarities (Centre for International Economics 1998). It would create a market of 28 million people. As the World Bank

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subsequently wrote, a free trade agreement between Forum island countries and Australia and New Zealand would promote increased investment, technology transfer, new knowledge and cheaper inputs for Forum island countries, as well as locking-in economic policy reforms (World Bank 2002).

In contrast, the Forum islands-only free trade agreement would cover only six million people and very little of the trade between the parties. It was also unlikely to realise dynamic gains like increased investment from richer Forum members and countries outside the region. In short, it would fail to promote the goal of sustainable economic development.

## **Legal impediments**

Notwithstanding the economic benefits, there were two legal obstacles to Australia forming a free trade agreement with the Forum island countries. Any such agreement between Australia, New Zealand and the Forum island countries would have to meet the disciplines of Article 24 of the General Agreement on Tariffs and Trade (GATT),<sup>29</sup> such as implementing free trade within ten years. Yet the Forum Secretariat and many Forum island countries wanted the flexibility possible under the WTO's Enabling Clause,<sup>30</sup> which sets lesser standards for agreements between developing countries, such as not having to implement free trade within ten years. This would only be possible with a Forum island countries-only free trade agreement (the fact that developing countries do not have to meet the disciplines of GATT Article 24 may explain why regional integration efforts between developing economies alone have generally been unsuccessful (De Melo and Panagariya 1992; see also El-Agraa 1994; and De Melo and Panagariya 1993). CARICOM is a notable exception, as it has pursued substantive liberalisation).

Second, the possibility of an Australia–New Zealand–Forum island country free trade agreement was complicated by the complex web of defensive most-favoured nation clauses in the region's trade architecture. A defensive most-favoured nation clause, included in many free trade agreements, provides that if a member of the free trade agreement passes on trade benefits to any non-member of the agreement, the same benefits must also be passed on to all fellow agreement members. Because of the European Union's agreement with all Forum island countries,<sup>31</sup> and the US agreement with some Forum island countries,<sup>32</sup> opening Forum island country markets to Australia and New Zealand also means opening up to the European Union and the United States within a similar timeframe. Since Australia, New Zealand, the European Union and the United States account for most Forum island country imports, this would involve opening up to almost the whole world. Australia's challenge was to produce a comprehensive structure demonstrating how Forum island countries would benefit from, and be supported through, this large first step.



### **Political impediments**

There were also two political impediments. Forum island country officials, encouraged by the Forum Secretariat, wanted a ‘stepping stone’ approach to trade liberalisation. They felt that Forum island country politicians would be in for a difficult time if they made a commitment to long-term liberalisation with Australia. The situation was complicated by the fact that many Forum island countries rely heavily on tariffs for government revenue—on average, tariffs make up 40 per cent of the Forum island countries’ tax revenue (Filmer and Lawson 1999). Since most of their imports are sourced from Australia and New Zealand, some of the Forum island countries would lose an average of 26.6 per cent of their tax revenue under a free trade agreement that included those countries (Filmer and Lawson 1999). Forum island countries with value-added taxes would have had to raise them, and those without them would have had to introduce them to replace the revenue lost from tariffs.

Second, Forum island countries were worried that a commitment to liberalise trade with Australia and New Zealand in the short term would prejudice their negotiations with the European Union. So Forum island countries were more concerned about the reaction of the distant but powerful European Union, than cementing a relationship with their fellow Forum members.

### **Negotiations**

The Forum Secretariat disregarded the modelling that showed there was little economic benefit in a Forum islands-only free trade agreement. The Secretariat proposed that Australia and New Zealand should be excluded from the main agreement; Forum island countries could sign on to an optional protocol if they wanted to establish free trade with Australia and New Zealand. So it was entirely conceivable that Australia and New Zealand would maintain duty-free access for Forum island countries under SPARTECA and that no Forum island countries would join the optional protocol. Meanwhile, Forum island countries would be negotiating with the European Union to allow European Union countries duty-free access to their markets before Australia and New Zealand.

Australia and New Zealand presented their own plan in response. Their proposal sought minimal textual changes to the Forum Secretariat’s draft agreement, but under their proposal the agreement would apply to all Forum members. Australia and New Zealand’s initial proposal did not specify the implementation period for Australia–New Zealand–Forum island country free trade, and did not specify any trade facilitation assistance.

At the PACER pre-negotiations workshop in March 2000, only one country, Tonga, supported Australia’s proposal. The meeting did however agree to engage consultants to consider Australia’s proposal.

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Australia began to refine its proposal in response to Forum island countries' concerns. The first problem was that the usual ten-year implementation period for free trade agreements, as specified in GATT Article 24, seemed too onerous for Forum island countries, requiring both broad and deep liberalisation over a relatively short period. Australia and New Zealand planned to continue providing duty-free access for Forum island countries from the start of the agreement. However, Australia believed the Forum island countries' developing country status constituted the 'exceptional circumstances' allowed in GATT Article 24 that could justify stretching the implementation period for Forum island countries to 20 years.<sup>33</sup>

Australia and New Zealand believed that a 20-year implementation period for Forum island countries could be justified to the WTO, because of the number of least-developed countries involved. A free trade agreement among this many developed and least developed countries had not been attempted before. If it worked, it would serve as an example of the successful large-scale integration of developing countries into the global economy. Australia might have been in a considerably better position at the negotiations if it had argued for this proposal from the beginning of the PACER process.

Formal negotiations started in August 2001. Although some Forum island country ministers had expressed support for Australia's plan, this was not reflected at the negotiations. Forum island country trade officials accepted that it was inappropriate to relegate Australia and New Zealand to an optional protocol to the main agreement, but could not accept Australia's plan to introduce free trade among all Forum members over a 20-year period.

Since Australia had failed to convince Forum island countries of the merits of committing to comprehensive trade integration, there was a need to produce a structure that would allow these countries to go about their business without splitting the Forum permanently, and without alienating Australia and New Zealand completely.

The Forum consultants proposed an 'umbrella approach' to resolve the impasse, which would consist of a head agreement that would include all Forum members. The head agreement would not be a free trade agreement, but would contain some trade facilitation provisions, and could contain any number of subsidiary agreements.<sup>34</sup> The first of these would be the Forum islands-only free trade agreement.<sup>35</sup>

Following some Australian refinements,<sup>36</sup> the PACER–PICTA framework was produced, with PACER being the umbrella agreement and PICTA the Forum islands-only Free Trade Agreement. This framework could be an important vehicle for regional integration, but some of its potential substance has been robbed by Australia's lack of desire to counter some of its shortcomings, and the Forum island countries' desire to get on with their own free trade agreement.

## **Lessons**

Forum island countries are still grappling with the implications of economic reform and free trade. Any new plan, such as the one that Australia proposed at the outset of the PACER–PICTA process, needs a long lead-in time where there is plenty of scope for frequent discussions, ideally face-to-face. If Australia wants to sell new initiatives for regional integration, it cannot rely on reactive refinements to overcome significant resistance.

In trying to sell its initiative, Australia did not bring anything new to the PACER–PICTA negotiating table. It did not offer a strategic vision of the region's future. It did not offer more aid, nor to fix up the trade provisions in SPARTECA that have frustrated Forum island countries for twenty years. But nor did Australia threaten to cut aid if it was not included in the agreement, nor to review the Forum island countries' duty-free access to Australia under SPARTECA. Forum island countries were given no reason to think they would be worse off for leaving Australia out. Unconvinced of the theoretical benefits of free trade, Forum island countries sought practical, long-term assistance to provide a safety net if they were to take what seemed like a leap of faith.

There are also other, broader factors to be considered in explaining the PACER–PICTA outcome, and to this we must look to Australia–Forum island country relations in general. Australia has long been regarded as the 'Big Brother' of the Pacific. Sometimes, this has been a derogatory label to indicate a domineering relationship; at other times, it is an affectionate label to indicate thanks for advice and assistance (Smyth, Plange and Burdess 1997:45). At the PACER negotiations, it seemed that the derogatory label held sway—there was seemingly little trust that anything Australia said could be taken at face value. Doubtless this reflects in part the complexity of the plan Australia presented at the first round of negotiations—but the reason it was complex was to try and meet Forum island country concerns, not to disregard them, a point which Forum island countries did not seem to accept.

Ultimately, Australia needs a strategic vision for where it wants its relations with the Forum island countries to be in 20 years time. Australia's current approach falls awkwardly and unsuccessfully between benign neglect and full commitment (see Rosewarne 1997; Evans and Grant 1995). If Australia's approach to PACER–PICTA had indeed been one of neglect, Australia would not have cared about Forum island countries having their own free trade agreement, and it would not have bothered trying to convince them of the merits of free trade between developed and developing countries. If Australia had been fully committed, it would have produced a plan for pursuing a common market over a 20-year period, or, at the least, tackled the implementation and selling issues to ensure Australia's plan for free trade in goods was accepted. Naturally, countries will only adopt a plan that has something in it for

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them. And even when the gains are clear, it helps to know that fellow members are sharing the risk in pursuing regional integration. Australia's PACER proposals had no political risk for Australia and much political risk for Forum island countries.

The failed Australian plan to introduce free trade in goods over a 20-year period represents a lost opportunity for all Forum members to develop a Pacific trade order. Australia and New Zealand got the guarantee that other developed countries would not receive preferential access to Forum island markets before them. Forum island countries—and the Forum Secretariat—got the Forum island countries-only free trade agreement they were after, with some minor concessions.

The Forum Secretariat also has to accept some responsibility for this minimalist outcome. It turned PACER into a zero-sum game with winners and losers. The Forum Secretariat's adversarial approach prevented more constructive outcomes. Prior to the pre-negotiations workshop, the Secretariat distributed its critique of Australia and New Zealand's proposal to a number of non-Forum countries and organisations, without asking the Forum membership first. Australia found out about the Secretariat's concerns at the same time as Japan, the United States and the European Union, as well as various UN bodies. At the pre-negotiations workshop, the then Forum Secretary-General, Noel Levi, told officials 'that they should not be preoccupied with the question of whether Australia and New Zealand should be in or out of the FTA as this would only distract officials from deliberating on the real issue' (Forum Secretariat 2000a:7), the Forum island countries-only free trade agreement.

The Forum as a whole needs to change its mind-set on two key issues: it needs to be convinced of the merits of deeper, and wider, integration, so it can win the solutions and leverage that are only possible in a larger, more united organisation. The economic modelling commissioned by the Forum Secretariat demonstrated that the Forum island countries-only free trade agreement is a dead-end: it will not promote sustainable economic development. By promoting integration among Forum island countries alone, the Secretariat did them a disservice, as such an approach will not resolve the critical challenges confronting them. The Secretariat's approach also allowed Australia to avoid more substantive commitments.

If the Forum is serious about tackling the region's challenges to sustainable economic growth, its next step should be to invest the PACER structure with substance and urgency. The task is to enlarge it into an agreement that includes a commitment to free trade on the part of Forum island countries and meaningful trade facilitation on the part of Australia and New Zealand. Australia and the Forum Secretariat must produce a comprehensive package to tackle the challenges facing Forum island countries. Pacific citizens deserve better, and Pacific governments need to do better by themselves and their fellow Forum members.

## **Conclusion**

This chapter has outlined the Forum's efforts at regional integration so far, and some of the obstacles to the pursuit of regional order. There have been some impressive achievements in the Forum's history, but there has also been an implicit reluctance to embrace measures that impact on internal sovereignty. The PACER–PICTA negotiations were examined as a vehicle for considering some of the obstacles to deeper regional integration in detail. The negotiations came about as a result of a European Union initiative, an initiative that the Forum's largest member initially resisted. The Forum Secretariat sought to exclude the Forum's richer members, and when these members were finally engaged, they failed to produce a timely package that was suitably attractive to overcome the political impediments to a comprehensive agreement. As the case study demonstrated, some Forum members resist a wider sovereignty, through misplaced suspicion or a failure to recognise opportunities and pursue strategic outcomes. These issues have held back the Forum and its members, as the comparison with the more advanced CARICOM showed. A key theme in the PACER–PICTA case study was the need for Australian leadership to carry proposals for Pacific integration forwards—and the consequences when this leadership is lacking.

However, growing threats to security, and the desire for closer economic ties, have highlighted the need to develop the Forum's sovereignty and have led to a gradual change in approach on the part of Forum members. The culmination of this evolution is the 2003 Solomon Islands intervention, when Forum members agreed to a peace-keeping operation and to Australia assuming responsibility for much of the Solomon Islands' internal sovereignty.

But the seriousness of the challenges facing Pacific states suggests that the need for Forum members to pool their sovereignty will only grow. The difficulties of implementing any regional integration project are not to be underestimated; but CARICOM's pursuit of a shared vision of regional integration, made explicit in its founding treaty, demonstrates the benefits that integration would offer the Pacific.

This chapter concludes the review of the present state of the Pacific, and its current policies. The ensuing chapters outline a new vision, and plan, to enable the Pacific to achieve regional order. In the following chapter, the European Union will be examined as the model that the Forum should emulate, and the proposal for the Oceania Community put forward.

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### Notes

- <sup>1</sup> The members of the Pacific Community are: American Samoa, Australia, the Cook Islands, Micronesia, Fiji, France, French Polynesia, Guam, Kiribati, Marshall Islands, Nauru, New Caledonia, Niue, the Northern Mariana Islands, New Zealand, Palau, Papua New Guinea, the Pitcairn Islands, Samoa, the Solomon Islands, Tokelau, Tonga, Tuvalu, the United Kingdom, the United States, Vanuatu and Wallis and Fortuna.
- <sup>2</sup> See Forum Communiqués at <http://www.forumsec.org.fj> [accessed 18 September 2003].
- <sup>3</sup> The Secretary-General is elected by Forum Leaders for a renewable three-year term.
- <sup>4</sup> [http://www.dfat.gov.au/geo/spacific/regional\\_orgs/spf.html](http://www.dfat.gov.au/geo/spacific/regional_orgs/spf.html) [accessed 1 June 2004].
- <sup>5</sup> The Council of Regional Organisations of the Pacific is chaired by the Forum Secretary-General.
- <sup>6</sup> Available at <http://www.austlii.edu.au> [accessed 6 July 2001]. PATCRA is theoretically a reciprocal agreement—that is, both parties benefit—but there is little evidence of this in practice. See PATCRA, Article 9.
- <sup>7</sup> Available at <http://www.austlii.edu.au> [accessed 6 July 2001].
- <sup>8</sup> See Forum Communiqués at <http://www.forumsec.org.fj> [accessed 18 September 2003].
- <sup>9</sup> Samoan Prime Minister Tuila'epa Sa'ilele Mallelegaoi said that '[i]t is incumbent on the current regional leadership to do everything it can as individual governments and as a Forum to discourage...what some observers think is the emergence...of a political culture that encourages the use of force to effect political and consequently economic and social change'. Australian Foreign Minister Downer said '[t]here was a clear commitment to face up to the political problems in the region and to work collectively to try to solve them—something that has never been done before' (O'Callaghan 2000b:7).
- <sup>10</sup> See United Nations Convention on the Law of the Sea. Available at <http://www.austlii.edu.au> [accessed 27 August 2003].
- <sup>11</sup> Agreement among Pacific Island States Concerning the Implementation and Administration of the Treaty on Fisheries between the Government of Certain Pacific Island States and the Government of the United States of America. Available at <http://www.austlii.edu.au> [accessed 27 August 2003].
- <sup>12</sup> Niue Treaty on Cooperation in Fisheries Surveillance and Law Enforcement in the South Pacific Region. Available at <http://www.austlii.edu.au> [accessed 27 August 2003].
- <sup>13</sup> Available at <http://www.austlii.edu.au> [accessed 27 August 2003].
- <sup>14</sup> Available at <http://www.austlii.edu.au> [accessed 27 August 2003].
- <sup>15</sup> South Pacific Nuclear Free Zone Treaty. Available at <http://www.austlii.edu.au> [accessed 27 August 2003].
- <sup>16</sup> Available at <http://www.austlii.edu.au> [accessed 27 August 2003].
- <sup>17</sup> Waigani Convention to Ban the Importation into Forum Island Countries of Hazardous and Radioactive Wastes and to Control the Transboundary Movement and Management of Hazardous Wastes with the South Pacific Region. Available at <http://www.austlii.edu.au> [accessed 27 August 2003].
- <sup>18</sup> However, as MacCormick states, no state today 'is in a position such that all the power exercised internally in it, whether politically or legally, derives from purely internal sources' (1993:1).
- <sup>19</sup> These include the Caribbean Disaster Emergency Response Agency, the Caribbean Meteorological Institute, the Caribbean Meteorological Organisation, Caribbean Food

Cooperation, the Caribbean Environment Health Institute, the Caribbean Agriculture Research and Development Institute, the Caribbean Regional Centre for the Education and Training of Animal Health and Veterinary Public Health Assistants, the Association of Caribbean Community Parliamentarians, the Caribbean Centre for Development Administration and the Caribbean Food and Nutrition Institute, and associate institutions such as the Caribbean Development Bank.

- <sup>20</sup> See [http://www.oecs.org/iust\\_ecsc.htm](http://www.oecs.org/iust_ecsc.htm) [accessed 13 December 2003].
- <sup>21</sup> Available at <http://www.forumsec.org.fj> [accessed 22 July 2003].
- <sup>22</sup> Available at <http://www.forumsec.org.fj> [accessed 22 July 2003]. Since PACER does not contain any trade liberalisation schedules, it is only PICTA that is a free trade agreement within the meaning of the WTO rules on regional trade agreements. General Agreement on Tariffs and Trade, Article 24.
- <sup>23</sup> PICTA entered into force in 2003.
- <sup>24</sup> The European Union's Lomé Agreements provided development assistance and duty-free access to the European Union for some seventy African, Caribbean and Pacific states, including many (now all) Forum island countries. However, the arrangement was illegal because it failed the WTO's most-favoured nation rule, the key rule of the multilateral trading system. This states that reductions in trade barriers given to one WTO member must be given to all WTO members. Under WTO law, it is possible to give developing countries benefits that are not passed on to developed countries as well, but it is illegal to give benefits to some developing countries and not to all developing countries. These legal flaws, combined with frequent criticism and various WTO cases, brought the European Union's fourth Lomé Agreement to an end. The European Union asked the WTO General Council for a five-year waiver from its obligations, after which time it would look to establish Regional Economic Partnership Agreements, in effect WTO-compatible free trade agreements, with its developing country partners. The European Union was initially looking to have such agreements in place by 2005.
- <sup>25</sup> Australia believed that multilateral liberalisation and APEC offered greater benefits for Forum members, and that they should be the focus of the Forum's efforts.
- <sup>26</sup> This is consistent with Fry's criticism of Australia's Pacific policy: too often, Australia sees the rest of the Pacific as somehow separate from itself. This limits the opportunity for shared understanding and common solutions (Fry 1991:22). See also Joint Parliamentary Committee (1989), which concluded, somewhat defeatedly, that Australia 'will inevitably remain somewhat apart' (1989:227).
- <sup>27</sup> Because of the low levels of inter-Forum island country trade—only 2 per cent of total Forum-wide trade—the agreement would result in an annual GDP increase of only A\$5 million (Scollay 1998; see also World Bank 2002).
- <sup>28</sup> A Forum-wide agreement would result in annual welfare gains for Forum island countries of over A\$200 million. Australia and New Zealand would experience an annual welfare gain of A\$58 million. Australia–New Zealand and the Forum island countries are already 'natural partners' because of the high percentage of trade between them (Centre for International Economics 1998; see also World Bank 2002 and Krugman 1991 for a discussion of 'natural partners').
- <sup>29</sup> Available at [http://www.wto.org/english/docs\\_e/legal\\_e/legal\\_e.htm](http://www.wto.org/english/docs_e/legal_e/legal_e.htm) [accessed 20 October 2001]. GATT Article 24 and the Understanding to GATT Article 24 outline the framework of WTO law within which free trade agreements dealing with goods must

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operate. These rules specify four key requirements that a free trade agreement to which developed countries are party must meet if it is to qualify as an exception to the WTO's most-favoured nation rule. An agreement must

1. cover 'substantially all the trade between the parties'
2. be implemented within ten years, unless there are 'exceptional circumstances'
3. not raise barriers to non-parties to the agreement
4. be notified to the WTO and demonstrate to other WTO members how the parties will achieve free trade between them within the specified time.

There are sound economic reasons for the disciplines in Article 24. For example, an agreement meeting the criterion for covering 'substantially all the trade' will involve meaningful liberalisation, leading to increased welfare for the parties. Further, the requirement that non-parties should not suffer from increased trade barriers helps to ensure that the trade diversion effects of the arrangement are minimised. See Hoekman and Kostecki (1995) and below, for a discussion of regional trade agreements and GATT Article 24.

- <sup>30</sup> The Enabling Clause, GATT Part 4 and the 1979 Decision on Differential and More Favourable Treatment of Developing Countries was established to recognise that developing countries need 'special and differential treatment' in their efforts toward free trade. Free trade agreements between developing countries do not have to meet the disciplines of Article 24.
- <sup>31</sup> Annex 5, Article 4 of the European Union agreement with Forum island countries states that if a member of the agreement passes on a benefit to any other developed country, it must also be passed on to the European Union.
- <sup>32</sup> Micronesia, Palau and the Marshall Islands currently enjoy preferential access to the United States through their Compacts of Free Association (these are also illegal under WTO rules, but have a waiver until 2006). Section 4, Article 243 of the US Compacts states that trade benefits given to any country must also be passed on to the United States. Unfortunately for Australia's trading interests in the Pacific, there is no most favoured nation defensive clause in SPARTECA.
- <sup>33</sup> Many of the European Union's free trade agreements with developing countries have implementation periods of 12 years for the developing country, and some parts of NAFTA are being phased in over 12–15 years.
- <sup>34</sup> Without trade liberalisation provisions, there would be no need to notify the agreement to the WTO.
- <sup>35</sup> Later there could be an Australia–Forum island country Free Trade Agreement and a New Zealand–Forum island country Free Trade Agreement, or Australia and New Zealand could have individual free trade agreements with every single Forum island country.
- <sup>36</sup> Australian officials further refined the plan by suggesting the head agreement should be as substantive as possible, and there should be only one subsidiary free trade agreement, the Forum island country-only free trade agreement. When Forum island countries were ready to embrace liberalisation towards Australia and New Zealand, the subsidiary free trade agreement would be 'folded back' into the head agreement. The final result—a single, all-encompassing agreement.



# 5

## From a Forum to a Community

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Pacific states face serious challenges to sustainable economic development, security, human rights, the rule of law and democracy, as well as the danger of isolation from the wider region. Aid alone has failed to resolve these challenges. Further, a lack of partnership between the Forum Secretariat and the Forum members with the resources to assist in the resolution of the challenges has previously been a feature of regional policymaking.

New and better approaches are possible, as the Forum's Biketawa Declaration, which led to the exercise of a regional sovereignty in the Solomon Islands, demonstrates (Pacific Islands Forum 2000a). Yet a more holistic approach is needed to address the region's challenges comprehensively. The first step is the development of a shared vision of the region's future—encouragingly, we see the beginnings of such a vision in the Forum Leaders' Auckland Declaration (Pacific Islands Forum 2004b). Yet this step must also involve the development of a model by which this future can be realised.

This chapter examines the European Union, the most advanced model of regional order, showing how regional integration can successfully promote the goals of sustainable economic development, security, the rule of law, democracy and integration with the wider region.

A substantial evolution is then proposed in the Forum's development. This would change what it means to belong to the Pacific region, and how the Pacific region is regarded by the rest of the world. It involves a commitment by all Forum members to

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an exciting shared future, and to the institutional arrangements needed to promote sustainable economic development, security, the rule of law, democracy and wider integration.

Thus, the Forum should be reorganised, and renamed the Oceania Community, to make it a more dynamic and more powerful organisation. The necessary agreements and structure are outlined for this to be achieved, and a sustainable funding arrangement is proposed, which would represent a new approach to aid in the Pacific. The chapter also shows that sustainable regional integration requires Community members to embrace the rule of regional law and a shared regional sovereignty.

This is the integrated strategic vision needed to resolve the Pacific's current challenges, and to realise a prosperous and peaceful future.

## **The European Union and goal one: sustainable economic development**

A consideration of the European Union demonstrates what a greater commitment to regional integration can achieve in terms of the five goals of regional order.

First, the European Union has pursued regional trade integration, later supplemented by monetary integration, as the best means of promoting sustainable economic development.

The case for regional trade integration rests, in the first instance, on the general case for free trade. Adam Smith (1777 [1990]) proposed that countries would benefit by developing an absolute advantage in particular goods, then trading with other countries which had an absolute advantage in producing other goods. This would promote efficiency, by fostering competition and providing opportunities for specialisation and economies of scale (Carbaugh 1995; 'The economics of free trade', *The Economist*, 22 September 1990; Gonnelli 1993),<sup>1</sup> ultimately leading to increased economic growth and welfare for citizens. David Ricardo (1817[1990]) refined this by suggesting that countries did not need an absolute advantage—they only needed a comparative advantage (Ricardo 1817 [1990]; Kreinen 1995).

Thus, countries benefit from trading with one another; and free trade involves countries removing barriers to imports from other countries. This benefits the exporting country which has sold its product, and the importing country which can access products more cheaply than if it produced them itself; thus, consumers in the importing country pay less and enjoy greater choice (Gonnelli 1993). These are just the static gains; the dynamic gains can include increased savings and investment, and the promulgation of new technology, innovation and productivity gains (Australian Department of Foreign Affairs and Trade 2000). These dynamic gains can generate growth throughout an economy, including in non-export sectors (Kreinen 1995).

Regional trade integration is a useful vehicle, then, for promoting free trade

among a group of countries more quickly or deeply than may be possible at the global level (De Melo and Panagariya 1992; Sager 1997).

The empirical evidence supports the link between open trading policies and economic growth, both generally and through the impetus of regional agreements.<sup>2</sup> In the European case, the link between integration and improved economic performance is strong. For example, it has been estimated that the completion of the European single market in 1992 has resulted in an additional 300,000–900,000 jobs (World Trade Organization 2003).

Between 1958 and 1970, trade among the initial European Union members increased six-fold, and three-fold with the rest of the world. Average gross national product increased by 70 per cent. Davison has analysed the effect of European Union accession on the nine countries that then joined between 1973 and 1995. In the year they applied to join the European Union, all but one had growth rates below the European Union average; in the year following accession, all had growth rates exceeding the European Union average, except for Denmark (below average) and Greece (equal to average) (Davison 1998). Over time, relatively poorer countries that joined the European Union, such as Ireland, Portugal and Spain, all converged toward the European Union average after accession (see Kaitila 2004). In 1973, when Ireland joined, its per-capita income was 62 per cent of the European Union average; in 2002, it was 121 per cent. The Irish President of the European Parliament has said that European Union membership turned Ireland 'from a stagnant, backward, failed part of the British regional economy into a modern and prosperous European country' ('Dancing an Irish jig', *The Economist*, 17 April 2004).

Likewise, the countries that joined the European Union in May 2004 have experienced higher growth than existing European Union members, as a result of trade integration and the economic reforms they undertook as part of the accession process.<sup>3</sup> Shortly after their independence, the European Union created a network of bilateral trade agreements with these countries, and then later insisted that acceding countries must be competitive market economies.<sup>4</sup> As a result, the European Union 'became the trade anchor of the transformation process in Central and Eastern Europe' making the European Union 'the engine of export growth' for these countries, with exports to the European Union from the Central and Eastern European countries increasing by 53 per cent (Inotai 1994).

The European Union's trade integration policies, and its insistence on economic reform, have prompted the International Monetary Fund (IMF) to describe the Central and Eastern European countries joining the European Union as 'in many respects perfect examples of small open economies' (Cottrell 2003:12). Kaliningrad, an exclave of Russia surrounded by Poland and Lithuania (both now European Union

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members), provides a contrast to its neighbours which were able to pursue European Union membership. Its average wage is US\$150 a month, roughly half the level in Lithuania, and one-third of the wage in Poland (Cottrell 2003).

The European Union has also pursued monetary integration as a means of combating inflation, increasing trade and facilitating further economic reform (see Yläoutinen 2001). Low inflation is an important element of sustainable economic growth, encouraging investment, allowing longer-term planning and avoiding boom and bust economic cycles (see Reserve Bank of New Zealand 1998, 1999). In Finland, for example, 'post-war economic policy had produced a pattern of recurrent bursts of rapid growth and these periods of boom had sowed the seeds for the next cycle of inflation followed by devaluation' (Yläoutinen 2001:22). Finland joined the Euro to win the benefits of 'lower inflation and more stable economic growth'; the Euro was viewed as 'the best guarantee for sustainable, employment-friendly economic growth' (Yläoutinen 2001:6, 18).

The European Union has also worked to ensure that economic growth is environmentally sustainable. One of the key arguments made in favour of allowing the Central and Eastern European countries to join the European Union was that they would be obliged to adopt European Union environmental safety standards, thus avoiding the risk of environmental damage from unsustainable industries (Van Ham 1993).

In the Pacific context, Mark Malloch Brown, former head of the United Nations Development Programme, has argued '[y]ou can't solve the chronic problems of each of the Pacific island states, the lack of a viable economy, weak political institutions, you can't solve it island by island' ('UN development body supportive of Pacific community plan', ABC Radio, 13 August 2003).<sup>5</sup> No Forum island country has an internal market big enough to drive economic growth on its own, nor will integration with other Forum island countries be sufficient. Previous efforts at trade integration between developing countries alone have demonstrated that the internal markets of such countries 'were too small relative to world markets to serve as the engine of growth' (De Melo and Panagariya 1992:39; see also El-Agraa 1994). De Melo and Panagariya state bluntly that 'as far as South–South integration is concerned, there is no future in it' (1993:20). Thus, Forum island countries would benefit from secure access to larger markets, and their industries and consumers would benefit from competitive imports (Gonnelli 1993). Trade in capital could be particularly important for Forum island countries. The literature suggests foreign investment is critical for development, providing increased employment and higher wages; opportunities to upgrade skills, technology and production methods, leading to increased productivity; and serving as a stimulus for domestic investment (OECD 1999; Australian Department of Foreign Affairs and Trade 1999c). Finally, trade integration may also help Forum island countries break the cycle of aid dependency.

Loo and Tower (1989) found that trade was twice as important as aid for the welfare of developing countries.

Thus, sustainable economic growth is unlikely to be achieved in the Pacific without regional integration. Based on the European Union experience, Pacific integration would contribute to higher levels of trade, improved economic performance and a stable monetary environment. Further, as with the European Union, regional integration would provide better mechanisms to enforce the Pacific's current environmental agreements.

## **The European Union and goal two: security**

Promoting security has been a core concern for the European Union—the impetus for integration was the desire to prevent another major war between European powers. In 1946, Churchill argued for a 'United States of Europe'.

The fighting has stopped; but the dangers have not...The structure of the United States of Europe, if well and truly built, will be such as to make the material strength of a single state less important. Small nations will count as much as large ones and gain their honour by their contribution to the common cause (Churchill 2002:957–58).

In 1950, the French Foreign Minister, Robert Schuman, proposed the integration of heavy industries to ensure France, Germany and other combatants would not go to war again (Pinder 1994; Fontaine 1995). Garton Ash argues that one of the key achievements of European integration is

...the unique, unprecedented framework and deeply ingrained habits of permanent institutionalised cooperation that ensure that the conflicts of interest that exist—and will continue to exist—between the member states and nations are never resolved by force...It is an economic community, of course, but it also a security community—a group of states that do find it unthinkable to resolve their own differences by war (1998:51).

Given that there were three devastating wars between France and Germany between 1870 and 1945, helping prevent another war between them would be a sufficient security achievement. Yet the European Union continues to be a major contributor to European stability. In the early to mid 1990s, for example, fears were expressed about a reunited Germany, and the rise of anarchy in the newly liberated Central and Eastern European countries (Edwards 1992; Hama 1996; Pinder 1994; Van Ham 1993). Even former German Chancellor Helmut Kohl argued that European union was needed to 'contain a potentially dangerous Germany within Europe' (Feldstein 1997:60).

The European Union deserves much of the credit for peacefully managing both these challenges. Monetary union helped address fears of German dominance, and

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the prospect of accession to the European Union assisted the Central and Eastern European countries through the rigours of the transition to a market economy, as well as promoting democracy and protecting minorities. Bertram believes that the European Union provided a 'structure of order' for Eastern Europe following the collapse of communism (Bertram 1995).<sup>6</sup> The process continues, too—Friedman and others suggest that Turkey's accession to the European Union is vital for promoting security.<sup>7</sup>

The European Union has been criticised, though, for its inability to project military power, and to manage the break-up of the former Yugoslavia (Dettke 1994). This perhaps misunderstands the nature of the European Union's contribution to European security, underselling its achievement in promoting stability through soft power rather than military force. Nonetheless, future integration efforts can learn from the European Union experience, and include mechanisms for preventive diplomacy from the outset.

Contrary to the European Union, Pacific integration will not be driven by fears of war between states. Instead, internal instability, the risks of potential failed states and the dangers posed by non-state actors represent the new security challenges. Arguably, these new challenges would also be alleviated by regional integration, in the same way that regional integration alleviated inter-state tensions in the twentieth century.<sup>8</sup>

## **The European Union and goal three: the rule of law**

Perhaps the European Union's most obvious success has been in promoting the rule of law. The substantive integration achieved by the European Union would have been impossible without the legally binding commitments in the European Union's various intergovernmental treaties. These treaties have provided clear supranational rules to guide relations between member states. However, they have also assisted in promoting the rule of law at the national level, which benefits individual citizens. For example, the simplification and standardisation of business rules benefits domestic individuals and companies as well as foreign individuals and companies.<sup>8</sup>

The European Union's 'Copenhagen criteria', adopted in 1993, specified the criteria which Central and Eastern European candidate countries had to meet before being allowed to accede to the Union. According to the criteria, acceding countries had to demonstrate they 'had achieved stability of institutions guaranteeing...the rule of law' and 'the ability to take on the obligations of membership' (European Union 2003). To this end, candidate countries had to implement 1,400 European Union laws and regulations, totalling some 80,000 pages, and demonstrate that they had the administrative and judicial capacity to enforce European Union laws (European Union 2004; Davison 1998). Thus, they were obliged to create a transparent legal framework following years of communist rule. It has been estimated that some 50 per cent of national legislation in member states is now generated by

the European Union ('Snoring while a superstate emerges?', *The Economist*, 10 May 2003), and that legal integration has proceeded 'quietly, incessantly, and without much controversy' (McManus 1998:126) (whether all the European Union's laws are strictly necessary is part of the ongoing, healthy debate between intergovernmentalists and institutionalists).<sup>9</sup>

An important element of the rule of law in the European Union context is that small states have enjoyed legal equality with large states. Yalem, for example, argues that the legal equality of member states is essential to the success of regional integration (Yalem 1973). Although there have been times when larger states have acted according to their own prerogatives—France and Germany, for example, breached the European Union's Stability and Growth Pact, to the frustration of smaller members—this is more of an exception ('The death of the stability pact', *The Economist*, 29 November 2003).

The creation of a substantive dispute settlement mechanism in the European Court of Justice has allowed members, small and large, as well as individual citizens, to assert their rights and resolve disputes in a peaceful manner. The creation of a system based on rules rather than power is no small achievement after centuries of European conflict (World Trade Organization 2003), where large states overran small states.

Thus, the European Union has been highly successful in promulgating the rule of law. Falk argues that 'European regionalism has demonstrated that it is possible to extend the rule of law beyond the state, often promoting further human rights gains' (Falk 1995:85). In the Pacific context, greater commitment to the rule of law would benefit all Forum members, small and large. The Pacific could usefully emulate the European Union model of comprehensive agreements between members being backed up by a regional dispute settlement mechanism.

## **The European Union and goal four: democracy**

From its outset, the European Union has insisted that members must be democracies. Article 237 of the Treaty of Rome stated that the European Union was 'open to all democratic European nations'.<sup>10</sup> Greece, Portugal and Spain all joined after periods of non-democratic government (Dettke 1994). Bertram and others have argued that European Union membership helped these countries emerge 'from authoritarian regimes to make the transition to social and democratic stability' (Bertram 1995:67; see also Van Ham 1993; Wright 1998). Indeed, the European Union allowed Greece to join even though it technically did not meet other criteria, 'partly on the grounds that membership would safeguard Greek democracy whereas exclusion might put it at risk' (Cottrell 2003:20).

The Copenhagen criteria also specified that acceding countries must have 'institutions guaranteeing democracy'. This provided an important incentive for the

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newly independent Central and Eastern European countries to maintain democratic polities, especially where there was no history of democratic government (Henig 1997). This achievement should not be underestimated. Dettke, for instance, warned in 1994 of 'the weakness of, and lack of experience with, the institutions of civil society and democratic pluralism' and 'the danger of relapse into authoritarian forms of government' in these countries (Dettke 1994:183). However, the accession process gave these countries 'the motivation and the models they need[ed] to entrench or restore democratic institutions' (Cottrell 2003:20).<sup>11</sup>

Thus, European Union membership has worked as an incentive for reinstating or reinforcing democracy. The European Union's efforts to facilitate economic development have also contributed to stronger democracy. Economic development

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Table 5.1 Phases in the development of the European Union

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Phase	Year	Countries
1	1951	Belgium France Germany Italy Luxembourg Netherlands
2	1973	Denmark Ireland United Kingdom
3	1981	Greece
4	1986	Portugal Spain
5	1995	Austria Finland Sweden
6	2004	Cyprus Czech Republic Estonia Hungary Latvia Lithuania Malta Poland Slovak Republic Slovenia
7	acceding	Bulgaria Romania
8	candidate	Turkey Croatia

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Source: <http://europa.eu.int/comm/enlargement> [accessed 4 October 2005].

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has allowed Europe to avoid the threats to democracy previously inspired, at least in part, by economic stagnation and inequality.<sup>12</sup>

The European Union has also worked to ensure that democratic majority rule has not been at the expense of protection for minorities. The Copenhagen criteria required institutions guaranteeing human rights and protection of minorities. Again, Dettke worried that 'every single East European state has a minority problem within or outside of its borders' (Dettke 1994:183). Yet, in contrast to the obvious example of the former Yugoslavia, acceding countries managed to work through minority issues peacefully.

Notwithstanding its success in reinforcing national democracy, it is more debatable whether the European Union has been successful in promoting transnational democracy. Arguably, the European Parliament has been the most underdeveloped of the European institutions—indeed, many authors have highlighted the risk of a 'democratic deficit' from European integration (see, for example, Featherstone and Sonntag 1984; Neunreither 1994; Weiler 1997). Zuleeg (1997) suggests a democratic deficit occurs when sovereignty is transferred to the supranational level, weakening democratic legitimation at the level of the nation–state, without sufficient compensation at the supranational level. Weiler argues the European experience has meant that 'the value of each individual in the political process has inevitably declined, including the ability to play a meaningful civic role in European governance' leading to 'a continuing sense of alienation from the Union and its Institutions' (Weiler 1997:65, 151). Thus, it is vital that regional integration efforts find ways to engage individual citizens.

The European Union demonstrates that regional integration can have an important normative influence in the promotion and protection of democracy. The challenge, then, for a Pacific integration project is to find mechanisms to promote democracy at the national level, as well as reinforcing the democratic legitimacy of the integration effort itself.

### **The European Union and goal five: integration with the wider region**

The European Union has been successful in deepening its integration process, but it has been as successful in widening the process. The European Union's membership remained static in its first twenty years because of France's veto over new members (Fontaine 1995). Since then, it has adopted a dynamic approach to membership, expanding to 25 countries, with more in prospect. The following table lists the various phases in the European Union's expansion.

Robert Keohane and Joseph Nye (1977) first distinguished between hard and soft power. Hard power refers to military capabilities, and the ability to use threats or rewards to get others to do what they otherwise would not. In contrast,

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...soft power is the ability to get desired outcomes because others want what you want. It is the ability to achieve goals through attraction rather than coercion. It works by convincing others to follow or getting them to agree to norms and institutions that produce the desired behavior. Soft power can rest on the appeal of one's ideas or culture or the ability to set the agenda through standards and institutions that shape the preferences of others...If a state can make its power legitimate in the eyes of others and establish international institutions that encourage others to define their interests in compatible ways, it may not need as many costly traditional economic or military resources (Keohane and Nye 1998:84).

The European Union can be regarded as one of the most effective projections of soft power, given its continued success in attracting new members. For the Central and Eastern European countries, the European Union 'offered a vision of freedom and prosperity for which countries hungered after decades of communist rule' (Cottrell 2003:20). Countries queue to join the European Union and accept its market disciplines in return for the benefits of belonging to a wider organisation. In turn, democracy and economic growth are strengthened in the acceding country (Kelly 2003c). Existing members enjoy the benefits of stability, new markets and investment opportunities (Lintner 1997).

The benefits of the European Union's integration with the wider region are twofold. Expansion has promoted sustainable economic growth, security, the rule of law and democracy over much of Europe. Yet the European Union's size gives it the ability to project power into the wider world. Ongoing integration has made the European Union the world's largest trading bloc (European Commission 1999), giving it considerable negotiating power in multilateral and bilateral trade negotiations—far more power, of course, than any one European state could marshal—and an effective bloc in the United Nations when united (see Brückner 1990).

A Pacific integration project would offer members the opportunity to influence and exercise soft power over each other. Just as important would be their ability to promote wider integration and to project soft power into the world.

## **Developing the Forum: the Oceania Community**

In the mid 1990s, Inotai argued that the

...traditional behaviour of the [European Union] toward Central and Eastern Europe is based on emergency support to the most needy countries. This approach does not offer sustainable stability because it treats the symptoms of the problem rather than its cause. Such an approach does not contribute to economic modernisation [and]...[e]mergency support helps strengthen the rent-seeking mentality of certain actors (1994:163).

Yet there were alternatives to this approach to the struggling European states, in

precisely the same way that there are alternatives if Forum members wish to truly assist the Pacific's struggling states. The European Union, 'in contrast to traditional international organisations, does not stop at the national borders of its members but reaches into their domestic structures and procedures, allowing nation-building from within—the only location from which it can be done with any hope of success' (Bertram 1995:40). This degree of impact on a state's internal sovereignty is only possible if there is a sense of genuine shared endeavour. European Union members accepted the challenges of reforming the Central and Eastern European countries, and they succeeded, but only because they offered full membership of the European Union in return. In the Pacific context, Australia cannot hector from 'outside' the region, as it has often sought to do: it can lead the quest for regional order by exercising soft power, but it must also be an integral, intimate partner in the process.

Thus, to resolve the region's challenges, Forum members must pursue substantive regional integration, and the Forum must become the core of new, more dynamic organisation, in the same way that the initial six-member European Coal and Steel Community has served as the core for the 25-member European Union.

Regional organisations have often changed their names to advertise new substance and new membership. The European Coal and Steel Community evolved to the European Economic Community, to the European Union, which may yet evolve to the United States of Europe. The Organisation of African Unity likewise reformed under the banner of the African Union.

'Oceania Community' is proposed as a new name for the Pacific Islands Forum. 'Forum' implies a vehicle for conveying views and raising concerns. 'Community' better conveys the sense of a group of states pursuing joint solutions to common problems. Consistent with my intergovernmentalist approach, I choose 'Community' instead of 'Union' because my vision is for a group of nation-states coming together to pursue common solutions to the challenges of the region, rather than a group of nation-states agreeing to create a Pacific super-state. Different structures may be needed in 50 years' time, but the timeframe of my concern is the next 20 years. So the book is about establishing a community, rather than a union, and 'Oceania' is used to distinguish this initiative from existing institutions.

To give effect to the goals of sustainable economic development, security, human rights, the rule of law and democracy, I propose that the Oceania Community should consist of

- a trade order, given form in a common market
- a monetary order, involving joint measures to promote monetary cooperation, such as inflation targeting and monetary union
- a security order, consisting of a crisis prevention and management centre and a standing peace monitoring group

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- a human rights order, embodied in a human rights commission
- a legal order, led by a regional court, dealing with human rights, environmental, trade and constitutional issues
- a political order, involving a regional parliament
- a commitment to pursuing the integration process with the wider region.

For this level of integration to be achieved, though, community members must be committed to the rule of regional law, and a shared regional sovereignty.

## **The rule of regional law**

Substantive regional integration will only come about through legally binding commitments. Countries interested in building regional order must be committed to the regional rule of law. This would mean recognising that all states are equally bound by the agreements of the Oceania Community, and accountable to the Community's institutions.<sup>13</sup> This would protect the interests of large and small members, as the European Union has demonstrated. A commitment to the law of the Community would also allow states and their citizens to be more strategic in their long-term planning, thereby affording greater security and certainty.<sup>14</sup> This is one of the key opportunities afforded by a Pacific integration project—regional integration ensures that the rule of law governs relations between states, but also between states and their citizens, and between citizens. As the European Court of Justice has stated, '[c]ommunity law...not only imposes obligations on individuals but is also intended to confer on them rights which become part of their legal heritage' (Case 26/62, *Van Gend en Loos v Nederlandse Administratie der Belastingen*, 1963 ECR 1, 12).

Thus, the rule of law is a key plank of regional integration. To advance regional integration, the New Zealand government report, *Towards a Pacific Community*, proposed 'an umbrella compact which pulls together within a Forum framework the instruments of regional security that are already in place...The goal is...a community of countries working together to help meet the needs and concerns of the region' (South Pacific Policy Review Group 1990:224). To give effect to the rule of law, the constitution for the Oceania Community should consist of such an umbrella compact, or single undertaking treaty, made up of a number of agreements that all members of the Community would have to ratify. The single undertaking treaty would consist of the following main agreements to

- establish a common market
- commit members to a common band of acceptable inflation
- establish permanent security mechanisms
- establish a regional human rights charter, and a regional human rights commission

- establish a regional court
- establish a regional parliament.

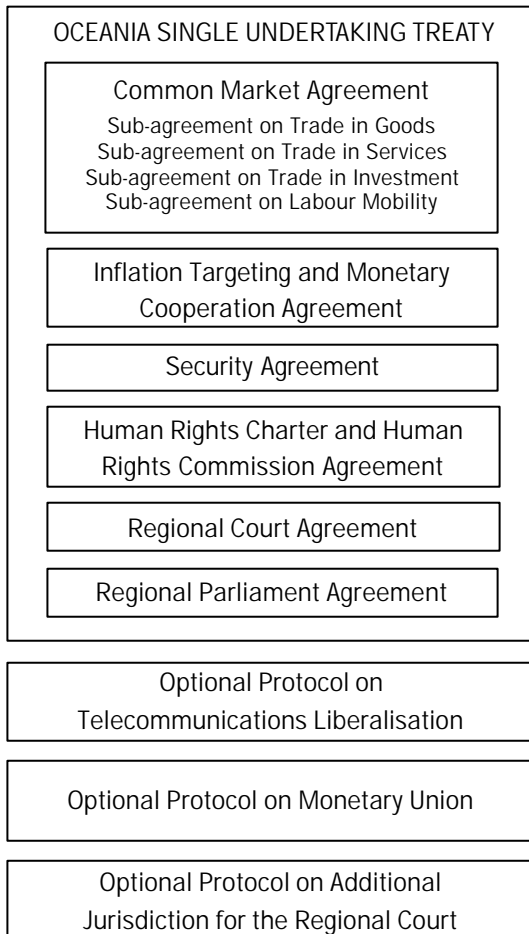
In addition to the compulsory single undertaking treaty, there would be optional protocols on telecommunications liberalisation, monetary union and some aspects of the jurisdiction of the regional court (Figure 5.1).

The single undertaking treaty incorporates the critical agreements, the minimum amount of integration needed to promote the five goals of regional order. The optional protocols would include important further integration initiatives for those members that are ready, but these are not critical to the establishment of the Oceania Community.

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Figure 5.1 Structure of the Oceania single undertaking treaty

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### **Regional order and global order**

It is crucial that Oceania Community law draws on the law of the global system, to the extent that it is applicable. This is because regional initiatives that are not informed by the values and law of the global system can be inward-looking and xenophobic, contributing to world disorder. As discussed in Chapter Two, the Pacific Way is sometimes promulgated by élites to cover up their own considerable interests whilst facilitating widespread discrimination (Howard 1991). Even the European Union, the best example of a framework for promoting regional order, has flaws. The European Union's trade policies lock out the most efficient producer, often located in a developing country, through massive agricultural subsidies.<sup>15</sup> In its negotiations for 'free' trade agreements, the European Union pressures developing countries into accepting sub-standard agreements that carve out sensitive sectors such as agriculture, which then reduces the pressure on the Union to make concessions in multilateral negotiations.<sup>16</sup> Further, critics argue that the European Union's development assistance policies often serve to trap developing countries into commodity-based economies, instead of facilitating more productive and profitable service industries.<sup>17</sup>

These potential negatives of regionalism demonstrate the need to relate regional initiatives to more general norms and interests. Forum members risk losing more from damaging the United Nations and the World Trade Organization than they stand to gain from regional integration efforts that do not support the global system. So it is vital that Forum members utilise the Oceania Community to promote the law of the global system—the United Nations, the World Trade Organization and the International Labour Organization—in our region.

There will be areas where the Oceania Community should rightly surpass the global system—for example, in the promotion and regulation of investment, the movement of workers and the promotion of democratic participation in supranational governance. Innovative measures taken through the Oceania Community may serve as precedents for the global system. But where there is an existing precedent, the Oceania Community should work to give local effect to it so as to contribute to and uphold world order.

Therefore, in detailing proposals for the Oceania Community, future chapters will work from global precedents where relevant. Thus, the Oceania common market should uphold WTO law generally, and the provisions on regional trade agreements in GATT Article 24 and GATS Article 5 specifically. The Oceania security mechanisms should be consistent with the UN Charter, and its provisions for regional security arrangements. The Oceania human rights charter should develop the UN human rights covenants, not undermine them.

## **Developing a regional sovereignty**

The Oceania Community's authority will depend on the extent to which current Forum members are willing to invest more national sovereignty in developing the Forum. This is the second key plank of regional integration. As discussed in Chapter Four, Forum members have so far only slowly embraced measures that impact on their internal sovereignty (given that there is no treaty between Forum members and that it is guided only by an understanding that the heads of government will meet annually, an argument could be made that members have not invested any sovereignty in the Forum).

Consequently, the Forum's effectiveness has been constrained. Forum citizens and governments need to be convinced that looking to sovereignty, or authority, outside their own country does not damage their national interest. Resolving the region's challenges depends on the willingness of citizens and national governments to embrace new and larger forms of sovereignty. A consideration of the region's security challenges makes this clear. Terrorists and transnational criminals move outside the traditional forms of state-based sovereignty; only by also moving beyond these traditional forms and embracing collective security can the impact of terrorism be reduced. Closer integration is the key. We have already had some indication of how this may develop in the Biketawa Declaration—the Forum's gradual embrace of more intrusive security measures paved the way for the Solomon Islands intervention.

Granted, a careful cost–benefit analysis should be made when deciding whether to agree to measures that will impact on internal sovereignty. It is appropriate that citizens maintain a healthy scepticism about investing national sovereignty in supranational organisations. National politicians and international bureaucrats should have to justify why such an investment is necessary. However, the serious challenges confronting the Pacific demand a new approach to resolve them. Forum members must invest a certain amount of sovereignty in carefully targeted regional measures.

The effectiveness of an international organisation depends on the amount of sovereignty that its members are willing to invest in it. Investing sovereignty is like any other investment—Forum members have to put in enough to make it worthwhile. This, for example, is a limitation of APEC—countries have not invested enough sovereignty, or authority, in APEC to make it much more than a forum for dialogue and trade facilitation (Australian Department of Foreign Affairs and Trade 2000; Ravenhill 2000; Rudner 1995). Already, though, investing sovereignty in multilateral organisations and treaties has brought great benefits for Forum members. A key example is the Law of the Sea negotiations, which granted Forum island countries their 200-mile exclusive economic zones. So it should be, too, with the Oceania

## **Pacific Regional Order**

Community. As the European Union demonstrates, much can be achieved at the regional level—the European Union’s sovereignty in WTO negotiations is far more powerful than the sovereignty of any of its individual members.

Lintner argues that the impact of globalisation has led many European countries to conclude that European Union membership and pooling sovereignty is the ‘only realistic means of maintaining control over their economic (and indeed political) destinies’ (1997:171). Heiberg states that ‘in an increasingly globalised and interdependent world, states will have to be very large or pool some of their sovereignty into regional organisations such as the European Union in order to have influence in international affairs’ (1998:193).

## **Structure and funding of the Oceania Community**

### **Structure**

The evolution of the Pacific Islands Forum to the Oceania Community will demand institutional innovation to prevent the duplication of organisations, ensure regional resources are productively allocated to where they are most needed, and facilitate the development of an Oceania voice and the prosecution of Oceanian interests on the world stage.

The current institutional structure of the Pacific Islands Forum and associated organisations was shown at Figure 4.1. Figure 5.2 shows the proposed institutional structure for the Oceania Community.

This diagram demonstrates that the important features of the current Pacific institutions would be retained in the Oceania Community. For example, the Pacific Islands Forum becomes the Oceania Forum of Heads of Government, the equivalent of the Council of Heads of Government in the European Union. However, the Forum Fisheries Agency, the South Pacific Regional Environment Programme and the South Pacific Applied Geoscience Commission should be incorporated into the Environment Division of the Oceania Commission. The need for the South Pacific Organisations Coordinating Committee would be eliminated.

Ministerial meetings in the Pacific Islands Forum currently take place annually, with senior officials’ meetings being, at best, an *ad hoc* process. Under the proposed Oceania Community, ministerial councils would be held twice a year, and senior officials’ councils six times a year.

### **Funding**

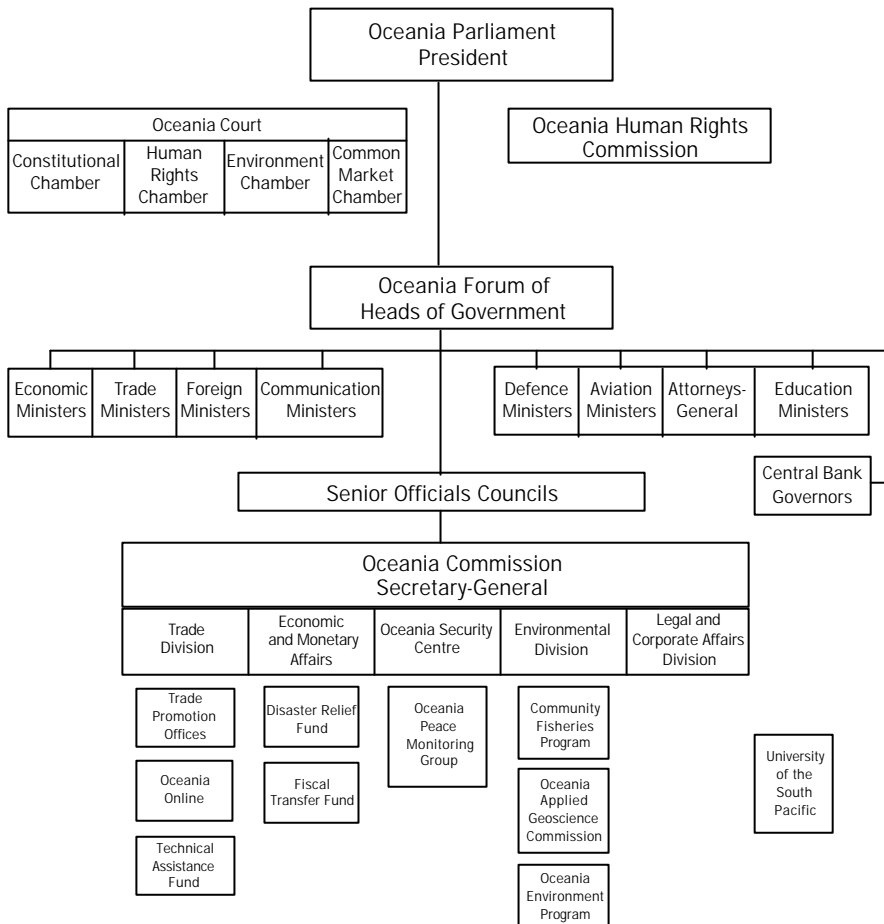
This section discusses funding for the Oceania Community, which would facilitate a new approach to aid in the Pacific. As discussed in Chapter Two, aid in the Pacific is currently problematic on two levels. The first issue is that Forum island countries ‘resent the dependence of their countries on aid’ (Henningham 1995:20). The



second issue is that aid has failed in most cases to put Forum island countries on the path to sustainable economic development.

The first issue is a problem of political perception. As discussed in Chapter Four, the Forum Secretariat and its programs are funded through two budgets—the regular budget, for which all Forum members are responsible through assessed contributions, and an extra budget, which is funded by Australia, New Zealand, non-Forum members and international organisations. In addition, Australia and New Zealand disburse substantial bilateral aid.

Figure 5.2 Proposed structure of the Oceania Community



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To remove some of the political problems, the Community's budget should be funded through a regional system of progressive taxation, and there must be a single budget to which all Community members contribute. This would assist in removing the perception of aid as a form of charity and hence, a source of resentment.

I propose the following adjustments to the Forum's current contributions (Table 5.2). I am guided by a country's GDP in determining each member's contribution, but this is not an absolute determinant. Strictly followed, basing taxation on GDP would mean that Australia and New Zealand would contribute close to 100 per cent of the Forum's budget. Even given the vast differences in GDP, all Forum members should be contributing something to develop a sense of ownership and pride in their regional organisation. The reality is that all members with the exception of Australia and New Zealand would receive far more in regional transfers than the amount they are taxed.

Expressed in percentage terms, Australia's contribution to the Oceania Community would be, at 64.25 per cent, much larger than its current contribution of 37.16 per cent to the Forum's regular budget. This, however, reflects the fact that Australia is currently a major contributor to the Forum's extra budget, which would be integrated into this single budget (Australia is also currently a large bilateral donor, some of which may instead be channeled into the Oceania Community budget).

Expressed in percentage terms, all other Forum members would be contributing a smaller percentage to the regional organisation's budget than they do currently.

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Table 5.2 Proposed regional taxation system (for the commencement of the Oceania Community)

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	Percentage of the Community budget
Australia	64.25
New Zealand	20.00
Papua New Guinea	5.00
Fiji	2.00
Federated States of Micronesia	1.00
Samoa	1.00
Solomon Islands	1.00
Vanuatu	1.00
Tonga	0.75
Palau	0.75
Marshall Islands	0.75
Cook Islands	0.50
Kiribati	0.50
Nauru	0.50
Niue	0.50
Tuvalu	0.50

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The reality is, however, that the Oceania Community's budget would be larger than the Forum's budget, given the greater range of activities. Thus, in monetary terms, members may end up contributing the same, or even more, to the regional organisation. Even if there were slight increases in monetary contributions this would be still fair, since the benefits of the Oceania Community would be greater than those of the Forum.

In terms of addressing the second issue, the failure to set Forum island countries on the path to sustainable economic development, it must be admitted that Pacific aid has often not been tied to any strategic outcomes (for example, until recently, Australia's aid to Papua New Guinea consisted of substantial direct transfers to the Papua New Guinea budget).

In the European Union context, however, aid has played a vital role in narrowing the gap between the European Union's richer and poorer countries (see Bornschier, Herkenrath and Ziltener 2004). The European Union demonstrates that aid can make a critical contribution to the realisation of the goal of sustainable economic development in the context of regional integration. As discussed above, the European Union had the commitment, and the strategic vision, to use its aid relationship with Central and Eastern European countries to facilitate economic reform in those countries. It pursued 'clear-cut modernisation...based on a medium-term comprehensive package that includes substantial financial transfers...in exchange for strict but reasonable conditions', to win better results and reduce long-term outlays (Inotai 1994:163). It did not display any embarrassment in pursuing this 'normative straitjacket' either (Murphy 1995:119). As the European Commission argued, 'in return for concrete progress in the implementation of political, economic and institutional reforms, the EU's neighbourhood is to benefit from the prospect of closer economic and political links with the EU' (European Commission 2003:7).

In the earlier years of the Oceania Community, substantial technical assistance would be needed to enable Forum island countries to implement the commitments proposed in the Oceania common market agreement and the Oceania inflation targeting and monetary cooperation agreement. Over time, the technical assistance component of aid will fall as reform is implemented and the number of Forum island country citizens participating in the Oceania labour mobility programs increases (these labour mobility programs will be discussed in the next chapter; they will entail their own costs, and can rightly be regarded as a substitute for other forms of aid). As Inotai argues, substantial initial outlays are needed to enable reform (Inotai 1994), but the strategic intention in doing this is to reduce long-term outlays, not to institute a permanent and greater dependence.

## **Pacific Regional Order**

To facilitate the strategic use of aid, the Forum's richer members should commit to five-year programs rather than annual funding. This would allow Forum island countries to engage in longer-term planning. It is reasonable to expect Forum island countries to commit to long-term reform to promote sustainable economic development; but it is also reasonable to expect richer Forum members to commit to long-term support for this process.

Ultimately, aid can provide a safety net and a hand-up but it cannot underwrite individual countries' development: aid alone cannot correct the pursuit of unsound national policies. Yet moving to a system of regional taxation would correct some of the political problems in Pacific aid, and utilising aid to support the economic reform inherent in the Oceania agreements would introduce greater strategic rigour (and limit the potential to pursue unsound national policies). Given reciprocal binding commitments to Pacific regional order, richer countries can and should facilitate a supportive regional environment, better enabling poorer countries to promote sustainable economic development.

## **Conclusion**

This chapter has further detailed a new strategic vision for the Pacific, developing the respective visions proposed by the Australian Parliamentary Committee and the Forum Leaders in the Auckland Declaration. It has outlined the European Union's success in promoting the five goals of regional order, and proposed that Forum members seek to emulate this success through a renamed and reconceptualised Pacific Islands Forum: the Oceania Community. Yet this will only be possible if Pacific states embrace the binding legal commitments and shared sovereignty that are inherent in the regional integration process. I have argued, too, that Forum members have much to gain by working at the global and regional levels in tandem, drawing on the existing legal and normative framework of the global system to pursue integration. The proposal for the structure and funding arrangements for the Oceania Community represents a new approach to the difficult issue of Pacific aid.

The first stage of Pacific regionalism was a colonial creation—the South Pacific Commission. Until recently, the second stage focused on polite discussions in the Forum. It is now time for the third and substantive stage, where members embrace an organisation, modelled on the European Union, that will be more effective in resolving the region's challenges, and more powerful in prosecuting its wider interests. Ensuing chapters consider the detailed plans needed to realise this strategic vision—an agenda for the Oceania Community that will build the foundations for Pacific regional order.

## **Notes**

- <sup>1</sup> As Gonnelli states 'in order to become wealthier, countries want to use their resources—labour, land and capital—as efficiently as possible' (1993:9).
- <sup>2</sup> See, for example, Organisation for Economic Co-operation and Development, 'trade and foreign direct investment are major engines of growth in developed and developing countries alike...In the last decade, countries that have been more open have achieved double the annual average growth of others' (1999:5); Carbaugh, 'the phenomenal growth in international trade over the last half century has led to a rapid increase in the living standards of all countries pursuing policies that encourage trade' (1995:3); Australian Department of Foreign Affairs and Trade, 'economies with strong institutions and open policies have grown at nearly eight times the rate of those with weak institutions and closed policies' (2000:viii); Gould, Ruffin and Woodbridge (1993); World Bank (1987), which classifies countries by trade orientation, finding that outward oriented countries experienced greater growth.
- <sup>3</sup> Studies by the European Commission suggested that the latest phase of enlargement would increase GDP growth in the acceding countries by between 1.3 and 2.1 percentage points annually, and by 0.7 percentage points for existing members. Conservatively, there would be an economic gain of 23 billion euro for new members and 10 billion euro for existing members.
- <sup>4</sup> The Copenhagen criteria, adopted in 1993, insisted that acceding countries must demonstrate 'the existence of a functioning market economy as well as the capacity to cope with competitive pressure and market forces within the union'. Available online at <http://europa.eu.int/enlargement/agenda2000/strong/2.htm> [accessed 11 November 1999].
- <sup>5</sup> Transcript available at <http://www.abc.net.au/am/content/2003/s923089.htm>.
- <sup>6</sup> Heiberg argued that 'the stability and economic development that is likely to come from EU membership will enhance the strength and stability of [acceding] countries and, with economic development and a higher standard of living, their internal stability will be improved' (1998:194–95).
- <sup>7</sup> According to Friedman, refusing Turkey admission to the European Union would be a 'hinge of history mistake'. *The Economist* likewise argues that it would be 'a geo-strategic error of historic proportions' (see Friedman 2004; 'The importance of backing Erdogan', *The Economist*, 31 January 2004; 'Turkey belongs in Europe', *The Economist*, 7 December 2002).
- <sup>8</sup> Lodgaard (1991) comes closest to addressing these issues, when he suggests that the arms trade, secessionist movements and environmental problems could be addressed through regional mechanisms.
- <sup>9</sup> For example, European Union regulations even dictate the permissible curvature of imported bananas (Feldstein 1997).
- <sup>10</sup> The updated version, in Articles 49 and 6(1) of the Maastricht Treaty, is that 'any European state which respects the principles...of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law...may apply to become a member of the Union.'
- <sup>11</sup> For example, in Slovakia a new coalition was elected in 1998 because the 'arbitrary rule' of the country's previous leader risked Slovakia's European Union accession.
- <sup>12</sup> Average per capita income in the initial 15 European Union members was US\$22,740 in 2002 (Cottrell 2003).
- <sup>13</sup> Compare with Hayek 1944:54.
- <sup>14</sup> Compare with Hayek 1944:54.
- <sup>15</sup> Almost 50 per cent of the European Union's budget is devoted to agricultural subsidies (European Commission 2000).
- <sup>16</sup> Australia was a frequent critic of these provisions at the WTO Committee on Regional Trade Agreements.
- <sup>17</sup> Matthews notes that 'critics maintain that the Lomé process perpetuates the historic division of labor, allocating the production of primary commodities to Africa and the production of industrial goods to Europe' (1991:5). See also Sawyerr (1986).

# 6

## Free trade

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Lack of development is one of the prime causes of Pacific disorder.<sup>1</sup> A key test of Pacific regional order would thus be whether it can facilitate sustainable economic development. As discussed in previous chapters, economic theory and the experience of the European Union, CARICOM and other substantive regional integration projects suggest that increased trade leads to greater economic growth. Thus, a comprehensive common market—promoting trade in goods, services, investment and labour—would be the Oceania Community’s most important initiative for lifting Pacific economic growth.

Therefore the Oceania single undertaking treaty should include four agreements to establish the Oceania common market

- an agreement on free trade in goods, to help Forum island countries develop more competitive goods, and to address their current trade concerns
- an agreement on free trade in services to facilitate the diversification of Forum island economies into the skills-intensive and high-wage services sector
- an agreement on free trade in investment, so that Forum island countries can attract the private capital they need to underpin economic growth
- an agreement on labour mobility, vital for improving Forum island countries’ skills base and raising the level of remittances flowing back to their economies.

These agreements would forge a comprehensive trade order and in turn an integrated Oceania economy. This chapter considers how the PACER–PICTA framework could be developed into a comprehensive common market agreement, and outlines

a plan to achieve free trade in goods, services, investment and labour, in accordance with the WTO agreements where relevant. The issue of an appropriate implementation period for the common market is then addressed.

There are many issues involved in creating a common market. This chapter sets out a legal framework to guide the common market and to identify the major implementation issues; however, not every legal or implementation issue is considered. As will be clear, there is much that Forum island countries must do better to achieve an Oceania common market, but there are also many areas where Australia has to do better by its regional partners.

### **Developing the PACER–PICTA framework**

The European Union experience suggests that an Oceania common market would be an important vehicle for promoting sustainable economic development. The PACER–PICTA framework, discussed in Chapter Four, represents a potentially vital beginning in this regard. It implicitly acknowledges that free trade has been the missing ingredient in the Pacific growth equation. At this time, however, PACER–PICTA only sets out an agenda for trade liberalisation between Forum island countries, rather than all Forum members.

But the PACER–PICTA framework does provide a roadmap for future regional integration between all Forum members. In the preamble, Forum members commit to encouraging ‘trade liberalisation and economic integration in the Pacific region, with a view to the eventual full and complete integration of all sectors of their economies’ (PACER, Preamble). This commitment will only be realised through a comprehensive Oceania common market.

There are two specific triggers in PACER for when Forum island countries have to negotiate a free trade agreement with Australia and New Zealand, and, potentially, one general trigger. The two specific triggers are

- a commitment to commence ‘consultations’ with Australia and New Zealand with a view to negotiating a free trade agreement in the event that Forum island countries commence negotiations with any OECD country, or any other country with a GDP higher than that of New Zealand (PACER, Article 6)
- a commitment to commence free trade agreement negotiations with Australia and New Zealand eight years after PICTA enters into force (PACER, Article 5) (PICTA entered into force in 2003, so this would be 2011) (Australian Parliamentary Committee 2003).

The potential general trigger is that Forum members agree to a major review of the agreement within three years of its entry into force, and every three years thereafter (PACER, Article 16).

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Rather than waiting until 2008 (when a Forum island countries–European Union agreement is implemented), or 2011 (eight years after PICTA), or later, all Forum members must demonstrate the courage to develop the PACER framework fully as soon as possible. In the PACER framework, Forum island countries have accepted that in the future they will enter a free trade pact with Australia and New Zealand. In the meantime, their attitude is ‘make us an offer’. One Forum Secretariat official said, ‘Forum island countries are crying out for a deal—they will happily put everything on the table, as long as Australia and New Zealand are prepared to do so as well’ (personal communication). Therefore, a major review of PACER should occur as soon as possible, with the intention of initiating negotiations for the Oceania common market.

Ultimately, the Oceania agreements must supercede PACER–PICTA. Pacific regional order demands more than various agreements amongst sub-sets of the Forum. There needs to be one overarching structure, so that PICTA—and Australia and New Zealand’s Closer Economic Relations (CER) agreement<sup>2</sup>—can be folded back into a larger, more comprehensive agreement. When Australia, New Zealand, the Forum island countries and the Forum Secretariat are serious about pursuing sustainable economic development and strategic foreign policy outcomes, they will move beyond discussing a free trade area for goods alone, and tackle services, investment and labour mobility.

I turn now to a consideration of how a comprehensive trade order between the Forum’s richer and poorer members could be achieved in goods, services, investment and labour by 2025.

## **Goods**

Liberalising trade in goods involves reducing the tariffs on goods imported from another country, as well as reducing non-tariff barriers that inhibit trade, such as onerous customs procedures. It is vital that the Oceania goods agreement address both of these impediments to free trade.

Tariffs are typically applied as a percentage of the cost of the product being imported. Through PICTA, Forum island countries committed to the trade liberalisation schedules between themselves (Table 6.1). Small island states and least-developed Forum island countries committed to the schedules shown in Table 6.2.

Each Forum island country was also entitled to submit a ‘negative list’, detailing products they were planning to exempt from the free trade regime for the foreseeable future because of their sensitivity (PICTA, Annex III). Forum island countries also committed themselves to regular reviews of the agreement, with the intention of removing products from the negative lists and speeding the liberalisation schedules (PICTA, Article 23).



Table 6.1 Goods liberalisation among Forum island countries

Base tariff on goods on entry into force of this Agreement	Entry into force of this Agreement	Maximum tariff (per cent) on goods from			
		1.1.2004	1.1.2006	1.1.2008	1.1.2010
More than 20%	20	15	10	5	-
More than 15%; not more than 20%	15	10	5	-	-
More than 10%; not more than 15%	10	5	-	-	-
Not more than 10%	-	-	-	-	-

Source: Pacific Island Countries Trade Agreement (PICTA), Annex II.

Table 6.2 Goods liberalisation among less developed Forum island countries

Base tariff on goods on entry into force of this Agreement	1.1.2004	Maximum tariff (per cent) on goods from			
		1.1.2006	1.1.2008	1.1.2010	1.1.2012
More than 25%	25	17.5	10	5	-
More than 20%; not more than 25%	20	15	10	5	-
More than 15%; not more than 20%	15	10	5	-	-
More than 10%; not more than 15%	10	5	-	-	-
Not more than 10%	-	-	-	-	-

Source: Pacific Island Countries Trade Agreement (PICTA), Annex II.

Table 6.3 Goods liberalisation between Forum island countries and Australia and New Zealand

Base tariff on goods on entry into force of this Agreement	Entry into force of this Agreement	Maximum tariff (per cent) on goods from			
		1.1.2010	1.1.2015	1.1.2020	1.1.2025
More than 20%	20	15	10	5	-
More than 15%; not more than 20%	15	10	5	-	-
More than 10%; not more than 15%	10	5	-	-	-
More than 5%; not more than 10%	5	-	-	-	-
Not more than 5%	-	-	-	-	-

Source: Pacific Island Countries Trade Agreement (PICTA), Annex II.

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Table 6.4 Goods liberalisation between less developed Forum island countries and Australia and New Zealand

Base tariff on goods on entry into force of this Agreement	Maximum tariff (per cent) on goods from				
	1.1.2007	1.1.2010	1.1.2015	1.1.2020	1.1.2025
More than 25%	25	17.5	10	5	-
More than 20%; not more than 25%	20	15	10	5	-
More than 15%; not more than 20%	15	10	5	-	-
More than 10%; not more than 15%	10	5	-	-	-
More than 5%; not more than 10%	5	-	-	-	-
Not more than 5%	-	-	-	-	-

Source: Pacific Island Countries Trade Agreement (PICTA), Annex II.

This same regime could be adopted in the Oceania goods agreement, albeit over a longer implementation period (Tables 6.3 and 6.4).

One important factor is the loss of tariff revenue that Forum island countries would experience as a result of implementing free trade with Australia and New Zealand. In this respect, Australia and New Zealand should provide technical assistance to aid in the introduction of value-added taxes. As can be appreciated from this issue alone, a crucial part of the goods agreement would be the trade facilitation and technical assistance measures to which Australia and New Zealand committed themselves.

### Non-tariff barriers

One consequence of falling tariffs is that non-tariff barriers become the more important impediment to free trade in goods. There are four areas to address in the Oceania goods agreement: rules of origin, quarantine, anti-dumping actions and emergency actions. The strategic goal would be to harmonise standards and regulations across the region, and for Forum island country exports to meet the quarantine and technical standards of developed country markets. Given Forum island country sensitivities, it will be impossible to sell Forum island countries on the benefits of signing on to a comprehensive trade order if Australia does not assist in these areas.

### Rules of origin

Rules of origin are a necessary part of any free trade agreement. With a free trade agreement, as opposed to a customs union, members maintain their own separate tariff regimes against countries outside the agreement. This can be represented as shown in Figure 6.1.

Thus the temptation for countries outside the agreement is to export a product to the country within the agreement that has the lowest external tariff rate (Country A), and then re-export it to the country with the highest external tariff (Country B), as shown in the second section of Figure 6.1.

To prevent this 'trade deflection', rules of origin stipulate that a certain percentage of the good must be produced using material or labour from countries within the free trade agreement. Thus, Country B might insist that 50 per cent of a good must be manufactured in Country A before it can take advantage of the zero tariffs between the two countries.

The rules of origin in SPARTECA (the current limited trade agreement among Forum members) stipulate that 50 per cent of a product's materials and associated labour must be sourced from one or more Pacific Islands Forum members, in order to qualify for duty free access to the Australian market (SPARTECA, Article 5). The 50 per cent threshold was the usual rate in other trade agreements at the time SPARTECA was created, and it was the figure used in the CER Agreement (SPARTECA, Article 3).

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Figure 6.1 Tariff rates in a sample free trade agreement

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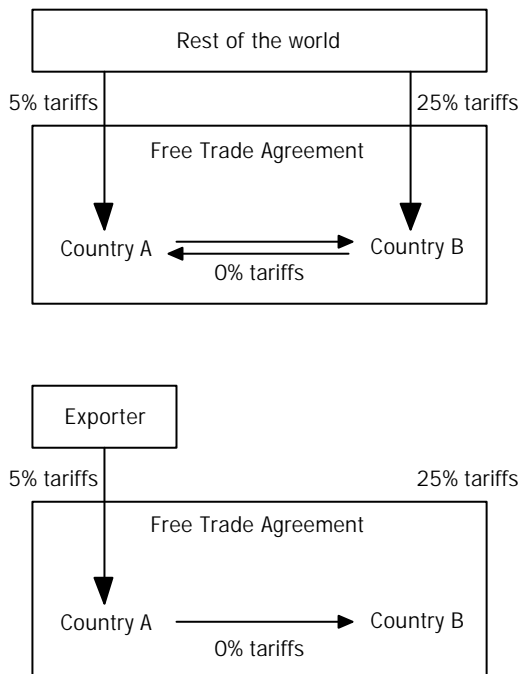
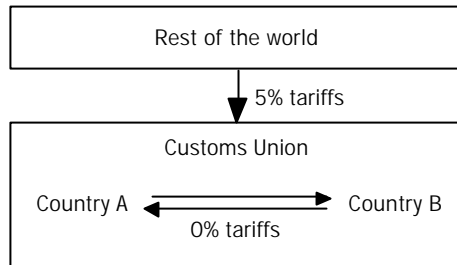


Figure 6.2 Tariff rates in a sample customs union



Forum island country representatives have long argued that SPARTECA's 50 per cent threshold is too high. Australia tells Forum island countries to become globally competitive, but requires 50 per cent of their materials to be sourced from Australia, rather than cheaper materials from Asia. This raises the price of the goods they produce and reduces their competitiveness. Australia, however, has had little interest in moving from its favoured 50 per cent threshold. The reason is domestic industry pressure. If the SPARTECA threshold were lowered, Fiji garment manufacturers could source their textiles from cheaper Asian sources and Australian manufacturers might miss out.

It is reasonable that Australia sets a rules of origin level that ensures Australia is only accepting those products from Forum island countries that are 'genuine' Forum country products—it is not enough for a product to arrive in a Forum island country, be only slightly modified, and then be sent duty-free to Australia as a Forum country product. However, it is less reasonable for Australia to set a rules of origin level simply to guarantee that Forum island countries use only Australian textiles rather than more price-competitive Asian textiles.

Rules of origin must be seen as a form of aid, like the duty-free access Australia gives to Forum island countries and other least developed countries, to reduce poverty and help these countries become globally competitive. A comprehensive, supportive industry plan for Australia should be complementary with Forum island countries' interests, not at their expense. Australian garment exporters should carve out their own niche in Forum island country markets through quality-competitiveness, if not price-competitiveness, but this should not be forced on Forum island countries.

Rules of origin are a threshold issue for Forum island countries in developing the Oceania trade order. Forum island countries will not embrace substantial liberalisation toward Australia without movement on this issue (similarly, Australia is unlikely to move from the current SPARTECA threshold of 50 per cent until Forum island countries embrace more liberal trade relations with Australia).

This leaves the question of an appropriate rules of origin threshold. Forum island countries have already sought a 40 per cent threshold, following their long-standing complaints about the 50 per cent threshold. In order to win these countries' adherence to the Oceania agenda, Australia should move to a 40 per cent threshold in the context of the Oceania goods agreement, but this could be phased in to match Forum island countries' liberalisation commitments (for example, movement to 45 per cent on ratification of the agreement, then a further reduction to 40 per cent after a certain number of years, provided the Forum island countries are meeting their commitments). Such a concession would also tie New Zealand more firmly into the Oceania agenda.

One radical solution to the rules of origin dilemma would be for the Oceania Community to form a customs union rather than a free trade agreement. In a customs union like the European Union, all members have the same common external tariff (Figure 6.2).

This eliminates the need for rules of origin, because countries outside the bloc no longer have the incentive to try re-exporting to Country B through the bloc member with the lowest tariffs (previously Country A).

Although forming a customs union with a common external tariff barrier is a logical extension of harmonising other trade measures, this would be of only marginal benefit in the Pacific. To negotiate a common tariff on all tariff lines among so many countries would require more negotiating resources than the end result would justify. GATT Article 24 stipulates that WTO members cannot raise their tariffs against non-members of a customs union. Therefore, Australia could not raise its tariffs to meet Forum island countries half way; Forum island countries would have to adopt the Australian tariff schedule and Australian decisions about tariff reductions. Given the concerns these countries have about maintaining their national sovereignty, this is unlikely to be acceptable, and there are better areas to expend the political capital in arguing for a regional trade order. An added problem is that New Zealand's tariffs are in some cases lower than Australia's. Since tariffs, even at the most-favoured nation rate, are falling steadily around the world, in the end, it is better to maintain the rules of origin at a favourable rate as part of a free trade agreement than attempting to negotiate a customs union.

## **Pacific Regional Order**

### **Quarantine**

Under its quarantine regime, Australia maintains a 'zero risk' policy, which, though unusual amongst WTO members, is legitimate under the WTO's Sanitary and Phytosanitary Measures Agreement (World Trade Organization 1994). A WTO member can take any consistent measure necessary to protect human, animal and plant life as long as the measures are backed up by scientific evidence. Australians deserve no less than a 'zero risk' standard, but this is a high standard for Forum island countries trying to export to Australia. Technical assistance might bring Forum island countries up to this standard so they can compete more easily in Australia. As the Australian Senate Foreign Affairs, Defence and Trade References Committee stated, it would be preferable to raise Forum island country standards rather than lower Australian quarantine standards (Australian Parliamentary Committee 2003).

Quarantine is a lever Australia can use to entice its regional partners into the Oceania goods agreement, but an issue on which Forum island countries would expect recognition of their concerns before committing to the common market.

### **Anti-dumping**

Under GATT Article 6 and the WTO Anti-Dumping Agreement (World Trade Organization 1994), a country can impose an additional duty when it believes that overseas traders are exporting at a price lower than it costs them to produce the good. Australia does at times instigate anti-dumping investigations. Although these can be a legitimate trade tool for protecting domestic industries, it is also time-consuming for a company to prove that it is not dumping. Forum island countries have often complained about the possibility of Australia using anti-dumping and emergency actions to prevent other countries' exports entering Australia. As a point of fact, Australia has not taken any anti-dumping actions against Forum island countries since the WTO Anti-Dumping Agreement was implemented. Nonetheless, during the PACER negotiations, Australia was still not prepared to renounce the possibility of future actions as part of a regional integration agreement.

Australia and New Zealand should preclude themselves from anti-dumping and other emergency action measures against Forum island countries as part of the Oceania goods agreement. Forum island countries are unlikely to have the resources to sell below cost anyway (the reverse is more likely to be true). Anti-dumping actions have been eliminated under the CER agreement. Now, such problems are dealt with under the anti-competition or predatory pricing provisions of domestic trade practices legislation. Such an initiative for all of Oceania will be considered in Chapter Ten.

## **Services**

Although they may be able to create niche markets for goods, Forum island countries can never compete with the comparative advantage Southeast Asia has in manufacturing. For example, the Fiji garment industry consists of cut, make, trim (CMT) factories, with no design or value added element—the job can be done anywhere. This is problematic because wages in the manufacturing industry in Fiji are 346 per cent higher than Indonesia and 649 per cent higher than China (Prasad and Asafu-Adjaye 1998).<sup>3</sup>

So Forum island countries are unlikely to become bases for extensive manufacturing, and commodities alone cannot sustain the economic development these countries need. The skills-intensive and high-wage services sector is the future: in the Forum island country context, foreign exchange earnings from one tourist can be as much as the earnings from 300 kilograms of coffee, a tonne of cocoa, or 10 cubic metres of logs (Levantis 1998). Forum island countries desperately need to diversify—because of the current reliance on goods alone, a bad crop or cyclone can devastate an economy for the year—and developing service industries is the key to this diversification.

Thus, for the region to promote sustainable economic development, and to hold its own in global competition, the future for all Pacific countries is in trade in services, particularly in tourism and e-commerce for Forum island countries.

## **The law**

A service can cover any activity from ordering a pizza over the internet, to flying on a plane, taking a holiday, making a phone call, doing the banking or managing a company. Free trade in services is about facilitating overseas companies' and individuals' access to the domestic market to deliver services. Allowing such access can broaden the skills-base in the domestic economy, introduce new technology, provide cheaper prices for consumers, and ensure more internationally competitive domestic services. This is critical because, according to the WTO, services are the largest and most dynamic component of both developed and developing country economies. Liberalising trade in services is also important because services are also inputs into the production of most goods (for example, creating most goods involves the use of electricity services).

The complement to GATT Article 24 is Article 5 of the General Agreement on Trade in Services (GATS) (World Trade Organization 1994), which stipulates the conditions a free trade agreement dealing in services must meet in order to qualify for an exception from the most-favoured nation rule (that is, that reductions in barriers to services trade should ordinarily be passed on to all other WTO members).

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First, a free trade agreement dealing with services must have ‘substantial sectoral coverage’. Substantial sectoral coverage refers to

- the number of service sectors and sub-sectors covered<sup>4</sup>
- the volume of trade affected<sup>5</sup>
- the modes of supply.

The four GATS modes of supply are cross-border supply, consumption abroad, commercial presence and the movement of natural persons. In the tourism industry,

- cross-border supply refers to when a consumer in one country buys services from a business in another country; for example, an Australian buying a holiday package from a Forum island country travel agent
- consumption abroad refers to when a consumer from one country consumes services in another country; for example, an Australian travelling to a Forum island country for a holiday
- commercial presence refers to the establishment of a physical presence in another country to provide the service. For example, if an Australian company builds a hotel in a Forum island country to supply tourism and recreational services
- the movement of natural persons refers to the temporary entry of professionals; for example, an Australian going to the Forum island country to manage the hotel.

GATS Article 5 also states that a free trade agreement must

- involve a commitment by members to give each other ‘national treatment’— that is, a service from a foreign supplier must be regulated and treated the same way as a domestic supplier
- be implemented within a ‘reasonable timeframe’
- not raise barriers to non-parties to the agreement
- be notified to the WTO and demonstrate to WTO members how the parties will achieve free trade between them (GATS, Articles 5.1b, 4, 7).

The Oceania Community should largely adopt the GATS framework. GATS uses a positive list approach to services liberalisation: a country makes a new commitment each time it wants to indicate it is happy to liberalise an area of services trade.<sup>6</sup>

Under GATS, a country makes commitments in each of the 155 possible sub-sectors as it sees fit, listing the limitations on market access and national treatment it maintains in each of the four modes of supply.<sup>7</sup>

Table 6.5 has various hypothetical entries. Where an entry reads ‘none’ it means that the country has no restrictions for trade in services; where an entry reads ‘unbound’ it means that the country made no commitments.

I consider how the Oceania common market should handle Mode 3, commercial presence, in the next section on investment, and Mode 4, the movement of natural



Table 6.5 Sample services liberalisation commitments

Sub-sector	Mode	Limitations on market access	Limitations on national treatment
Hotels and restaurants	1–Cross-border supply	Unbound	Unbound
	2–Consumption abroad	None	None
	3–Commercial presence	Normal government approval and registration required for all foreign investors.	Foreign investors not entitled to 10-year tax holiday like domestic investors; investors can only own 35 per cent of any company.
	4–Temporary movement of natural persons	Normal government approval for foreign nationals required. Managers must have an MBA from Sydney University; chefs must have a Michelin star.	Skilled chefs must train locals in their culinary delights.

persons, in the final section on labour mobility. For the purposes of the Oceania common market, the GATS approach to Modes 3 and 4 should be revamped and expanded.

Most WTO members made commitments in the GATS under Mode 1, cross-border supply, and Mode 2, consumption abroad, as they do not impact as much on internal sovereignty. To recap, an example of Mode 1 would be a Forum island country travel agent selling a holiday package to an Australian, and an example of Mode 2 would be a Australian travelling to a Forum island country for a holiday. Yet if Forum island countries are to maximise the benefits of such activities, it is vital that they also implement a new framework for facilitating e-commerce as part of the Oceania services agreement.

### **E-commerce**

In 1997 and 1999, the Australian Department of Foreign Affairs and Trade (1997a, 1999a, 1999b) commissioned studies into e-commerce and found that

- e-commerce breaks the old rules about natural trading partners. Geography no longer has to be the prime consideration. Australian firms have forged strategic alliances with Scandinavian firms, because these countries are at the forefront of the e-commerce revolution.
- traditionally, firms had to be a particular size to be able to export: a firm that exported needed a minimum staff of five and a minimum turnover of A\$2

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million. Again the old rules no longer apply—the size, staff and turnover needed for a firm to export have been dramatically reduced.

- for a country to benefit from e-commerce, a competitive telecommunications sector, combined with good telecommunications infrastructure, is vital.

These findings have a number of critical implications for Forum island countries. With its potential to beat distance and allow small firms to export, e-commerce is a technological revolution tailor-made for Forum island countries. Tourism is the Forum island country export that will particularly benefit from e-commerce. Forum island country businesses will be able to cut out the overseas middle man, and sell directly to overseas consumers. Forum island country tourist operators may save up to 40 per cent of the cost of their services by cutting out United States and European travel agents (Australian Department of Foreign Affairs and Trade 1999a). There is also potential to increase the export of commodities. Many Asian hotels and restaurants put in last-minute orders to Australian farmers for fresh produce (Australian Department of Foreign Affairs and Trade 1999b). With e-commerce, Forum island countries could also exploit such opportunities.

To realise this potential, however, Forum island countries need to address two of the challenges identified earlier: poor telecommunications infrastructure, and a lack of internet users. The Forum has frequently discussed telecommunications reform,<sup>8</sup> so the rhetoric on the importance of the new economy is there. Nonetheless, progress will be slow without binding commitments. As part of the Oceania services agreement, an Oceania legal framework for e-commerce, based on global precedents, may provide the necessary fillip.

The Telecommunications Annex to GATS provides a useful precedent for the Oceania services agreement. After the Uruguay Round, WTO members negotiated an additional optional annex to GATS to promote further liberalisation in telecommunications. Many countries recognised the need for a competitive telecommunications sector to take advantage of globalisation.<sup>9</sup> Only Papua New Guinea, however, made any commitments under the telecommunications protocol. Forum island countries have been reluctant to allow competition that may detract from government revenue, even if it might result in improved service or cheaper prices. Given the sensitivities about Forum island country telecommunications, additional provisions on telecommunications deregulation could be made an optional protocol to the Oceania Community's single undertaking treaty, replicating the situation in the World Trade Organization.

Forum island countries could also usefully adopt the UN Commission on International Trade Law's Model Law on Electronic Transmissions (Electronic Commerce Expert Group 1998).<sup>10</sup> The key principles in the Model Law are

- technology neutrality—law should not discriminate between different forms of technology
- functional equivalence—electronic and ‘paper’ commerce should be treated in the same way, for example, domestic laws should recognise digital signatures as much as signatures on paper.

Forum island countries also need to take steps to ensure the security of transactions on the internet. Thus, the Oceania services agreement would require members to enact their own version of the Model Law, and to take steps to ensure the security of e-commerce transactions.

## **Investment**

The Pacific needs a region-wide investment agreement, to ensure a predictable, stable and transparent investment regime, to encourage and regulate foreign investors. An Oceania investment agreement would have three key benefits. First, it would ensure that basic rights—such as property and contract rights—are upheld, which Forum island countries have often failed to do. Second, it would ensure a consistent approach to investment across the region; few big investors have the time or inclination to master wildly different investment regulations in fourteen small island states (Price Waterhouse 1999; South Pacific Forum 1999c). Third, it would regulate transnational corporations when they enter nation—states—this will be more effectively done through regional regulations than by Forum island countries acting alone. Properly implemented, the Oceania investment agreement would increase investment flows both within, and into, the Oceania common market. This is vital because foreign direct investment is one of the most important drivers of sustainable economic development (World Bank 1999).

The first priority is to get rules on foreign direct investment (investment that is about establishing an ongoing, significant interest in an enterprise) rather than portfolio investment (trade in shares, derivatives and bonds, for example). This course offers the most immediate, obvious benefits, but Oceania members may later negotiate a joint approach to portfolio investment.

## **No global precedent**

There is currently no overarching global agreement governing investment. During the Uruguay Round, there was discussion about the desirability of rules on investment, but no comprehensive agreement was reached. Instead, Mode 3 of GATS has rules on investment, but in services alone; so GATS does not go far enough, in either promoting or regulating foreign investment. For example, under GATS Mode 3 a bank may set up a branch office in another country to provide banking services,

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but there is no general right for an investor to come in and, for instance, establish a factory to produce goods. Nor is there an effective mechanism in GATS to ensure the effective regulation of foreign investors so that they live up to their responsibilities.<sup>11</sup>

### **Rights and responsibilities**

The Oceania common market should combine the rights and responsibilities of foreign investors into a single binding instrument. Previous proposals for international investment agreements—namely the OECD's Multilateral Agreement on Investment and the United Nations' Draft Code of Conduct on Transnational Corporations—failed because they separated the rights and responsibilities of investors (Goodman and Ranald 1999; Graham 2000; Coonrod 1977; Robinson 1986; United Nations Centre on Transnational Corporations 1988).<sup>12</sup> Thus, the Oceania investment agreement could provide a precedent for the global system. The time is ripe for such an agreement—sensible governments accept the importance of foreign direct investment, and sensible transnational corporations see the importance of the social agenda. The Oceania investment agreement would provide increased market access opportunities for foreign investors in the Pacific by ensuring fairer, more transparent regulations. They would make more money, even though they would face heavier regulation.

### **Making rights work**

An investment facilitation agreement rests on two core rights: the right of establishment and the right to national treatment (UNCTAD 1999a, 1999b, 1999c). A country seeking foreign investment will let investors enter the market and will treat them in the same manner as domestic investors. In practice, this would mean that Forum island countries could no longer stipulate that any foreign investment, or a foreign investment over a certain amount, had to be approved before proceeding, and there could be no more restrictions on repatriating profits. It would mean no more requirements for foreign investors to

- enter into joint ventures with local partners
- be minority shareholders in their own business
- have a certain number of local directors on the company board
- jump through more bureaucratic hurdles than domestic investors
- employ certain people or have a certain number of local managers or a certain number of local employees generally
- export a certain percentage of their output so as not to compete with the domestic market
- purchase a certain percentage of their raw materials locally
- import a certain amount of new technology (Price Waterhouse 1999; South Pacific Forum 1999c).

To attract foreign investment a country should have an open investment regime with no such requirements (OECD 1999). Understandably though, Forum island countries have particular sensitivities about foreign investment, and it is vital that regional trade integration mesh with political-community sentiment. A transparent legal framework in step with local sentiment, even if it is not fully open initially, is better than meaningless, unenforceable laws.

Having spoken to political figures and people on the street about foreign investment in Bougainville, Fiji and Vanuatu, I have noted two common concerns: the desire not to 'lose control' of any foreign investment, and the desire for clear local benefits. The usual solution in the Pacific to address these concerns is to allow foreign investment only in the form of joint ventures. However, these two goals can be met through a more sophisticated response that would simultaneously facilitate investment and meet Forum island country concerns.

Binding legal obligations on the responsibilities of foreign investors, backed up by the institutional framework of the Oceania Community, would ensure that developing countries do not lose control over their foreign investors.

In terms of ensuring clear local benefits, joint ventures are a poor vehicle (UNCTAD 2000b). They usually take the form of a contractual association between a domestic investor and an overseas investor. Forum island countries typically specify that the local investor has to be the majority owner in any joint venture. Consider a foreign company that wants to establish a new business in a Forum island country. The company estimates that it would take, say, A\$1 million to establish the new business. They have to find a local investor who can put up over A\$500,000—unlikely in tiny countries with low domestic savings, which is why foreign investment is needed. Alternatively, the foreign company might seek out some amenable locals to establish a front company to produce a local investor for the government approval process.

Thus, even though the foreign company might be providing the cash and the ideas, they are not allowed to own their own company outright—they are limited to being minority shareholders. That fact, plus the usually tedious approval process, is a disincentive to overseas investors. In his *Blueprint for the Protection of Fijian and Rotuman Rights and Interests*, Fijian Prime Minister Laisenia Qarase proposed joint ventures to promote development, but only if majority controlled by indigenous Fijians (Callick 2000b). In Fiji, not only does the foreign company need to find someone to put up the money, the local investor has to be an indigenous Fijian as well.

The United Nations Committee on Trade and Development (UNCTAD 2000b), typically sympathetic to the needs of developing countries, says that compulsory joint ventures cannot achieve what developing countries want them to achieve, and are rarely successful. A foreign investor may choose to enter into a joint venture with a local investor to obtain expertise in the local market, but Forum island countries

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will not attract much overseas money if they limit investment to 49 per cent of a joint venture with an impoverished local partner. The Oceania trade order should phase out the requirement for foreign investors to participate in joint ventures. If Forum island countries want some involvement in the oversight of foreign investors, they could provide for one or two non-executive, non-voting local directors to sit on the board.

The Oceania investment agreement should also address the issue of performance requirements. Performance requirements are reasonable to encourage the employment of locals, to encourage the hiring and training of local managers, and to encourage the training of the workforce generally. It is hard to argue for foreign investment if it does not create local jobs. These requirements are best set in percentage terms: for example, 75–80 per cent of the investor's workforce should be employed from the local population; 15 per cent of the local workforce should receive some form of training each year, and a further 5 per cent should be given management training. These requirements are straightforward and easily audited. The cost of labour and training in Forum island countries is low, so a relatively small investment on the part of the transnational corporation would mean a great deal to the local community and would ease the transition from communal land and subsistence farming.

A more liberal Pacific investment regime also has implications for Australia and New Zealand. Under the *Foreign Acquisitions and Takeovers Act 1975*, Australia established a Foreign Investment Review Board in 1976. Any substantial foreign investment in a business valued at over A\$50 million needs to be approved by the Board, as does any proposed new investment valued at A\$10 million or more. Any purchase of real estate by a foreign national has to be approved by the Board—to ensure that foreign nationals are not purchasing real estate for speculation and artificially inflating the Australian housing market. The approval process is straightforward and few investments are rejected. Still, it is an impediment to investment, and Australian monetary policy is more likely to cause inflation in the housing market.

Australia should offer to remove these barriers for its Pacific partners—as it has also liberalised its investment regulations with the US<sup>13</sup>—so that members of the Oceania Community receive preferential access to the Australian investment market. There are a number of reasons to take this step. If Australia wants to develop an Australasian and Oceanian economy, it must allow for a free flow of investment between these countries. Further, the Oceania investment agreement should assist in resolving communal land issues in Forum island countries. Australia can hardly tell Forum island countries to sort out their land problems without providing reciprocal access to its own land market.

Under the Act, Australia can also reject a proposed foreign investment if it is against 'the national interest'. Australia could retain this exemption in its commitments under the Oceania investment agreement, but could tighten up both the definition and those sectors to which it would apply. For its Pacific partners, Australia should remove the blanket requirement that any investment over A\$50 million needs to be approved by the Foreign Investment Review Board. But an investment over A\$50 million in the natural resources sector, or a defence-related sector (the two most sensitive sectors), would still go through the approval process. This will not be much of an issue for Australia in the first phase of the Oceania Community, but later expansions of the Community may include members with much greater investment resources. If a 'national interest' exemption is maintained in certain sectors, it should be a common standard across all members of the Oceania Community, again, to promote predictability and transparency. A tighter, more transparent test than 'the national interest' might be 'net economic benefit' (Bora 1995:97).

Following Australia's lead, New Zealand has a similar set-up to the Foreign Investment Review Board—the Overseas Investment Commission. However, New Zealand would probably welcome reform in this area, as Australia's investment approval process has been an irritant in the CER relationship.

### **Resolving communal land tensions**

A 'right to establishment' for a foreign investor implies a right to be able to rent or buy land to build a shop or factory or hotel. As discussed earlier, however, communal land issues in the Pacific are problematic, and the lack of a comprehensive and transparent system of property rights in the Pacific is frequently cited as a source of tension and a constraint on economic growth (World Bank 1998; Larmour 1997a; Cole 1986).

In the context of the Oceania investment agreement, therefore, the right to establishment becomes fairly meaningless without non-discriminatory access to land. What is needed is a system providing security of tenure and the ability to transfer land, as well as transparent and predictable government regulations (Larmour 1998).

Theoretically, the easiest solution is to convert communal land into freehold land. That, however, may be neither sustainable nor secure from Forum island countries' point of view, even if conversion should be a long-term goal. The Oceania Community should be careful, too, in drawing a line between the legitimate business of a regional organisation seeking to facilitate investment, and what national governments should sort out for themselves. For example, Fiji's Native Land Trust Board is an inefficient, unwieldy enterprise from which ordinary Fijians are entitled to expect more (Lawson 1991; Feizkhah 2001). But the aim of the Oceania Community should be to facilitate foreign direct investment, not to target the Board.

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If the Board makes land available for investors, that is the concern of the Fiji national government rather than the Oceania Community.

Any solution to the communal land issue as it relates to the Oceania investment agreement must have the following elements.

- A community should be free to decide, following appropriate advice and counselling, to do with its land what it sees fit, even if this involves converting it to freehold land so as to attract investment.
- There must be clear benefits, facilitated by the Oceania Community, the national government and the investor, for any community that chooses to make its land available for investment. Likewise, there must be a safety net to help tenants relocate after leases have expired, and to ensure adequate compensation for their work.
- There must be a three-way commitment between a national government, the relevant local community and the intending investor to sustainable development. For example, once a decision is made by the local community, they are bound by it. Likewise, the investor must act in a way that contributes to the economic development of the community and protects its environment.

The solution would be for the Oceania Community to establish a system of investment priority zones—areas where a community will make their land available to investors, through rent or purchase, subject to a reasonable offer. National governments would maintain a register of such zones. All the paperwork would be resolved before a priority zone appeared on the national register, so an investor could simply consult the register and negotiate a price with the local community. A government would have to ensure that there was no less than, say, 10 priority zones on the national register of larger Forum island countries at any given time (or five priority zones for smaller Forum island countries), so an investor would always be assured of access to land.

So that locals enjoy clear benefits from their decision, communities in the priority zones would be given the first opportunity to participate in the Oceania Community's labour mobility programs. The employment performance requirements negotiated with the foreign investor should be filled with locals from the relevant area in the first instance. The Oceania Community and the national government should jointly compensate tenants adversely affected by the decision to convert to freehold land. Various safeguards should be built into the process, such as independent legal advice to members of the community before a commitment is made, and an independent environmental assessment before any investment commences.

It is difficult for non-islanders to understand the full meaning of customary title to a Pacific islander. Communal land means different things to different people; and it comes back to choice. Many islanders do seem prepared to embrace different



approaches to managing communal. Are the proposed trade-offs and benefits of the Oceania Community—greater economic growth, and the safety nets of more aid and labour mobility—sufficient to encourage change in this area? Some Pacific governments might say ‘no’, but under the Oceania Community’s single undertaking treaty, countries would have to accept both the benefits and disciplines of regional integration. Potential members would not be able to pick and choose, accepting the parts of the treaty they like and rejecting those they do not.

This is a framework for those who wish to resolve the issue, within a supportive regional order, which may be further refined by Pacific Islanders. Converting communal land to freehold land may be a step too far initially. Forum island countries might prefer to make land available through 50 or 99-year leases—this is a long enough period for an investor to make a profit, without Forum island countries feeling they are surrendering their land for good. Given common regional guiding principles, each country could articulate its own legally transparent regime.

### **Investor responsibilities**

Investors’ rights would be an important element of the Oceania common market. Equally important would be investors’ responsibilities—the price for greater market access, including streamlined bureaucratic procedures.

The biggest flaw in previous attempts to regulate foreign investors was the desire to control every aspect of transnational corporations’ activities. Previous attempts failed to distinguish fairly between what was properly a matter for regulation and what should be left to the corporations, so they can get about creating economic growth and providing employment opportunities. Take the issue of technology transfer. Countries could reasonably expect to find an element of technology transfer in any new foreign direct investment, as a transnational corporation brings new equipment to the country to run its operations. New technology benefits both the country and the corporation, and it is reasonable to put in a clause encouraging technology transfer in the preamble of an investment agreement. But if this turns into a binding legal commitment, the government and the transnational corporation would theoretically have to negotiate about the appropriate level of technology the corporation needs to run its business. The government would not know and it would be a disincentive to investors. Such decisions are best left to the market, beyond the purview of investment agreements.

It is better to have a realistic legal framework than pious non-binding principles that are ignored by governments and investors alike. Rather than trying to control every aspect of transnational corporations’ activities, binding regulations in the Oceania investment agreement should focus on three core areas: labour standards, environmental standards and respecting local laws.

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The International Labour Organization and the United Nations provide explicit guidance on the labour standards that should be included in the Oceania investment agreement. Transnational corporations should be legally bound to ensure

- a workplace that respects the right to freedom of association (that is, the right to form and join unions) and to organise and bargain collectively<sup>14</sup>
- a workplace free from forced or compulsory labour<sup>15</sup>
- a workplace free from exploitative child labour<sup>16</sup>
- a workplace free from discrimination in employment (that is, all workers are entitled to equal respect and treatment).<sup>17</sup>

Regulations should also ensure transnational corporations pursue 'ecologically sustainable development', a phrase coined by the World Commission on Environment and Development in 1987. The Brundtland Report defined it as 'development that meets the needs of the present without compromising the ability of future generations to meet their own needs' (Sands 1995:188). Many companies operating in the Pacific currently violate the principle. Overseas companies have been strip-logging large tracts of land in the Solomon Islands, and deep water fishing boats from Taiwan have been allowed to take advantage of the Solomon Islands' exclusive economic zone (Chevalier 2000; Fairbairn and Worrell 1996; Liloqula and Pollard 2000).

Again, the goal must be to translate these general concerns about sustainable development into legal instruments specific enough to be useful and binding. Parts of the United Nations' Draft Code of Conduct on Transnational Corporations are helpful. Various voluntary Australian codes are also instructive, particularly those produced by the Business Council of Australia (1995) and the Australian Manufacturing Council (1992).

Thus transnational corporations should be legally bound to

- adopt the International Standards Organization (ISO) standards on environment management systems, environmental auditing, environmental performance evaluation, and life cycle assessment<sup>18</sup>
- disclose information to host country governments and the public on the characteristics of products, processes and experimental activities that may harm the environment, including the measures and costs necessary to avoid such harmful effects
- adopt a 'cradle to grave' approach to environmental management
- ensure hazardous industries have emergency contingency plans
- conduct forestry operations in a sustainable manner.

The Oceania Community would need to undertake an independent environmental assessment of any major new investment to ensure it observes these principles, and host governments should be able to invite the Community to undertake further assessments of major investments at five-year intervals.

A transnational corporation and its overseas staff should also respect the laws of the host country, avoiding corruption and tax evasion. Transnational corporations bribe bureaucrats to circumvent the law or to facilitate paperwork in a less than transparent investment environment. The solution is two-pronged. Naturally, these corporations should not offer bribes. To this end, the OECD guidelines on corruption and bribery could be included in the Oceania investment agreement. However, it is also incumbent on Oceania Community members to reduce bureaucratic hassle. Tax evasion would be reduced through a double taxation agreement, whereby the transnational corporation and its personnel are taxed only in one country, rather than in both the host and the source country.

Including these core standards in the Oceania investment agreement would not inhibit good investments. The Oceania investment agreement would conceivably have a flow-on effect, in establishing best practice standards on labour and environmental issues for Pacific citizens. Having an organisation above the nation–state stipulating core labour and environmental standards could avoid the situation that occurred in relation to the Ok Tedi mine. During the court proceedings, the Papua New Guinea government and BHP lawyers were drafting legislation that would have seen citizens fined 100,000 kina for initiating litigation against BHP anywhere, plus a fine of 10,000 kina per day for continued legal action (Bhakti 1995–96). If someone were successful in their case after these disincentives, the national government would be a debtor to BHP for the amount of the judgment (Moshinsky 1995; Gordon 1995; Kaye and O’Callaghan 1995; Hawes and Stevens 1995). A better investment climate generally, underpinned by the Oceania Community’s regulations on labour and environmental standards, could avoid such situations in the future.

### **Government responsibilities—tackling corporate welfare**

The Oceania investment agreement should also aim to limit corporate welfare.<sup>19</sup> It is better for governments, particularly in developing countries, to spend their money on improving their infrastructure—governance, roads, clean water, sewerage, telecommunications—which benefits investors and locals alike, rather than giving tax breaks to transnational corporations (UNCTAD 2000a; Forum Secretariat 2000c; Price Waterhouse 1999; South Pacific Forum 1999c). Corporate welfare is the ultimate zero sum game if it sets up tax competition between some of the world’s least developed countries.

Corporate welfare is often offered to counter other disincentives to investors—coups, tensions over communal land, and inefficient bureaucracy. A better strategy is to tackle the underlying issues and leave government funds to do greater good elsewhere. Investors themselves have told Forum island country officials that, rather

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than tax holidays, the best forms of corporate welfare are skilled human resources, competitive telecommunication services, a clear legal framework and an efficient bureaucracy (Forum Secretariat 2000c). The Oceania Community should aim to create a uniform incentive, not through poor regulation and tax breaks, but through an environment that welcomes and facilitates investment.

## **Labour**

The final, crucial element of the Oceania trade order is labour mobility—it is this initiative that is most likely to attract Forum island countries to the regional integration project. Labour mobility is not the same as immigration, or allowing those seeking welfare to move to Australia and New Zealand. Rather, it involves an entitlement to look for work in other countries within a common market. The entitlement usually lasts for a set period of time. If people cannot find work, they are expected to return to their country of origin.

The benefits to Forum island countries from access to the Australian and New Zealand labour markets are obvious: skills development, a wider perspective, and better pay leading to higher and more secure remittances back home. Remittances encourage business activity in Forum island countries (Brown and Connell 1993; Brown 1994), as they increase domestic saving and investment in home countries. Some Pacific economies are almost entirely dependent on remittances from their overseas workers for their foreign exchange. In one study, 90 per cent of Tongan households surveyed received remittances, making up 52 per cent of cash incomes (Ahlburg 1996).<sup>20</sup> Thus, labour mobility is a key vehicle for promoting sustainable economic development in Forum island countries. Yet, as will be discussed, access to recruits from the Forum island country labour market may be increasingly vital for Australia and New Zealand in the decades ahead.

### **The case for labour mobility**

The Oceania trade order demands significant Forum island country reform, particularly of communal land tenure. In exchange, a significant trade-off or escape valve is needed. Labour mobility is the big incentive that would make the common market work, as well as consolidating the rest of the Oceania program. Dobell (2003:3) states that 'labour mobility is a cornerstone issue. It would be a vital demonstration of Australia's good intent...in return, we should demand some real reforms from the Islands'.

Forum island countries have long sought access to the Australian labour market. In 1971, Fijian Prime Minister Ratu Mara suggested Australia should establish a guest-worker scheme (Committee to Advise on Australia's Immigration Policies 1988). Forum island countries raised the issue of labour mobility at South Pacific

Forum Labour Ministers' Conferences throughout the 1970s and 1980s. In 1979, the Conference noted its

...appreciation [of] the existing arrangements implemented by some Governments to provide temporary employment for the nationals of other countries as a commitment to the economic development of the region. It now urges [other] countries...to consider establishing such short-term employment schemes, noting that the earnings of workers on these schemes are a very effective form of bilateral aid (Committee to Advise on Australia's Immigration Policies 1988:4).

During the PACER negotiations, the Forum Deputy Secretary-General said that if labour mobility were included in any trade agreement, the Forum island countries would sign up immediately. Papua New Guinea, Fiji, Samoa and Kiribati expressed great interest in labour mobility with Australia and New Zealand. The symbolic importance of such a program cannot be underestimated. Herily states that 'such a scheme would be a highly visible sign that Australia's relationship with the Pacific was changing' (Australian Parliamentary Committee 2003:75); Dobell (2003:18) believes it would 'open up new vistas, give new hope and opportunity'.

In its 2003 report, the Australian Senate Foreign Affairs, Defence and Trade References Committee recognised that labour mobility would be a key part of its proposed Pacific economic and political community. The Committee believed such a scheme 'has the potential to provide meaningful and significant income and assistance to Papua New Guinea and Pacific island countries at the same time as being of benefit to the Australian economy' (Australian Parliamentary Committee 2003:xviii). The Committee also believed such a scheme should include 'adequate mechanisms...for training and the transfer of skills' (Australian Parliamentary Committee 2003:xviii). The Committee's proposal makes a welcome change in the thinking of Australian policymakers; proposals for Pacific labour mobility programs were previously rejected on the grounds that Australia maintained a non-discriminatory migration program (Piper 1990; Australian Parliamentary Committee 2003). This somewhat disingenuous argument mistook temporary labour mobility for permanent migration, did not admit that Australia maintained working holiday programs with some but not all countries, and seemed somewhat naïve when countries around the world were and are embarking on regional integration projects that discriminate against Australia.

Pacific labour mobility is not a new idea. It has been proposed in different forms: in 1984, by the Committee to Review the Australia Aid Programme (Commonwealth of Australia 1984); in 1989, by the Australian Parliament Joint Committee on Foreign Affairs, Defence and Trade (1989); and in the 1997 review of Australia's aid policy. This latter review stated that labour mobility 'may prove' to be more cost-effective

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than continuing high levels of aid in perpetuity. Limited access to Australia...has been argued for as an effective way to assist the very small states whose only export is labour services' (Commonwealth of Australia 1997:166).

A labour mobility program is not that radical an innovation. New Zealand has had full access to the Australian labour market since the 1920s. Because the Cook Islands and Niue are states freely associated with New Zealand (they enjoy New Zealand citizenship), they too already enjoy full access to the Australian labour market and Medicare benefits. Under the Trans-Tasman Travel Arrangements, in the 1999–2000 financial year some 43,018 New Zealanders (and friends from the Cook Islands and Niue) came to Australia for long-term or permanent stays. As at 30 June 1999, not counting temporary visitors like tourists, some 404,800 New Zealand citizens were in Australia, and 226,200 had been in Australia for more than a year.<sup>21</sup>

Australia also grants temporary residence visas to many others who enter the Australian labour market. For example, in 2004–05 some 100,000 people entered Australia on working holiday visas, a program which allows young people from overseas to travel to Australia for a year and work during part of that time (Vanstone 2005). If we assume that each of the 100,000 people in Australia on working holiday visas work at least three months of the 12 months they are in Australia, this would be nearly the same as 25,000 people on Oceania work visas working for the full twelve months.<sup>22</sup> Under the working holiday program, young people from the Netherlands can work and travel around Australia. On diplomatic and economic grounds, Australia will benefit more by offering Forum island countries similar access in exchange for trade liberalisation.

Already, Pacific islanders are vital workers in key sectors of the Australian economy, filling jobs Australians or New Zealanders dislike (Larner 1990; Committee to Advise on Australia's Immigration Policies 1988). Australia is reliant, too, on the willingness of temporary entrants into the Australian labour market to undertake difficult jobs. Research into the working holiday visa program demonstrated that

- most on working holiday visas obtained work easily because of their flexibility
- they are an important source of temporary labour for some Australian industries, including fruit growing, temporary clerical and labour agencies, hotels, shops and restaurants
- because the work offered was temporary or seasonal, many employers had difficulty attracting Australians to fill positions.

A number of business organisations and individuals made submissions to the Senate Committee expressing 'frustration' at their inability to find workers at harvest time, and proposing a Pacific labour mobility scheme to address these shortfalls (Australian Parliamentary Committee 2003).

The Australian Council of Trade Unions has likewise expressed support for Pacific labour mobility, and has begun developing a proposal with the Fiji–Australia Foundation for a trial scheme (Australian Parliamentary Committee 2003). If an Oceania common market were created, unions could help to ensure those on Oceania work visas enjoyed their entitlements, so they would have a pool of ready recruits.

As long as basic minimum entitlements are in place, employers would not favour a Pacific worker over an Australian or New Zealander. The dangers to the Australian or New Zealand workforce would be minimal, because the productivity of Australian and New Zealand workers is likely to be higher. When NAFTA was implemented, there was concern that the United States would lose unskilled jobs to Mexico, but research ultimately showed the average US worker was five times more productive than the average Mexican worker (Federal Reserve Bank of Dallas 1993).

There is a further critical argument that suggests Pacific labour mobility would be in Australia's national interest. By 2020, Pacific labour mobility may be vital for helping to sustain economic growth in Australia. A 2003 report by the Boston Consulting Group found that Australia will face acute shortages in unskilled labour over the next twenty years—by 2020, Australia will be short some 200,000 workers annually (Boston Consulting Group 2003). Access Economics also warns that new sources of labour 'will dry up' over this period, because of low fertility rates, the baby boomer generation retiring and the move to a services economy (Access Economics 2001a, 2001b). Australia needs to start implementing a mechanism that will allow it to address these shortfalls in 2020.

### **The law**

Mode 4 of GATS provides for the temporary entry of professionals. During the Uruguay Round many developing countries unsuccessfully sought to extend this to unskilled labour; and it seems unlikely the situation at the WTO will soon change since Mode 4 was the mode that saw the least amount of commitments by WTO members. Thus, the Oceania labour mobility agreement needs to surpass the Mode 4 provisions if a true common market is to be realised.<sup>23</sup>

The European Union establishes totally free movement for workers, skilled and unskilled. The relevant article states that 'such freedom of movement shall entail the abolition of any discrimination based on nationality between workers of the Member States as regards employment, remuneration and other conditions of work and employment'.<sup>24</sup> This is a useful precedent for labour mobility between a group of developed countries. It is of diminishing utility, perhaps, when it comes to labour mobility between developed and developing countries, particularly when one developed country is likely to be the hub for all the others.

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In this instance, it is Australia that needs 'special and differential treatment'. To give complete effect to non-discriminatory, unlimited free trade in labour would be politically unsustainable for Australia, in the same way that giving complete effect to free trade in investment would be politically unsustainable for Forum island countries. Even the European Union has a period of transition for labour mobility after a new country has joined, to prevent disruption to the existing labour market. The aim here is to produce a workable framework that remains consistent with Australia's national interest. The key issues considered are the size of the intake, the length of the visas, skills development, graduated commitments, safeguards and reciprocity. Some further issues are considered briefly in Appendix 2.

### **Intake**

The Oceania labour market scheme should be large enough to improve the Forum island countries' skills base significantly, to be politically appealing to Forum island country governments, and to facilitate change through the Oceania Community when it comes to issues like communal land. It should not be so large as to excite political tensions in Australia and New Zealand, or to avoid the need for Forum island countries to tackle their own problems of promoting economic development and dealing with unsustainable population growth.

At the conclusion of the 20-year implementation period, Australia should be accepting 20,000 individuals annually from Forum island countries under labour mobility programs. New Zealand could contribute in proportion to its population, so another 2,000–3,000 places may be available in New Zealand (New Zealand has previously had limited labour mobility programs for Fiji, Samoa, Tonga and Tokelau; and the Cook Islands and Niue have ongoing access to the New Zealand labour market through their free association agreements).

Therefore I propose that, by 2025, there will be 40,000 individuals from Forum island countries in Australia in the first or second year of their Oceania work visa. This would not affect Australia much, except in a positive way (considering the pleas by businesses who need seasonal workers), and given Australia's existing openness to New Zealanders and working holiday makers. It would, however, mean a great deal to Forum island countries.

There would be debate about how to allocate these places between Forum island countries. Larger countries like Papua New Guinea and Fiji could reasonably expect to receive a greater proportion, as might least-developed countries, but the figures can be worked out during the course of negotiations by Forum island countries themselves, or the Forum Secretariat, subject to final approval by Australia. If there are environmental refugees from low-lying countries, and such countries become eligible for permanent migration, they need not participate in the Oceania labour



market programs. The Federated States of Micronesia, Palau and the Marshall Islands already have access to the US labour market through their Compact arrangements, but it is reasonable for them also to expect access to the Australian labour market, in return for their liberalising trade in goods, services and investment.

### **Length of visas**

The key goals of the Oceania programs should be that Forum island country participants gain skills and a wider perspective from a period of employment in Australia and New Zealand (remittances would be an important benefit of the program, but they are not the main reason for the program). Two years is an appropriate period to achieve these goals, after which participants would return to their own country. The purpose of the labour mobility program is not for participants to establish long-term careers in Australia and New Zealand. They would not be eligible to apply for extensions.

Temporary visas and labour mobility differ from permanent migration. A two-year limit would avoid the brain drain and depopulation problems experienced by the Cook Islands because of its permanent access to the New Zealand and Australian labour markets (most of the Cook Islands' population now lives in New Zealand—between 1996 and 2001, the resident population in the Cook Islands shrank by 23 per cent) (Dusevic 2001b). Remittances decrease over time, so a regular turnover in labour programs would ensure that a steady supply of overseas money returns to Forum island source countries (Ahlburg 1991).

As with the European system, if individuals show no evidence of looking for work (usually within three months), they would be obliged to leave. If individuals overstay their visas, their country of origin should have their visa quota for the following year reduced accordingly, until the over-stayers leave. One proposal to the Senate Committee suggested that source countries themselves could take responsibility for the return of Pacific workers, through bonds or other conditions (Australian Parliamentary Committee 2003).

### **Program streams—the Business Skills Development Program**

The bulk of the Oceania labour market participants would fall under a general Oceania work visa program. They would be responsible for finding their own work, with assistance from government employment agencies where needed, and would be responsible for their own airfares.

However, the Oceania labour mobility agreement should also include a separate, smaller stream focused more explicitly on skills development. Thus, Australia should initiate a Business Skills Development Program, which would aim to improve the Forum island countries' skills base, and speed development in those countries.

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The Business Skills Development Program would cover only a small percentage of the overall program, some 500 of the 20,000 entering Australia when the labour mobility program is fully implemented, but substantial benefits would be attached to the program. Through the Oceania Community, Australia and New Zealand should pay for those selected to undertake internships over the two-year period of the program. Participants, and their immediate families, would have their airfares covered, and they would receive assistance in finding accommodation.

The Business Skills Development Program would be tailored to plug nominated skills gaps in Forum island countries. So, rather than continually sending consultants out to advise Forum island countries, which leads to frequent complaints of 'boomerang aid' (Australian Parliamentary Committee 2003:97), Forum island country individuals would be invited to Australia to learn the skills they need. Experience at state and federal government departments would help, but participation in the private sector, particularly in tourism, would probably be more important given the failure of many Forum island countries to facilitate a viable private sector. Willie Rasmussen, a Cook Islands High Commissioner to New Zealand, has said Cook Islanders need to be trained to Australian and New Zealand standards: 'Cook Islanders in the tourism industry do not want to be cleaners all the time' (Dusevic 2001b).

It would be for the national government of the relevant Forum island country to suggest program participants, subject to final approval by Australia. However, the principle of non-discrimination should apply—for example, Fiji should not favour indigenous Fijians over Indo-Fijians.

Participants in the Business Skills Development Program would not be eligible to apply for permanent migration to Australia for a period of 10 years after they have returned to their source country. There is no point in them undertaking the program unless they are committed to giving something back to their home country.

As discussed in the previous section, those who embrace communal land reform should have initial access to the labour mobility programs. Therefore, quotas for the Business Skills Development Program and the Oceania work visa would be filled in the first instance from those living in the investment priority zones, where communities have decided to open their land for foreign investment. This would ensure there are significant incentives for reform, and an immediate pay-off for a decision to move forward.

### **Graduated commitments**

The labour mobility agreement would be the most important incentive for encouraging Forum island countries to embrace the Oceania trade order, and its implementation should be tied to the degree to which Forum island countries implement their own

commitments. I welcome Australian Foreign Minister Alexander Downer's expression of willingness to at least consider a working holiday visa for Forum island country citizens (Allard 2003),<sup>25</sup> but there has been no mention of tying this benefit to Forum island country trade liberalisation. A failure to reinforce this link would be a serious strategic error: once given away, access to the Australian labour market cannot be used for future leverage. During the PACER negotiations, Forum island countries took for granted the duty-free access to the Australian and New Zealand markets they had received for 20 years under SPARTECA. But this access is not a natural right, and it should entail reciprocal rights. Likewise, access to the Australian (and New Zealand) labour market should not be given away, and all the benefits of such a program should not be front-loaded. Implementing the labour mobility program over time would reassure Australians and encourage early implementation of the rest of the common market in Forum island countries. Regular reviews should occur to ensure all parties are meeting their obligations.

Table 6.6 provides an example of how Oceania labour mobility could be implemented in Australia. The intake would obviously be subject to negotiation. Notionally, however, at the conclusion of the implementation period, some 40,000 Forum island country workers would be in Australia, in the first or second year of their visa; 1,000 of these would be on the Business Skills Development Program (this compares to the unregulated 40,000-plus New Zealanders currently entering Australia each year under the Trans-Tasman Travel Arrangements). On the above figures, some 9,000 people would have participated in the Business Skills Development Program over 20 years.

In her comments to the Senate Committee, Professor Helen Hughes argued against a labour mobility scheme, fearing 'welfare dependent ghettos of Pacific immigrants in Australian cities' (Australian Parliamentary Committee 2003:74). I do not believe this to be a realistic danger on these numbers and, again, this ignores the distinction between permanent migration and labour mobility as part of a common market: those who cannot find work would be ineligible for welfare and expected to return to their home countries.

According to the Boston Consulting Group's projections, it may be that Australia requires far greater numbers of Forum island country workers to sustain its economy (Boston Consulting Group 2003); so these figures may be re-negotiated at a later time. Alternatively, a biennial program of 40,000 people might exhaust all of the Forum island country individuals interested in the scheme. If the other provisions of the Oceania common market are properly implemented, this would lead to improved economic development. This may largely remove the incentive for coming to Australia and New Zealand to look for work.

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Table 6.6 The Oceania labour mobility agreement—sample Australian intake

	Intake from business skills development program	Intake from Oceania working visa program	Total
1	300	4,700	5,000
2	300	4,700	5,000
3	300	4,700	5,000
4	300	4,700	5,000
5	300	4,700	5,000
Review of Oceania common market			
6	500	5,500	6,000
7	500	5,500	6,000
8	500	7,000	7,500
9	500	7,000	7,500
10	500	9,500	10,000
Review of Oceania common market			
11	500	9,500	10,000
12	500	9,500	10,000
13	500	12,000	12,500
14	500	12,000	12,500
15	500	12,000	15,000
Review of Oceania common market			
16	500	14,500	15,000
17	500	14,500	15,000
18	500	17,000	17,500
19	500	17,000	17,500
20	500	19,500	20,000

### Safeguards

It would be inappropriate for Australia to use safeguard measures against Forum island countries when it comes to trade in goods, services or investment. However, safeguards are appropriate for labour mobility. In times of high unemployment in Australia, there will not be any jobs for Forum island country individuals and they may waste money travelling to Australia for no reason. Thus, there would be provision for the Oceania work visa—as opposed to the Business Skills Development Program—to be suspended if Australia is experiencing a recession; that is, two or more successive quarters of economic contraction.

### Reciprocity

Forum island countries would benefit from reciprocal labour mobility arrangements, and Australian and New Zealand leaders should be able to sell benefits to their own citizens. In Vanuatu, for example, a work permit for an Australian costs A\$5,000. In

Fiji, business visas for Australians are restricted to 14 days, an impediment to the conduct of business (Australian Parliamentary Committee 2003). Forum island countries do not want expatriates taking their jobs, but their approach robs their companies of overseas expertise that would improve their skills base. The World Bank sums up the situation thus

[t]here appears to be a widespread view in the [Forum island countries] that employment of labour from high-income countries is a negative-sum game, with such labour displacing local labour. However studies in the region have shown that expatriate labour and local labour are complementary—employment of skilled expatriate labour leads to increased employment of local labour (World Bank 2002:iii; see also Duncan and Lawson 1997).

In addition, allowing skilled foreign nationals to enter the Forum island countries is an efficient way of training up locals. An overseas manager and chef in the initial phase of a hotel's operations, for example, will quickly build specialised knowledge amongst local workers.

There should be reciprocity, then, in the Oceania labour mobility agreement. As with tariff reductions, Forum island country commitments could be small, and implemented over time—a smaller Forum island country could work up to allowing, say, 50 Australians and New Zealanders access to their labour market without a work permit. Still, it would keep the focus on joint commitments to achieve shared benefits, and would help sell the labour mobility agreement in Australia and New Zealand.

The question of inter-Forum island country labour mobility could be resolved separately. The prospect of individuals in small, more distant Forum island countries travelling to Fiji and Papua New Guinea for work seems unlikely if they can travel to Australia or New Zealand instead. If individuals are going to leave their homes, they will go to where they can earn the best remittances and where there is not already high unemployment. So the impact of inter-Forum island country labour mobility would be small.

## **Implementation**

An important threshold question in developing a common market is the length of the implementation period. Forum island countries would be incapable, both politically and economically, of implementing a comprehensive trade order within a short timeframe—reform must be introduced gradually.

As discussed in Chapter Four, WTO members are bound by the stipulations in GATT Article 24 and the Understanding to GATT Article 24 that a free trade agreement dealing with goods must be implemented within 10 years, unless there are 'exceptional circumstances'. Likewise, under Article 5 of the General Agreement on

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Trade in Services (GATS), a trade agreement dealing with services must be implemented within a 'reasonable timeframe', presumably also 10 years (as discussed, there is currently no dedicated international agreement dealing with trade in investment or labour).

I continue to believe that the 20-year implementation period Australia proposed at the PACER negotiations was appropriate and justifiable to the WTO Committee on Regional Trade Agreements (as discussed earlier, Forum island countries may well have accepted this implementation period had Australia's proposal been more refined and better sold). I also believe, however, that the Oceania common market should largely be implemented by 2020, and fully implemented by 2025. Two of the key factors here are the APEC Bogor goals of free trade and investment in Asia Pacific by 2020, and ASEAN's goal of implementing a comprehensive Southeast Asian common market by 2020. Because the APEC Bogor goals are non-binding, totally free trade will not be realised in the Asia Pacific by 2020, absent several comprehensive WTO rounds. But 2020 provides a useful benchmark, and tariffs in the region are steadily falling. Already, 69 per cent of goods entering APEC countries face tariffs of only 0–5 per cent (APEC 2000). The prospect of the APEC and/or ASEAN scenario being largely realised by 2020 represents a significant competitive challenge for Forum island countries.

If negotiations for an Oceania common market commenced relatively shortly, Forum island countries would have approximately 20 years to implement reform gradually.<sup>26</sup> However, if such an initiative were delayed until 2011 or later, Forum island countries would have less time to restructure to meet the 2025 deadline.

Utilising the PACER–PICTA framework, Australia should propose a major conference as soon as possible, to initiate negotiations for the Oceania common market. I suggest a 20-year implementation period for the Oceania common market, which would allow Forum island countries to restructure their economies gradually until 2025, by which time they would be globally competitive. But the implementation period might be shortened once the benefits become clear to all parties, as the CER partners start reaping the benefits of their agreement and seek to shorten the process (Australian Department of Foreign Affairs and Trade 1996b).

It is incumbent on all Forum members to work together constructively to create a regional common market as soon as possible. Yet this depends on a shared strategic vision, whereby Forum island countries embrace necessary reform, and Australia and New Zealand provide an attractive policy package to encourage and support this process.

## Conclusion

Chapter Four reviewed the PACER–PICTA negotiations, and Australia’s inability to persuade Forum island countries of the merits of its twenty-year plan. This led to a sub-optimal outcome, but it should not end the quest for an Oceania trade order.

European integration was not an inexorable process, with one crowning success following another. Its common market failed at the first attempt, necessitating a new push for a comprehensive common market with the Single European Act of 1986. SPARTECA represents Oceania’s first faltering step towards regional economic integration, in the same way that the initial New Zealand–Australia Free Trade Agreement was a tentative step for Australia and New Zealand before their world-class CER. The PACER–PICTA framework might go either way—it might ultimately fail, or it might become the very model of economic integration between developed and developing countries.

The Oceania common market would involve the following commitments

- free trade in goods, services, investment and labour to create an integrated Oceania economy
- a Business Skills Development Program and an Oceania working visa as features of the agreement on labour mobility
- agreements on e-commerce law and information technology, and an optional protocol on liberalisation in telecommunications, to encourage e-commerce throughout the region
- a framework for resolving communal land issues
- legal requirements for transnational corporations to uphold labour standards, environmental standards and local laws, and agreements on double taxation standards to reduce tax evasion
- more money for health and education as Community members phase out corporate welfare
- a rules of origin threshold of 40 per cent, and Australia’s commitment not to use emergency safeguards measures for goods, services and investment; but provision for labour movement to be suspended after successive quarters of economic contraction in Australia
- ongoing technical assistance to aid in implementation, in areas such as the mutual recognition of standards and qualifications, as well as for improving Forum island country quarantine standards.

Some additional institutional benefits are discussed briefly in Appendix 1.

The Community would give effect to global agreements—the World Trade Organization framework, International Labour Organization core standards, related human rights instruments, and the principles of equitable, sustainable development.

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However, the Community would innovate by providing new templates for investor rights and responsibilities, tackling corporate welfare and implementing labour mobility between developed and developing countries.

The advantages for Australia and New Zealand include increased exports in goods, services and investment; access to the Forum island country labour market as needed; and, more generally, a more strategic use of aid money and improved Pacific security. The advantages for New Zealand specifically include better access to the Australian market for its goods, because of a fall in the rules of origin threshold; and more favourable access for investment, removing a long-term irritant.

The advantages for Forum island countries include increased exports, particularly in services; increased access to the Australia–New Zealand labour market to improve their skills base; increased credibility and more investment; a framework for resolving communal land issues; improved telecommunications and prospects for e-commerce; better regulation of transnational corporations; and improved quarantine standards that enable Forum island countries to sell products to a global market more easily.

Thus, as formulated, the Oceania common market would successfully promote sustainable economic development in the Pacific and alleviate the tensions caused by lack of development. What should be clear is that focusing on trade in goods alone considerably limits the potential benefits of Pacific trade liberalisation; that focusing on liberalisation among sub-groups of the Forum likewise limits the potential benefits, particularly in terms of investment flows, skills transfer and labour mobility between the Forum's richer and poorer members; and that all Forum members have areas where they must do better by their regional partners to achieve an Oceania common market.

This is the strategic plan that the Pacific needs to achieve a comprehensive trade order. Given the region's current challenges to sustainable economic development, it is practical, important and urgent, and vital to the wider Pacific regional order.

Yet further regional initiatives to promote sustainable economic development are possible. The next chapter discusses how a regional approach to monetary policy would provide additional benefits for Forum island countries.



## Notes

- \* Although we reached slightly different conclusions, special thanks to Justine Braithwaite for extensive discussions in relation to her paper, *Regulation of Transnational Corporations: towards a Code of Conduct for Australian Businesses Operating Offshore* (1995).
- <sup>1</sup> See Chapter Two.
  - <sup>2</sup> Hereafter 'CER'. Available at <http://www.austlii.edu.au> [accessed 12 July 2001].
  - <sup>3</sup> The garment industry in Fiji was created through various artificial Australian schemes (namely SPARTECA–TCF and the Import Credit Scheme), not through comparative advantage.
  - <sup>4</sup> GATS divides services into twelve categories. The system largely follows the UN Central Product Classification system. The sectors are business; communication; construction and engineering; distribution; educational; environmental; financial (insurance and banking); health-related and social; tourism and travel-related; recreational, cultural and sporting; transport; and other. These sectors are then divided into a further 155 sub-sectors. For example, the tourism and travel-related services sector breaks down into hotels and restaurants, travel agencies and tour operators, tourist guides, and other. So 'substantial sectoral coverage' for the Oceania common market should involve a broad range of commitments across all these sectors.
  - <sup>5</sup> In terms of the volume of trade, there is no absolutely precise qualitative and quantitative formula for measuring this, largely because there is as yet no agreed way of collecting statistics on trade in services. Obviously, the larger the volume of trade covered, the more useful an agreement will be.
  - <sup>6</sup> I suggested above that a negative list approach is appropriate for the Oceania agreement on trade in goods. However, because of the additional sensitivities surrounding trade in services, a positive list approach to services liberalisation may be more acceptable to Forum island countries.
  - <sup>7</sup> A country can also list horizontal commitments, which are limitations the country applies across all sectors. An example of a horizontal commitment in Mode 3, commercial presence, is that all new investments over A\$10 million have to be approved by the government (which is Australia's policy). An example of a horizontal commitment in Mode 4, the temporary entry of professionals, might be to insist that managers have an MBA from one of a select number of universities to qualify for entry. GATS also allows countries to make most-favoured nation exceptions, but that would not be relevant in the context of the Oceania common market.
  - <sup>8</sup> In 1999, the Forum initiated a meeting of communications ministers to discuss these issues. Ministers adopted the Vision for the Pacific Information Economy which stated that 'investment, job creation and trade within the information economy bring growing and continuous benefits to the region's economy, generating revenue, jobs and economic efficiencies for the whole regional economy' (South Pacific Forum 1999a:10). Communication ministers adopted the goal of 'Information and Communication Technologies for every Pacific Islander' (Pacific Islands Forum 2002c:1). Various Forum Communiqués have also recognised the need for competitive telecommunication markets. In the Forum's 2000 Communiqué, leaders 'recognised the vital role played

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by information technology in promoting improved trade, tourism and education and expressed concern at the prohibitive costs of internet service in the region' (Pacific Islands Forum 2000: para 9).

- <sup>9</sup> Good telecommunications will result in cheaper phone calls and cheaper internet service providers, basic requirements for e-commerce.
- <sup>10</sup> Many countries have given effect to the Model Law's principles, and Australia passed the *Electronic Transactions Act* in 1999. Available at <http://www.austlii.edu.au> [accessed 13 November 2003].
- <sup>11</sup> See Article 9 of GATS, which focuses on the anti-competitive behaviour of service suppliers.
- <sup>12</sup> Australia proposed a more constructive approach to the United Nations' Draft Code, but this was not accepted by other parties (Asher 1992).
- <sup>13</sup> See Chapter 11, 'Investment', of the Australia–United States Free Trade Agreement. Available at [http://www.dfat.gov.au/trade/negotiations/us\\_fta/final-text/chapter\\_11.html](http://www.dfat.gov.au/trade/negotiations/us_fta/final-text/chapter_11.html); see also [http://www.dfat.gov.au/trade/negotiations/us\\_fta/guide/11.html](http://www.dfat.gov.au/trade/negotiations/us_fta/guide/11.html) [accessed 2 June 2004].
- <sup>14</sup> See Article 8 of the Covenant on Economic, Social and Cultural Rights; Article 22 of the Covenant on Civil and Political Rights; International Labour Organization Convention Concerning Freedom of Community and Protection of the Right to Organise (No. 87); and International Labour Organization Convention Concerning the Application of Principles of the Right to Organise and Bargain Collectively (No. 98).
- <sup>15</sup> See Article 8 of the Covenant on Civil and Political Rights; International Labour Organization Convention Concerning Forced or Compulsory Labour (No. 29); International Labour Organization Convention Concerning the Abolition of Forced Labour (No 105).
- <sup>16</sup> See Article 32 of the Convention on the Rights of the Child.
- <sup>17</sup> See Articles 2 and 7 of the Covenant on Economic, Social and Cultural Rights; Articles 2 and 3 of the Covenant on Civil and Political Rights; Article 1 of the Convention on the Elimination of Discrimination Against Women; the Convention on the Elimination of Racial Discrimination; International Labour Organization Convention Concerning Discrimination in Respect of Employment and Occupation (No. 100) and International Labour Organization Convention Concerning Occupational Health and Safety and the Working Environment (No. 111).
- <sup>18</sup> See International Standards Organisation standards 14001, 14010, 14031 and 14041. Available at <http://www.iso.org/iso/en/ISOOnline> [accessed 20 June 2001].
- <sup>19</sup> The global system provides a little lead for a possible framework for the Oceania investment agreement on this issue. The WTO Agreement on Subsidies and Countervailing Measures goes some way in curtailing measures taken to distort the investment market—banning governments from giving subsidies to companies contingent on their export performance, or contingent on their using domestic instead of overseas goods—but not far enough in tackling issues such as tax incentives.
- <sup>20</sup> Downer (2003a) notes that remittances comprise almost 40 per cent of Tonga's GDP.
- <sup>21</sup> I should note that I regard the Trans-Tasman Travel Arrangements as a precedent for their labour mobility provisions alone, not their welfare provisions. Following a 2001 agreement between Australian Prime Minister John Howard and New Zealand Prime

Minister Helen Clark, the Arrangements make reciprocal provisions for the payment of pensions. Prior to this agreement, New Zealanders were eligible in Australia for unemployment benefits as well as pensions; New Zealand would then compensate Australia for part of this cost. Since Forum island countries will not be able to fund welfare for their citizens in Australia and New Zealand, nor to provide Australians and New Zealanders with reciprocal welfare rights, the provision of welfare is a non-issue.

- <sup>22</sup> Working holiday-makers are not allowed to work more than three months in any one job, but, technically, they could have four different jobs and work for the entire twelve months.
- <sup>23</sup> GATS Article 5 gives WTO blessing to labour market integration requirements, so long as citizens of participating parties are exempt from requirements concerning residency and work permits.
- <sup>24</sup> Article 39(2), Consolidated Version of the Treaty Establishing the European Community Available at [http://europa.eu.int/eur-lex/en/treaties/dat/EC\\_consol.html](http://europa.eu.int/eur-lex/en/treaties/dat/EC_consol.html) [accessed 22 October 2001].
- <sup>25</sup> Mr Downer is quoted as considering 'working holiday arrangements or something akin to that'; but 'more work needs to be done to explore what's possible and what isn't possible' (Allard 2003:6).
- <sup>26</sup> Under this proposal, Forum island countries would received forty-four years of duty free access to the Australian and New Zealand markets—from the commencement of SPARTECA in 1981, to 2025, the conclusion of the implementation period—before being asked to reciprocate fully.

# 7

## Monetary cooperation and integration

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The European Union has pursued monetary integration as an important element in its efforts to promote sustainable economic development. A regional monetary policy has been regarded as a vital means of combating inflation, increasing trade and facilitating further economic reform (Yläoutinen 2001). This chapter outlines how the Oceania Community could pursue monetary cooperation, then integration, in a way that would likewise contribute to sustainable economic development.

Monetary policy has been the missing element from the Forum's economic reform agenda. This chapter proposes some practical initial steps to rectify the situation: improving the standard of economic data across the region; initiating meetings of Forum central bank governors, in addition to economic ministers; committing to independent central banks; and adopting a commitment to maintain inflation levels within a common band. Since some Forum members still suffer high inflation, inflation targeting could have great benefits, but would be relatively simple to implement.

The chapter then explores the advantages and disadvantages of a common currency for Oceania, and the question of whether Oceania is an optimal currency area, with proposals for a common Oceania currency. The chapter concludes with a consideration of whether an Oceania Monetary Fund would be a useful addition to the region's institutional architecture.

## **First steps in the Oceania monetary order**

As discussed in Chapter Four, in 1995 the Forum instituted a new annual meeting, the Forum Economic Ministers Meeting (FEMM). According to the Forum Secretariat, the FEMM 'plays a key role in assessing regional economic developments, including progress on economic reform and sustainable economic development' (Forum Secretariat 2000:4). In general, the FEMM is a useful vehicle for diagnosing common problems across Forum island countries and discussing reform options. Yet the Madang Action Plan, and the FEMM's ambit, are limited to trade policy and fiscal policy; monetary policy is not included (Pacific Islands Forum 2000b). Further, the FEMM has displayed a reluctance to pursue binding, regional solutions to the problems identified.

To promote sustainable economic development, Forum members need to commit to developing the Forum's sovereignty on economic issues generally, and to adopting a joint approach to monetary affairs. Four initial steps are crucial.

First, the Forum should adopt regional standards for the reporting of monetary and fiscal statistics. Forum island countries' lack of detailed statistical information is an impediment to national economic policymaking and regional cooperation. The Australian Senate Foreign Affairs, Defence and Trade References Committee identified the collection of a standard set of relevant economic and social statistics as an early priority, given the 'significant problems with estimating the size and nature of the economies in the region' (Australian Parliamentary Committee 2003:xiv).

There have been some efforts in this area already, with leaders in the 2001 Communiqué endorsing 'the priority placed on improvements in regional statistics and further development of a regional capacity to coordinate and enhance technical assistance in this area' (Pacific Islands Forum 2001: para 14). Yet proposals for a regional financial intelligence unit have not progressed (Pacific Islands Forum 2001: para 39), and closer integration demands a much more rigorous, common approach to the collection of economic data.

Second, the Forum should initiate regular, at least annual, meetings of central bank governors to facilitate the exchange of information and experience. This would complement the FEMM, but would ensure the Forum has at least one meeting devoted entirely to the region's monetary affairs.

Third, Forum members should commit to allowing central bank governors to set monetary policy independent of their governments, as occurred as part of the European integration effort (Habvermeier and Ungerer 1992). Independence allows a central bank to set monetary policy free of political considerations, with the ability to ignore demands from the government to print money to fund debt, or instructions

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from a government to lower interest rates dramatically to promote a spurt of economic growth just before an election (Persson and Tabellini 2000; Drazen 2000). When this occurs the result is more likely to be a series of boom–bust cycles rather than steady growth. States with independent central banks are better at promoting economic growth (Burdekin et al. 1992), and central banks with the greatest independence are all located in high-growth countries (Fry 1998).

Fourth, the Forum needs to develop a regional approach to tackling inflation. Most agree that ‘the best contribution monetary policy can make to an economy is to provide stable prices and damp down inflationary expectations’ (Yläoutinen 2001:18). As discussed in Chapter Two, many Forum island countries still suffer from high inflation, so the pursuit of low inflation is an important area for joint Oceania action. Tackling inflation would keep prices stable, allowing better planning and economies for Oceania citizens, and further encouraging investment (Reserve Bank of New Zealand 1998, 1999), all important elements of sustainable economic development.

Thus, the Oceania monetary order should be founded on a joint commitment to monetary stability. The question is how best to implement this policy. In developing the Oceania monetary order, it is useful to take into account the European Union experience.

In the 1970s, Europe began to explore the possibility of a regional system of fixed exchange rates, eventually creating the European Monetary System in 1979 (Habermeier and Ungerer 1992). Under this system, members pegged their currencies to within  $\pm 2.25$  per cent of each other, in an effort to limit currency movements and promote low inflation, a stable environment for trade and investment and, hence, economic development (Habermeier and Ungerer 1992).

The European Monetary System in its original form was, however, largely destroyed by the 1992 currency crisis, which initially ‘seemed to derail...the cause of monetary union in Europe’ (Salvatore 1997:224). German reunification saw the German government embark on a borrowing and spending program to tackle East Germany’s problems. To tackle high inflation and retain investment, the German central bank, the Bundesbank, raised interest rates. Since the rest of the EC countries were tied to Germany’s monetary policy through the European Monetary System, their interest rates went up as well (‘Europe’s monetary future’, *The Economist*, 23 October 1993). England was already experiencing a recession. To keep pushing interest rates up would deepen the recession and ruin the domestic housing market, possibly spelling the end of Margaret Thatcher’s government (Cobham 1995; Salvatore 1997).

England’s dilemma was whether to maintain high interest rates or to withdraw from the European Monetary System and cut interest rates. George Soros and fellow speculators bet that domestic political considerations would prevail, so started

selling down the pound. The Bank of England spent around £20 billion defending the value of the pound on 'Black Wednesday', 16 September 1992 (Cobham 1995). In the end, England and Italy withdrew from the European Monetary System, and Soros earned his reputation as the man who broke the Bank of England. The European Monetary System currency band was subsequently widened to 15 rather than 2.25 per cent, which essentially defeated the point of the pact and occurred too late to be useful ('Europe's Monetary Future', *The Economist*, 23 October 1993).

The experience of the European Monetary System, particularly England's defeat by currency speculators, demonstrates that attempting to ensure monetary stability by fixing exchange rates within a narrow band is no longer feasible in the age of globalisation. Countries can have two out of the three of a fixed exchange rate, control over monetary policy and freedom of movement of investment, but not all three (Salvatore 1997; Frankel 1999). If currency speculators were to attack an Oceania currency band, Oceania members might spend considerable resources defending a band to little or no benefit—funds that could be better spent in other ways to promote sustainable economic development. So there is no point in the Oceania members pursuing monetary cooperation through a currency band.

Rather than pegging exchange rates, countries wanting to pursue regional monetary stability should commit to inflation targeting ('On target?', *The Economist*, 1 September 2001). Inflation targeting, first pioneered by New Zealand, involves a government charging a central bank with achieving an inflation figure within a certain band, for example 0–2 per cent. The government sets the figure, and the central bank chooses the means for achieving it. A Deputy Governor of the Reserve Bank of Australia has said that

...inflation targeting had been a successful model for monetary policy in Australia...[because] it had been associated with lower, less-variable inflation and better and less-variable economic growth. Inflation targeting allowed a lot of short-term flexibility in monetary policy but imposed the appropriate medium-term constraint on inflation (Wood 2004:13).

Thus, if Oceania members signed up to this system, they would be committing to an inflation band rather than a currency band. The benefits from inflation targeting are slightly different from those of currency targeting. Although businesses would not know the exact exchange rate between Oceania members from week to week, they could be assured of operating in a region with a stable monetary policy. Investors could be confident of committing funds to a substantial investment, knowing that inflation would not wipe out their returns.

Even if all Oceania members did not sign up for monetary union, all members should commit to a common inflation target of, say, 0–5 per cent over the medium term (individual members, like Australia and New Zealand, could still establish a

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narrower band for themselves of 0–3 per cent). Nevertheless, inflation targeting would assist in paving the way for, and later reinforcing, a common currency. This is because Oceania members would need to develop a common approach to inflation for monetary union to work.

These measures—improving regional economic data, initiating meetings of central bank governors, committing to central bank independence and inflation targeting—are important steps that the Forum could institute immediately to rectify the gap in the Forum’s reform agenda on monetary policy and to lay the foundations for Oceania monetary order. These measures, however, should represent the starting point of Oceania monetary order, not the end-point. The following sections consider the existing degree of Pacific monetary integration, and the advantages and disadvantages of developing a common Oceania currency.

### **Existing monetary integration**

A common Oceania currency is not that radical a step, as a degree of Pacific monetary integration already exists. As discussed earlier, Kiribati, Tuvalu and Nauru use the Australian dollar, and the Cook Islands and Niue use the New Zealand dollar. If, hypothetically, New Zealand adopted the Australian dollar tomorrow, seven Forum members would be using the Australian dollar.

The Marshall Islands, Palau and the Federated States of Micronesia use the US dollar, and their terms of trade heavily favour the United States. Of the Marshall Islands’ imports, 61 per cent are from the United States, compared to 3 per cent from Australia. Similarly, 44 per cent of the Federated States of Micronesia’s imports come from the United States, compared to 20 per cent from Australia (Australian Department of Foreign Affairs and Trade 2004a). Thus, it does not make much economic or political sense to promote the use of the Australian dollar in those states.

Thus, of the proposed initial Oceania members, the countries of interest in discussing monetary union are Papua New Guinea, Fiji, Vanuatu, Solomon Islands, Samoa and Tonga. Fiji, Vanuatu, Samoa and Tonga currently peg their exchange rates to a basket of their major trading partners’ currencies. Australia features prominently, so there is a degree of integration between the Australian dollar and these countries’ currencies already. Solomon Islands used the Australian dollar until 1978, when ill-advised Australian officials instructed their counterparts that this would not be desirable (Central Bank of Solomon Islands 2002). As a result, the Solomon Islands currency is modelled quite closely on the Australian dollar. In August 2002, Solomon Islands Finance Minister Laurie Chan announced he was discussing dropping the Solomon Islands dollar for the Australian dollar as part of an economic recovery plan (Duncan 2002; ‘Solomons want to use \$A’, *The Age*, 6 August 2002). Papua New Guinea has its own floating currency, but used the Australian dollar until 1975, as did Tonga.



## **Advantages and disadvantages of a common Oceania currency**

The advantages of a common Oceania currency include increased trade, investment and tourism, various gains in efficiency and potentially large savings for Forum island country governments. The disadvantage is that the loss of national control of monetary policy could exacerbate a recession in an individual Forum island country, if that Forum island country 's business cycle is out of sync with others.

### **Advantages**

The advantages of a common Oceania currency suggest it could make an important contribution to sustainable economic development in the Pacific. Rose estimates that a common currency can lead to a trebling of trade between the parties to a monetary union (Rose 1999). It is too early to assess the long-term gains that will be made in Europe as a result of the introduction of the Euro, but, as Rose (1999) suggests, even if his predictions are indicative rather than precise, it still represents a major increase in trade and hence economic growth.<sup>1</sup>

A common Oceania currency would also lead to increased direct investment between the participating countries, through a more efficient allocation of capital and more efficient financial markets (Expert Working Group on European Monetary Union in Yläoutinen 2001; see also Duncan 2002).

Trade and investment would be promoted in part through eliminating the costs of exchange rate volatility.<sup>2</sup> Traders can insure against currency fluctuations, adding to the cost of the transaction. But many Pacific traders, including New Zealanders, cannot or will not arrange this hedging (Grimes et al. 2000). This makes Pacific traders vulnerable to losses from exchange rate fluctuations. These risks would be eliminated by a common currency, ensuring a constant rate of return to traders and investors, not to mention those in Forum island countries receiving remittances.

Developing countries in particular need also to consider the opportunity cost of maintaining separate national currencies. With a common Oceania currency, poorer Oceania members would no longer need to maintain large foreign reserves to ensure their national currency trades at a particular rate. The Reserve Bank of Fiji maintains foreign reserves of F\$800 million (US\$352 million), but would need far less under a common currency, thus freeing up money for other government spending (Economist Intelligence Unit 2000). Further, considerable resources are needed to maintain a national central bank. It takes skilled staff, and a great deal of information, to make accurate determinations in monetary policy. The Reserve Bank of Fiji's operating budget in 2001, for example, was F\$9.2 million, and the bank currently employs 146 staff; the Bank of Papua New Guinea employs 242 staff.<sup>3</sup> Arguably, the expertise tied up in running a Forum island country central bank could be better employed elsewhere in the public or private sector (Duncan 2002).

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A common Oceania currency would also facilitate tourism and business travel, cutting down on exchange rate costs for travellers. A common Oceania currency alone may not lead to a surge in tourism, but it could encourage Australians and New Zealanders to travel throughout Forum island countries. Over time, a common currency, together with the Oceania common market, could lead to the development of regional companies, with Forum island country companies feeling more comfortable about developing cross-border links.<sup>4</sup>

A common currency also acts to limit government deficits. Since governments entering a monetary union lose their individual control over monetary policy, they can no longer direct a national central bank to print out more money to finance government deficits (Duncan 2002). Poor economic governance saw the Central Bank of Solomon Islands continually instructed to print money ('Truth often the first casualty of war', *Canberra Times*, 17 June 2000; Angiki 2001).<sup>5</sup> Likewise, after the first coups, the Reserve Bank of Fiji was, in effect, printing money with no backing (Knapman 1990). A common currency also removes the danger of wild fluctuations in a national currency because of a political crisis (de Brouwer 2000).

A common currency can also stimulate economic reform, as occurred in Europe. As has been argued in the Finnish context, 'responsibility for necessary structural changes and the improvement of the employment situation still remain at the national level. But the [euro] framework has helped to achieve these goals by providing the necessary degree of stability' (Yläoutinen 2001:20; Gros and Thygesen 1992; Copeland 1994).

These various advantages combine to generate clear gains in efficiency; in the European context it was argued that the efficiency gains exceeded any direct costs caused by the changeover to the euro (Yläoutinen 2001). Further, though, a common currency will declare the Pacific's regional identity. Implicit in a common currency is a joint commitment to each country's economic welfare and to a shared regional future. The political assurance this implies may well overcome some of the economic considerations.

## **Disadvantages**

The main disadvantage of a common currency is the loss of national control of monetary policy (Kwan 1998). National governments and/or national central banks can no longer raise and lower interest rates at will. What might be an appropriate interest rate and rate of inflation for one state in the currency union might not suit another, as happened under the European Monetary System in 1992 when German interest rates ran inappropriate for England ('Europe's Monetary Future', *The Economist*, 23 October 1993). A regional approach to monetary policy involves a utilitarian approach to raising and lowering interest rates, but this can strain the few states for which the common interest rate is unsuitable.

If a Forum island country experienced a recession, the normal response would be to lower interest rates, to inject more money into the economy and promote growth. Forum island countries would lose this option on joining the Oceania currency union. This does not matter if most members of the currency union experience a recession at the same time—the Oceania central bank would lower interest rates to promote growth accordingly—but becomes more complicated when an individual country experiences a recession. The central bank would not lower regional interest rates to benefit just one state, because doing so would raise inflation in all members and risk initiating a boom–bust business cycle. Whether or not countries are likely to be experiencing growth or a recession at the same time—that is, the degree to which their business cycles are largely synchronised or not—depends on the degree to which the countries are economically integrated to begin with. But even a high degree of integration could not prevent a devastating cyclone causing a recession in a single Forum island country. This suggests that a common Oceania currency may indeed carry risks for sustainable economic development in individual Forum island countries at particular times in the business cycle.

It is questionable, however, whether small open economies are able to pursue dramatically different economic policies from their neighbours. In reality, the degree of monetary independence enjoyed by small economies is already modest (Yläoutinen 2001).

The loss of control of national monetary policy in turn puts greater pressure on national fiscal policy. Usually a government has two tools at its disposal to fight a recession: it can inject more money into the economy either by lowering interest rates or by increasing government spending. Governments in a currency union have lost the first capacity, and must rely entirely on government spending—a potential problem issue for Forum island countries, which have few resources to begin with. This is a typical difficulty with currency unions, but it does not matter so much in federations like Australia and the United States, where a federal government can transfer funding to disadvantaged regions. It is more of a disadvantage in the European Union, and with the proposed Oceania Community, if there is no central body that can coordinate fiscal transfers.

### **Is Oceania an optimal currency area?**

The success of a monetary union rests on whether the countries forming the union are an ‘optimal currency area’, a theory developed by economist Robert Mundell (1961). According to Mundell and his successors, an optimal currency area will exist when its constituent countries have

- a high degree of trade integration between them

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- complementarity between their economies
- business cycles that are largely synchronised
- mechanisms to deal with asymmetrical economic shocks (Ishiyama 1975; Krugman 1990; Emerson et al. 1992; Wyplosz 1997).

### Trade integration

Prior to monetary union, 70 per cent of European Union members' trade was with one another (Information Program for the European Citizen 1997). Australia is a hub country for much Pacific trade, but the degree of integration is not that high. However, the fact that Oceania members are not doing 70 per cent of their trade with each other is not fatal—it reflects the current level of trade barriers in the Pacific. This would change if the Oceania common market were implemented. European monetary union was a long process, dependent on the completion of a high standard, viable common market in the first instance (Emerson et al. 1992). The degree of trade integration throughout Oceania would improve further into the Oceania Community, as it did in Europe (Information Program for the European Citizen 1997).

In the context of monetary integration, it is particularly important that the Oceania common market promote the free movement of investment funds and the integration of financial services (Pinder 1996; Duisenberg 2001). The Oceania common market would have provisions on foreign direct investment from the outset, though provisions on portfolio investment need not be tackled immediately. However, Oceania members would need to remove capital controls progressively, perhaps starting at the five or ten-year point of the Community, to realise the full benefits of a monetary union (European Union members had to ensure the free movement of all types of investment in the first stage of preparations for the Euro) (Pinder 1996). The Oceania services agreement would encourage integration of financial services, and there is already a high degree of financial integration throughout the Pacific private sector because Australian banks are prominent in all these countries.

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Table 7.1 Economic growth in Australia and New Zealand: real growth in gross domestic product, 1996–2002 (percentage change year on year)

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	1996	1997	1998	1999	2000	2001	2002
Australia	3.5	5.4	5.4	4.4	3.0	2.7	3.3
New Zealand	3.1	-0.7	-0.2	3.9	4.0	2.6	4.4

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Source: Australian Department of Foreign Affairs and Trade, 2004a. *Country Fact Sheets*, Commonwealth of Australia, Canberra.

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### **Complementarity**

The degree of complementarity between economies forming a monetary union is important. Consider two hypothetical countries: financial services are the main export of the first country; coconuts the main export of the second. Coming up with a common monetary policy for these two countries would be difficult, because the factors affecting growth and contraction of trade in financial services, and the growth and contraction of trade in coconuts are likely to be quite different. The problem in Oceania is that the proposed initial membership consists of two highly developed, sophisticated economies and some of the least developed economies in the world.

There is also a lack of diversification within Forum island countries. A diversified national economy can better withstand asymmetrical shocks, or unusual impacts, on its economy. If a Forum island country produces only one commodity and a cyclone destroys most of the crop, the economy will suffer more than one that lost a similar crop but also had, for example, a tuna-exporting business, hotels, a financial services centre and a garment industry. Diversification is important because those joining a common currency lose monetary policy as an instrument for dealing with these asymmetrical shocks. Therefore the built-in ability of a national economy to bounce back becomes more important. Currently most Forum island countries have narrow economic bases dependent on a few commodities. Properly implemented, though, the Oceania common market would facilitate greater diversification in Forum island economies, particularly in the services sector, leading to more sophisticated economies generally. This would in turn facilitate a more viable monetary union.

### **Business cycles**

It is also helpful if the business cycles of the proposed members of the currency area are largely synchronised. A common monetary policy is more effective if countries experience periods of growth and contraction at roughly the same time. A common monetary policy can be dysfunctional if monetary policy is tightened when one or more members of the currency area are already experiencing a recession. If we consider the business cycles of Australia and New Zealand, we can see a high degree of convergence, except for 1997 when different responses to the Asian financial crisis led to a marked contrast.

Longer-term studies show that the Australian and New Zealand cycles are synchronised 80 per cent of the time—a high degree by world standards (Hartcher 2000b; Grimes et al. 2000). However, there are greater periods of divergence in Forum island countries' business cycles (see Table 2.3).

The divergences can largely be explained by the fact that Forum island economies are more susceptible to asymmetrical shocks, some due to cyclones, some to political instability. Fiji's economy contracted by 2.8 per cent in 2000 following the

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country's third coup, and the Solomon Islands economy contracted by 14 per cent following the coup there (Asian Development Bank 2002). The Oceania Community, if successful in promoting the five goals of integration, would minimise political instability. However, if political instability occurred, a common currency would mean that Forum island countries would not have to spend foreign reserves to maintain a stable national currency in the wake of a crisis. A common currency would eliminate the effect of political disasters on the exchange rate (de Brouwer 2000).

### **Mechanisms to deal with asymmetrical economic shocks**

Finally, Community mechanisms for dealing with an asymmetrical shock are vital. If a country has given up the possibility of using its monetary policy to fight a recession, other tools are needed: labour mobility and fiscal transfers (de Brouwer 2000). If one member is experiencing a recession, it is important that people in that low growth area can find employment in a high growth area. There is already a high degree of labour mobility between Australia and New Zealand. The Oceania labour mobility agreement would ensure a degree of labour mobility throughout the rest of Oceania as well.<sup>6</sup>

The handling of fiscal transfers is more difficult. Europe, for example, has been largely unsuccessful in coming up with a system of fiscal transfers, because almost 50 per cent of the European Union's budget is instead spent on agricultural subsidies (European Commission 2000). European Union Commissioner Romani Prodi has predicted that European monetary union among such diverse countries means that 'some day there will be a crisis and new economic-policy instruments will be created' ('Europe's big idea', *The Economist*, 5 January 2002).

### **Politics and economics**

These are the important economic considerations, and, taken together, can build up a useful picture as to whether a potential currency area is viable or not. There is no perfect currency area. Some economists argued that the European Union was not an optimal currency area prior to monetary union, but the further economic integration that would occur as a result of union might make it an optimal currency area afterwards (Frankel and Rose 1998). De Grauwe argues that 'not a single monetary union in the past came about because of recognition of economic benefits of the union. In all cases it was drive by political objectives' (de Grauwe 1993:653, 661).

Monetary union comes down to politics as much as economics. Many national economies would fail the test of whether or not they are optimal currency areas. Economists figure that the United States is made up of three or more optimal currency areas, but no one suggests abandoning the US dollar (Salvatore 1997). Likewise, Tasmania might be better off with a different currency from Queensland, and the

North Island of New Zealand might be better off with a different currency from the South, but no one proposes smaller currency areas in these instances either.

The most comprehensive study about monetary union between Australia and New Zealand, *An ANZAC Dollar?*, concluded that the static economic arguments are fairly evenly balanced: the authors found those arguing for or against union could find figures to support either case (Grimes et al. 2000). Nevertheless the authors favoured a common currency because of the potential dynamic benefits and its implicit commitment to a shared future as an economic entity. Further, the dynamic economic benefits might be considerable in terms of increased trade and investment.

A constituency in Australia and New Zealand—mostly in business circles—continues to be interested in a common currency. Monetary union between Australia and New Zealand occasionally makes it out of business and academic circles to feature on the political agenda. In 2000, the issue appeared briefly to be building up some momentum. Helen Clark said that New Zealand was ‘not on the radar screens of big institutions and investors’, so it might be time to consider a common currency with Australia (Dore and Henderson 2000). This followed the release of *An ANZAC Dollar?*, which found 80 per cent of New Zealand businesses favour monetary union with Australia. Service sector firms, the region’s future, were most strongly in favour (Grimes et al 2000).

The discussion ran in newspapers for 10 days until Australian Treasurer Peter Costello stated that any country was welcome to discuss the adoption of the Australian dollar, but Australia was ‘not interested in any new currency, any third currency’ (‘Costello: No new money’, *The Australian Financial Review*, 14 September 2000). Ms Clark responded that New Zealand was not interested in giving up its currency without a new currency and a joint central bank in return (Henderson and Dore 2000). But this may be an ambit claim rather than a veto. Ms Clark had previously been adamantly opposed to any form of currency union (Dore and Henderson 2000). Times change.

In terms of a wider union, during his tenure as Australian Foreign Minister, Gareth Evans requested a study of the pros and cons of a Forum island country common currency, but not an Australasian-Forum island country currency union. Thus, the Australian Senate Foreign Affairs, Defence and Trade References Committee’s 2003 report marks the first political exploration of Pacific monetary integration. The Committee recommended that the Australian government should not discourage those Forum island countries who wished to adopt the Australian dollar (a small step, perhaps, but a progression from the situation mentioned above, when Solomon Islands was discouraged from continuing with the Australian dollar) (Australian Parliamentary Committee 2003).

The issue we return to, then, is whether the proposed currency is viable and will contribute to sustainable economic development. The rest is a matter of political

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will. I believe the economic arguments for monetary union amongst many, though not all, of the Oceania members are favourable, or at least evenly balanced. Beyond the economic considerations, though, a common currency would send an important signal to the region itself, and the rest of the world, about how the Pacific views its shared future. If the will can be found for the Oceania Community generally, it can be found for a common currency. The question is how to do it.

### **A common Oceania currency**

In the first phase of the Oceania Community, it is not in Australia's interest to adopt a new common currency. Even if Oceania currently accounts for 8 per cent of Australia's exports, that still leaves 92 per cent of Australia's exports going elsewhere. The benefits of a new common currency would only flow to Australia if the level of Australian exports going to the common currency area were much higher. For example, if, further down the track, Japan joined the Oceania Community, some 30 per cent of Australia's exports would be covered by the Oceania Community, and it might make economic sense at that point to start the debate about a new currency.

Promoting a new currency in Australia would require an investment of political capital comparable to that required to introduce the goods and services tax (GST). Where the economic benefits from a proposal are marginal, it becomes an obvious area for partisan point-scoring. Since the economic benefits for Australia from a new common currency in the first phase of the Oceania Community are marginal, this political capital may be better directed elsewhere—for instance, toward promoting an Oceania labour mobility agreement.

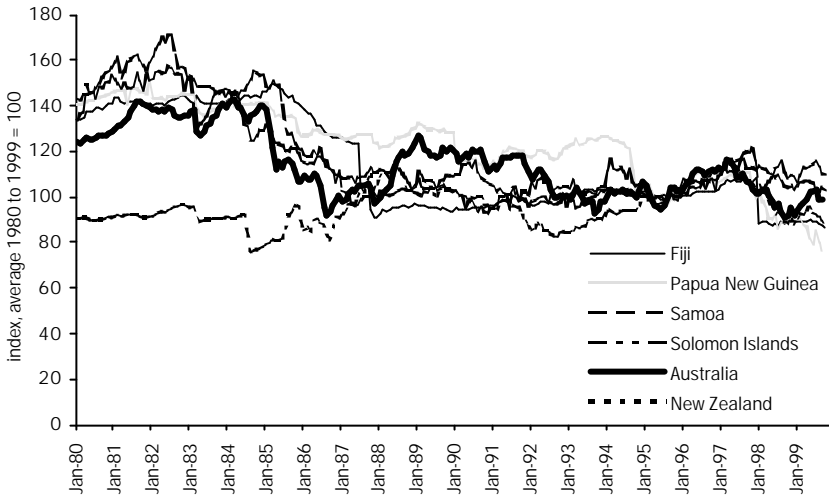
It is in the region's interest to use the Australian dollar as the Oceania common currency, and to begin establishing the conditions for wider union. Thus, Australia should promote Australian dollarisation in the first phase of the Oceania Community. Pursuing monetary integration through the use of the Australian dollar, rather than the creation of a new currency, would avoid the delays and long negotiations over convergence criteria and post-integration stability that characterised European monetary integration (thirty-three years elapsed from the time of the first substantive discussions about monetary union to the appearance of the euro notes and coins) (Apel 1988).

There are many advantages to the region from Australian dollarisation. Since 1993, Australia's low inflation regime has been a key component of a long period of economic growth. Consider its inflation record between 1996 and 2002 (Table 7.2)

Following New Zealand's lead, Australia has adopted inflation targeting, with the target set at 2–3 per cent. However, Australia has used a smoother method to achieve its target than has New Zealand. The Reserve Bank of Australia has to



Figure 7.1 Real effective exchange rates, 1980–99



Source: Gordon de Brouwer, 2000. 'Should Pacific island nations adopt the Australian dollar?', *Pacific Economic Bulletin*, 15(2):161.

achieve the target over the course of the economic cycle (Reserve Bank of Australia 1996), in effect, over the medium term. This gives the Reserve Bank of Australia more flexibility in achieving the target—it need not suddenly raise interest rates if inflation looks like going over 3 per cent; instead, it can tighten monetary supply gradually (de Brouwer 2000). Until recently, the New Zealand Reserve Bank had to achieve its inflation target of 1–2 per cent annually, meaning it had to raise rates more quickly to meet its target within the time frame. New Zealand's system, combined with its use of a 'monetary condition index' to set policy (which Australia

Table 7.2 Australian inflation rate, 1996–2002 (percentage change year on year)

	1996	1997	1998	1999	2000	2001	2002
Australia	0.3	0.9	0.9	1.5	4.5	4.4	3.0

Source: Australian Department of Foreign Affairs and Trade, 2004a. *Country Fact Sheets*, Commonwealth of Australia, Canberra.

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did not use) sent the New Zealand economy into recession following the Asian financial crisis, whilst the Australian economy continued to grow ('G'day Goldilocks', *The Economist*, 6 March 1999:78). New Zealand's interest rates at the time were 10 per cent, whilst Australia's remained below 5 per cent. New Zealand has now abandoned the monetary condition index and annual inflation targeting, and now has practically the same system as Australia, with the New Zealand Reserve Bank aiming for inflation of 0–3 per cent over the medium term ('From Brash to Bollard', *The Economist*, 31 August 1999:21).

Australia's central bank is independent of the government of the day, to the extent that the government sets the inflation target and it is then for the bank to decide how to achieve it. Thus, Australia offers the region a stable monetary policy, given the importance of central bank independence discussed above. Duncan believes that one of the key benefits of Australian dollarisation in the Pacific would be central bank independence; a related benefit would be lower interest rates in the Pacific (Duncan 2002).

Australian and Forum island country currencies track each other relatively closely. The following figure shows movements in the real exchange rate between Australia and five other Forum members from 1980 to 1999 (de Brouwer 2000).

Although the currencies of the proposed partners do not track each other exactly, the degree of convergence increases over the period.<sup>7</sup> There would be no point in more Forum island countries adopting the US dollar, for example, given Forum island countries' reliance on commodity exports. The US dollar is not a commodity currency, and the peso–US dollar link in Argentina, for example, caused considerable difficulty, because it has made Argentina's commodity exports uncompetitive and ultimately caused considerable economic and social turmoil ('Argentina: flirting with anarchy', 'Between the creditors and the streets' and 'No good options', *The Economist*, 5 January 2002; Duncan 2002). Notwithstanding the importance of the services sector in the Australian economy, international currency traders largely regard the Australian dollar as a commodity currency. Thus, the Australian dollar is largely compatible with Forum island countries' interest in a competitive commodity currency (Duncan 2002; de Brouwer 2000). The Australian dollar may be of lower value than the US dollar, but this makes Australian exporters more competitive, as it would also assist Forum island country exporters. Further, as a floating currency, the Australian dollar would respond to commodity shocks effectively.

Use of the Australian dollar would also facilitate the flow of tourists and remittances around the region, two goals of the Oceania common market. Forum island country individuals working in Australia and sending remittances home would know that the value of their money would hold constant. Use of the Australian dollar would also recognise the reality that much of the trade in the region is denominated

in Australian dollars already (importers are billed in Australian dollars rather than the local currency).

Thus, Australian Treasurer Peter Costello was correct in his approach when he suggested that Australia should promote Australian dollarisation rather than a new currency. He was incorrect, though, when he said that Australia should not contemplate any changes at all to its monetary arrangements. Australia can take certain steps to encourage other countries to use the Australian dollar, all of which are consistent with the national interest.

First, there is the issue of representation on the Reserve Bank of Australia board. The board has six representatives, in addition to the Governor, Deputy Governor and Secretary to the Treasury. To promote the use of the Australian dollar as the Oceania currency, it would be appropriate to increase the number of representatives from six to ten. Seven representatives should be drawn from Australia, one from New Zealand, one from Papua New Guinea, with the final representative rotating around other Forum island countries (representation would only be drawn from those countries that adopted the Australian dollar). Clearly Australian representatives would form the majority of the board, but the proposed break-down is roughly in proportion to population and still gives other Community members a voice in Australian monetary policymaking. The Reserve Bank of Australia's Governor or Deputy Governor should be made available for parliamentary appearances in Forum island countries. Forum island country representatives already undertake secondments at the Reserve Bank of Australia; it would also be useful to appoint staff from other Oceania countries on a permanent basis.

Seigniorage is the income that the Australian government earns from the use of its currency. The currency is worth more than it costs to print, so the owner of the printing machine generates revenue (Hausmann 1999). If more countries use the Australian dollar, Australia would start making more seigniorage. One appeal of the euro, as opposed to just adopting the deutschmark, was that a common central bank would share seigniorage. To promote wider use of its currency, Australia could return the seigniorage it makes from other Community members using its currency (minus costs) (Duncan 2002). Countries could use the Australian dollar at its cost price. Given the many other advantages Australia would enjoy from promoting the use of its currency—better economic performance among Forum island countries, more trade, and so on—sharing the seigniorage profits would remove an obstacle on the voyage to monetary order. The US Senate is considering proposals for the United States to return seigniorage profits to South American states that pursue US dollarisation (McLeod 2000; Hausmann 1999).

It would also be appropriate to make some changes to Australian notes and coins. Australia could have a map of the Pacific on the back of its coins, instead of

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the English monarch. The European Union chose bridges as the motif for its notes; a linking theme for Oceania could be beaches and the sea. An Australian note—preferably a lower denomination note used frequently by Pacific islanders—could become the ‘Oceania note’ with a beach on one side and prominent islanders on the other side.

The issue of fiscal transfers in the event of a recession in one Forum island country is more difficult. One test of monetary union is whether compensatory fiscal mechanisms make up for the loss of national control of monetary policy. The Oceania Community would not be a form of the fiscal federalism that exists between the Australian federal and state governments. Australia already makes substantial fiscal transfers to Forum island countries through its aid program (de Brouwer 2000), but for those adopting the Australian currency, Australia should establish two ‘fiscal transfer’ trust funds to assist Oceania members suffering significant shocks to their economy. A ‘natural disaster fund’ could help when a cyclone, for example, sends an economy into recession. The Forum already has a Regional Natural Disaster Relief Fund, which provides members with immediate assistance up to a maximum F\$20,000 following natural disasters. This existing fund could be enlarged, so that more generous payments are possible, better reflecting the impact of a disaster on a member’s fiscal position. Thus, the Oceania monetary order could modify the ill effects of natural disasters.

A second fund could help those countries that have followed sound economic policies, but experience some other sort of shock that sends their economy into recession. Australia could provide A\$65 million each to establish the two funds. Other Oceania members and aid donors could also contribute, so the funds may total around A\$100 million each. Invested wisely, the two funds could eventually provide substantial fiscal transfers to Forum countries that suffer disasters.

The Oceania Community should be put in charge of the two funds. Thus, all members would be collectively responsible for how the funds are disbursed, as occurs already with the Regional Natural Disaster Relief Fund. Contributing states would have a say in how the funds are disbursed, but no state should enjoy a veto over the disbursement of funds.

## **Supervision**

If the Reserve Bank of Australia were to assume responsibility for regional monetary policy, there may be calls for it also to assume responsibility for supervising the Oceania financial system and to become the lender of last resort for Forum island countries.<sup>8</sup> For the foreseeable future, however, Forum island countries should maintain their own national regulatory regimes. Over time, as trust and confidence build in the other institutions of Oceania, Forum island countries may see the merits

of regional regulation, but it is not an early priority. Forum island countries themselves need to display greater responsibility for tidying up their financial systems, as the willingness of many Forum island countries to tolerate money laundering, and the 1997 collapse of the National Bank of Fiji, indicate (Chand 1998b; OECD 1998).<sup>9</sup>

There is no absolute rule that a central bank should be responsible for financial system regulation as well as monetary policy. Central banks following the English model combine the two roles; those following the German model usually separate them, as does the European Central Bank (Haubrich 1996). Taking on the regulatory function might involve an assumption that the Reserve Bank should bail out a Forum island country in a financial crisis. This would involve the Reserve Bank injecting liquidity when a banking crisis threatened a country's financial stability. The national government would then have to repay whatever money the Reserve Bank committed to ensure financial stability.

There are two problems with the Reserve Bank assuming such a role. First, the image of the Reserve Bank pursuing sovereign debt from a Forum island government makes for some unfortunate presentational issues. It would be hard, too, convincing Australian taxpayers that their tax dollars are best spent bailing out poorly regulated Forum island country banks.

Second, it encourages 'moral hazard'—individuals, businesses or governments may behave recklessly when they know they will be bailed out (Sharma 2000). Forum island country banks may back more risky loans if their risk were so minimised. It also lessens the impetus for Forum island country governments to tidy up their banking sectors. Further, the Reserve Bank's bail-out role is not spelled out in detail anywhere in the relevant Australian legislation. This is designed to limit the moral hazard problem: because the Reserve Bank is not obliged to act in any particular circumstances unless there is a threat to general financial stability, a bank cannot rely on a bail-out. If the Reserve Bank performed this role on a regional basis, however, the relevant considerations would need to be spelt out in detail, so all countries would know what protection their financial systems enjoyed. The downside of this certainty of Reserve Bank action in particular circumstances would be a greater risk of moral hazard.

Thus, the Reserve Bank of Australia should adopt a no bail-out rule, as the European Central Bank has done.

### **An Oceania Monetary Fund**

If the Reserve Bank of Australia does not take on the supervisory role and bail-out function, there may be some debate about whether an Oceania Monetary Fund should be created to perform these tasks. The idea of regional monetary funds, to

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complement or replace the International Monetary Fund, gained momentum following the Asian financial crisis.

The International Monetary Fund currently performs the role of international lender of last resort (Sharma 2000). A regional monetary fund thus becomes the lender of second-last resort. This may encourage moral hazard, because banks and governments know they have the chance to be bailed out not just once, but twice ('Converging Hopes', *The Economist*, 13 February 1999).

The International Monetary Fund is an imperfect institution (Li Lin and Rajan 2001; Sharma 2000). But the answer is to reform the global system, not set up competing regional monetary funds. Instead of establishing an Oceania Monetary Fund, the Oceania Community could add value to the global system by promoting information sharing and peer reviews of financial system stability. Under Article 4 of its mandate, the International Monetary Fund conducts annual reviews of its members' economic, financial and banking performance (International Monetary Fund 1992: Article 4). Oceania Community reviews of its members may produce more feasible recommendations for reform through a better appreciation of local conditions (Herman 1999).

## **Conclusion**

Forum members are yet to explore the potential of a common regional approach to monetary policy. This denies them an important vehicle for promoting sustainable economic development. Along with trade policy and fiscal policy, the region must include monetary policy as an essential part of the FEMM reform process. The current situation could be rectified through such practical measures as improving the availability and standard of economic data, instituting meetings of central bank governors, committing to independent central banks, and adopting a regional approach to tackling inflation. Inflation targeting would contribute to sustainable economic development by stabilising prices, steadying the national business cycle, and promoting a sustained, even rate of economic growth. Thus, a regional approach to inflation should be a key feature of the Oceania monetary order.

Sustainable economic development would also be facilitated by a common currency among those countries that enjoy a high level of integration with Australia, and judge their business cycles to be sufficiently synchronised to justify a common monetary policy. Australia should promote the use of Australian dollarisation, and provide the necessary funds and expertise to ensure a smooth transition for Oceania members that adopt it. However, as Argentina's experience demonstrates, inappropriate currency arrangements can produce disorder ('Argentina: flirting with

anarchy', 'Between the creditors and the streets' and 'No good options', *The Economist*, 5 January 2002). For some members (say, the Marshall Islands, Palau and the Federated States of Micronesia), adopting the Australian dollar may cause economic turmoil. In other members, there may be a risk of political turmoil through the loss of a symbol of national identity (de Brouwer 2000). Obviously, monetary integration would not contribute to sustainable economic development in these cases.

So it is appropriate for Australia to promote Australian dollarisation, but not to insist on it. As in Europe, where England and Denmark elected not to pursue monetary integration at the outset, monetary union should be an optional protocol to the Oceania single undertaking treaty. Some countries may elect to take this step from the outset of the Oceania Community. For others, it may be more appropriate at the fifteen to twenty-year mark. By this stage, the degree of integration between members would be much higher. Australian dollarisation might be a non-issue by then. Members may even be debating the merits of a new common currency among a bigger Oceania grouping. Meanwhile, Australia's efforts would have prepared the way for the promise of the wider regional order.

A common market, complemented by a regional approach to monetary policy, is the most important step a regional community can take to promote sustainable economic development. Yet sustainable economic development also depends on a benign security environment, and the next chapter proposes a new security architecture for the Pacific to prevent and manage security issues better.

## Notes

- <sup>1</sup> The large benefits shown by Rose seem to highlight the importance of establishing an economic union in addition to a monetary union, as much of his research was based on economic and monetary unions, rather than monetary unions alone. For example, part of his analysis was based on the Australian dollar union of Australia, Christmas Island, Norfolk Island, the Cocos Islands, Kiribati, Nauru and Tuvalu.
- <sup>2</sup> For example, a Fijian exporter might make a deal with a Samoan importer to import a particular product; the contract is in Fijian dollars. If the Fijian dollar drops relative to the Samoan tala, the Samoan importer makes a profit on the transaction and the Fijian exporter misses out. If the Fijian dollar rises relative to the Samoan tala, the Samoan importer must find more tala to convert into Fijian dollars to fulfil the contract.
- <sup>3</sup> Email from Public Relations Officer, Reserve Bank of Fiji, 1 July 2002.
- <sup>4</sup> Such developments would be consistent with the Caribbean experience (Fairbairn and Worrell 1996).
- <sup>5</sup> Duncan (2002:145) notes that the Solomon Islands central bank 'has fought tooth and nail against various administrations over the past decade or so to maintain its independence and prevent the government from profligate deficit financing'.

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- <sup>6</sup> Because of differences in language and culture, Europe was judged to have low labour mobility before monetary union, even where the entitlement existed. But countries participating in the first phase of the Oceania Community have English in common, thus overcoming this first hurdle, and those entering the developed country labour markets would have a strong desire to succeed.
- <sup>7</sup> De Brouwer (2000:164) notes that the differences can be explained in part by 'large idiosyncratic shocks, often political in particular countries'.
- <sup>8</sup> Although the Australian Prudential Regulation Authority has direct supervision of the banks, the Reserve Bank of Australia is responsible for the overall stability of the Australian financial system.
- <sup>9</sup> The OECD and the G7's Financial Action Task Force expressed concerns about Nauru, Vanuatu, Samoa, the Cook Islands, the Marshall Islands, Tonga and Niue (Cornell 2000; Randall 1999).



# 8

# Security

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Since security is such a wide-ranging topic, this chapter is delimited in three respects. First, I do not dwell on issues where work is already taking place. Second, I do not consider every single security issue in the Pacific; rather, my focus is on measures where the need can be reasonably anticipated, and that it is appropriate to include in the Oceania security agreement as part of the single-undertaking treaty. For example, a high-impact peace enforcement action, should it be required, is most likely to be handled through UN mechanisms. It is therefore unnecessary (and, arguably, inappropriate) for the Oceania Community to assume responsibility for such actions. Third, the focus is on internal disputes, in the belief that these represent the most likely challenges to Pacific security;<sup>1</sup> but there is a brief consideration of external threats and mutual defence at the conclusion of the chapter.

## **The Forum and security**

As discussed in Chapter Four, the Forum's approach to security issues has evolved gradually, culminating in the Aitutaki Declaration of 1997 and the Biketawa Declaration of 2000.

The Aitutaki Declaration anticipated the development of various preventive diplomacy initiatives, utilising the Forum Secretary-General's good offices, the Forum Regional Security Committee, eminent persons, fact-finding missions and third-party mediation (South Pacific Forum 1997b: para 11).<sup>2</sup> Under the Biketawa Declaration,

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the Forum Secretary-General may consult with Forum Foreign Ministers in the event of a security crisis, who in turn may

- make a statement
- create a Ministerial Action Group
- establish a fact-finding or similar mission
- convene an Eminent Persons Group
- institute third-party mediation
- support institutions or mechanisms that would assist a resolution
- convene a special meeting of the Forum Regional Security Committee, or of Forum Ministers
- if the crisis persists, convene a special meeting of Forum Leaders to consider other options (Pacific Islands Forum 2000a: para 2).

Using the authority of the Biketawa Declaration, the Forum deployed its first Election Observer Mission to the 2001 Solomon Islands elections (Pacific Islands Forum 2002b: para 15); deployed an Eminent Persons Group to the Solomon Islands in 2002 to consider areas of Forum assistance (Pacific Islands Forum 2002a: para 15); and, in 2003, deployed a regional intervention force to the Solomon Islands.

These are encouraging developments, but the Forum remains limited in terms of its standing mechanisms.<sup>3</sup> For a long time the Solomon Islands government, encouraged by Australia, looked to the Commonwealth, rather than the United Nations or the Forum, for assistance to prevent the spread of conflict. This is an indictment of the Forum: it currently lacks a permanent institution, with dedicated staff, devoted to preventing or ameliorating conflict. This is crucial, because early detection and prevention is the most humane, least complex and inexpensive method for managing conflict (Evans 1996:61).<sup>4</sup> As will be discussed below, this is particularly pertinent when considering the development of conflict in the Solomon Islands.

In response to the terrorist attacks of 11 September 2001, Forum Leaders passed the Nasonini Declaration on Regional Security in 2002. In it, Leaders expressed their concern about international terrorism and underlined their commitment to global efforts to combat terrorism (Pacific Islands Forum 2002b: paras 3, 4). The focus of the Declaration, however, was on national initiatives—chiefly the implementation of particular national legislation suggested by the Honiara Declaration in 1992—rather than on the creation of regional mechanisms (Pacific Islands Forum 2002b: paras 7, 8). The Honiara Declaration itself identifies areas of ‘possible’ cooperation—in intelligence gathering, training and joint exercises for dealing with serious incidents—but there has been little progress (South Pacific Forum 1992). This represents a missed opportunity, particularly for Australia, whose citizens, among Forum members, are the most likely target of a terrorist attack (as was demonstrated by the two Bali bombings).

It must be acknowledged, though, that the Forum is already working on three important security issues: the flow of small arms into the region,<sup>5</sup> money laundering,<sup>6</sup> and improving police training to address the Pacific's law enforcement issues.<sup>7</sup> My interest here is to address the need for new mechanisms to promote the goal of security generally, but particularly to prevent and ameliorate the loss of life from armed conflict.

To demonstrate why this is so vital, and the potential benefits of a Pacific security order, I next consider how the region handled, or failed to handle, its two greatest security challenges in recent years, in Bougainville and Solomon Islands.

## **Bougainville**

In an attempt to arrest the vicious cycle of violence in Bougainville (outlined in Chapter Two), a peace conference was planned for October 1994 in Arawa. The conference was a failure—the Bougainville Revolutionary Army (BRA) and Resistance leadership feared a trap, and did not show up—but there was one historic development: Australia, New Zealand, Fiji, Vanuatu and Tonga came together to provide the South Pacific's first peacekeeping force, which consisted of 400 personnel (Regan 1998; McCarthy 1995). The contributing countries notified the UN Secretary-General of their initiative (Allen 1995).

Ensuing attempts at peace allowed a moderate BRA /Resistance leadership to emerge which, though supporting independence, believed ordinary people were suffering too much because of the fighting and that a peaceful accommodation had to be reached (Regan 2002, 1997, 1998). In a final effort to end the conflict by force, however, Papua New Guinea Prime Minister Julius Chan engaged the mercenaries, Sandline International, ultimately bringing down his own government and almost precipitating a military coup (Australian Parliament Joint Standing Committee 1999; Dorney 2000; O'Callaghan 1999; Dinnen 1999; Fry 1999). A consensus was emerging among many of the parties to the conflict that force alone could not solve the problem (Regan 1997; Fry 1999).

The Burnham Agreement of 1997 and the Lincoln Agreement of 1998 established a permanent ceasefire, and a framework for Bougainville and the national government to resolve the outstanding issues of independence, autonomy and weapons disposal.

The agreements also established the Truce Monitoring Group and its successor, the Peace Monitoring Group. The Truce Monitoring Group and the Peace Monitoring Group were to be unarmed, neutral peace monitoring forces, drawn from Australia, New Zealand, Fiji and Vanuatu, made up largely of military personnel, but with some police and civilian monitors. Their main goals were to give the Bougainville factions the political space to conclude an agreement between themselves and the national

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government, and to restore confidence at the grass-roots level (Regan 1999). It was believed a supranational monitoring group would keep all parties to the agreement honest (Australian Parliament Joint Standing Committee 1999).

Because of the suspicion with which many Bougainvilleans regarded Australia, New Zealand took the lead with the Truce Monitoring Group and many of the early peace initiatives. The Truce Monitoring Group consisted of 120 New Zealanders, 90–110 Australians and 20 Fijians and ni-Vanuatu (Australian Parliament Joint Standing Committee 1999). Under the Burnham Agreement, the Truce Monitoring Group's mandate was to

- monitor and report on compliance with the truce
- instil confidence in the peace process through its presence, good offices and interaction with the local community
- provide information on the truce and peace process.<sup>8</sup>

The Truce Monitoring Group was replaced five months later by the Peace Monitoring Group, established under the Lincoln Agreement. Its mandate was similar to the Burnham Agreement, but allowed the Peace Monitoring Group to provide further measures to assist with a democratic resolution, as determined by the parties to the Lincoln Agreement.<sup>9</sup>

The Peace Monitoring Group was led by an Australian Commander and an Australian Chief Negotiator. At its peak, the Peace Monitoring Group consisted of around 245 Australians, 29 New Zealanders, 15 ni-Vanuatu and 12 Fijians (Australian Parliament Joint Standing Committee 1999). Papua New Guinea notified the UN Security Council of developments and sought endorsement for the Peace Monitoring Group. A two-person UN observer mission was established as a result.

It was envisaged that the Peace Monitoring Group would be in place for only a short time before a final settlement. But three years of frustration and tension followed for all parties during the negotiations on independence, the level of autonomy in the interim, and weapons disposal. Francis Ona, who had initiated the secessionist struggle, did not participate in the peace process. He remained hidden within the Panguna no-go zone with his Me'ekamui army, and maintained an undercurrent of support throughout Bougainville.

By November 2000, discussion between Bougainville and the national government had deadlocked.<sup>10</sup> There was open talk of a return to warfare, and the return of Francis Ona. In December 2000, Australian Foreign Minister Alexander Downer proposed that the parties consider a non-binding referendum on independence for Bougainville in 10–15 years' time.<sup>11</sup> This proposal involved each side making significant concessions.<sup>12</sup>

The agreement on a referendum for independence was formalised between the Minister for Bougainville Affairs, Moi Avei, and the President of the Bougainville

People's Congress, Joseph Kabui, on 26 January 2001.<sup>13</sup> The referendum agreement was the catalyst for resolving the other difficult issues that had stalled the negotiations, leading to an agreement on weapons disposal,<sup>14</sup> followed by an agreement on autonomy.<sup>15</sup> These three agreements were then gathered into the Bougainville Peace Agreement, which was signed on 30 August 2001. The Papua New Guinea parliament passed the necessary legislation in early 2002 (Regan 2002).

The final undertakings in the Bougainville Peace Agreement were that a referendum be held 10–15 years after the election of the autonomous Bougainville Government; that the timing of the referendum would take into account standards of good governance and the implementation of weapons disposal; that the referendum would include an option of separate independence for Bougainville; and that the result would have to be ratified by the national parliament.

As a result of these developments, and a successful start to the weapons disposal process, the Peace Monitoring Group slimmed down,<sup>16</sup> then finally withdrew in June 2003 (Australian Parliamentary Committee 2003).<sup>17</sup> A Transition Team, consisting of 17 civilians from the Peace Monitoring Group contributor countries, remained in place to support the UN observer mission and 'further advance the peace process' (Australian Parliamentary Committee 2003:183–84; Downer 2003f).

Although the Peace Monitoring Group consisted of four Forum members, neither the Forum collectively, nor its bureaucrats, had a role in the resolution of the Bougainville crisis.

## **Solomon Islands**

Efforts to bring peace to Solomon Islands had two distinct phases: the smaller, ultimately unsuccessful International Peace Monitoring Team, which was followed by the Forum's comprehensive intervention, the Regional Assistance Mission to Solomon Islands (RAMSI). Each is considered below.

### **Phase One: the International Peace Monitoring Team**

Ongoing violence forced the Prime Minister of the Solomon Islands, Bartholomew Ulufa'alu, to submit his resignation on 13 June 2000. He was succeeded on 30 June 2000 by Manasseh Sogavare, who had previously been Opposition Leader.

Australia and New Zealand backed Sogavare's efforts to broker a peace, with both providing naval boats to allow the factions to meet, leading to a ceasefire in August. In October, Australia flew 130 Solomon Islanders to Townsville to facilitate a comprehensive settlement. The Townsville Agreement was signed on 15 October 2000, with the aim of promoting disarmament, restructuring the police force and decommissioning militias.<sup>18</sup> The Townsville Agreement also provided for compensation for individuals and areas affected by violence.<sup>19</sup>

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The Agreement established an International Peace Monitoring Team (IPMT), to support the Solomon Islands Peace Monitoring Council. The IMPT was mandated to

- oversee weapons disposals
- conduct regular inspections of the weapons after they were stored
- monitor the implementation of the agreement and report on breaches.<sup>20</sup>

The IMPT was to submit a fortnightly report to the Peace Monitoring Council on these issues.

The IPMT was led by Australia and consisted of 49 personnel. These IPMT personnel were occasionally joined by representatives from the Commonwealth Secretariat, Tonga and the Cook Islands. Six teamsites were established, in addition to the IPMT headquarters in Honiara.

New elections were held in December 2001, in which Sir Allan Kemakeza was elected Prime Minister. Some 90 election monitors attended, including many Forum representatives, following the Forum's decision under the Biketawa Declaration (Australian Department of Foreign Affairs and Trade 2003a).<sup>21</sup>

Unfortunately, the IMPT was only partially successful. Comprehensive disarmament and weapons disposal did not occur (approximately 2020 weapons were recovered, but most were homemade); the compensation-for-grievances process established in Townsville became corrupted; and ethnic conflict 'evolved into a broader pattern of criminality' (Wainwright 2003:488; see also Nicholson 2002). Ex-militias formed criminal gangs, and the police were involved in corruption and criminal activity. It became impossible to re-establish the rule of law (Wainwright 2003; O'Callaghan 2003d). A former Police Commissioner was assassinated; ten people were killed in an attempt to arrest the most notorious warlord, Harold Keke, and a cabinet minister was assassinated (Keke claimed responsibility) (Nicholson 2002; O'Callaghan 2003b, 2003e; Kemakeza and Warner 2003).

The IPMT departed Solomon Islands in June 2002, four months early, following agreement by Solomon Islands, Australia and New Zealand that it had done all it could to assist the peace process (Australian Department of Foreign Affairs and Trade 2003a; Nicholson 2002).

### **Phase Two: the Regional Assistance Mission to Solomon Islands**

In April 2003, Kemakeza wrote to John Howard again seeking assistance to address the Solomon Islands' security crisis. Howard arranged for Kemakeza to be flown in for urgent talks on 5 June (O'Callaghan 2003d). The Australian government responded by announcing its new policy of 'cooperative intervention' (Kelly 2003a).

The Australian government provisionally agreed to an intervention force, provided such an undertaking had backing from the Pacific Islands Forum, that there was a formal request from the Solomon Islands, and that the Solomon Islands parliament

passed enabling legislation (Howard 2003b). The Forum Foreign Ministers endorsed the proposal on 30 June. On 4 July, the Solomon Islands Governor-General made the formal request, acting on the advice of the cabinet; on 11 July, the Solomon Islands Parliament provided its endorsement, passing the necessary legislation on 17 July (Howard 2003b).

RAMSI commenced on 24 July, and consisted of 2,250 police, military and civilian personnel, drawn from Australia, New Zealand, Papua New Guinea, Tonga and Fiji. The police component consisted of 325 personnel, and the military component some 1,800 personnel, which included 450 combat troops, as well as logistics, engineering and medical personnel (Wainwright 2003; Howard 2003b).

RAMSI's mission was twofold, incorporating

- a police and military operation to restore law and order by removing weapons from gangs and militias
- a nation-building program—involving the insertion of foreign advisors into key positions—to improve economic management, the delivery of essential services, policing and the administration of the legal system, and to promote an effective democratic process (Australian Department of Foreign Affairs and Trade 2003b).

The initial phase of RAMSI has been a success. Over 3,400 weapons, including 670 high-powered guns, were surrendered during a three-week amnesty period, some of which had been held illegally by police (Australian Department of Foreign Affairs and Trade 2003c). Six hundred arrests were made and 1,000 charges laid in the first five months of the operation (Australian Department of Foreign Affairs and Trade 2003e). Harold Keke also surrendered (Wainwright 2003).

As can be appreciated, the Forum played a far more dynamic role in addressing the Solomon Islands crisis, with its deployment of election monitors in December 2001, and approval of the intervention force in June 2003. The election monitors and RAMSI are the most encouraging signs of a nascent Pacific security order, and Australia's leadership in the case of RAMSI was commendable. RAMSI was more successful than the IPMT because it addressed the underlying causes of the Solomon Islands' difficulties, not just the manifestations, and the necessary resources and degree of intervention were better aligned with the nature of the problem.

Yet a key issue is whether earlier intervention by the region could have reduced tensions, saved lives and prevented the country bankrupting itself. The national police force was so heavily identified with one ethnic group—70 per cent of the force was Malaitan—that it could not resolve the conflict (O'Callaghan 2000c). As Amnesty International noted, 'there is no one to create order' (Smellie 2000:58).

For a long time, Australia resisted early intervention (Dobell 2003; Daley 2000c; Wainwright 2003). Yet leaders of the various militia groups told Australian Foreign

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Minister Alexander Downer in June 2000 that 'only a neutral force could save the country from civil war' (O'Callaghan 2000d:1). As he resigned, Ulufa'alu said

[i]n our Melanesian culture, when two brothers are fighting you need a third party. And I will keep saying this until Australia and New Zealand listen. Because two fighting brothers—you cannot ask them to resolve their problem. You need a third person that is of status, that is of integrity, that is of repute, to intervene to bring these two to a peaceful solution (Maher and Dorney 2000:38).

Andrew Miriki, who as late as 1999 had been Francis Ona's chief of intelligence, also told me that Australia was regarded as a father figure that occasionally needed to step in and sort out its children, Papua New Guinea and Bougainville.

In Solomon Islands, it is difficult to avoid the conclusion that the need for a supranational, neutral force was apparent, and firm, early action would have saved lives and the economy, and avoided the need for a greater intervention force later. It would also have been less of a burden for the intervening states, particularly Australia.<sup>22</sup>

## **The Oceania Security Centre**

The first step in developing the Oceania security order would be for the Pacific Islands Forum, or the Oceania Community, to establish an Oceania Security Centre. Such a centre would focus on preventive diplomacy and conflict resolution, promoting humanitarian law and combating terrorism.

The centre is modelled in part on the Organisation for Security and Cooperation in Europe (OSCE 1999).<sup>23</sup> The OSCE has 180 staff and is geared to be active 'in all phases of the conflict cycle, from early warning and conflict prevention to conflict management and post-conflict rehabilitation' (OSCE 1999:2, 33). At any given time, it will be conducting a number of field missions (OSCE 1999). Like the OSCE, the Oceania Security Centre should have the capacity to deploy election monitors to help promote democracy.<sup>24</sup>

Some activities that Australia is already undertaking—election monitoring, workshops on small arms and humanitarian law—could be subsumed into the Oceania Security Centre. This has the advantage for Australia of burden sharing, but other Forum members may more readily access these services if provided by a neutral, regional body in the Oceania Community, rather than as a form of bilateral assistance from Australia.

### **Preventive diplomacy**

Preventive diplomacy has been defined as consensual diplomatic and political action to

- prevent disputes from arising between parties
- prevent disputes escalating into armed confrontation



- limit the intensity of violence and humanitarian problems resulting from such conflicts and prevent them from spreading.<sup>25</sup>

Thus, the key goal of the Oceania Security Centre would be early prevention. Evans argues that 'disputes rarely develop into full-blown conflicts overnight, at least for those who understand the situation and have been following its development' (Evans 1996:64). Early prevention, moreover, has a number of advantages

- parties are more likely to accept assistance while issues are still specific, before grievances accumulate, issues and parties have multiplied, positions have hardened and the desire for retribution becomes paramount
- since the goal is resolution rather than containment, it is more likely that the dispute will be resolved and will not recur
- early prevention is likely to be more cost-effective in both financial and human terms (Evans 1996).<sup>26</sup>

Therefore, the Oceania Security Centre would monitor developing situations, generate risk assessments, examine causes of conflicts, track existing disputes, conduct fact-finding missions, give early warning to the Oceania Community, and, through trained negotiators, engage in negotiation, mediation, arbitration, reconciliation and crisis management.<sup>27</sup> As can be appreciated, these activities are consistent with the goals and proposed activities in the Biketawa Declaration.

### **Post-conflict settlement and rebuilding—The Oceania Peace Fund**

The Oceania Security Centre would also be the lead regional agency managing post-conflict settlements. Thus, it would be responsible for activities 'designed to reduce the risk of a resumption of conflict, and contribute to creating the conditions most conducive to reconciliation, reconstruction and recovery' (Griffin 1999:1).

The Oceania Security Centre should have sufficient funds at its disposal for when financial aid is a necessary part of any peace settlement.<sup>28</sup> One of the biggest impediments to resolving the Solomon Islands' conflict was the government's lack of funds for a compensation package. Presently, there is an expectation that Australia will fund peace dividends or compensation packages in the region. Australia, however, risks being seen to adopt a partisan position depending on how the compensation is disbursed. It makes Australia, with its theoretically unlimited funds, the potential creditor for peace any time there is a dissatisfied group within the Pacific that wants to stir up trouble ('Solomons compensation package the first step towards ending its ethnic conflict', *The Canberra Times*, 9 July 2000:6).

Further, one ongoing problem during the Bougainville peace process was a reluctance on the part of the Papua New Guinea government's Office of Bougainville Affairs to disburse the funds provided by Australia to further the peace process. This

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tended to damage the national government's cause unnecessarily, because it only served to antagonise the Bougainville leaders. In future operations, it would be better if such funding were disbursed by the Oceania Community. It may speed negotiations—and would certainly remove a source of antagonism—if a neutral body, rather than a party to the negotiations, were releasing the funds.

Thus, Forum members should establish an Oceania Peace Fund, which would be managed by the Oceania Security Centre. Properly invested, the Oceania Peace Fund would enable the Community to disburse a significant amount of aid in the event of a negotiated end to future conflicts, for the purposes of compensation, reconstruction and weapons disposal. This would demonstrate an immediate, tangible peace dividend to the local population.

## **Promoting international humanitarian law**

One of the Oceania Security Centre's most important tasks would be to promote greater regional adherence to the Geneva Conventions.<sup>29</sup> These conventions seek to limit the forms of armed conflict, and to restrain state violence even in situations of emergency. The conventions amplify the principles of a just war: military necessity, proportionality, and protection for non-combatants (de Preux 1987).<sup>30</sup> The importance of the conventions was reaffirmed in the Statute of the International Criminal Court 1998.<sup>31</sup>

Greater adherence to the conventions will contribute to more professional behaviour by military and paramilitary forces in the Pacific. This is particularly important in countries such as Papua New Guinea and Fiji, which have large armed forces, but is just as relevant in many other Forum island countries, given that their police forces perform quasi-military functions. The Australia Defence Force approach to the conventions is that they 'usually reflect best practice and that compliance with them, where relevant, is the appropriate expectation for force standards' (Kelly et al. 2001:114–15).<sup>32</sup>

The 1977 Protocols to the Geneva Conventions<sup>33</sup> extend the protection granted to civilians in the initial conventions and regulate non-international armed conflict, with provisions covering non-state actors. Protocol II covers armed conflicts within a state's territory 'between its armed forces and dissident armed forces or other organised armed groups which, under responsible command, exercise such control over a part of its territory as to enable them to carry out sustained and concerned military operations'.<sup>34</sup> Non-state actors gain combat status under the Protocols—and hence prisoner of war status if captured—provided they distinguish themselves from civilians in the lead-up to, and during, an attack, and provided they are part of an organised force, subordinate to a command structure.<sup>35</sup>

The Pacific region unfortunately has one of the lowest ratification rates for the Geneva Conventions. Yet the behaviour of all parties to the Bougainville conflict

shows the need for the Oceania Community to promote acceptance of these conventions (Regan 1999).

The Papua New Guinea Defence Force, for example, prevented medical supplies reaching civilians in Bougainville, precipitating thousands of deaths. The blockade was, in part, reinforced with Australian-supplied patrol boats (Australian Parliament Joint Standing Committee 1999). Under common Article 3 of the four conventions (which applies to both international and non-international armed conflicts), 'persons taking no active part in the hostilities...shall in all circumstances be treated humanely' and 'the wounded and sick shall be...cared for'. The blockade's military goal was to prevent further weapons reaching Bougainville, but blocking food and medicine as well was, in the words of Protocol I, 'excessive in relation to the military advantage anticipated'. Article 54 of Protocol I bans the starvation of civilians as a method of warfare. In general, Protocol I provides for the protection of vehicles carrying medical equipment (extending the provisions of the second Geneva Convention) and Protocol II affords special protection to the sick and wounded in the context of a civil war.

Bougainvillean forces were equally unprofessional. It was difficult at times to tell the difference between the BRA, Resistance forces and criminal *raskol* gangs. Many fighters were motivated by family or community factors, rather than group ideology (Regan 1997, 1998, 1999). As a result, many did not belong to any sort of organisation with a command structure, and failed to distinguish themselves from the civilian population.<sup>36</sup> With command structures so obviously lacking, few groups had the capacity to implement the provisions of Protocol II, as required in Article 1.

The violent extremists on all sides, particularly those indistinguishable from the criminal element, did little to observe the spirit or letter of the Geneva Conventions, given the random murders and rapes that occurred, not to mention the BRA's targeting of educated people (Regan 1998, 1999). Thus, few who regarded themselves as combatants would have qualified for the status of 'lawful combatant' as defined in the conventions, and for the protections of prisoners of war.

In Solomon Islands, the militia groups, even if they had identifiable commanders or spokesmen, demonstrated little knowledge of, or interest in, the Geneva Conventions. In one incident, three militiamen killed two members of a rival militia while the latter were recovering from wounds in their hospital beds ('Gunmen kill pair in hospital', *The Sydney Morning Herald*, 11 July 2000:8). The Solomon Islands police force used the Australian-supplied patrol boat to shell civilians on several occasions (O'Callaghan 2001d, 2001f).

Given the grave transgressions of the law of war that have occurred in the region, the Oceania Security Centre needs to encourage ratification of the Geneva Conventions, their protocols, and the Statute for the International Criminal Court, and to facilitate education about their provisions. The Oceania Security Centre could

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establish training programs for the armed forces, and the police forces. As an example of how this may work in practice, the Australian Defence Force and an Australian university have established the Asia Pacific Centre for Military Law, which aims to 'increase respect for the law of armed conflict throughout Asia and the South Pacific' (University of Melbourne 2002).<sup>37</sup> Further, Australia currently runs workshops in Papua New Guinea on the need to observe international humanitarian law whilst using small arms (Australian Department of Foreign Affairs and Trade n.d.).

The Oceania Security Centre has the potential to make a unique contribution to the promulgation of the Geneva Conventions. As Bougainville demonstrated, the conventions fall down in the absence of a formal military chain of command, particularly in the case of 'an anarchic conflict involving loosely organised clans and other "units", which may be parts of a "private army" or perhaps just bands of plundering, pillaging killers, none of them bound by a professional code' (Thurer 1999:731).<sup>38</sup>

New measures are needed in these circumstances, beyond just educating military and civilian élites. In such cases, the Oceania Security Centre could disseminate information via radio and relate the conventions to existing cultural norms (Thurer 1999).

## **Combating terrorism**

The Oceania Security Centre would also be a vehicle for closer cooperation to combat terrorism. It should be charged with three main areas: generating financial intelligence, facilitating general intelligence sharing, and developing contingency plans in the event of a terrorist attack.

Most Forum island countries have an interest in developing greater financial intelligence, but lack the resources to create effective national-level units. In any event, it makes more sense to have a regional mechanism to track money laundering, to develop a broader, and more comprehensive, picture. Thus, the Oceania Security Centre would also serve as the region's financial intelligence unit. One option would be to expand the work of the Australian Transaction Reports and Analysis Centre (AUSTRAC) so that it becomes a regional mechanism for financial reporting and the dissemination of information about money laundering.<sup>39</sup> AUSTRAC has stated that it regards the Pacific as a priority area; it has already signed a memorandum of understanding with Vanuatu, and is developing them with the Cook Islands and the Marshall Islands (Australian Parliamentary Committee 2003).

The Oceania Security Centre would also be a mechanism for sharing general intelligence on terrorism-related issues among Community members (Australian Strategic Policy Institute 2002). This could involve creating facilities to share time-sensitive information quickly and instituting meetings of representatives from

Community members' intelligence and security services, in addition to the current meetings of law enforcement officials (the Forum did establish a Regional Security Information Exchange in 1988, but the exchange has not been mentioned in recent Forum Communiqués in relation to terrorism, and doubts have been expressed about its efficacy) (Findlay 1992).

Given the likelihood of a terrorist attack against Australian citizens, even on the Australian mainland, is thought to be high (Australian Strategic Policy Institute 2002), it is sensible to develop regional contingency plans for dealing with the aftermath of such an attack (Babbage 2002; Australian Strategic Policy Institute 2002). This is an area where Australia is likely to be the main beneficiary of regional cooperation, yet this is entirely appropriate, since the Oceania Community should benefit all members, not just Forum island countries.

The Oceania security agreement should develop the law enforcement cooperation provisions in the Honiara Declaration and the Nasonini Declaration. Thus, police from Australia (or another Community member that has been attacked) should be able to participate in any investigations that need to occur in other Community members following an attack (as the Australian Federal Police worked in cooperation with the Indonesian authorities following the Bali bombing). By this, I do not mean to suggest such an attack would have been executed by Forum island country citizens, but it is certainly possible that one of the Pacific's offshore banks may have assisted in financing an attack, and that the perpetrators may have lived in, or travelled through, another Community member.

The Oceania Security Centre should also be charged with developing plans for regional assistance following a terrorist attack. For example, if a terrorist attack occurred in Australia, military personnel from New Zealand, Fiji and Papua New Guinea may be able to assist in managing the aftermath. It may be that Australian interests overseas are targeted, in which case there should be plans for the rapid deployment of medical personnel to assist local authorities (Australian Strategic Policy Institute 2002).

### **The Oceania Peace Monitoring Group**

To complement the Oceania Security Centre, the Oceania Community should also establish a standing Peace Monitoring Group. The Oceania Peace Monitoring Group would be permanently available when the efforts of the Oceania Security Centre alone are not enough, when a substantial supranational presence is needed to prevent the escalation of conflict and promote its resolution.

The Oceania Peace Monitoring Group should have the ability to deploy rapidly. As the OSCE has found, 'the decisive point for the effectiveness of any conflict

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management is how to move smoothly and judiciously from early warning to early action'.<sup>40</sup> Early intervention may speed resolution and build confidence in a peaceful outcome. Conflicts stand the greatest chance of being resolved at their inception—before positions harden and the main players demonise their opposites—or in their later stages, when combatants are exhausted or killed, rather than in the middle when violence is most rampant (Evans 1993). A standing peace monitoring group, immediately available, may limit the spread of violence, saving lives and avoiding the need for a peacekeeping or enforcement operation.

### **Lessons learned from previous operations**

Other regions do not provide an obvious model for the Oceania Peace Monitoring Group.<sup>41</sup> The *ad hoc* Bougainville Peace Monitoring Group provides the best precedent, and it is worth considering the factors that combined to make it a successful operation.

First, Bougainville was a 'mature' conflict. The general population and many combatants were sick of the violence. They were ready to negotiate a peace, realising that continued armed conflict would, at best, result in a pyrrhic victory (Regan 1999). The Bougainville Truce Monitoring Group/Peace Monitoring Group was the culmination of attempted peace initiatives over preceding years (Australian Parliament Joint Standing Committee 1999; Regan 1998). Thus, parties to a conflict have to be ready to deal.

Second, the Bougainville peace process benefited from sustained Australian interest. Australia provided substantial funding, for the Peace Monitoring Group itself and for AusAID projects, so that Bougainvilleans saw an immediate peace dividend.<sup>42</sup> Australia was also patient, allowing the parties the space to negotiate the issues themselves, only intervening when other options had been exhausted (Regan 1999; Regan 2002). Likewise, New Zealand remained actively engaged throughout, having initiated the peace process when many combatants were still dubious about Australia. New Zealand led the initial Truce Monitoring Group, and cooperated closely with Australia through the Peace Monitoring Group.

Third, the Peace Monitoring Group's neutrality was vital. The key to winning the trust of the Bougainvillean factions and the national government was to convince them that the Peace Monitoring Group was not taking sides. Thus, the Peace Monitoring Group was an observer rather than a participant in negotiations. By contrast, in the Solomon Islands, the IPMT was criticised for supposedly breaching the terms of its mandate under the Townsville Agreement. It was claimed that the IPMT had opened up its own discussions with some military forces over weapons disposal, and planned to 'allow the coup-makers continued access to hundreds of high-powered weapons' (O'Callaghan 2001c:11; O'Callaghan 2001e:14). There was a perception, right or wrong, that the IPMT was not neutral.

One factor in promoting the neutrality of the *ad hoc* peace monitoring groups was their limited mandates. The Burnham and Lincoln Agreements for Bougainville and the Townsville Agreement for the Solomon Islands specified that the groups were to monitor the peace through building confidence, facilitating weapons disposal and reporting on ceasefire violations. The *ad hoc* Peace Monitoring Groups did not get involved in aid delivery, for instance, because ensuring aid reached one area may have been misinterpreted as favouring one faction (Australian Parliament Joint Standing Committee 1999). Limited mandates also help to avoid the problem of mission creep.

Fourth, the contribution of Fiji and Vanuatu to the Bougainville Peace Monitoring Group, particularly at the teamsites, was critical. The ni-Vanuatu members of the teamsites served as translators, and the Fijians and ni-Vanuatu were a point of Melanesian identification for the local people. Bougainvilleans felt they could open up to the Fijians and ni-Vanuatu, and receive a sympathetic understanding of their issues. Liaison Team Buka, arguably the most important of the five teamsites, was always headed by a Fijian commanding officer.

Fifth, the Bougainville Peace Monitoring Group was unarmed, subduing tensions and encouraging Bougainvilleans to go about their business unarmed. The presence of civilians at each teamsite also contributed to the atmosphere of normality. These civilians liaised with the local community and investigated ceasefire violations. Civilian presence indicated that the Peace Monitoring Group contributing countries regarded the situation as safe for their own civilians, giving the Bougainvilleans further confidence.

Even though Peace Monitoring Group personnel were unarmed, no Peace Monitoring Group member was attacked. The parties to the peace process understood that the Peace Monitoring Group would be evacuated immediately if targeted in any way. As Foreign Minister Alexander Downer said when shots were fired in the direction of two IPMT members in the Solomon Islands, '[t]he IPMT's mandate was agreed by the parties, who at the same time provided guarantees of the safety of IPMT personnel...The IPMT will stay in the Solomon Islands only as long as it is welcome and its neutrality is respected' (Polglaze 2001).<sup>43</sup>

Sixth, the Peace Monitoring Group went to considerable effort to win over the local population and restore confidence. It provided medical assistance in emergency situations, and made the fleet of Peace Monitoring Group Iriquois helicopters available for medical emergencies. It established a small publishing industry, publicising progress in the peace process and various community events (Australian Parliament Joint Standing Committee 1999). Particularly in the early stages, Peace Monitoring Group personnel facilitated and attended reconciliations, a key factor in restoring peace at the community level.

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It must be acknowledged that there was an element of good luck in the success of the Bougainville Peace Monitoring Group—it is important to remain realistic about the prospects for success in future operations, as the failure of the Solomon Islands IPMT's efforts to secure a permanent peace demonstrate. The key advocates for peace amongst the Bougainville political leaders managed to carry on, despite poor health. Though violence did occur after the peace accords, it was quickly contained. Alexander Downer's intervention in December 2000 occurred at precisely the right time; Australia did not intervene any earlier, although no doubt it would have been tempting to do so. Moi Avei was a very able Minister for Bougainville Affairs, determined to solve the problem and sell the hard decisions (Regan 2002).<sup>44</sup>

Thus, good management and good luck combined to produce a successful outcome in the Bougainville peace process. Nonetheless, there are areas where improvements could have been made. More work could have gone into disarmament, by developing a process for weapons disposal prior to a final settlement. The UN observer mission undertook some efforts in this regard, but made little progress (Australian Parliament Joint Standing Committee 1999). The IPMT also struggled to secure comprehensive weapons disposal (Wainwright 2003). It may be that full weapons destruction cannot take place until a final settlement is negotiated, but this should not prevent efforts at weapons containment. The effort is as important for its symbolism—encouraging non-combatants to believe that life is returning to normal and that they can go peacefully about their business—as for its substance.

Further, the Peace Monitoring Group exit strategy could have been clearer. Many Bougainvillean leaders assumed that the Peace Monitoring Group commitment was open-ended, or that the group would maintain its initial high numbers. A defined exit strategy may have provided further impetus to the negotiations.

In sum, the Bougainville Peace Monitoring Group was successful because of parties who were ready to deal, sustained Australian interest, its neutrality and its limited mandate, Forum island country involvement, its unarmed nature, and its efforts to win over the local population. These factors should be replicated in the creation and deployment of the Oceania Peace Monitoring Group to the extent possible.

### **Features of the Oceania Peace Monitoring Group**

The Oceania security agreement could not spell out the numbers, composition and resources that would be required in any given operation. At its peak, the Bougainville Peace Monitoring Group involved around 300 personnel; the Solomon Islands IPMT involved 49; and RAMSI involved 325 police and 1,800 supporting peacekeepers. Similarly, the composition will depend on the circumstances. The Oceania Security Centre could request election monitoring, which would most appropriately comprise



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Table 8.1 Proposed minimum commitments for the Oceania Peace Monitoring Group

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	Minimum commitment (persons)
Australia	40
New Zealand	15
Papua New Guinea	15
Fiji	15
Vanuatu	10
Other	5
Total	100

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civilian monitors from all Community members, together with officials from the Australian Electoral Commission. If there were a high likelihood of violence in a particular situation, it would be appropriate to utilise defence personnel and federal police, even if they are unarmed.<sup>45</sup> Thus, it would be inappropriate and impossible to detail the composition and nature of future operations.

Instead, the Oceania security agreement should spell out a minimum commitment of personnel that would be permanently available for deployment as part of the Oceania Peace Monitoring Group. The Community should be able to field a Peace Monitoring Group of at least one hundred in any given operation. In the first phase of the Oceania Community, the breakdown could be as shown in Table 8.1.

Members could contribute more to a given operation, and circumstances may require it. Forum island countries would share responsibility for such regional operations—all Oceania members should be prepared to contribute to an operation, even if smaller countries' contribution is limited to only one or two police personnel or civilian monitors.

The circumstances of an operation might suggest likely participants—it would have been inappropriate, for instance, for the Papua New Guinea Defence Force to have participated in the Bougainville Peace Monitoring Group—but it would be advisable for the Oceania Peace Monitoring Group to draw on personnel from at least one country in the same sub-region as the country experiencing the security crisis. In Bougainville, for example, it was useful for the Bougainville Peace Monitoring Group to have representatives from Vanuatu, a fellow Melanesian country. Ensuring this occurs in future would help the local populations to identify and communicate with the Oceania Peace Monitoring Group.

The Oceania Peace Monitoring Group should be neutral, to win the trust of all parties and the safety of the group itself. It should be unarmed, and it should be

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made clear to the parties to a conflict that the Oceania Peace Monitoring Group would withdraw if attacked. The Oceania Peace Monitoring Group should serve a limited, defined purpose. For example, it could supervise Bougainville's referendum on independence in 10 years' time, but it would be inappropriate for it to oversee nation-building efforts if Bougainville elects to become independent.

Any Oceania operation needs a defined exit strategy, to maintain the pressure on the parties to negotiate a settlement. Obviously, leaving a conflict zone within six months, when the parties are still negotiating major issues, would be an abrogation of responsibility. The Oceania Peace Monitoring Group could be committed for an initial two-year period (subject to the safety of its personnel and ongoing weapons disposal). At the end of the initial two-year period, the Oceania Community could review progress, and elect to keep the Oceania Peace Monitoring Group in place for a further two-year period, but at a reduced size. At the end of the four-year period, the Oceania Community may elect to leave the Oceania Peace Monitoring Group in place for a fifth and final year, but, again, at a much reduced size. Thus, parties to a dispute would have five years to resolve their key differences.<sup>46</sup>

The ongoing presence of the Oceania Peace Monitoring Group would be tied to ongoing weapons disposal. Some of the peace dividend—the development assistance from aid agencies—could also be tied to weapons disposal. Disposal need not mean destruction. The emphasis could be on confidence-building measures like placing weapons in containers.

The UN Security Council should be informed any time the Oceania Peace Monitoring Group is deployed, as required by Article 54 of the UN Charter, and the Council would be regularly updated on progress.<sup>47</sup> It would be appropriate for a small UN observer mission to operate alongside any Oceania Peace Monitoring Group deployment, to highlight to the conflicting parties the regional and global interest in ensuring a peaceful outcome.

## **Deployment**

Defined mechanisms in the Oceania security agreement would allow the Oceania Peace Monitoring Group to be deployed; for example, on the recommendation of the Oceania Security Centre or Community foreign ministers. Before the Oceania Peace Monitoring Group is deployed, all, or almost all, significant players in the conflict should express their commitment to a peace process. The relevant government should agree to the deployment. If a player in a conflict refuses to participate in a peace process, their absence should not represent a significant threat to the process. The fact that Francis Ona did not participate in the Bougainville peace process did not prevent the deployment of the Peace Monitoring Group or the successful outcome there. The IPMT went ahead even though Harold Keke did not

support it (Roberts 2001a). This is a matter of judgment in each case, but the presumption should be in favour of deployment. The idea is to ensure that the Oceania Peace Monitoring Group faces minimal risk, but zero risk would be unrealistic.

### **Limitations**

The Oceania Peace Monitoring Group would not be a cure for all possible security issues. For example, if the Oceania Peace Monitoring Group had existed at the time of any of the three coups in Fiji, it would not have been called into operation. Although the democratically elected government may have requested assistance, the Oceania Peace Monitoring Group would not have enjoyed the consent of all parties to the dispute. Of course, non-involvement would not have been an option if there had been massive, systematic human rights violations—if, for instance, the Fijian army had started to kill Indo-Fijians rather than ejecting them from government—but such extreme circumstances would (theoretically) have been handled through a UN peace enforcement operation.

### **Peacekeeping**

Papua New Guinea Prime Minister Julius Chan first suggested a Pacific peacekeeping force in 1980. This followed the ‘coconut war’ in Vanuatu, when Australia and Papua New Guinea provided logistical support to the government to put down a separatist rebellion (Smith 1996). Chan found no support from fellow Forum members at the time (Fry 1990). Chan tried again in 1988, arguing, ‘[t]he initiative must come from the developed nations, because they will be expected to follow it with their cheque books, and it must be something bolder and entail firmer commitments than just simply handing out aid or patrol boats’ (Warner 1988:36). During a subsequent term as Prime Minister, Chan felt so constrained by his options that he sought to hire mercenaries to resolve the Bougainville crisis. Perhaps the Sandline debacle may not have occurred if a regional mechanism had been available.

Chan seemed to envisage a regional peacekeeping force that would supplement domestic military or paramilitary forces—it differs from the UN peacekeeping model. In a prescient 1990 article, Australian academic Greg Fry examined the issues involved in establishing such a force (Fry 1990). He correctly predicted that *ad hoc* forces were more likely than a standing peacekeeping force, that an intervention would be designed to assist in the resolution of an internal security problem, and that Australia and New Zealand would seek Forum endorsement for an intervention (Fry 1990). Yet he feared such a force could be misused, for example, to aid a government to suppress internal dissent (Fry 1990). As he envisaged it,

[a] South Pacific force would be involved in...a ‘police action’ despite the use of soldiers to carry it out. Coercive action would be involved and the

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force would not be neutral. This is not peacekeeping as it is generally known... The essence of international peacekeeping is that the peacekeeping force should be neutral; that it should not be making the peace between conflicting parties but rather should be assisting in the implementation of agreements between them; and that the force should not be involved in coercive action...Its weapons are only for self-defence (Fry 1990:119).

Fry (1990) did not reject the possibility of a worthwhile Pacific peacekeeping force, but his concerns certainly raise issues about the standing of any Pacific peacekeeping force, and the appropriate circumstances for its deployment.

Apart from the brief use of a Pacific peacekeeping force at the 1994 Bougainville peace conference, the Solomon Islands intervention in 2003 represents the first major Pacific regional peacekeeping operation. Any future peacekeeping initiative is likely to have many of the features of RAMSI. It will be an *ad hoc* operation designed to provide an overwhelming presence at the start of a peace effort, to ensure an immediate sense of security and encourage adherence to the law and/or the terms of a peace agreement.<sup>48</sup> It will most likely be a short-term operation, given the resources involved, giving way to a core, longer-term peace monitoring or police operation.<sup>49</sup>

Even though RAMSI provides a worthwhile precedent, I believe it is unrealistic to attempt to negotiate standing peacekeeping resources as part of the Oceania security agreement. Individual states are unlikely to surrender their discretion when it comes to peacekeeping commitments, since the commitment of forces to peacekeeping missions requires greater deliberation on the part of national governments. Lives may be lost and such operations may require a larger commitment of resources. Individual states may also fear compromising their national security by over-committing resources to a regional operation. In contrast, Oceania Community members are more likely to commit to a Peace Monitoring Group in advance, because fewer resources are involved and personnel are at less risk.

Instead, the Oceania security agreement should focus on measures that will assist in the creation of *ad hoc* peacekeeping missions as required. Such measures could aim to increase inter-operability between members' defence forces, through common planning doctrines, standardised communications and command and control procedures (Ryan 2000). The Community could also facilitate joint training among members.

The Oceania security agreement, addressing the concerns raised by Fry, also needs to develop a framework for when *ad hoc* peacekeeping operations will be deployed.

As discussed, the Australian government's three prerequisites prior to its intervention in Solomon Islands were

1. a formal invitation from the relevant government, and enabling legislation
2. Forum approval
3. implicitly, general support from the population of the relevant state.<sup>50</sup>

Although the Solomon Islands intervention was welcome, this is an inadequate framework for future reference. If, hypothetically, Papua New Guinea had requested a peacekeeping force in the past to blockade Bougainville and hunt down Bougainvillean criminals, the request would most likely have met these three criteria. Papua New Guinea would obviously have provided the formal invitation; and the initiative would probably have enjoyed general support from the rest of Papua New Guinea's population, and would most likely have won Forum approval (recall that in these exact circumstances, Australia provided Papua New Guinea with defence training, patrol boats and Iriquois helicopters, which were used to perpetrate breaches of human rights and humanitarian law) (Fry 1991:25; Bergin 1994). To avoid this situation, UN authority and observers should be additional features of any framework for Oceania Community intervention. Importantly, any intervention should uphold the five goals of regional order, which include upholding the rule of law and avoiding human rights violations.

Opinions differed as to whether Australia and other contributing nations should have sought UN Security Council approval for RAMSI prior to its deployment (the Security Council was notified after the operation had commenced) (Wainwright 2003).<sup>51</sup> Kelly argued that the legal authority for the operation flowed from the consent of the Solomon Islands government and the legislation it passed (Kelly 2003b). Griffin suggests that 'legally, consensual, non-offensive peace operations can be undertaken on an *ad hoc*, collective basis, by a regional organisation or indeed by an individual state without authorisation by the Security Council' (1999:21).

Consideration of the relevant provisions of the UN Charter, however, suggests a more ambiguous situation. The UN Charter encourages regional arrangements, going so far as to state that regional institutions should 'make every effort to achieve pacific settlement of local disputes...before referring them to the Security Council' (UN Charter, Chapter 8). But Article 53 states that 'no *enforcement action* shall be taken under regional arrangements or by regional agencies without the authorisation of the Security Council' (*italics added*).

A *prima facie* argument could be made that RAMSI had at least some of the features of a peace enforcement operation: it involved an external intervention force, whose personnel were given the authority to use lethal force in the discharge of their duties.<sup>52</sup> Further, Australia committed naval assets to interdiction, to prevent weapons entering Bougainville from the Solomon Islands (RAMSI 2003). This differs from traditional peacekeeping operations, where the emphasis is on neutrality and impartiality, as outlined by Fry (1990). The United Nations has defined peacekeeping operations as those 'involving military personnel, but without enforcement

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powers...based on consent and cooperation. While they involve the use of military personnel, they achieve their objectives not by force of arms, thus contrasting them with the “enforcement action” of the UN under Article 42’ (United Nations 1990:4–5). In contrast, peace enforcement operations have been defined as ‘coercive in nature...undertaken under UN chapter VII when the consent of any of the major parties is uncertain. They are designed to maintain and re-establish peace or enforce the terms specified in the mandate’ (Rikhye 2000:69). RAMSI is arguably closer to an East Timor-style enforcement operation, where the intervention force was granted Security Council authority to ‘take all necessary measures’ to restore peace and security.<sup>53</sup>

UN involvement was certainly contemplated as part of the Solomon Islands operation,<sup>54</sup> but was complicated politically by the Solomon Islands’ diplomatic recognition of Taiwan rather than China.<sup>55</sup> Some suggested that Australia and others did not seek a Security Council resolution for fear of a Chinese veto (Kelly 2003b), but the conservative Australian government’s scepticism about multilateral institutions (Wesley 2002; Flitton 2003; Howard 2003a) may also have played a part. These are difficult issues and it is important to be pragmatic—Australia, and the people of the Solomon Islands, would have been placed in an invidious situation if China had indeed vetoed a Security Council resolution prior to deployment (when faced with a Russian Security Council veto, NATO members argued that the need for humanitarian intervention justified the use of force in Kosovo, but the existence of a principle of humanitarian intervention in international law is disputed) (Wheeler 2001; Thomas 1999; O’Connell 2000).

There should, however, be a presumption in favour of UN approval and involvement in future operations. This would provide a more secure legal basis for an intervention, but is also important for political reasons.

RAMSI involved a large external security force, authorised to use lethal force, as well as foreign personnel assuming responsibility for key parts of the Solomon Islands government apparatus: finance and economic management, the judicial and prison system, and law enforcement (Australian Department of Foreign Affairs and Trade 2003a; Forum Foreign Affairs Ministers Meeting 2003b). This represents a surrender of a considerable part of the Solomon Islands’ sovereignty. The Australian Strategic Policy Institute has argued that in such instances a higher degree of intervention and a deeper long-term commitment is necessary because of the depth of the institutional decline in failed states.<sup>56</sup> Operations involving such a high degree of intervention have typically been conducted under UN auspices, such as the United Nations Transition Assistance Group (UNTAG) in Namibia, the United Nations Transitional Authority in Cambodia (UNTAC) and the UN Transitional Administration

in East Timor (UNTAET). Although Solomon Islands was not surrendering its sovereignty as completely as occurred in these earlier UN operations, there are advantages for Community members, particularly Australia, in sharing the burden and responsibility for future high-level interventions with the United Nations. McCarthy argues that regional organisations generally 'lack the experience, mandate and neutrality' to undertake higher-level interventions (McCarthy 1995:25).

The addition of UN impartiality, credibility and standing to any regional operation assists Australia (and, indeed, any other Community member which has a substantial role in future interventions) politically.<sup>57</sup> Wainwright has argued, for example, that the Solomon Islands mission is 'vulnerable to the fluctuations of political alignment in Honiara...this remains a delicate basis for such an operation, and might present problems in the longer term' (Wainwright 2003:493). In future operations, if resentment builds over the loss of sovereignty, it will not be directed solely at one Community member if the United Nations is involved. Further, burden-sharing avoids one Community member being blamed when setbacks occur.

It is worth re-considering, too, Australia's first prerequisite for RAMSI's deployment—an invitation from the Solomons Islands government, and enabling legislation. Given that the reason for the deployment was that Solomon Islands was a failing state, Australia was fortunate that there was a government with sufficient authority to make these arrangements.<sup>58</sup> In the future, though, there may be a need for an intervention in a failed state where the government is incapable of commanding sufficient legitimacy to make such an invitation. When a state is failing or failed it may be increasingly difficult, too, to determine the general will of the population. In such a case, Australia would surely be wise to call on the authority of the United Nations, as well as regional institutions. This would be even more compelling in the case of Papua New Guinea, where Australia would be intervening as the former colonial power.

In anticipation of the need for high-level interventions in the future, and to avoid an inappropriate Security Council veto over an individual operation, the Oceania Community should establish a framework agreement with the United Nations.<sup>59</sup> The Oceania security agreement should state that the Oceania Community is a regional organisation within the definition of Chapter Eight of the UN Charter, as the treaties establishing the Organisation of American States and the OSCE do (OSCE 1999). The framework agreement between the United Nations and the Oceania Community would then delineate the Community's areas of responsibility, specifying those instances where the Community would act, the type of action, the notification and reporting requirements, and the degree of assistance that could be expected from the United Nations in any future intervention (the UN observer mission in

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Bougainville was small, but it usefully reinforced to the parties that the 'eyes of the world' were watching). The Community could then seek Security Council approval for this framework.

Thus, in addition to an invitation from a democratic government, general support from the population and Forum approval, I suggest a fourth consideration for any Oceania peacekeeping/ enforcement intervention should be included in the Oceania security agreement

4. UN authority from a standing framework agreement, recognising the Oceania Community as a regional body with the sovereignty to manage Pacific disputes, in accordance with Chapter Eight of the UN Charter.

As a final fail-safe, a fifth general consideration could be added

5. the intervention will promote human rights and be in accordance with humanitarian law.

These added protections would increase the authority and neutrality of any future regional intervention force, and would avoid the dangers identified by Fry (1990, 1991). For example, Oceania peacekeepers would not be involved in a Bougainville-style situation should it arise in the future, with a national government requesting assistance to blockade a wayward province. Such an action would be unlikely to win UN approval, and would clearly not promote human rights, nor would it be in accordance with humanitarian law.

## **Peace enforcement**

It can be appreciated that there is a continuum of security initiatives, ranging from those, such as the Oceania Security Centre, which may involve a mild degree of intervention, to those, such as RAMSI, which involve a high degree of intervention. I have expressed caution about solely regional initiatives, such as RAMSI, which seem to rest on the borderline between peacekeeping and peace enforcement operations, and suggested that it is more appropriate for the region to act in concert with the United Nations when a high degree of intervention is involved. McCarthy argues, for example, that regional organisations face 'numerous legal, operational and political barriers which will generally render them unwilling and unable to undertake effective enforcement measures' (McCarthy 1995:24).

It may be that, unfortunately, there is a need for an explicit peace enforcement action in the Pacific at some future point, where an external fighting force is needed to intervene between warring parties, or to prevent mass killings. This obviously involves the highest possible degree of intervention, and I believe in such a case the United Nations, rather than the Oceania Community, should manage the response. Such an intervention would require an explicit Security Council mandate, and a UN



rather than a regional force. Representatives from Oceania members could form part of a UN operation, but the Oceania force would not be operating in its own right. Thus, such high-level peace enforcement goes beyond what should be considered in the Oceania security agreement.

## **Mutual defence**

This chapter has focused on internal security issues, in the belief that these represent the most likely threats to Pacific security, and the risk of external aggressors is low (Commonwealth of Australia 2000). This has clearly been the more recent pattern. It would be appropriate, however, for the Oceania security agreement to include provisions on mutual defence arrangements for handling other issues.

Australia has made explicit and implicit commitments for the mutual defence of all Forum island countries. According to the 2000 Defence White Paper, Australia would want to be in a position to help Forum island countries defend themselves against unprovoked armed aggression, and would be very likely to provide substantial support to any Southwest Pacific country in these circumstances (Commonwealth of Australia 2000). Forum island countries may be concerned at times about Australian interference in their internal sovereignty, but they look to Australia (with New Zealand) to guarantee their external security. Whilst I was in Bougainville, senior Fijian members of the Peace Monitoring Group were very interested in the Defence White Paper, because, as one officer said, '[w]e would look to Australia if ever we were in trouble' (personal communication).

Given the low risk of external aggression, Australia should formalise a mutual defence commitment with other Forum island countries as part of the Oceania security agreement, as it has done bilaterally with Papua New Guinea. This would further engender a regional perspective on security issues. Australia's commitment to the Pacific Patrol Boat program could also be formalised in the Oceania security agreement,<sup>60</sup> as could its commitment to assist Forum island countries in the aftermath of natural disasters.<sup>61</sup>

Such commitments would further encourage Forum island countries' adherence to the regional security order, and could be used by Australia and New Zealand as leverage to ensure greater Forum island country commitment to, for example, the principles of humanitarian law in their military and paramilitary training.

## **Conclusion**

The Pacific has faced a number of security challenges in recent years, with internal conflicts in Fiji, Papua New Guinea and Solomon Islands, as well as the supranational threat of terrorism. Australia's intervention in Solomon Islands was predicated on

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the assumption that Solomon Islands risked becoming a failed state, and that such interventions might be required in other Pacific states in the future.

Addressing these conflicts requires a multi-faceted approach. Clearly the promotion of sustainable economic development, the rule of law and democracy are part of this approach, in terms of addressing their origins and developing a climate that eschews internal conflict. Yet promoting these goals will not be enough. For example, Bougainville will conduct its referendum on independence by 2020, which will probably lead to a new state. Yet many in Bougainville will resist independence, preferring autonomy within Papua New Guinea. Given Bougainville's past violence, the referendum and its aftermath will need supervision, to avoid risking all that has been achieved so far.<sup>62</sup>

Thus, promoting the goal of security necessarily involves improving the Pacific's security architecture. The key new institution would be the Oceania Security Centre. The Centre would engage in preventive diplomacy initiatives, assist in post-conflict resolution through the administration of a peace fund, promote cooperation to combat terrorism, and ensure greater adherence to the Geneva Conventions to lift the professionalism of the region's military and paramilitary forces.

This chapter proposed a standing Oceania Peace Monitoring Group, consisting of 100 personnel drawn from all Community members. A permanent mechanism available for rapid deployment might contain disputes, and obviate a larger commitment later. This would have been true in the Solomon Islands, and possibly in Bougainville. I have also suggested that the Oceania security agreement should include measures to improve interoperability between the region's military and paramilitary forces, in anticipation of the need for *ad hoc* peacekeeping operations. Finally, to win Forum island countries' adherence to the Oceania single undertaking treaty, it is suggested that Australia should formalise its arrangements for mutual defence, the Pacific Patrol Boat program and disaster relief.

A distinction is drawn between initiatives requiring a mild level of intervention, such as election monitoring, and those requiring a high level of intervention, such as peacekeeping and peace enforcement operations. The higher the level of intervention, the greater the need for UN authority and involvement. Thus, in the case of peacekeeping operations, there would be shared authority between the United Nations and the Oceania Community, whereas peace enforcement operations would be within the purview of the United Nations alone.

Preventing and limiting conflict will continue to be a difficult undertaking, and failures will most likely still occur. Yet an improved Pacific security architecture would help realise one of the key goals of regional order, and its successes could potentially save many lives.

The next chapter proposes a regional human rights commission. Such a commission could also assist in addressing some of the underlying causes of conflict in the region, by promoting better local adherence to the supranational rule of law.

## **Notes**

- <sup>1</sup> The Australian parliamentary inquiry concluded that 'It is likely that Pacific island countries, particularly in Melanesia, will continue to suffer political, ethnic and social tension intensified by continuing economic decline and poor governance' (Australian Parliamentary Committee 2003:xxviii).
- <sup>2</sup> The Forum Regional Security Committee consists of representatives from Forum members' law enforcement agencies, including police, customs and immigration officials.
- <sup>3</sup> Forum Foreign Ministers meet annually (but not Defence Ministers, nor Attorneys-General); the Forum Regional Security Committee meets twice a year; and the Forum Secretary-General may use his or her good offices in an effort to address a conflict.
- <sup>4</sup> The Aitutaki Declaration recognises that 'it is best to avert the causes of conflict', so 'the Forum is committed to reducing, containing and resolving all conflicts by peaceful means' (South Pacific Forum 1997b: para 10).
- <sup>5</sup> Australia has hosted workshops on the small arms problem, and all Pacific Islands Forum members are adopting the same legislation to control the use of such arms. Further, a comprehensive study has been undertaken into the flow of arms in the Pacific. The South Pacific Police Chiefs Conference and the Oceania Customs Organisation have examined ways to control the flow of weapons. See Pacific Islands Forum (2000a: para 60). See also Australian Department of Foreign Affairs and Trade (n.d., 2001b, 1999d); Roberts 2001b; Australian Parliamentary Committee (2003).
- <sup>6</sup> The United Nations, World Bank, OECD and Commonwealth are all working with the Forum and individual members to tackle the problem of money laundering (see OECD 1998; Cornell 2000; Randall 1999).
- <sup>7</sup> Australian Prime Minister John Howard has proposed that a regional police training centre be created in Fiji, involving Australia training 200 regional police a year; this would be a noteworthy addition to the region's current security architecture. Through the Enhanced Cooperation Program, officers of the Australian Federal Police began assuming in-line positions in Papua New Guinea to assist in addressing that country's law and order difficulties, but the program later foundered. Perhaps eventually a pool of officers from Australia and New Zealand will be available to assist other Forum island countries as needed. Encouragingly, a regional transnational crime team has been established following a workshop in Tonga in 2002 (Australian Parliamentary Committee 2003; Lewis and Harvey 2003).
- <sup>8</sup> See Article 5, Agreement between Australia, Papua New Guinea, Fiji, New Zealand and Vanuatu concerning the Neutral Truce Monitoring Group for Bougainville. Available at <http://www.austlii.edu.au> [accessed 27 August 2003].
- <sup>9</sup> See Protocol concerning the Peace Monitoring Group made pursuant to [and amending] the Agreement between Australia, Papua New Guinea, Fiji, New Zealand and Vanuatu

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concerning the Neutral Truce Monitoring Group for Bougainville. Available at <http://www.austlii.edu.au> [accessed 27 August 2003].

- <sup>10</sup> This followed the collapse of the ninth round of negotiations in eleven months.
- <sup>11</sup> This represented a considerable change from Australia's previous policy which was that such matters 'were entirely for the Papua New Guinea government to decide, in conjunction with the Bougainvillean leaders' (Australian Parliament Joint Standing Committee 1999:59).
- <sup>12</sup> The national government was formalising a process that may lead to independence for Bougainville, which it had previously resisted; and Bougainville was deferring the referendum on independence, which many Bougainvilleans wanted immediately, and accepting that the result of the referendum would not be binding.
- <sup>13</sup> Agreed Principles on Deferred Conditional Referendum on Independence, initialled at Kokopo on 26 January 2001.
- <sup>14</sup> Australia facilitated a meeting in Townsville in February 2001 between Bougainville leaders and the Papua New Guinea government to negotiate the deal on weapons disposal. Formal agreement was reached on 9 May, and the Townsville meeting allowed Bougainvilleans to agree on a plan for weapons disposal between themselves, and to hold reconciliation ceremonies between various combatants. See Regan (2002:122–24) for details of the final agreement on weapons disposal.
- <sup>15</sup> An agreement on the level of autonomy that Bougainville would enjoy prior to the referendum on independence proved difficult. The national government feared the precedent it would set for other provinces, but for some Bougainville factions autonomy was more important than the referendum on independence. Agreement was reached in June 2001. Again Australia facilitated agreement by holding workshops demonstrating, for instance, that it was possible to have federal and state police forces. See Regan (2002:120–22) for details of the final agreement on autonomy.
- <sup>16</sup> Peace Monitoring Group numbers had fallen to 75 personnel by December 2001, and the number of teamsites had been reduced to two.
- <sup>17</sup> 1,700 weapons had been placed in containers by mid 2003 (Australian Department of Foreign Affairs and Trade 2003c).
- <sup>18</sup> Part 2, Townsville Peace Agreement Available at [http://www.vanuatu.usp.ac.fj/pactreaties/Treaties\\_etc/Townsville\\_Peace\\_Agt.html](http://www.vanuatu.usp.ac.fj/pactreaties/Treaties_etc/Townsville_Peace_Agt.html) [accessed 27 August 2003].
- <sup>19</sup> Part 3, Townsville Peace Agreement Available at [http://www.vanuatu.usp.ac.fj/pactreaties/Treaties\\_etc/Townsville\\_Peace\\_Agt.html](http://www.vanuatu.usp.ac.fj/pactreaties/Treaties_etc/Townsville_Peace_Agt.html) [accessed 27 August 2003].
- <sup>20</sup> Annex II Townsville Peace Agreement Available at [http://www.vanuatu.usp.ac.fj/pactreaties/Treaties\\_etc/Townsville\\_Peace\\_Agt.html](http://www.vanuatu.usp.ac.fj/pactreaties/Treaties_etc/Townsville_Peace_Agt.html) [accessed 27 August 2003].
- <sup>21</sup> Australia and other donors fully funded these elections (Australian Strategic Policy Institute 2003).
- <sup>22</sup> Wainwright usefully illustrates the financial implications of early intervention, from Britain's role in the former Yugoslavia: 'Britain became involved in Bosnia after several years of civil war; Britain spent at least £1.5 billion on this involvement. Kosovo, which saw a quicker British response, cost Britain in the order of £200 million. The preventive action taken in Macedonia, however, meant that Britain spent just £14 million' (Wainwright 2003:487). In the Solomon Islands context, the IPMT cost around A\$8 million, and Australia spent A\$22 million in total on the peace process during the IPMT

- phase. RAMSI, however, will cost A\$200–300 million a year for 10 years (Australian Strategic Policy Institute 2003; Australian Department of Foreign Affairs and Trade 2003a; Nicholson 2002).
- <sup>23</sup> The idea for an Oceania Security Centre also draws on earlier Australian and New Zealand proposals for regional conflict prevention mechanisms. Gareth Evans proposed that the United Nations should establish Regional Peace and Security Resource Centres. In 1995, Australia proposed that the ASEAN Regional Forum create a 'regional centre for conflict prevention', to be known as the 'Regional Risk Reduction Centre', which would gather and analyse information, monitor and report on specific issues and provide an early warning function; the proposal was not taken up. New Zealand has previously proposed a Pacific conflict resolution and mediation service. The list of proposed activities also draws on Article 33 of the UN Charter (Evans 1999; McCarthy 1995; Ball 1999; Findlay 1992).
- <sup>24</sup> The Australian Electoral Commission, through the Pacific Islands, Australia and NZ Electoral Administrators' Network (PIANZEA) already regularly provides election monitors to the region; this could be subsumed into the Oceania Security Centre. See [http://www.aec.gov.au/\\_content/how/international/index.htm](http://www.aec.gov.au/_content/how/international/index.htm) [accessed 27 September 2005].
- <sup>25</sup> This definition draws on Boutros-Ghali (1992) and Ball (1999b).
- <sup>26</sup> McCarthy also believes early prevention can be successful because 'the tactics used to persuade the other party are still largely rhetorical and do not yet involve large-scale violence with its attendant changes in motivation and perceptions. Communication is usually still possible and relations between the parties may be ongoing in a broad range of other areas' (McCarthy 1995:18).
- <sup>27</sup> The list of proposed activities draws on Article 33 of the UN Charter (see Ball 1999b; Acharya 1999; Evans 1999).
- <sup>28</sup> In 1998, the Forum Secretariat proposed a special fund be created to support the development of preventive diplomacy mechanisms, but the proposal was not taken up at that time.
- <sup>29</sup> First Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field; Second Geneva Convention for the Amelioration of the Condition of the Wounded, Sick and Shipwrecked Members of Armed Forces at Sea; Third Geneva Convention relative to the Treatment of Prisoners of War; Fourth Geneva Convention relative to the Protection of Civilian Persons in War. Available at <http://www.austlii.edu.au> [accessed 27 August 2003].
- <sup>30</sup> Under the Conventions, parties in armed conflict can only attack military personnel and targets. The First and Second Conventions protect sick and wounded troops on land and sea, as well as medical personnel and medical establishments during armed conflict. The Third Convention protects prisoners of war, and the Fourth Convention protects civilians in war.
- <sup>31</sup> Article 8 of the Statute covers war crimes, and defines war crimes as grave breaches of the Geneva Conventions. Article 8 then summarises some of the Conventions' key provisions. The Conventions provide more detail on appropriate conduct (although some sections are outdated), so they remain useful standards for the Oceania Community to promote.

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- <sup>32</sup> An important element of INTERFET's success in East Timor, and the reputation of Australia's soldiers, was the Australian Defence Force's strong commitment to acting within the bounds of the Geneva Conventions (Kelly et al. 2001).
- <sup>33</sup> Protocol I Additional to the Geneva Conventions, and relating to the Protection of Victims of International Armed Conflicts; Protocol II Additional to the Geneva Conventions, and relating to the Protection of Victims of Non-International Armed Conflicts. Available at <http://www.austlii.edu.au> Accessed 27 August 2003.
- <sup>34</sup> Para 1(1), Protocol II.
- <sup>35</sup> An individual cannot kill people, and then claim prisoner of war status when captured because of a notional association with a guerrilla force.
- <sup>36</sup> Regan notes that the BRA 'high command' did not have much control over BRA fighters. He also notes that the Papua New Guinea Defence Force had 'poor command and control systems and often idiosyncratic officers' (Regan 1998:280).
- <sup>37</sup> The Centre has organised presentations around the region on topics such as rules of engagement, peacekeeping and civil–military cooperation. The Centre also runs one to two week courses on military operations law for commanders, legal advisers and training managers. The latter is specifically designed to aid the interoperability of regional forces.
- <sup>38</sup> In such circumstances, crimes against humanity could apply, even when the situation in relation to war crimes is unclear—see Article 7 of the Statute of the International Court of Justice.
- <sup>39</sup> AUSTRAC is Australia's specialist financial intelligence unit, and anti-money laundering regulator. See Australian Parliamentary Committee (2003).
- <sup>40</sup> Organisation for Security and Cooperation in Europe (1999).
- <sup>41</sup> Other regions seemingly have under-developed security mechanisms, or focus on peacekeeping rather than peace monitoring (again, the OSCE's field operations come closest). The European Union is yet to develop a clear role for its defence body, because of uncertainties between European Union members about priorities, and its relationship to NATO. The OAS has occasionally been involved in peacekeeping activities, but more to support US interests. The Economic Community of West African States (ECOWAS) has occasionally taken on peacekeeping/enforcement action. The Organisation of African Unity attempted a peacekeeping mission, in Chad, with little success. The Organisation of East Caribbean States' standing regional force supported the United States in Grenada (Fry 1990; Dobson 1999; Ofuatey-Kodjoe 1994; Gordon 2000).
- <sup>42</sup> Amongst other activities, Australian aid funded an 84 bed hospital in Buka, 50 first aid posts and 70 classrooms in remote areas; trained 100 community police workers; employed 4,000 Bougainvilleans; and reconstructed Radio Bougainville, an important tool in the peace process. In total, Australia committed A\$100 million in aid in the first five years of the reconstruction effort (Nugent 2000; Australian Parliament Joint Standing Committee 1999).
- <sup>43</sup> Likewise, factional leaders guaranteed the safety of Peace Monitoring Group personnel from the outset of the Group's operations (Australian Parliament Joint Standing Committee 1999).
- <sup>44</sup> I was able to see Avei's effectiveness for myself, at the informal talks on Buka on 5 January 2001, and at the Kokopo talks on 26 January 2001.

- <sup>45</sup> Particularly in the early stages of the Bougainville Peace Monitoring Group there were many representatives from the Australian special forces, albeit unarmed. Their numbers dwindled as the dangers lessened.
- <sup>46</sup> This would avoid the situation that has occurred in Cyprus, where the UN peacekeeping force has been in place since 1964. An Australian conference on peacekeeping noted the problem of open-ended commitments, and suggested 'mandates could include sunset clauses or signpost a process of transition' (Clements and Wilson 1994:5).
- <sup>47</sup> Article 54 states that '[t]he Security Council shall at all times be kept fully informed of activities undertaken or in contemplation under regional arrangements or by regional agencies for the maintenance of international peace and security'. This article reinforces the complementary link between the global and regional systems, and was why the Security Council was informed of the initial 1994 Pacific peacekeeping operation for the Bougainville peace conference, and the later Peace Monitoring Group (McCarthy 1995).
- <sup>48</sup> In the Solomon Islands context, Wainwright argued that the 'size and nature of the intervention force convinced Solomon Islanders that it "meant business"...[it] served to pierce the climate of violence and impunity that had existed, by making it clear that the circumstances had profoundly changed' (2003:493).
- <sup>49</sup> The number of military personnel involved in RAMSI, for example, fell from 1,500 to 600 within six months (Shanahan 2003).
- <sup>50</sup> Australian Foreign Minister Alexander Downer referred to 'broad community support' and 'wholehearted support in the Solomon Islands for an intervention'. Australian Prime Minister John Howard referred to 'overwhelming support from the people of the Solomon Islands' (Downer 2003e, Downer 2003d; Howard 2003b; Wainwright 2003).
- <sup>51</sup> Both the UN Security Council and Secretary-General expressed support for the initiative.
- <sup>52</sup> The Australian Defence Minister, Robert Hill, said that he had permitted the use of lethal force under the rules of engagement. This was confirmed by Australian Prime Minister John Howard (Karvelas 2003; Howard 2003c).
- <sup>53</sup> UN Security Council resolution 1264/99.
- <sup>54</sup> The Solomon Islands Governor-General anticipated that intervention may be under the 'umbrella' of the United Nations, in case there was a need for 'the UN to take charge of the administration of the country for a short time'; and the Australian Strategic Policy Institute, whose report provided impetus and a blueprint for the intervention, suggested the intervention 'should be endorsed by the UN Security Council...It is in Australia's long-term interests for the UN to become increasingly engaged in the South Pacific, and it should be encouraged to play such a role' (Australian Strategic Policy Institute 2003:36).
- <sup>55</sup> Solomon Islands receives grants from Taiwan in return for its diplomatic recognition of Taiwan (Australian Strategic Policy Institute 2003).
- <sup>56</sup> The Institute believes the following elements are required in such an intervention: 'restoration of security, the creation of a rule of law, the construction of robust and durable institutions, economic reform and development, and reconciliation after any conflict' (Australian Strategic Policy Institute 2003:30).
- <sup>57</sup> For example, in the Bougainville context, Regan argued that 'the involvement of the UN undoubtedly helps to create confidence in the process on the part of the groups with

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the highest level of suspicion of Australia, and which might therefore have been concerned by the “dominant” Australian role in the PMG’ (Regan 1999:30).

- <sup>58</sup> In 2002, for example, the Australian Strategic Policy Institute noted that the governments of Papua New Guinea, Solomon Islands and Vanuatu are ‘weak, transient and hard to deal with’ (Australian Strategic Policy Institute 2002:29).
- <sup>59</sup> The Organisation of American States, the Organisation of African Unity, the Organisation of the Islamic Conference and the Arab League have such framework agreements with the United Nations (Evans 1996).
- <sup>60</sup> As also discussed in Chapter Four, Australia underwrites a significant element of Forum island country defence capabilities, their Pacific Patrol Boats, meeting the cost of the vessels, as well as the cost of ongoing maintenance, logistics, Australian advisors, and in some cases, fuel (Australian Department of Defence 2002).
- <sup>61</sup> See Australian Parliamentary Committee (2003) for a discussion of the disaster management activities that Australia already undertakes for Forum island countries. There is also a formal arrangement between Australia, New Zealand and France on coordination in the event of a natural disaster in the Pacific (the FRANZ Joint Statement on Disaster Relief Cooperation in the South Pacific 1992). Australia and New Zealand have also worked on an *ad hoc* basis to assist Forum island countries suffering droughts and cyclones.
- <sup>62</sup> The Bougainville Peace Agreement already anticipates international observers being invited to the referendum process (Regan 2002).



# 9

## Human rights

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Two institutions are crucial if the Oceania Community is to address, at the regional level, the Pacific's challenges to the rule of law. This chapter considers the first of these institutions, the Oceania Human Rights Commission, which would be governed by the Oceania Human Rights Charter. The companion institution, the Oceania Regional Court, will be considered in Chapter 10.

The rate of ratification or accession to the key UN human rights instruments is extremely low in the Pacific—a significant challenge to the rule of supranational law (see Table 2.9). The human rights environment in the Pacific is not benign, and lack of regard for UN human rights law has contributed to Pacific disorder. The treatment of Indo-Fijians following the coups in 1987 and 2000 by the Fijian government (see Chand 1997; Howard 1991; Lal 1998; Lal and Larmour 1997; Nanda 1992; O'Callaghan 2001),<sup>1</sup> Papua New Guinea's response to the security crisis in Bougainville (see Joint Standing Committee 1999) and the challenges to democracy in Tonga (see James 1997; Helu 1992; Lawson 1997; Montgomery 2000), discussed in previous chapters, demonstrate the need for an integrated approach to human rights in the Pacific. Amnesty International's 2004 annual report noted the following human rights issues in the Pacific: Australia's treatment of asylum-seekers; ethnic violence, police brutality and deteriorating prison conditions in Papua New Guinea; impunity for human rights abuses in Fiji; and measures to restrict media freedom in Tonga (Amnesty International 2004).

Obviously, finding better ways to promote and protect human rights represents a broad challenge for the Oceania Community. Yet it is essential if the Community is to tackle some of the underlying causes of disorder in the region.

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The chapter commences by outlining the shortcomings in the Forum's approach to human rights, and the previous and current efforts to create a formal human rights mechanism. This includes the United Nations' disappointing efforts to promote a 'regional' human rights organisation in the Asia Pacific, an area which covers half the world (and which just happens to include Pacific states).<sup>2</sup>

An Oceania Human Rights Charter is proposed, to form part of the Oceania single undertaking treaty. A regional expression of the global human rights agreements would strengthen regional order, winning local commitment and adherence to human rights law. The Charter should also detail the education activities that the Oceania Human Rights Commission would undertake to promote human rights, and the enforcement mechanisms needed to protect the rights of individuals and communities at critical times.

## **The Forum and human rights**

The Forum has done little explicitly to promote human rights in the Pacific. Following the first Fijian coup most Forum members refused to discuss the situation as a formal agenda item. The Forum statement simply noted the 'complexity of the problems' and hoped 'for a peaceful and satisfactory solution' (South Pacific Forum 1987: para 3). The Forum also made no comment on the human rights abuses occurring in Bougainville.

In Forum Communiqués and other documents, members do express commitment to 'good governance' (see, for example Pacific Islands Forum 2002: para 2). Good governance does have some parlance in human rights terms—for example, Australia initiated a resolution on good governance at the UN Human Rights Commission in 1999. But the human rights connotations of good governance are more implicit than explicit in its use in Forum documents, and largely relate to economic management. Wickliffe notes that Forum members made no mention of the fiftieth anniversary of the Universal Declaration of Human Rights in 1998's Forum Communiqué, let alone reaffirming their commitment to its principles (Wickliffe 1999).

Encouragingly, Forum Leaders do express commitment to the 'defence and promotion' of human rights in the 2004 Auckland Declaration (Pacific Islands Forum 2004a). They also note their desire to encourage the development of national human rights machinery (Pacific Islands Forum 2004a: para 9). These developments may represent the start of a new era of engagement with human rights issues for the Forum.

The United Nations Development Programme (UNDP) has, until now, attempted to address the Forum's shortcomings by working directly with Pacific states on human

rights issues rather than through the Forum. The philosophy of its Governance for Livelihoods and Development in the Pacific (GOLD) initiative is that

Pacific island countries are fully committed to implementing principles of good governance for sustainable growth, equitable development, lasting peace and social cohesion. However, it will be difficult for Pacific countries to achieve these goals unless aspects of human rights are integrated into their development policies and legislative framework. Rights violations in the Pacific are common yet there are very few organisations to monitor rights-based violations across society.<sup>3</sup>

GOLD has organised various sub-regional and national seminars to encourage the ratification of the core UN human rights instruments.<sup>4</sup> Participants at one workshop recommended that 'the Pacific Islands Forum lift the profile of human rights in the region' and that a 'forum be established addressing human rights-related questions and the importance of ratification of international treaties'.<sup>5</sup> The UNDP also has a Regional Rights Resource Team, which aims to help policymakers adopt human rights conventions.<sup>6</sup>

The Commonwealth Secretariat has also been active. It has held a Workshop on Human Rights Education and Training, which recommended a Pacific Charter of Human Rights and the establishment of a South Pacific Centre for Human Rights. This institution, primarily designed as an education centre, was located within the Port Vila campus of the University of the South Pacific (Wickliffe 1999).

These are all worthy initiatives, but are not the same as a permanent intergovernmental mechanism affording protection to individuals. Ideally, the Forum would have the commitment to human rights to initiate the type of activities conducted through the GOLD program. Those involved with the South Pacific Centre for Human Rights see it as providing impetus toward a Pacific Human Rights Charter and intergovernmental mechanism, rather than as an end in itself.

### **Previous and current efforts towards regional mechanisms to promote human rights**

Addressing the Forum's lack of an intergovernmental human rights mechanisms is vital; the lack of such an institution is evidence of the Forum's immaturity as a regional organisation. The advanced regional systems have found regional order to be incomplete without a human rights institution (CARICOM is an exception). The European Human Rights Commission commenced operations in 1954, the year after ratification of the European Convention on Human Rights and Fundamental Freedoms. The Inter-American Commission started its work in 1959, and the African Commission in 1987, the year after ratification of the African Charter on Human and Peoples' Rights.<sup>7</sup> The American Convention on Human Rights entered into force in 1978.

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There is, however, a flaw in the European system of regional order—it is actually two systems rather than one. The Council of Europe, handling human rights, is separate from the common market, the European Court of Justice and the European Parliament. There is a disappointing subtext here, perhaps, that human rights are not important enough to be integrated into the main game. The European Union attempted to rectify this with the EU Charter of Fundamental Rights, which drew on the Council of Europe's convention and the state of national law in European Union members. The EU Commission said it would be guided by the Charter in all its work; but the two systems continue separately.<sup>8</sup> The Oceania Community should improve on the European Union model, by including its human rights machinery as an integral part of its regional order from the outset.

Despite facilitating the creation of the African Commission, the United Nations has done little to facilitate an intergovernmental human rights mechanism in the Pacific (D'Sa 1981–83; Tucker 1983).<sup>9</sup> Commencing in 1990, the United Nations held a series of workshops in an attempt to provide some impetus toward regional arrangements in the Asia Pacific. So far they have failed, and they will continue to fail. The reason is simple. Some forty countries—from Afghanistan to Yemen to Bhutan to Fiji, with Palestine also represented—have attended the various workshops.<sup>10</sup> It is impossible to come up with a 'regional' mechanism that covers half the globe. The problems of the Middle East are not the problems of the Pacific, so a 'regional' organisation covering the United Nations' definition of the Asia Pacific adds little value to the global system itself.

Some at the workshops have recognised the essential folly of the United Nations' efforts, noting that 'a first step could be the setting up of subregional machinery for human rights information dissemination' and that 'the usefulness of working at a subregional level...must also be stressed' (United Nations 1996:71). It is questionable whether the various regions of the Asia Pacific, given their size—in both population and geographic terms—constitute 'sub-regions' or are, like the Pacific, more properly regions in their own right.

Australia has attempted to add some momentum to the creation of a regional human rights commission. Former Foreign Minister Gareth Evans suggested the creation of such a mechanism in 1995, but was criticised by those who thought he was proposing to pursue a lowest common denominator approach to rights, rather than a regional institution seeking to promote universal rights (Hill 1995; Evans 1995). Australia had more luck when, together with the UN Centre for Human Rights, it proposed an Asia Pacific Regional Workshop of National Human Rights Institutions. The first workshop was held in Darwin in 1996, attracting Fiji, India,

Indonesia, Mongolia, Nepal, New Zealand, Pakistan, Papua New Guinea, the Philippines, Thailand, Solomon Islands and Sri Lanka. The workshop issued the Larrakia Declaration, agreeing to establish an informal Asia Pacific Forum of National Human Rights Institutions.

Despite having few staff and little funding, the Forum of National Human Rights Institutions has done much to promote the establishment and strengthening of independent national human rights institutions. Members must subscribe to the United Nations' Paris Principles on the Status of National Institutions,<sup>11</sup> which include criteria such as having a broad mandate based on global human rights law, with the independence of the commission guaranteed by statute or constitution. It would be a mistake, however, to attempt to create a formal mechanism based on the Asia Pacific Forum of National Human Rights Institutions.

The UN Workshops and the Asia Pacific Forum of National Human Rights Institutions can serve as worthwhile catalysts for dialogue, but they should not be mistaken for concrete steps to a regional arrangement, comparable to the existing institutions in Europe, the Americas and Africa. The countries participating in the Asia Pacific initiatives are too many, too large and too remote to allow for a local human rights order to function effectively.

LAWASIA, a non-government organisation, has proposed workable regions as the basis for regional human rights commissions. It divided the Asia Pacific into four smaller regions, concentrating its initial efforts on the South and Western Pacific Region, consisting of Australia and the other Pacific countries (see LAWASIA 1997). In 1985 the LAWASIA Human Rights Standing Committee sponsored a conference on 'Prospects for the Establishment of an Intergovernmental Human Rights Commission in the South Pacific' (Deklin 1992). Participants 'requested LAWASIA to press for the establishment of a small secretariat, attached for administrative purposes to the South Pacific Commission or the South Pacific Forum, to initiate the establishment of the regional inter-governmental human rights body' (Leary 1990:325). A Pacific Charter was drafted, largely based on the African model, but with some unique features reflecting the region's character. The Charter envisaged a Commission that would assist governments and also receive petitions from individuals (see LAWASIA 1992).

Despite the rigour of the LAWASIA proposals, the requisite political will was lacking at that time. At that stage, the newly independent Forum members were largely focused on resisting any perceived interference with their internal sovereignty. But the region's security and economic crises since then have changed the situation, as evidenced by the Forum's Biketawa Declaration.

### **Advantages and disadvantages of regional human rights systems**

The most obvious potential advantage of the Oceania Human Rights Commission is that a regional human rights order may lead to a meaningful local expression of rights (see Tucker 1983; Hyden 1993; Okoth-Ogendo 1993; Leary 1987; United Nations 1996; Tibi 1994; Donoho 1991). Parker argues that 'although the principles of human rights are universal in character, the most direct and effective route to the protection of these universal ideals is via regional systems' (1983:239). Corbera believes '[u]nique cultural, political, and economic factors justify the regionalisation of human rights systems' (1993:939).

An Oceania Human Rights Commission would allow members to feel a sense of ownership of the human rights issues confronting the region, rather than feeling they are having something imposed on them by the global system. Buergenthal, an academic and judge on the Inter-American Court of Human Rights, has argued that 'the problems of our Hemisphere are more unique to the Americas than they are universal or European. They can only be solved within the framework of our own legal, cultural, political, and social traditions' (Buergenthal 1981:166). Tamata believes the advantage of using the Pacific Islands Forum to promote human rights would be member states' closeness in terms of cultural affinity, political understanding, historical involvement, trade, and the movement of people between the island countries (2000).

The Oceania Human Rights Commission would allow members to feel that their issues are receiving sympathetic consideration, that differences of philosophy and priorities could be worked through to produce local solutions. The Commission could help narrow the gap between local customs and the rule of law in Fiji and other members. It might have a greater capacity than the United Nations to provide well-informed advice, and early warnings of security and economic crises.

The great potential disadvantage of regional arrangements, so far unrealised in the other regional systems, is that a regional expression of rights could corrupt the global law. This fear of undue deference to regional norms is usually a reaction to cultural relativists, who argue that there are no universal standards and that any cultural practice is as valid as any other (Tamata 2000; Afshari 1994; Donoho 1991; Monshipouri 2002; Poe 2002; Goodhart 2003; Binder 1999). Although theories of cultural relativism may have started off with worthy aims—the theory was initially developed by anthropologists concerned about Eurocentric superiority (An-Na'im and Deng 1990)—it is misplaced in the human rights debate. Those who promote cultural relativism (or variations like Asian values or the Pacific Way) when it comes to human rights law typically do so to cover up their own interests (see Henningham 1995; Howard 1991; Ghai 1993; Thio 2000; Englehart 2000). A related

argument, that giving effect to human rights law impedes economic development, is also nonsense, because economic growth is dependent on the rule of law and a stable macroeconomic environment (see, for example, Messick 1999; Donnelly 1999; Harvey 2002; Sengupta 2002; Hamm 2001; Sano 2000; Udombana 2000), not human rights violations.

UN involvement would ensure the Oceania human rights order remains connected with, and responsive to, the global system. UN backing would give the Oceania Commission a legitimacy and credibility that it might otherwise lack, and would avoid the potential disadvantages of regional human rights arrangements. There may at times be creative tensions between regional and global concerns, but this should be welcomed as evidence of constructive dialogue.

## **The Oceania Human Rights Charter**

### **Rights**

The Oceania Human Rights Charter should promote human rights, humanitarian law and labour rights. The Charter might also introduce new rights and a creative balance between rights and duties.

The European, American and African regional organisations all negotiated their own regional human rights conventions with minor variations on the rights detailed in the UN instruments (the European Convention follows the Universal Declaration of Human Rights, but precedes, and may have been a precedent for, the 1966 Covenant on Civil and Political Rights, and the Covenant on Economic, Social and Cultural Rights). Rather than negotiating a new instrument, it would be better to incorporate the relevant UN human rights law into the Oceania Human Rights Charter. Giving effect to the global agreements would be easier and quicker than negotiating a new text. Further, adopting pre-existing agreements would ensure the Oceania Charter avoids the dangers of cultural relativism.

However, it is the rights and programs for implementing those rights that should be adopted from each of the proposed instruments, not necessarily the procedures for international monitoring. The monitoring and enforcement powers for the Oceania Human Rights Commission would be negotiated separately.

The key rights to be included in an Oceania Human Rights Charter are listed in the Covenant on Civil and Political Rights (CCPR) and the Covenant on Economic, Social and Cultural Rights (CESCR).<sup>12</sup> Although ideological conflict dictated the division of these core rights into two Covenants in 1966, the global community unanimously recognised in the Vienna Declaration 1993 that 'all human rights are universal, indivisible and interdependent and interrelated' (Vienna Declaration and Program of Action, Part I.5). Australia, to its credit, has promoted both civil rights and

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economic rights, and thus performs a bridging role between developed and developing countries in negotiations over human rights instruments and resolutions.

The CCPR regulates the power of the state. Many of the rights relate to the use and misuse of the state apparatus: freedom from torture, freedom from arbitrary arrest and detention, the right to a fair trial; freedom of thought, conscience and religion; and the right to peaceful assembly (CCPR, Articles 4, 7, 9, 14, 18 and 21). Article 4 allows certain rights to be suspended in a public emergency threatening the life of the nation. Such a derogation clause, however, would not have excused the actions that Rabuka took after the first and second coups in Fiji, because the manufactured emergency did not threaten 'the life of the nation'. The CESCR contains the 'positive' or 'distributive' rights, such as the right to an adequate standard of living, the rights to adequate housing, clothing, food, education, health care and social protection (CESCR, Articles 9, 11, 12 and 13).

Although these two 'first generation' Covenants list the most important rights, many 'second generation' single-issue instruments amplify particular rights, and strategies for their promotion and protection.<sup>13</sup> Thus the following five instruments should be included in the Oceania Human Rights Charter.

The Convention Against Torture<sup>14</sup> defines torture as any act, not lawfully sanctioned, by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person in order to obtain information or a confession, or to intimidate or coerce (Convention Against Torture, Article 1.1). The Convention focuses on state actions—to fit within the Convention definition, the torture must be inflicted by a public official or person acting in an official capacity, or occur with their acquiescence (Convention Against Torture, Article 1.1). Psychological forms of torture—when a victim fears that a relative will be tortured or killed—are also prohibited.

The Convention on the Elimination of All Forms of Racial Discrimination<sup>15</sup> has been widely ratified. States must 'prohibit and bring to an end, by all appropriate means, including legislation as required by circumstances, racial discrimination by any persons, group or organisation' (Convention on the Elimination of All Forms of Racial Discrimination, Article 2.1d). The Convention has an emphasis on preventive measures, and combating structural discrimination. Fiji and other Oceania members need not be too concerned about genuine measures to promote the welfare of their indigenous peoples—the Convention provides for positive discrimination 'for the sole purpose of securing adequate advancement of certain racial or ethnic groups or individuals', but such measures are subject to a sunset clause (Convention on the Elimination of All Forms of Racial Discrimination, Article 1.4, 2.2).

Including the Convention's substantive provisions in the Oceania Human Rights Charter would be a significant symbolic step. The region, long troubled by race issues, would be demonstrating its recognition of the need for promoting religious and



racial tolerance, including through the education systems. Every country has scope to do more to eliminate discrimination, to ensure all people enjoy the same rights in law and practice. Thus, all states in the region should engage in dialogue to produce improved measures to combat racial discrimination.

The UNDP's *Pacific Human Development Report* discussed the difficulties confronting women in the Pacific, particularly in Melanesian countries (UNDP 1999). Including the Convention on the Elimination of Discrimination Against Women<sup>16</sup> in the Oceania Human Rights Charter would be an important step in addressing this situation. The Oceania Human Rights Commission could then contribute to the vital Pacific debate about traditional values and lifestyles and women's rights (see Deklin 1992).

The Convention on the Rights of the Child<sup>17</sup> is the world's, and the region's, most widely ratified instrument (see Office of the UN High Commissioner for Human Rights 2002). Thus, it provides a good basis for initial dialogue. The Convention covers the range of economic, social, cultural, civil, political and humanitarian rights (Bolton 1990). This Convention and the Convention on the Elimination of Discrimination Against Women are the first enforceable treaties with an integrated approach to these rights, moving beyond traditional divisions of economic and civil rights (Hammarberg 1990).

The Oceania Human Rights Charter could also usefully adopt language from the Declaration on the Right to Development,<sup>18</sup> perhaps in its preamble. The Declaration is not in the same class of global law as the six instruments above—it is a General Assembly resolution, rather than a treaty open for ratification—but it has great moral authority and many developing states are, naturally, concerned about a right to development. Including the Declaration in the Oceania Charter would recognise these concerns. The African Charter—which LAWASIA followed in its Draft Pacific Charter of Rights and Duties—recognises the right to development.

Many states, though, misconstrue the right to development, limiting it to economic development. This right encapsulates economic security, but also the ideal of democratically sharing this economic growth.<sup>19</sup> Development is a holistic process, encompassing all human rights, not just economic development.<sup>20</sup> The Vienna Declaration makes it clear that lack of development in a country does not justify the violation of civil and political rights (Vienna Declaration Part I.10).

Though the Oceania Human Rights Charter would largely draw on the existing global human rights law, there is still scope to innovate. Pacific states have advanced the right to a clean and safe environment through a number of agreements. The concern with the environment is understandable given the region's experiences with nuclear weapons testing and nuclear waste disposal, and the potential impact of global warming, and it would be appropriate to recognise this in the Oceania Human Rights Charter. The African Charter refers to the need for a 'general[ly]

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satisfactory environment'. The LAWASIA Draft Charter puts it better, stating that '[a]ll peoples shall have the right to a clean, healthy and safe environment favourable to their development' (Article 24) (other parts of the Oceania single undertaking treaty would also protect the environment).

The Oceania Human Rights Charter could usefully develop the right to privacy (Article 17 of the CCPR), given the integral role that the internet and e-commerce would serve in the Oceania common market. Article 8 of the European Union's Charter of Fundamental Rights is instructive.

Everyone has the right to the protection of personal data concerning him or her...Such data must be processed fairly for specified purposes and on the basis of the consent of the person concerned or some other legitimate basis laid down by law. Everyone has the right of access to data which has been collected concerning him or her, and the right to have it rectified.

The Oceania Human Rights Charter should also encompass humanitarian law. The Oceania Human Rights Commission should promote the Geneva Conventions and their protocols. As part of this body of law, the Oceania Commission should also include UNESCO's Convention for the Protection of Cultural Property in the Event of Armed Conflict.

The Oceania Charter should also encompass core labour rights. Labour rights were discussed in Chapter Six in the context of the Oceania investment agreement on the responsibilities of transnational corporations. Oceania members should see that labour standards are implemented by domestic businesses, as well as transnational corporations (the proposed Oceania investment agreement would only cover transnational corporations). Thus, the Oceania Human Rights Commission should work with members to ensure

- workplaces respect the right to freedom of association and to organise and bargain collectively<sup>21</sup>
- workplaces are free from forced or compulsory labour<sup>22</sup>
- workplaces are free from exploitative child labour<sup>23</sup>
- workplaces are free from discrimination in employment<sup>24</sup>
- safe and healthy working conditions.<sup>25</sup>

In 1998, the International Labour Organization (ILO) drew these five core rights together into a new Declaration on Fundamental Principles and Rights at Work.

To complement the agreements establishing the Oceania common market, particularly the Oceania labour mobility agreement, the Oceania Human Rights Charter could adopt language from the UN Declaration on the Human Rights of Individuals Who Are Not Nationals of the Country in Which They Live, and the Convention on the Rights of Migrant Workers 1990.

**Duties**

Article 29.1 of the Universal Declaration states that each individual has a duty to the community, 'in which alone the free and full development of his personality is possible.' Yet the concept of duties of individuals has not been amplified in any subsequent UN human rights instruments. The American Convention and the African Charter include sections on duties. Forum island countries would most likely insist on some expression of duties given the importance of the interrelationship between rights and duties in their communal lifestyles (Powles 1992).

The InterAction Council, chaired by former Australian Prime Minister Malcolm Fraser, produced a Draft Universal Declaration of Human Responsibilities, hoping it would become a companion instrument to the Universal Declaration of Human Rights (InterAction Council 1997). The draft was endorsed by a number of high profile ex-politicians and other leaders, and some may suggest that this document should form the basis of a statement of duties in the Oceania Human Rights Charter. Such a suggestion should be resisted as the language it uses could potentially undermine the strength of the Charter's human rights provisions. For example, Article 12 on 'Truth and Tolerance' includes the line '[n]o one is obliged to tell all the truth to everyone all the time'. Whilst technically true, such an understanding is open to abuse by politicians and others, and does not deserve to be codified in a human rights instrument. Article 14 provides '[t]he freedom of the media to inform the public and to criticise institutions of society and governmental actions, which is essential for a just society, must be used with responsibility and discretion'. This is also open to abuse if governments choose to emphasise the media's responsibility to act with discretion, instead of fearlessness.

Those provisions demonstrate that the concept of duties can be misused. Human rights should not depend on the performance of duties to a particular power or institution, and duties should not be a facade for cultural relativism (Saul 2001). Duties to people generally—for instance, a duty to the community as in the Universal Declaration of Human Rights—are to be welcomed, but duties to individuals—chiefs, for instance—or to the state are best avoided. It is not that such duties never exist, but including them in a human rights charter institutionalises them and imbues them with a political power that may be misused or misinterpreted.

An appropriate formulation for the Oceania Human Rights Charter would be to follow Article 32 of the Inter-American Convention, which, in the section on the Relationship Between Duties and Rights, strikes an appropriate balance.

- Every person has responsibilities to his family, his community, and mankind.
- The rights of each person are limited by the rights of others, by the security of all, and by the just demands of general welfare, in a democratic society.

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It does not include a duty to the state, and the fact that limitations must take place in the context of 'a democratic society' is a necessary check. A duty to the community is quite different from a duty to the state, which can be mistaken for a duty to the government of the day. The duty to the family is likely to find resonance in Forum island countries, and usefully complements Article 23 of the CCPR and Article 10 of the CESCR, which recognise that 'the family is the natural and fundamental group unit of society and is entitled to protection by society and the State'.

As with many other aspects of the values and commitments that should be included in the Oceania single undertaking treaty, there is a distinction to be drawn between what belongs in the preamble and what belongs in the agreement proper. Since duties are not legally enforceable, the statement on duties should be left in the preamble.

## **The margin of appreciation**

Drawing on the rights created by the global system does not remove the need for regional initiative in their interpretation and implementation. Amnesty International, for example, says that the challenge in the Pacific is to marry global human rights law with local cultural systems ('Pacific nations urged to marry traditional and modern laws', Australian Broadcasting Corporation, 5 January 2001).<sup>26</sup> A framework is needed, though, to guide regional creativity so as to preserve the integrity of the global law.

The 'margin of appreciation' doctrine attempts to reconcile differences between UN human rights law, and the domestic practices, norms and the needs of individual states. The doctrine allows states a margin of discretion in the implementation of rights. Under the European Convention the margin of appreciation refers to the 'discretion left to domestic legislators, courts, and executives in creating, interpreting, and applying the laws of their own society' (Andrews 1984:495).

The extent to which the provisions of the European Convention allow for a margin of appreciation varies. In a case on censorship the European Court of Human Rights found that 'it is not possible to find in the domestic law of the various Contracting States a uniform European conception of morals'.<sup>27</sup> Views will vary 'from time to time and from place to place, especially in our era which is characterised by a rapid and far-reaching evolution of opinions on the subject' (Handyside Case, para 48). However, the Court emphasised the importance of freedom of expression as an essential foundation of a democratic society (Andrews 1984). Therefore restrictions on the right 'must be proportionate to the legitimate aim pursued' (Handyside Case, para 49). In a subsequent freedom of expression case, the Court found that the same state (the United Kingdom) had exceeded the margin of appreciation.<sup>28</sup> On the relevant issues there was a high degree of consensus amongst the party states, so the acceptable margin of appreciation was not as great.

Thus, the degree of margin may vary depending on the right involved. For instance, there is not much room for interpretation when it comes to rights like freedom from torture and slavery. Traditional practices that result in violence should not be condoned under the margin of appreciation. Greater discretion is possible, however, when deciding how to implement the right to a good education, or the right to freedom of expression, as the European cases on censorship demonstrate. An example from Fiji may be instructive. Indigenous Fijians, naturally, have the right to freedom of religion and, as part of their commitment to the Methodist religion, may themselves choose to keep the Sabbath holy. However, enforcing the Sabbath for the rest of the population through army decree and roadblocks, as occurred after the second coup, would be going too far (Nanda 1992).

The margin of appreciation rule should be included in the Oceania Human Rights Charter. However, there should be a proviso that the margin should not be interpreted in a way that undermines other rights. The Inter-American system has produced an appropriate formulation. It found that the Inter-American Convention must 'be interpreted in favour of the individual, who is the object of international protection'.<sup>29</sup> The CCPR also includes a clause standard to many instruments, that nothing in the Covenant may be interpreted so as to justify the destruction of any of the rights and freedoms in the Covenant.

The Oceania human rights order should ensure that universal standards are reflected through local concepts and norms. The alternative is an arrangement that unduly defers to regional norms at the expense of global law. By allowing a degree of deference to domestic practice where a right is less absolute—and a common regional practice on its implementation has not emerged—the margin of appreciation recognises this tension and provides a framework for reconciling universal norms and cultural diversity.

## **Oceania Human Rights Commission functions**

### **Education and promotion**

In the first phase of the Oceania Community, the bulk of the Oceania Human Rights Commission's work should focus on education and promotion activities, that is, those activities that do not have an explicit enforcement function. (The American and African Commissions have a mandate to undertake a range of education and promotion efforts. The European Commission, in contrast, is geared almost entirely to dispute resolution.)

Human rights education is the key to a successful human rights order—raising awareness about rights is the first step to ensuring they are respected and implemented in the domestic context. The educative function of the Oceania

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Commission would be a crucial and enduring contribution to regional order. Prevention is better than cure, and conferences, seminars and meetings of government ministers, policymakers and policy implementers, all help the cause. The Commission should also offer scholarships for courses in human rights law, especially to those who could have an influence over the protection and promotion of rights.

The Commission's grassroots work should be regarded as just as essential as its work with government ministers and officials. The Commission should translate the basic human rights instruments into native languages, and explore ways to make them culturally relevant. Developing programs for schools and universities should be an integral component of any education strategy. The Commission should develop libraries and databases accessible to Pacific citizens through publications and the internet (although the latter is less viable for developing countries in the immediate future).

The Commission should create specialist programs to educate police and armed forces about human rights and humanitarian law, as required by the Convention Against Torture and the Geneva Conventions.<sup>30</sup> The crises in Bougainville, Fiji and Solomon Islands highlight the need for such training, and the Oceania Commission should assist domestic institutions to produce seminars and manuals for police and armed forces.

An important extension of the Oceania Commission's education and promotion work would be to encourage national human rights institutions and press councils: assisting existing bodies and providing the resources and expertise to create national commissions and press councils in those states that lack them. This would help embed human rights law in the domestic sphere (see Reif 2000). Following Australia's efforts, the United Nations has made national institutions a high priority. Much like regional commissions, national commissions have a vital role to play in advising and educating, disseminating information, reviewing legislation and practices, and seeking remedies (Vienna Declaration, para 36), and press councils assist to secure freedom of speech, from which many other rights flow.

Of the countries proposed for the first phase of the Oceania Community, Australia, New Zealand and Fiji have national human rights commissions. Given other Forum island countries' size and fiscal constraints, they may not wish to create national commissions; they may prefer to allocate officers in legal departments to these activities. Such an arrangement would not conform to the Paris Principles—that is, national human rights institutions should be independent of the rest of the government—but this may be the extent of the resources that Forum island countries can allow and it is preferable to having no staff devoted to human rights issues. Given their size, many Forum island countries may accept the Oceania Commission

performing the tasks a national commission would otherwise undertake, such as reviewing legislation and assisting with the preparation of United Nations treaty reports.

Establishing effective consultation mechanisms with non-government organisations would be essential for the Commission's education and promotion work. Much of its information would come from non-government organisations, who would often have more developed networks and access to information than the Commission itself (Reisman 1995). However, since the Oceania Commission would place as much emphasis on economic, social, cultural and development rights as on civil and political rights, it should establish links with non-government organisations beyond those, such as Amnesty International, associated with libertarian rights. The Oceania Commission should also build relationships with trade unions and aid agencies, to reflect its wider concerns.

Although regional commissions can enjoy many advantages from liaising with non-government organisations, there are disadvantages. The Inter-American Commission, for example, has had to work to maintain the appearance of neutrality despite the large input of non-government organisations (Pasqualucci 1995). Further, non-government organisations are often focused on tactical issues, whereas the Oceania Commission should contribute equally to the tactical and strategic pursuit of human rights. Some non-government organisations attempt to marshal public support to prompt the release of a particular prisoner, or stop the torture of an individual. As vital as this work is, instituting the programs to prevent these situations initially occurring is equally necessary. Pursuing structural change may at times necessitate a different emphasis from non-government organisations.

To measure the effectiveness of its education and promotion work, the Inter-American Commission frequently conducts country and regional studies and, where appropriate, makes recommendations to the relevant governments (United Nations 1996). This could prove an effective model for the Oceania Commission. Under the Inter-American Commission procedures, the relevant country is given the opportunity to respond following an investigation and preparation of a draft report.<sup>31</sup> The Commission may decide to modify the report as a result, or indeed, not to publish it. A country report is always prepared following consultation with government officials and after giving opportunities to the government to express its views (United Nations 1996).

Governments have not always agreed with the conclusions the Inter-American Commission has reached in its various reports; some react badly; others see it as an opportunity for dialogue (United Nations 1996). Yet on the whole, Oceania member states would most likely respond better to a report prepared by an Oceania Commission sympathetic to the regional context, instead of the United Nations.

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On occasion, the Inter-American Commission has considered that particular violations, or widespread political, technological or social changes, justify the preparation of general, regional studies (American Convention, Article 41c; United Nations 1996). This is also a useful precedent for the Oceania Commission, as a broad, thematic approach would have the advantage of making individual members more receptive to findings and recommendations, rather than feeling they have been singled out. During the PACER–PICTA negotiations there were plans for a social impact study; the Oceania Commission could undertake this task. Such an endeavour would simultaneously instil accountability in the Oceania Community for its efforts in promoting economic reform, and in Forum island countries, for their efforts in promoting the right to development.

As part of its country reports, the Inter-American Commission also makes on-site visits. There are obvious advantages to an on-site visit from the perspective of those suffering human rights abuses—the presence of a supranational organisation can act as a check on governments. But there are also advantages for governments from on-site visits (Reisman 1996). Governments can better explain a situation, highlight difficulties in implementing policies, ask for training assistance, and request help from other members of the Oceania Community (as Prime Minister Bartholomew Ulufa'alu might have done during the Solomon Islands ethnic tensions; see Maher and Dorney 2000). A regional organisation is better able to appreciate the local dynamic than the United Nations, possibly resulting in better fact-finding, understanding and interpretation.

The UN Human Rights Commission's theme rapporteurs provide a useful precedent for the Oceania Commission's on-site visits (see Australian Department of Foreign Affairs and Trade 1993; Kirby 1996; Weissbrodt 1986). Unsurprisingly, an individual working behind the scenes can achieve more than a larger working group—and do it more efficiently and cheaply (Weissbrodt 1986). Oceania Commission rapporteurs could assist governments in the areas corresponding to the instruments included in the Oceania Human Rights Charter. Thus, there could be rapporteurs on gender equality, racial equality, children, development and the environment. In the first phase of the Community, the rapporteurs' focus would be on educative and preventive strategies; this may later develop into an investigative mandate.

Ultimately, the success of the Oceania Commission's education and promotion efforts would rest on the informal relationship it established with members of the Community. The Commission should proceed slowly, gradually building consensus on the appropriate expression of rights, mechanisms and functions. The Oceania Commission would be tackling sensitive issues: for instance, racism in Fiji; democracy



in Tonga; indigenous issues and the treatment of asylum seekers in Australia. This calls for diplomacy; the Inter-American Commission has stressed it

...never loses sight of the fact that it is not and cannot be institutionally antagonistic to governments. The Commission is created and sustained by governments that voluntarily assumed human rights obligations and is structured to help those governments realise such obligations by highlighting inconsistent behaviour, indicating when remedies are appropriate and helping governments institutionalise new normative arrangements. A Commission must have the courage to speak out critically and forcefully when necessary, but it should always try to avoid polarisation, seeking to work with governments whenever possible or appropriate (Reisman 1995:96).

One Commissioner has admitted the Commission 'has not always been successful. However, it regularly examines its performance, carefully heeds OAS' annual review of its activities and studies responsible non-governmental appraisals' (United Nations 1996:40). Overall, though, the Inter-American Commission has made a considerable contribution to advancing the observance of human rights in the region. Farer argues that 'exposure, or the threat thereof, has accomplished a mitigation of barbarity...It cannot be doubted that the prospect or consequences of a Commission inquiry has saved lives, averted torture, terminated arbitrary detentions, and ameliorated conditions of detention' (Farer 1987:403).

Thus, the Oceania Commission should not display restraint and deference to domestic authorities, to the point of being rendered meaningless (Hovius 1985); at times the Commission would need to confront oppressive conduct openly. Like the Inter-American Commission, though, the Oceania Commission would need to strike a sensible balance between publicity and behind the scenes work.

### **Enforcement**

The capacity to enforce rights directly presents more difficulties than education and promotion activities. Nonetheless, the Oceania Human Rights Commission must be able to intervene in critical situations.

Two methods of enforcement are outlined here: allowing individuals to petition the Commission directly; and implementing a reporting regime. The European, Inter-American and African commissions allow individual petitions. Petitions from individuals would reinforce the Oceania Commission's education and promotion activities. Such petitions may make the Commission aware of problems which otherwise would not have been known. If a petition is indicative of a larger problem, the Commission could then focus its attention on developing structural remedies.

In considering a petition, the European, American and African Commission procedures emphasise 'friendly settlement.' This may have particular resonance

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amongst Oceania members, and has the advantage for individuals of being cheap and accessible (United Nations 1996). Thus, the Oceania Commission should adopt a low-key, confidential approach in liaising with government representatives. Suggestions and recommendations may resolve an issue; but there should be scope for the Commission to ask a government to undertake provisional measures pending an investigation or report.

Successes would most likely come through negotiation rather than application of the rule of law. Commission members would need to view the chances of success realistically, especially in the first years of operation. As the Inter-American Commission found, 'because the Commission has not avoided the hard cases, its "scorecard" is less impressive than it might have been if the Commission had carefully selected easier cases for its docket' (Reisman 1995:96).

Pacific citizens should have the right to petition the Commission on breaches of economic, social and cultural rights, as well as civil and political rights. However, since progress on economic, social and cultural rights is more likely to come about through efforts over many years, a government reporting regime would usefully complement the right to individual petition.

Such government human rights reports typically include interviews with officials, statistics and a review of common practices. A reporting system would work if the state reported frankly and the Commission responded critically. The UN Human Rights Committee has found that the state must have a constructive view of the procedure, which requires tact on the part of the United Nations as well (O'Flaherty 1994). A reporting system is more helpful when the right concerned, such as the right to development and the right to a clean environment, is as much a matter of facilitating international cooperation as resolving complaints (Harvey 1987). As with the European system, the Oceania Human Rights Commission should also allow for disparities in economic conditions, which influence a state's capacity to implement economic, social and cultural rights.<sup>32</sup>

The other regional human rights commissions also offer a third possibility for enforcement, allowing member states to submit complaints about other members. However, the inter-state complaint has never been utilised in the American and African systems, and very rarely in the European system (see Leckie 1988). Since its usefulness is doubtful, it would be better to omit this option from the Oceania Human Rights Charter. This would reassure states, and still leave scope for informal, confidential approaches from members to the Commission, which could then pursue its own inquiries.

In the event of mass human rights violations, complaints could be made to the United Nations. Even with the creation of a regional human rights order, it is still appropriate to bear in mind an appropriate division of responsibilities between the global and regional systems. The United Nations has the authority and resources to handle widespread, ongoing violations.

### **Conclusion**

The Pacific needs new mechanisms to promote better adherence to the supranational rule of law, because the lack of adherence to supranational law in many Pacific states is one of the prime causes of regional disorder. An Oceania Human Rights Commission would have vital work to do in closing the gap between supranational human rights law and the values and practices of many Pacific states. A regional commission would have the local representation, dynamism and relevance to encourage a shift in the region's approach to human rights, and to secure greater adherence to the rule of law. It would also cure the United Nations' pursuit of inappropriate regional human rights organisations, covering countries from the Middle East to the Pacific, in an unsuitable definition of the Asia Pacific which can add little value to the global system's efforts to promote human rights.

In developing its list of rights, the Oceania Human Rights Charter would draw on the United Nations' instruments, Geneva Conventions and ILO Conventions, as detailed in the following diagram, as well as innovating in areas such as environmental protection and privacy. The Charter would propose a wide range of promotional activities for the Oceania Human Rights Commission, and ensure the Commission has the capacity to enforce rights through a combination of individual complaints and a thorough reporting regime (Figure 9.1).

The Oceania Human Rights Commission's role in promoting regional order is critical. It would be the only regional institution explicitly considering, and safeguarding, all four of the 'deepening' goals of regional order—sustainable economic development, security, the rule of law and democracy—in an integrated fashion. Further, it would demonstrate the Community's institutional integrity to Pacific citizens. Pacific regional order would be incomplete without it.

The next chapter considers the Oceania Court, which, together with the Human Rights Commission, is designed to address the Pacific current challenges to the rule of law.

Figure 9.1 The Oceania Human Rights Charter

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## Notes

- <sup>1</sup> I refer here to the 'government' because Fiji's initial government maintained communal electoral rolls; the chief rebel who committed the first two coups, Sitiveni Rabuka, subsequently became the leader of the government; and many parts of the government apparatus—the army, some judges—were used to facilitate the removal from power of the democratically elected government in the third coup; and the subsequent government continued to discriminate against Indo-Fijians (as in its Blueprint for the Protection of Fijian and Rotuman Rights and Interests).
- <sup>2</sup> The United Nations' definition of the 'Asia Pacific' includes Middle Eastern and Central Asian countries; any 'regional' organisation based on this broad membership could add little value to the United Nations' efforts to promote human rights.
- <sup>3</sup> See [http://www.undp.org.fj/gold/human\\_rights.htm](http://www.undp.org.fj/gold/human_rights.htm) [accessed 9 December 2002].
- <sup>4</sup> See [http://www.undp.org.fj/gold/human\\_rights\\_wkshs.htm](http://www.undp.org.fj/gold/human_rights_wkshs.htm), [http://www.undp.org.fj/gold/national\\_workshops.htm](http://www.undp.org.fj/gold/national_workshops.htm) [accessed 9 December 2002].
- <sup>5</sup> See [http://www.undp.org.fj/gold/micro\\_human\\_rights\\_wkshs.htm](http://www.undp.org.fj/gold/micro_human_rights_wkshs.htm) [accessed 9 December 2002].
- <sup>6</sup> See <http://www.undp.org.fj/Governance.htm> [accessed 26 July 2002].
- <sup>7</sup> Like Pacific states, African states have often resisted measures that would impact on their internal sovereignty. However, the African human rights order has steadily, albeit slowly, evolved, and a human rights court was recently established (see Udombana 2001; Essien 2000; Odinkalu 1998, 2001; Mutua 1999; Murray 2003).
- <sup>8</sup> See <http://www.europarl.eu.int/charter> [accessed 19 June 2003].
- <sup>9</sup> This initiative followed the General Assembly's request to the UN Commission on Human Rights in 1966, to study establishing regional institutions to promote human rights (Vasak and Alston 1982).
- <sup>10</sup> Countries that have attended the various workshops include Afghanistan, Australia, Bangladesh, Bahrain, Bhutan, Brunei Darussalam, Cambodia, China, Fiji, India, Indonesia, Iran, Iraq, Japan, Jordan, Kuwait, Lebanon, Malaysia, Maldives, Micronesia, Mongolia, Myanmar, Nepal, New Zealand, North Korea, Oman, Pakistan, Papua New Guinea, the Philippines, Saudi Arabia, Singapore, Solomon Islands, South Korea, Sri Lanka, Syria, Thailand, United Arab Emirates, Vietnam, Yemen, with Palestine also represented.
- <sup>11</sup> Available online at <http://www.unhcr.ch/html/intlinst.htm> [accessed 27 August 2003].
- <sup>12</sup> Available online at <http://www.unhcr.ch/html/intlinst.htm> [accessed 27 August 2003].
- <sup>13</sup> See [http://www.undp.org.fj/gold/human\\_rights\\_in\\_pacific.htm](http://www.undp.org.fj/gold/human_rights_in_pacific.htm) [accessed 9 December 2002].
- <sup>14</sup> Available online at <http://www.unhcr.ch/html/intlinst.htm> [accessed 27 August 2003].
- <sup>15</sup> Available online at <http://www.unhcr.ch/html/intlinst.htm> [accessed 27 August 2003].
- <sup>16</sup> Available online at <http://www.unhcr.ch/html/intlinst.htm> [accessed 27 August 2003].
- <sup>17</sup> Available online at <http://www.unhcr.ch/html/intlinst.htm> [accessed 27 August 2003].
- <sup>18</sup> Available online at <http://www.unhcr.ch/html/intlinst.htm> [accessed 27 August 2003].
- <sup>19</sup> According to Forsythe, '[d]evelopment is a comprehensive economic, social, cultural and political process, which aims at the constant improvement of the well-being of the

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entire population and of all individuals on the basis of their active, free and meaningful participation in development and in the fair distribution of the resulting benefits'(1989:82). See also Alston 1985, 1991.

- <sup>20</sup> The Preamble to the Declaration on the Right to Development states: '[t]he right to development is an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realised'.
- <sup>21</sup> See CESCR, Article 8; CCPR, Article 22; International Labour Organization (ILO) Convention Concerning Freedom of Association and Protection of the Right to Organise (No. 87); and ILO Convention Concerning the Application of Principles of the Right to Organise and Bargain Collectively (No. 98).
- <sup>22</sup> See CCPR, Article 8; the ILO Convention Concerning Forced or Compulsory Labour (No. 29); the ILO Convention Concerning the Abolition of Forced Labour (No 105).
- <sup>23</sup> See Convention on the Rights of the Child, Article 32.
- <sup>24</sup> See CESCR, Articles 2 and 7; CCPR, Articles 2 and 3; Convention on the Elimination of Discrimination Against Women, Article 1; the Convention on the Elimination of Racial Discrimination; ILO Convention Concerning Discrimination in Respect of Employment and Occupation (No. 100) and ILO Convention Concerning Occupational Health and Safety and the Working Environment (No. 111).
- <sup>25</sup> CESCR, Article 7.
- <sup>26</sup> Available online at <http://www.abc.net.au/ra> [accessed 5 January 2001].
- <sup>27</sup> *Handyside v United Kingdom* in (1976) *Year Book on the European Convention on Human Rights* 506 European Court of Human Rights, Series A, No. 24, 1 E.H.R.R. 737.
- <sup>28</sup> *The Sunday Times v United Kingdom* in (1979) *Year Book on the European Convention on Human Rights* 402, European Court of Human Rights, Series A, No. 30.
- <sup>29</sup> *In the Matter of Viviana Gallardo, Government of Cost Rica*, Decision of 13 November 1981, Inter-American Court of Human Rights, 12 OEA/Ser. L/V/III. 7 doc. 13, Ser. A and B. No. G.101/81 (1982) paragraph 16.
- <sup>30</sup> Convention Against Torture, Article 10; Article 1 of the Geneva Conventions, requires parties 'to ensure respect for' humanitarian law. This is complemented by Articles 83 and 19 respectively of the two Protocols, which require adherents to include humanitarian law in their military and, where relevant, civilian instruction programs.
- <sup>31</sup> Regulations of the Inter-American Commission on Human Rights Article 63 reprinted in *Handbook of Existing Rules Pertaining to Human Rights in the Inter-American System* (1980), Articles 59–63.
- <sup>32</sup> The European Social Charter was designed by the Council of Europe to complement the European Convention. Unlike the European Convention, though, the Charter establishes a reporting rather than a judicial regime (Davidson 1993).

# 10

## The rule of law

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Pacific regional order would be incomplete without a mechanism for interpreting the single undertaking agreement and its protocols, to allow members to enforce their rights and peacefully settle disputes. Therefore, the Oceania Community should have a Court, with four chambers dealing with human rights, common market, environmental and constitutional issues. The development of a regional jurisprudence, and the interplay between the Oceania Court and national courts, would assist in addressing the challenges to the rule of law currently constraining the Pacific.

This chapter considers the Pacific Island Forum's current approach to dispute settlement, and contrasts it with CARICOM. The European Court of Justice is examined as the most relevant precedent for the Oceania Court. The operations of each chamber of the Oceania Court are outlined, as well as how the relevant sections of the Forum's current agreements should be developed, and who should have standing to bring cases to the Court.

### **The Forum and dispute resolution**

The Forum's institutional architecture currently does not include a standing dispute settlement mechanism. Some Forum agreements do include dispute settlement provisions, but, as will be discussed below, these are underdeveloped.<sup>1</sup> These *ad hoc* provisions are insufficient for a more advanced model of regional integration, and for promoting the rule of law throughout the Oceania Community.

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One possible objection to an Oceania Court is that Forum island countries might be reluctant to embrace legally binding dispute settlement at the regional level, because 'the Pacific Way' emphasises informal dispute resolution (Henningham 1995). However, the Forum has previously discussed a regional court of appeal (South Pacific Forum 1974), and it has previously endorsed the establishment of a Regional Panel of Appellate Judges (South Pacific Forum 1988).

During the PACER–PICTA negotiations there was much discussion about the form of the dispute settlement mechanism that should be included in the agreement. One delegation asked '[w]hy can't we just sit around and talk about things—isn't that the Pacific Way?' The Deputy Secretary-General of the Forum gently advised Forum members, though, that '[w]hen we haven't had these things we've got into trouble in the past and been caught with our pants down'. Without the rule of law and formal dispute settlement mechanisms there is no safety net when the Pacific Way fails, as the war in Bougainville demonstrates.

A contrast with CARICOM is again useful. The Preamble to CARICOM's Dispute Settlement Protocol states that members are

...convinced that an efficient, transparent, and authoritative system of dispute settlement in the Caribbean Community will enhance the economic, social and other forms of activity in the CARICOM Single Market and Economy, leading to confidence in the investment climate and further growth and development (CARICOM, Protocol IX).

There is no ambivalence like that seen in the Forum; rather, there is a clear understanding that regional integration depends on, and benefits from, authoritative dispute settlement. In 2003, the Caribbean Court of Justice entered into force (Carrington 2003). This is what the Forum must work towards if it is to achieve substantive regional integration.

During the PACER–PICTA negotiations, Forum island countries did become interested in a dispute settlement mechanism when it came to the level and type of technical assistance Australia should provide. Forum island countries will accept dispute settlement, then, when there is something in it for them. However, dispute settlement is about rights and obligations. Australia rightly blocked that particular mechanism because it did not involve reciprocal obligations.

## **Precedent**

The European Court of Justice has been central to the development of the European Union, speeding economic integration, promoting democracy and protecting individual citizens. European regional order is as much the result of case law as treaty law (Tridimas 1996).



The Treaty of Rome declared that the European Community was to be based on free trade in goods. Yet it was the Court of Justice that converted principle into practice, in the 1963 landmark case *Van Gend en Loos*,<sup>2</sup> rejecting the argument that the Treaty was only about governing relations between nation-states. Rather, it found the Treaty was about establishing a community legal order, where the rule of law covered individual citizens as well as national governments. The Court held that the importer who challenged a customs assessment in their national court could rely on the Treaty provision prohibiting increases in customs duties (Keeling and Mancini 1994).

The European Court of Justice has often rescued the integration effort in Europe from the bureaucrats. At one point, the European Commission was bogged down in establishing technical regulations to facilitate exports. The Court of Justice trumped this laborious procedure by establishing that any good that could be legally sold in one Community member could be legally sold in any other Community member (Laursen 1999).

The European Court's body of law rests on two doctrines. The first is the doctrine of supremacy, that, where there is a conflict, Community law overrides national law. The second, an extension of supremacy, is that any form of Community law, whether intergovernmental treaty or European Commission directive, can create citizens' rights, which must then be upheld by national courts (see Rinze 1993).

The European Court's decisions have provided an evolving, but largely consistent, body of law to give effect to the Treaty. In doing so, the Court has attempted to extrapolate from members' national constitutions, as well as being guided by such catch-all principles as 'the requirements of sound justice or good administration' and 'the common legal heritage of Western civilization' (Kakouris 1993:542). Given the diversity of members' legal systems, it is interesting that the Court's efforts to develop a European jurisprudence have been accepted by members.

Through its rulings, the European Court has developed a normative structure that balances the rights of national governments, companies and citizens. Its work suggests the importance of a legal institution in sustaining regional order. It has ensured that protectionist tendencies did not undermine the Treaty, and, at times, has provided a much-needed impetus towards regional order.

## The Oceania legal order

The creation of the Oceania Court would be vital for embedding the rule of law throughout the Oceania Community. Based on the European Union experience, it would create a regional legal order, and may assist in promoting better national regulatory environments. Judges for the Oceania Court would be drawn from all

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members of the Community, and the interplay between the regional and domestic courts—in terms of referrals and precedents—may help instill a greater commitment to the rule of law (see Cox 2003). The Agreement Establishing the Caribbean Court of Justice states, for example, that the Court ‘will have a determinative role in the further development of Caribbean jurisprudence through the judicial process’ and that members are ‘convinced of the desirability of entrenching the Court in their national Constitutions’ (Agreement Establishing the Caribbean Court of Justice, Preamble).

The Oceania legal order would usefully develop existing legal links. Members in the first phase of the Oceania Community are fortunate to have similar legal traditions—most are based on the British common law system. Judges from Pacific countries often sit on the Courts of Appeal of fellow Pacific countries, as occurred with the Court of Appeal in Fiji following the third coup.<sup>3</sup> In effect, Fiji accepted the judgment of a ‘regional court’ when the Court of Appeal declared the interim government after the third coup was illegal. Another example of the movement of judicial personnel around the Pacific is that a retired South Australian judge has served as Kiribati’s chief justice.

Judicial cross-links are to be welcomed, but the Oceania Community requires a Court to be the promoter and guardian of the regional integration effort. Proponents of the Caribbean Court of Justice argued that, given the significance and breadth of the Caribbean integration agreements,

...it is only to be expected that disputes will arise and it is therefore essential that the rules of the game be interpreted by one impartial tribunal rather than by separate courts throughout the fifteen member states (Carrington 2003:6).

To ensure the development of the Oceania legal order and respect for its decisions, member states of the Oceania Community should enact domestic legislation ensuring that decisions of the Court can be enforced locally and serve as precedents for domestic courts. The Oceania Court should also make its judges available to domestic courts.

The Oceania Court could serve as a Court of Appeal for those countries requesting it to perform this role, much as the Court of Appeal functioned in Fiji after the third coup. The Caribbean Court of Justice will perform this function for CARICOM members, as the Eastern Caribbean Supreme Court has already done for a number of Caribbean states (see Agreement Establishing the Caribbean Court of Justice, Article 12; and Rules of Court of the Caribbean Court of Justice (Appellate Jurisdiction), Article 10).<sup>4</sup>

The Oceania Court would be the first regional court to combine specialist human rights, trade and environmental chambers in one court, as well as a general constitutional chamber.<sup>5</sup> Nonetheless, there could potentially be a delineation between the human rights chamber and the other chambers. In terms of the

commitments in the initial compulsory single undertaking treaty, Community members should agree that the judgments of the trade, environmental and constitutional chambers would be binding. However, an allowance could be made that the judgments of the human rights chamber would be advisory. As will be explained below, an advisory human rights jurisdiction can still make an important contribution. I believe, however, that this compromise may be necessary to make the Court politically saleable, because of the additional sensitivities about human rights issues in the Pacific.

I turn now to a consideration of the individual chambers.

### **Human rights chamber**

The American and European human rights courts have both contentious and advisory jurisdiction. Under the contentious jurisdiction, individuals or states petition the court for a binding judgment on whether a violation has occurred, and, if so, what remedies are appropriate. To invest the Oceania Court with a contentious human rights jurisdiction may be a step too far in the initial phase of the Oceania Community, even if it is the model for the longer term. The combination of adversarial dispute settlement (which Forum island countries may be reluctant to engage in) and human rights issues (sensitive in all states) may imperil the creation of the Court. As mentioned earlier, it is preferable to start off with a more limited human rights jurisdiction, in the expectation that it will develop over time.

Thus, the better option would be to invest the Oceania Court with an advisory human rights jurisdiction. The Inter-American Human Rights Court demonstrates how an advisory jurisdiction can make a critical contribution to promoting human rights, and it best exemplifies the approach the Oceania Court should adopt<sup>6</sup> (the International Court of Justice's rulings are likewise advisory and non-binding). Those members interested in developing the Court's contentious jurisdiction could sign an optional protocol to the compulsory single undertaking treaty.

Under the Inter-American Human Rights Court's advisory jurisdiction, states may request a non-binding opinion on the interpretation of the Inter-American Human Rights Convention, or on the compatibility of any domestic laws with the international human rights instruments (American Convention on Human Rights, Article 64).<sup>7</sup> Additionally, the Organisation of American States (OAS) may consult the Court. The OAS may only request opinions on matters within its sphere of competence, and must be able to demonstrate a 'legitimate institutional interest' in the matter (Inter-American Court of Human Rights 1982: para 14). The Inter-American Human Rights Commission, however, enjoys an absolute right to request advisory opinions (Inter-American Court of Human Rights 1982).

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The Inter-American Court has a wide ambit in considering requests for advisory opinions. Like the European Court of Human Rights, the Inter-American Court allows itself a 'margin of appreciation' in order to weigh the circumstances in each case, with a presumption in favour of exercising its advisory jurisdiction (Dwyer 1990). The Court 'must have compelling reasons...before it may refrain from complying with a request for an opinion' (Inter-American Court of Human Rights 1981a: para 30) (However, the Court will not accept a matter under its advisory jurisdiction if to do so will undermine its contentious jurisdiction) (Inter-American Court of Human Rights 1981b). A ruling under the Court's advisory jurisdiction is not binding on the parties (see De Abranches 1980; Frost 1992). This is the main point that distinguishes an advisory judgment from a contentious one, since all the other procedures remain the same (Dwyer 1990; Inter-American Court of Human Rights 1992).

Inter-American advisory opinions have been accepted willingly by states, possibly because they recommend action rather than dictate it. The advisory jurisdiction allows members to make inquiries about human rights law without the stigma of being declared a violator (Dwyer 1990), diminishing the domestic political cost of complying with the Court's judgment. In addition, if a state refuses to follow an advisory opinion, there is less damage to the regional system than if a binding decision is ignored (Corbera 1993).

The Oceania advisory jurisdiction may be closer to the ideal of consensual decision-making favoured by many Pacific states. The experience of other bodies has demonstrated that states will typically follow advisory opinions, even though technically they are not legally binding (see Parker 1983; Buergenthal 1982, 1985).

One advantage of an advisory jurisdiction is that it may allow a court to consider a broader range of issues, and so establish more general normative standards, than may be possible in a contentious case focusing on the circumstances of one individual (Peddicord 1984). A judge of the Inter-American Court has written that advisory opinions allow the Court to 'deal with many questions that are of great theoretical importance for the development of human rights law...resulting in a much more extensive development of the law' (Frost 1992:194).

Members of the Asia Pacific Forum of National Human Rights Institutions have already taken a small step towards the creation of a body with advisory jurisdiction, with their establishment of an Advisory Council of Jurists (Asia Pacific Forum of National Human Rights Institutions 2004). The Council will provide, on request, non-binding legal opinions on human rights issues of concern to Asia Pacific Forum members. Each Forum member nominates a suitably qualified person to serve on the Council for a once-renewable period of three years (former Chief Justice of the High Court Sir Anthony Mason was Australia's first nomination to the Council). Opinions

provided by the Council remain confidential unless otherwise stipulated by the relevant Forum member/s.

This model could be transferred to the Oceania Court, although decisions of the Court, even under its advisory jurisdiction, should be made public. Confidential procedures are appropriate for the Oceania Human Rights Commission to facilitate its political work, but public rulings are crucial to the development of a transparent, credible legal order.

Some states in the region may be suspicious about the Oceania Court if it is invested with a human rights jurisdiction at all. These fears may be alleviated by emphasising that only states and the Oceania Community itself would have access to the Oceania Court's advisory jurisdiction. A human rights court limited to an advisory jurisdiction is not the ideal, but it would be a substantial first step in developing a Pacific human rights jurisprudence. It shifts the focus from political negotiation to legal procedure, which would in turn reinforce the legitimacy of the Oceania Human Rights Commission's political work.

### **Common market chamber**

The normative effect of a common market chamber cannot be underestimated. In the Caribbean context, it was argued that

...an efficient Caribbean Court of Justice will be the backbone of an efficient CARICOM Single Market and Economy. Confidence in the court is indispensable to the proper functioning of the Single Market and Economy (Carrington 2003:6).

Further, the Caribbean Court would be 'the custodian of predictability and stability', ensuring a uniform application of the regional regulatory framework, and contributing to a stable regional economic environment (Cox 2003:13). This is consistent with Adam Smith's centuries-old argument that a 'tolerable administration of justice' is essential for economic development (Messick 1999:121).

The Oceania Court's common market chamber would be chiefly responsible for adjudicating disputes about the agreements on trade in goods, services, investment and labour. A fifth area is important, however, to ensure that the Oceania trade order leads to the maximum benefits for citizens—competition law, also known as anti-trust or anti-monopoly law.

The creation of the Oceania common market would lead to greater linkages between companies as they learn to operate on a regional basis.<sup>8</sup> This is vital for Forum island countries' survival and competitiveness. Nonetheless, large companies may become monopolies that abuse their dominant position in the market, shutting out the small to medium enterprises that are a feature of Forum island country

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private sectors. The Oceania Community needs a mechanism to limit the possibility of abuse. Competition law is the appropriate vehicle for promoting consumer protection and 'economic democracy' (see Gibbons and Mina 1995).

The Pacific presents various national competition issues, given Forum island country governments' involvement in their domestic economies. My concern, however, is not to tackle these national issues in the initial phase of the Oceania Community. Forum island country governments will be sensitive about any threat to government-run businesses, and negotiating resources are best directed elsewhere (although the Oceania Community could usefully offer technical assistance to those Forum island countries that wish to establish a national competition policy).<sup>9</sup>

Rather, my aim is to ensure the Oceania Community has jurisdiction over transnational corporations operating in two or more Oceania members and abusing their regional market power. Thus the Oceania Court would have a relatively narrow competition jurisdiction over regional instead of national competition matters. The European Union draws a similar distinction in its competition jurisdiction between transnational corporations, which are regulated by the European Union, and smaller enterprises, which are left to national competition regimes (Jacobs and Stewart-Clark 1990; Gibbons and Mina 1995). CARICOM's Competition Commission is also focused on regulating cross-border behaviour (Competition Policy, Consumer Protection, Dumping and Subsidies, Protocol Amending the Treaty Establishing the Caribbean Community, Article 30e, Protocol viii).

Since individual Forum island country markets are so small, there is a critical need for Forum island country companies to band together to achieve greater efficiencies and, in turn, greater exports. One key example is the situation with Forum island country national airlines. Maintaining separate national airlines has often been a costly business for the smaller Forum island countries (Pacific Islands Forum 2003). Although code-sharing arrangements have rationalised the system somewhat, there is still an obvious need for a regional airline to achieve greater efficiencies (Pacific Islands Forum 2003)—hopefully leading to more flights at lower costs. Nonetheless, such a regional airline would have a monopoly on air transport in most Forum island countries. Granting the Oceania Court a limited competition jurisdiction would not prevent such mergers, but would provide a protective mechanism to ensure the mergers worked in favour of Pacific citizens.<sup>10</sup>

A monopoly, in itself, is not the problem; the problem is a monopoly abusing its dominant market position through price fixing, collusive tendering, market or customer allocation and refusals to purchase or supply goods and services (UNCTAD 2000). Such abuses result in higher prices, less product choice and poorer services, for consumers and other businesses (Fels 2001b). It is this behaviour that the common market chamber should be given jurisdiction to deal with.

The Oceania competition jurisdiction would also streamline one aspect of the Oceania goods agreement. A country can impose an additional duty where it believes that overseas producers are exporting at a price lower than what it would have cost them to produce the good. Australia is a frequent instigator of these anti-dumping measures, and Forum island countries have often complained about the possibility of Australia using such measures against them. However, Hosli and Saether state that anti-dumping investigations and duties tend to protect domestic (in this case Australian) firms, whereas competition law better targets the anti-competitive behaviour of foreign firms (Hosli and Saether 1998). In the Oceania Community, members should forgo anti-dumping investigations against their regional partners, and instead utilise the Oceania Court to prevent genuinely anti-competitive behavior.

In addition to competition matters and trade in goods, services, investment and labour, the common market chamber could also be made responsible for dealing with disputes over customary land, if members would prefer to have a supranational body rather than a local one adjudicate such disputes.

### **Environment chamber**

The Oceania Community would be incomplete without mechanisms for promoting environmental care and diversity. An environment chamber would demonstrate that regional integration is compatible with environmental protection, and would also demonstrate the Oceania Community's commitment to sustainable development.

A trio of agreements provides the Pacific with a reasonably good level of environmental protection, at least as far as statements of principle and legal infrastructure go. In 1985, the Forum created the Treaty of Rarotonga, which established the South Pacific Nuclear Free Zone. The Treaty, entering into force in 1986, dealt with Forum concerns to prevent nuclear testing, storage or dumping in the region, whilst still allowing nuclear-armed US warships to visit ports in the region. The same year, the Forum created the Convention for the Protection of the Natural Resources and Environment of the South Pacific in an effort to control pollution. The Convention entered into force in 1990, and was further refined in 1995 by the Waigani Convention, which aims to regulate and minimise transboundary movements of hazardous and radioactive wastes. The Waigani Convention entered into force in 2001.

With the exception of global warming, these three conventions cover the key environmental concerns of Forum island countries: nuclear testing, pollution and waste dumping. Given the number of new agreements that would need to be negotiated to establish the Oceania Community, there is little point in creating new environmental agreements. Instead, these agreements should be subsumed into

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the Oceania single undertaking treaty (with some minor amendments to reflect the fact that the agreements would no longer just cover the South Pacific).

The chief failing of these agreements is in their dispute settlement procedures. Annex 4 of the Treaty of Rarotonga outlines the complaints procedure in the event of a dispute. The director of the treaty's 'consultative committee' (which meets only occasionally) will consider a complaint about, for example, the dumping of radioactive waste. First, the director must send special inspectors to consider the matter. Second, the inspectors must report to the consultative committee. Third, the consultative committee must decide on the truth of the report. Only after this has occurred will the parties to the convention meet at the Pacific Islands Forum. That is all—there is no legal muscle; no remedies that can be imposed. Any action will come after political negotiation at the Pacific Islands Forum. Given the Forum is a meeting of heads of government, it is reasonable to assume that such a meeting would take some time to organise, if it occurred at all outside the Forum's regular annual meetings. This is hardly appropriate when time is critical in preventing or containing environmental damage. These provisions do not seriously police breaches of the Convention.

The dispute settlement procedures in the Convention for the Protection of the Natural Resources and Environment of the South Pacific are slightly more developed. Under Article 26, and the annex on arbitration, parties can submit a dispute to a tribunal of one to three arbitrators if alternative dispute resolution has failed. The tribunal can order interim measures and a final award, but the dispute can only go to arbitration if both parties agree.

The Waigani Convention on the transboundary movement of hazardous wastes has similar provisions to the Convention for the Protection of the Natural Resources and Environment—parties can go to arbitration if they all agree to it. Parties can also take their dispute to the International Court of Justice—again, if they all agree. Liability and compensation remains an underdeveloped area of the treaty—Article 12 simply suggests that the parties should consider appropriate arrangements in these areas.

Under the dispute settlement proceedings in both the latter Conventions, the tribunals can take up to 10 months to give a final decision. This is unfortunate, given that environmental damage typically needs to be addressed immediately, not in 10 months' time when the funds from a tribunal award may become available. Forum island countries are unlikely to have the resources to address the damage before an award is made. A more streamlined, standing system is needed to resolve environmental disputes quickly and effectively.

To raise the profile of these three environmental treaties and give them teeth, the Oceania Court's environment chamber should be charged with settling disputes under the agreements. Quick action is needed in the event of pollution or dumping,



not long drawn-out procedures to establish an arbitration panel. The environment chamber of the Court would hear a dispute immediately, and decide on action, including injunctions. Where environmental damage has occurred, the Court would be empowered to order remedies and damages.

Investing the Oceania Court with jurisdiction over these three Conventions would make them powerful instruments to protect the environment. As with the human rights chamber, the environment chamber's jurisdiction has the potential to evolve. In time, for example, it could resolve disputes between Community members over ocean management, as members become more comfortable with its jurisdiction.

### **Constitutional chamber**

The final chamber of the Oceania Court would be the constitutional chamber, dealing with those issues that arise from the Oceania single undertaking treaty and its protocols that are not covered by the other, specialist chambers. The constitutional chamber would typically deal only with major issues, such as government-to-government disputes about the nature of their respective obligations. An example of such a dispute would be if a richer member of the Community failed to meet the contributions it had promised in the single undertaking treaty. Matters before the constitutional chamber would involve a sitting of the full Oceania Court.

The Oceania legal order would be incomplete without an appellate mechanism, so the constitutional chamber would also function as an appellate chamber for disputes from the specialist chambers, and referrals from national courts.

### **Standing**

The European Court of Justice has developed an impressive body of jurisprudence, perhaps because such a wide range of institutions and individuals can bring cases. The European Community, European Community employees, members, national courts and individual citizens can all approach the Court. Granting standing to a similarly broad range of institutions and individuals would greatly increase the Oceania Court's relevance and its benefit to Pacific citizens.

There are, however, limits, or at least there would be initially. As discussed above, granting individuals standing to bring human rights complaints through a contentious jurisdiction may be a step too far in the initial stages of the Community. Granting standing to transnational corporations to bring cases to the common market chamber might also be too big a step for some time. NAFTA currently grants investors standing to commence dispute settlement proceedings against member states, but the image of a large transnational corporation dragging a small Forum island country to the

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Oceania Court might undermine support amongst Forum island countries for the Court and even the Community itself. Member states should be able to bring cases on behalf of transnational corporations, where transnational corporations' interests would be subject to wider foreign policy considerations. Thus, transnational corporations would be permitted to make submissions to the Court in a relevant case, but would not be able to launch a case in their own right.<sup>11</sup>

Non-government organisations should also be able to make submissions to the Court. Conducting open proceedings and providing channels for non-government organisations to participate would allow civil society to engage the Court in its work. The Oceania legal order should be big enough to accommodate various briefs and points of view—after all, the aim of a legal order is to resolve competing points of view peacefully.

Nonetheless, the Oceania Court should insist that non-government organisations themselves be transparent in their dealings with the Court. The UN Conference on Environment and Development, or Earth Summit, set a constructive standard in this regard. Non-government organisations could participate if they registered their interest, established their relevance, verified their non-profit and non-governmental status and provided a copy of their annual report (Burns and Kakabadse 1994). Non-government organisations should also disclose their sources of funding, even if they have a non-profit status.<sup>12</sup> Where the Court is considering labour rights, it would be appropriate to relax the non-profit rule so that governments, unions and businesses could contribute briefs, as occurs at the International Labour Organization.

The Oceania Court could also take an additional step to ensure the Court reflects public concerns, rather than just relying on non-government organisations. Four advocates-general are attached to the European Court of Justice, and their sole brief is to represent the public interest. This model is drawn more from the continental system rather than the Commonwealth system, but could be adapted for the purposes of the Oceania Court. 'Friends of the court' might also be needed to assist individuals in bringing claims against governments.

In keeping with the positive aspects of the Pacific Way, not to mention good legal practice, potential litigants in most disputes would be required to submit their cases to alternative dispute resolution before being accepted by the Oceania Court (this is less appropriate in cases dealing with imminent environmental damage or human rights problems). Conciliators should be attached to the Court for this purpose.

## **Conclusion**

An Oceania Court would be essential for promoting the rule of law throughout the Oceania Community, developing a regional jurisprudence and providing members with a mechanism for the peaceful settlement of disputes. As the European Court of Justice demonstrates, and proponents of the Caribbean Court of Justice have argued, a regional court is the essential guardian of the integration effort. The initial Treaty of Rome was kept simple, but the European Court of Justice has been able to provide the detail needed to make the original treaty work.

The human rights chamber, through its advisory jurisdiction, would begin the process of developing a Pacific human rights jurisprudence. Over time, this may evolve into a contentious jurisdiction, which would allow individuals standing to bring their human rights complaints. The common market chamber would assist in facilitating a stable economic environment in the Pacific through its regulation of the Oceania common market. Its competition jurisdiction would protect the integrity of the market by targeting those regional companies that seek to abuse their market power. The environmental chamber would give teeth to the Forum's current environmental agreements, ensuring members could quickly obtain interim measures to contain environmental damage, and, later, compensation for such damage. The constitutional chamber would remain the overall custodian of the integration process, as well as providing the safety of an appellate mechanism.

The reluctance of Forum island countries to embrace formalised, supranational dispute settlement proceedings will have to be overcome (although their domestic courts are hardly idle). But this reluctance would change when Forum island countries appreciate the benefits that the Oceania Community offers them, and appreciate that the Oceania Court enables them to enforce their rights against stronger and richer members of the Community. This is entirely realistic: at the global level, the World Trade Organization allows even its smallest member to take on the United States and win.

Thus, along with the Oceania Human Rights Commission, the Oceania Court would play a vital role in fostering the rule of law among member states. Further, it would interpret and enforce the commitments made in the Oceania agreements, to the benefit of members and their citizens.

The next chapter considers the complementary measures needed to promote democracy in the Pacific.

### Notes

- <sup>1</sup> The FEMM process has identified the need to improve dispute settlement mechanisms within Forum island countries (particularly in relation to investment matters), but this is not the same as proposing a regional mechanism. The 2000 FEMM did propose, though, that the Forum Secretariat investigate providing Forum island countries with dispute resolution training (see Forum Economic Ministers Meeting 2000, 2003).
- <sup>2</sup> Case 26/62, *Van Gend en Loos v Nederlandse Administratie der Belastingen*, 1963 ECR 1. The case concerned the tariff re-classification of chemicals.
- <sup>3</sup> The Court of Appeal hearing one of the important post-coup cases involved three New Zealand judges, one Australian judge and one British judge, who was also the Chief Justice of Tonga (O'Callaghan 2002).
- <sup>4</sup> The Eastern Caribbean Supreme Court, established in 1967, is the superior court for Antigua and Barbuda, Dominica, Grenada, St Kitts-Nevis, St Lucia, St Vincent and the Grenadines, and three British overseas territories: Anguilla, the British Virgin Islands and Montserrat.
- <sup>5</sup> The Oceania Court should not seek jurisdiction over serious international crimes, such as breaches of the Geneva Conventions. These matters are more appropriately handled by the International Criminal Court.
- <sup>6</sup> Although the European and Inter-American human rights courts both have an advisory jurisdiction, the European Court of Human Rights has never issued an advisory opinion, perhaps because of its advanced contentious jurisdiction and the limited circumstances in which its advisory jurisdiction can be utilised. The Inter-American advisory jurisdiction is a better precedent, and its political setting more relevant to the Oceania Community (Jensen 1983).
- <sup>7</sup> A state which is not party to the Inter-American Convention may also consult the Court. Although a non-party state is yet to take advantage of this measure, such a mechanism increases the scope for including states not prepared to be part of the regular, formal mechanisms.
- <sup>8</sup> This has been the experience in the Caribbean (see Fairbairn and Worrell 1996).
- <sup>9</sup> An optional protocol to the single undertaking treaty should provide incentives to Forum island countries to liberalise their telecommunications monopolies, as part of the Oceania e-commerce strategy (see also Chapter Six).
- <sup>10</sup> In contrast, the European Union has the power of veto over mergers that may create monopolies.
- <sup>11</sup> In any event, Oceania members and transnational corporations can always utilise the World Bank's International Centre for the Settlement of Investment Disputes if they wish to deal with each other directly.
- <sup>12</sup> If this standard of establishing relevance proved too elastic and led to a flood of non-government organisations making submissions, the standard could be raised to the UN Economic and Social Council one of technical expertise.

# 11

## Democracy

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Democracy has proven a consistent force for security and sustainable, equitable development. Democracy should be an integral part, then, of Pacific regional order. An institution is needed that engages Oceania citizens in their regional polity, demonstrating the benefits of collective political action in tackling the challenges confronting the Pacific. Ensuring democratic values are embedded in the Oceania political order from the outset would produce a transparent, sustainable regional order (World Bank 1994; Iqbal and Jong-Li You 2001; Gradstein and Milanovic 2002; Dethier and Hafez Coli 1999; Garton-Ash 1998; Dettke 1994; Elman 2000).

This chapter outlines the issues surrounding the creation of an Oceania Parliament. After considering the rationale for an Oceania Parliament, the European, Nordic and Caribbean models for a regional parliament are considered, as well as two previous proposals for a Pacific Parliament. The proposal for the Oceania Parliament is then put forward, and consideration given to the issues of powers, voting rights, the level of representation from each country and topics for deliberation.

### **Oceania democracy**

An Oceania Parliament, and the creation of a democratic regional polity, would offer a number of advantages.

First, if Pacific regional order is to work, Pacific citizens have to feel directly engaged in their polity, even if that polity is beyond the nation-state. Citizens have to feel they can influence the Oceania Community's direction. Supranational organisations need to have a direct connection with 'the person on the street', but

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many citizens currently regard international bodies and their representatives as overly distant (Kerr 2001; Nordic Council of Ministers 2000). In contrast, a regional parliament would ensure that the various Oceania Community institutions are publicly accountable for their actions.

Second, there is the need to address the challenges to democracy in various Pacific states. Huntington predicted in 1968 that 'if the social conflicts and problems facing a society grow but their political institutions prove unable to adapt, the result may be political instability and even degeneration' (Huntington 1968; Berman 1997). One of the key problems in the Pacific, especially in Forum island countries, is that national political institutions are often seen as weak and unresponsive (Berman 1997). This may be due to a lack of national cohesion (Henningham 1995), the effects of economic globalisation,<sup>1</sup> or the inherent limitations of size. The Pacific needs new structures, then, to overcome scepticism about the capacity of the democratic process to produce solutions (Latham 1998). New forms of citizenship are needed and a vote in a supranational organisation may be part of the answer.

Third, the Oceania Parliament should also play a vital part in ensuring the Oceania Community successfully reflects the concerns of civil society (Carrington 2000). Strong democratic political institutions are important for a viable civil society—they channel conflict, and provide a forum for the oppressed and their representatives from non-government organisations (Berman 1997). In 2004, Forum Leaders noted the need to 'strengthen Forum engagement with civil society...One option could be for civil society to organise a forum just prior to the Leaders' meeting' (Pacific Islands Forum 2004a: para 12). A regional parliament would be a better mechanism for increasing engagement.

Some non-government organisations, such as trade unions and business organisations, have a considerable impact in the domestic sphere. Some, such as Amnesty International and the World Economic Forum, have a considerable impact at the global level. The Oceania political order would create a 'shared space' where domestic and international non-government organisations could operate, simultaneously taking a broader view than is possible at the national level, and a more intimate view than is possible at the global level. The Oceania Parliament would give these organisations a forum to channel their concerns, or to seek direct representation. The environmental movement, for example, has made effective use of the European Parliament to voice its concerns (Smith 1999). Former New Zealand Prime Minister and WTO Director-General Mike Moore has compared the movement toward regional structures to the creation of trade unions in the nineteenth century: '[j]ust as citizens get together on a national basis to elect governments,

form trade unions, establish consumer and civil rights, we must now move forward in a quantum jump and think regionally' (Moore 1982:60).

Fourth, the links between Australia and Forum island countries are currently largely centred on aid and economic issues. To establish an Oceania community, this needs to broaden out into social issues and the sharing and merging of cultures. The Oceania Parliament, as a voice for local concerns and interests, would be a mechanism to promote substantive cross-cultural dialogue. Perceptions of neo-colonialism in the Oceania Community would be avoided, too, if Forum island country representatives shared authority with representatives from richer countries in a democratically governed regional institution.

Fifth, the Oceania Parliament would have an important role to play in explaining how some of the Oceania Community's other mechanisms—such as the common market, monetary integration and security mechanisms—would affect citizens. As Edwin Carrington, the CARICOM Secretary-General, exhorted representatives of the Caribbean Assembly

...you are a vital conduit to the people of this region in whose name we make decisions. You understand their concerns, you reflect their views and you take back to your constituencies an understanding of the main workings and issues of CARICOM and how these affect the daily lives of people (Carrington 2000).

Finally, the Oceania Parliament would provide a mechanism for constructively managing frustrations and conflicting points of view. It may be that the Parliament produces reactionaries who are not in favour of the Oceania Community and will actively campaign against it. Likewise, Indo-Fijians and Australian Aborigines might be elected and voice concerns about their respective national governments. Such input is vital. The Oceania Community must be able to demonstrate the institutional morality and maturity to deal with difficult issues in non-violent ways.

These potential advantages are beyond what the Pacific Islands Forum is capable of providing at the present, with its low profile and ministerial delegates. As it currently functions, the Forum does not provide the political guidance necessary to ensure the success of the Oceania Community. Nor does it provide a political space for its citizens. Its meetings take place behind closed doors; it issues Communiqués rather than resolutions; and it excites little interest among Pacific citizens. Few Pacific citizens would be aware of the Forum. In contrast, 91 per cent of Nordic citizens are aware of the Nordic regional parliament (Nordic Council of Ministers 2000). If the Oceania Community is to promote democracy and win the support of its citizens, a new structure is needed.

## **The European model**

The father of European regionalism, Jean Monnet, was not concerned about popular opinion. Indeed, he sought to avoid it, and to instead establish and maintain an élite consensus around the need for economic integration (Holland 1993; Ball 1996). Democratic participation was not a consideration, and so began the seeds of Europe's current democratic deficit.

Even if creating a democratic regional polity has never been at the forefront of the European integration effort, the European Parliament has nonetheless continued to evolve. The initial treaty created a Consultative Assembly, with membership drawn from national parliaments. The first direct elections for the Assembly occurred in 1979, and the Single European Act of 1986 renamed the Assembly the European Parliament. European citizens have also been granted the right to petition their Parliament directly, giving them a stake in their governing body.

The Maastricht Treaty granted the European Parliament the power of co-decision with the Council of Ministers over many of the issues involved in the integration process (Mancini and Keeling 1994). Two readings of legislation occur, by both the Parliament and the Council, with the effect being that the 'assent' of Parliament is required to pass new legislation (Cussick 1989). Yet co-decision does not give Parliament the final say in the legislative process—all legislation must still be approved by the Council (Raworth 1994). Perhaps the Parliament's greatest current power is to refuse to endorse a new European Commission (those who head the European Union bureaucracy). In mid 1999, the Parliament was able to force the Commission's resignation, demonstrating it had at least one powerful mechanism for protest (*The Economist*, 27 March 1999; Graff 1999). Thus, the co-decision and endorsement procedures ensure the European Parliament can make a more substantive contribution to the European debate.

There has been a healthy tension between the Council of Ministers, the Council of Heads of Government and the European Assembly-Parliament throughout the European integration effort. This is understandable—members of the Councils are responsible to democratically elected national governments, and their constituents have not always been in favour of transferring more sovereignty to regional institutions. Nonetheless, the Council of Ministers has arguably been overly zealous in limiting the powers of the European Parliament through much of its history.

Introducing direct elections from the outset of the integration effort and calling the Assembly a 'Parliament', might have done much to involve the peoples of Europe in the integration process, and assured them of a voice in their regional polity. Since this did not occur, the turn-out for elections in many countries has been low (Smith 1995), and election results largely reflect how individual national governments are



tracking in the political cycle rather than a concern to establish a regional polity (Smith 1999).

The European model demonstrates that the powers of a regional parliament can evolve (or not) over time, but it is important to allow citizens a direct role in choosing their regional representation to ensure their engagement and participation.

### **The Nordic model**

The current powers and functions of the European Parliament are representative of an advanced model of regional order. The Nordic Council provides an alternative precedent. The Nordic Council is the apex of cooperation between the Scandinavian countries. The Council was created in 1952 and was the successor to the more informal Interparliamentary Union. Perhaps similarly to Pacific countries, 'the Scandinavians were not interested in setting up a political union as envisaged by the early federalist members of the Council of Europe' (Solem 1977:41). The main purposes of the Council are to further Nordic unity, by facilitating a regional approach to problem solving; to ensure Nordic integration has parliamentary oversight; and to promote political cooperation with 'strong popular anchorage' (Nordic Council of Ministers 2001:8).

In many respects, the Nordic Council has the functions and form of a national parliament, but not the powers, because its motions perform a normative, but not a binding, function (Solem 1977). The Council has 87 members, drawn from members elected by the parliaments of member states, following nomination by their respective political parties (Nordic Council of Ministers 2001). Delegates from national parliaments serve a one-year term, and can be re-nominated.

The Council meets annually for 7–10 days, and also arranges theme sessions for a comprehensive treatment of selected issues (Nordic Council of Ministers 2001). The Council has five standing committees: the Culture and Education and Training Committee (specifically designed to promote Nordic community), the Welfare Committee, the Citizens' and Consumer Rights Committee, the Environment and Natural Resources Committee, and the Business and Industry Committee (Nordic Council of Ministers 2001). These meet several times each year, and are designed to relate to the committees in members' domestic parliaments (Nordic Council of Ministers 2001). The prime ministers of the member states meet frequently throughout the year to plan the main sessions and to coordinate foreign and security policy.

A motion at a session of the Nordic Council passes through the familiar legislative stages: first reading, consideration by a committee, and second reading. Sessions are open to the public, in contrast with those of the Pacific Islands Forum. The

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Council has extensive follow-up procedures once a motion has been passed—governments report to the next session on the action they have taken on the motion, and the Council may continue to raise a matter until satisfied that it has been resolved. The Nordic Council's inability to pass binding legislation has not undermined its effectiveness. Regardless of their status in law, there is considerable media interest in the Council's resolutions, and governments are potentially exposed to parliamentary and interparliamentary criticism (Solem 1977). In a comment with resonance for the Oceania political order, Solem suggests that

...it could well be that the positive spirit with which the Nordic Council generally operates is partly caused by the fact that the organisation is not equipped with what would seem to be the needed supranational authority...the present careful, step-by-step functional method of cooperation and coordination has added to its positive spirit (Solem 1977:49).

This coincides with my vision for the Oceania Parliament—its strengths would be in its profile, powers of persuasion and normative value, but it would not be invested with the power to override democratically elected national governments.

## **The CARICOM model**

The Assembly of Caribbean Community Parliamentarians was created in 1994, to ensure the achievement of a viable Caribbean Community (Carrington 2000). Its goals are 'to provide a forum for people of the Community to make their views known through their representatives' (CARICOM 1989: Article 4b) in order to stimulate greater public awareness in the regional integration process (Carrington 2000); and to encourage common policies on foreign affairs, and economic, social, cultural, scientific and legal matters (CARICOM 1989: Article 4).

Each member state has four representatives, and representatives are drawn from government and opposition members of national parliaments (CARICOM 1989: Article 3). The Assembly can make recommendations to any CARICOM institution and adopt resolutions on any matter related to CARICOM's key treaty (CARICOM 1989: Article 5). The Assembly may not consider matters that are exclusively within the domestic jurisdiction of members (CARICOM 1989: Article 5.4). The Assembly's resolutions are not legally binding; but its deliberations follow the form of a domestic parliament (CARICOM 1989: Articles 5.3, 6 and 7) and its resolutions have normative force. Assembly meetings are meant to occur at least annually, and the Assembly can establish various committees to advance its work (CARICOM 1989: Article 6, 5).

The Caribbean model usefully demonstrates the commitment of a group of small, developing states to the 'democratisation of the regional integration movement' (CARICOM 2000)—a vital precedent for Pacific states.

## Previous Pacific models

The New Zealand Labour Party first proposed a Pacific Parliament as part of its election platform in 1969 and 1972 (Moore 1982). In 1979, Jack Ridley, a New Zealand parliamentarian, developed the first detailed proposals for a South Pacific federation and parliament; these were further refined in 1989. Ridley argued a federation was needed 'to resist a likely economic takeover by Australia, to protect New Zealand's national identity, to unify and protect the South Pacific area and to ensure its orderly development' (Ridley 1989:13–14). Ridley believed there was 'a need for executive authority at the highest level' and this would not come about 'without bringing together the South Pacific nations in an orderly manner' (Ridley 1989:26). New Zealand was being 'swamped' by Australia, so new structures were needed to enhance New Zealand's sovereignty in a wider structure (Ridley 1989:14). It is easy to imagine Forum island countries empathising with this fear of being swamped.

Mike Moore advocated a Pacific Parliament in 1982, taking up Ridley's theme: 'it will be to New Zealand's advantage to politically dilute what could be economic dominance from Australia' (Moore 1982:26). Moore's model was for a parliament that would consider any issue of economic, social and political significance to the region. He believed it would be an improvement, too, on the Pacific Islands Forum, which represents governments, not parliaments (Moore 1982). Such a parliament would be 'an investment in closer economic, political and social relations between the Pacific Islands, Australia and New Zealand' and would facilitate better use of scarce resources (Haas 1982:5).

Moore largely followed the Nordic Council precedent in producing his model for a Pacific Parliament. He believed that membership of a national parliament should be a prerequisite for Pacific Parliament membership because it committed each parliament and each political party. Moore argued that the 'commitment of the various political forces to this regional entity is fundamental, otherwise the Pacific parliament would stay, as far as the people were concerned, a remote club without accountability to the people, and then not directly accountable to each Parliament' (Moore 1982:43). Although concerned about accountability to the people, Moore did not propose direct elections.

Ridley and Moore worked from different assumptions in deciding on the number of representatives each member of the regional polity should enjoy. Ridley's 1979 proposal consisted of a federation made up of 62 representatives: five from each state of Australia and the North and South Islands of New Zealand; three from Papua New Guinea; two from Fiji, Solomon Islands, Samoa, French Polynesia and New Caledonia, and one from Vanuatu, Tonga and the Cook Islands (Ridley 1989).

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His 1989 proposal consisted of 49 representatives: 24 from Australia; seven from New Zealand; five from Papua New Guinea; two from Fiji, Solomon Islands, Samoa and New Caledonia; and one from Vanuatu, French Polynesia, Tonga, Kiribati and Cook Islands.

Ridley's models lead to inconsistencies. If his first proposal were implemented today, Papua New Guinea, with a similar population to New Zealand, would have only one-third of the representatives of New Zealand. His second proposal involves calculations about representation based in part on economic weight (including aid levels). Ridley's models basically involve various contortions to justify giving New Zealand as many seats as possible. In both models, he did not consider the very smallest nation-states worthy of representation—a precedent unlikely to gain widespread support among Forum island countries. In contrast, Moore proposed a model with numbers of representatives for each country based on population size (Moore 1982:45).

## **The Oceania Parliament**

### **Voting**

The Oceania Parliament should combine features from the European Parliament and the Nordic Council. Perhaps the most critical question is the method of selection for the Oceania Parliament's representatives. There are many possible options for selecting members. Members could be chosen, for example, by national governments, or as a delegation of parliamentarians.

The most appropriate course for the Oceania Parliament, however, would be for citizens of Pacific states to elect their representatives directly. In terms of offering democratic legitimacy, the European Parliament model currently represents the best example. Direct election would provide the sense of legitimacy needed to promote democracy and engage Oceania citizens in the Oceania political order. Pacific citizens are more likely to trust the institutional integrity of the Oceania Community if they have a direct influence on its direction.

Direct elections would engage citizens in a way that appointment of delegates by national governments would not. Unlike Europe, the Pacific obviously consists of a series of islands. One effect of this, from the largest island to the smallest, is that citizens have not had to think overly much about their neighbours, a luxury not enjoyed by the many neighbouring countries in Europe. Direct elections for the Oceania Parliament would help to change this, increasing media interest and engaging citizens far more deeply in regional issues.<sup>2</sup>

This focus on a bigger picture is especially important for Forum island countries. This is because voting in the Oceania Parliament may, conversely, reinforce national

identity in the more fragmented Forum island countries. For example, Liloqula has argued in relation to Solomon Islands that, '[i]f our nation is to remain intact, it must work hard at uniting people for a common cause...At present, this aspect of nation building is missing' (Liloqula 2000:14). In countries where national identity and cohesion are weak (Henningham 1995), participating in a larger body may force citizens to think about where their interests lie as a country. This may encourage citizens to greater identification with their home states, and perhaps also encourage democratic tendencies at the national level.

One problem with the European political order is that each member state determines different voting rules for electing representatives to the European Parliament. This is not a useful precedent for the Pacific, since Pacific states have many different electoral systems, not all of them appropriate. Consider Fiji. Prior to independence, a European vote was worth considerably more than an indigenous Fijian vote (Lawson 1991). Under the 1990 Constitution, an indigenous Fijian vote was worth considerably more than an Indo-Fijian vote, and the vote of a rural, Eastern indigenous Fijian considerably more than an urban Fijian or rural Western Fijian (Lawson 1993).

The Oceania political order should therefore improve on the European model by having uniform electoral procedures across the region for elections to the Oceania Parliament. The method for electing national representatives to the Oceania Parliament should be based on the principle 'one vote, one value'.<sup>3</sup> There should be no discrimination on the basis of gender, ethnicity, race, social status, wealth or location. To allow such discrimination would be to betray the principles on which the Oceania Community, and the Oceania Parliament, should be founded. Although voting procedures for national elections would remain the business of national governments, these regional standards (combined with the work of the Oceania Human Rights Commission) may help, over time, to address the Pacific's current challenges to democracy.

It follows from these suggested principles that, unlike some Forum island parliaments, seats would not be set aside for chiefs in the Oceania Parliament. Chiefs may run for election along with other Pacific citizens, though, and the Parliament may over time establish various consultative mechanisms with chiefs.

Voting for the Oceania Parliament should be compulsory. The right to vote should come with the responsibility to engage in the electoral process and the regional polity. Compulsory voting would also put the pressure on the Oceania Community and national governments to ensure that citizens have the opportunity to participate in the regional elections.

To contain costs, the elections for regional candidates could be held concurrently with national elections, with the successful regional candidates 'held over' until the

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relevant term of the Oceania Parliament commences. Over time, too, the cost of elections should come down with advances in technology.<sup>4</sup>

### **Oceania citizenship**

A critical issue in holding elections is deciding who is eligible to vote. In Europe, only those who are citizens of the member states are entitled to vote. One problem in Oceania is that Forum island countries often have stringent and complicated means of determining citizenship. In Vanuatu, for example, applications for citizenship are considered by a Citizenship Commission. The applicant needs the testimony of two chiefs and citizenship may be refused on character grounds, if a member of the commission knows the applicant's private affairs are not in order (Hassal 1999). This means that there may be many people who reside in Pacific states but do not have national citizenship.

Oceania citizenship should be simpler, and seek to establish a direct relationship between the Oceania Community and as many citizens within its sphere as possible. Anyone with the status of a permanent resident in a member state, even if not a citizen there, would be entitled to vote. National electoral rolls do not list all residents, but permanent residents could register on a regional roll.

### **Representation**

In the initial phase of the Oceania Parliament, the system of electing national representatives is to be preferred, so Oceania member states feel a sense of ownership of the process (the fact that the European Union and the Nordic Council consist of national representatives has not stopped members forming regional coalitions along social democrat and conservative party lines) (Nordic Council of Ministers 2001).

Any method to work out appropriate representation among countries of such different population sizes will have an element of arbitrariness. I propose

- each member of the Oceania Community, no matter how small, is entitled to representation in the Oceania Parliament
- a member's population should guide the amount of representation they enjoy
- members with larger populations should not be granted so many representatives as to make the size of the Oceania Parliament unworkable.

This means, of course, that representation cannot be in direct proportion to population. The formula used is as shown in Table 11.1. Thus, in the first phase of the Oceania Community, representation would be allocated as shown in Table 11.2.

This leads into the issue of length of terms. Nordic Council representatives, appointed by their respective parliaments, have a term of one year; European Parliament representatives, directly elected, have a five-year term. The cost of annual

Table 11.1 Formula for representation in the Oceania Parliament

Population	Representation
1–20,000	1
20,001–100,000	2
100,001–500,000	3
500,001–1,000,000	4
1,000,001–5,000,000	5
5,000,001–10,000,000	6
10,000,001–20,000,000	10
20,000,001–50,000,000	15
50,000,001–100,000,000	20
Over 100,000,000	25

Table 11.2 Levels of representation in the Oceania Parliament in the first phase of the Oceania Community

Member	Population ('000)	Representation
Niue	1.65	1
Tuvalu	10.20	1
Nauru	12.10	1
Cook Islands	17.80	1
Palau	20.30	2
Marshall Islands	54.00	2
Kiribati	88.10	2
Tonga	100.00	3
Federated States of Micronesia	112.60	3
Samoa	180.00	3
Vanuatu	200.00	3
Solomon Islands	500.00	4
Fiji	800.00	4
New Zealand	3,900.00	5
Papua New Guinea	5,100.00	6
Australia	19,800.00	10 (soon 15)
Total		51 (soon 56)

Source: Population figures are from Australian Department of Foreign Affairs and Trade, 2004a. *Country Fact Sheets*, Commonwealth of Australia, Canberra. Figures are for 2002, or nearest available year.

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direct elections throughout the Oceania Community cannot be justified, but five years between elections is too long a period to sustain the necessary sense of direct involvement and accountability the Oceania Parliament should inspire. A fixed term of three to four years would be appropriate.

### **Deliberation**

The European Parliament model of year-round deliberations is beyond what is initially needed for the Oceania Community. The Nordic Council, bearing an element of the Pacific Way that should resonate with Forum island countries, is the more useful model, at least in the early stages.

Thus the Oceania Parliament would have an advisory and supervisory role initially—its value would be normative, coming from publicity and discussion, rather than an ability to overrule national parliaments or the decisions made by national government ministers. In the European context, centralists seek binding powers; but, in the Pacific context, a regional parliament chosen by direct election is a sufficient beginning, and may evolve over time.

The Nordic Council's work is grouped around five main areas: culture, education and training; welfare; citizens' and consumer rights; the environment; and business and industry development (Nordic Council of Ministers 2001). At times, the Council has also considered questions of foreign and security policy and aid assistance. A similar indicative list for the Oceania Parliament could include trade, particularly tourism; development, particularly the place of women in traditional societies; monetary management; the environment; fisheries; legal issues; communications and technology; regional services (including airlines); and human rights.

Initially, the Oceania Parliament might meet three times a year, for a week or two at a time, with other work continued in the interim. The Parliament, at least in its early years, could sit in Australia's Old Parliament House. Parliamentary committees and inquiries could be established reflecting each facet of the Oceania Community. Such select committees could provide a model for sharing regional experience on, for example, managing public accounts. The Parliament could establish mechanisms to ensure the proper involvement of civil society in its deliberations, and citizens could petition the Parliament with their concerns.

The Oceania Parliament would elect a President, who would be a key figure for promoting the Oceania Parliament within and without the region, and for assisting with dispute resolution. The Parliament would elect the President with the understanding that the Presidency would be held by a Forum island country member of the Parliament at least once every three terms.

The combined effect of these measures would be to establish a viable, dynamic regional polity, with the potential to promote democracy throughout the Pacific.



## Conclusion

The Maastricht Treaty reaffirms ‘the principles of liberty, democracy and respect for human rights and fundamental freedoms and the rule of law’.<sup>5</sup> To promote these same values, Pacific states might need to look to establishing political institutions and structures beyond their borders. An internal focus will not reinvigorate the faith of citizens in democratic governance and will not forge the social consensus necessary to preserve the benefits of regional economic integration.

Further, Monnet’s approach to European integration would not work today. Supranational institutions need to demonstrate institutional integrity from the outset, and mechanisms for participation. A regional order lacking democratic legitimacy is less likely to be sustainable, and is certainly more likely to be controversial. Democratic legitimacy must be a manifest part of a responsive integration process from the outset. There is a need to increase ‘stakeholdership’, to involve the public, and not just perceived élites. The Oceania Parliament would ensure that the Community is seen as having legitimacy and integrity by those it is meant to serve.

To give effect to these principles, I have proposed that the Oceania Parliament follow the European Parliament’s system of direct elections, but that its deliberations should follow the Nordic Council model, where the emphasis is on normative authority rather than binding legal authority. This will preserve the legislative powers of democratically elected national governments and ministers. In terms of representation, I have been guided by Mike Moore’s proposals for a Pacific Parliament, where the consideration was on population numbers alone, rather than Jack Ridley’s proposals, which also took into account economic factors.

The Oceania Parliament, particularly if it has direct elections, would engage the hearts and minds of Oceania citizens and the media, and raise interest in Oceania issues. It would promote regional democracy and would have the potential to encourage change in those Pacific states where democracy is challenged.

As absolutely free trade will not commence from year one of the Oceania Community, so the Oceania Parliament will not be the pinnacle of democracy from year one. The allocation of legislative power between national and regional bodies will be a necessary and continuing debate. But the creation of the Oceania Parliament would signal a commitment to the combined evolution of political and economic regionalism. The Oceania trade, monetary and political orders would mutually reinforce each other. With the Oceania Court, the Oceania Parliament would provide an important normative building block for the Community’s direction.

Deepening the Pacific integration process through the agreements and institutions needed to promote sustainable economic development, security, the

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rule of law and democracy is vital if the Pacific is to address its challenges. Yet widening the integration process will also have a critical role in securing prosperity in the Pacific, and promoting the Community's dynamism. The Community's evolution is the subject of the next chapter.

## **Notes**

- <sup>1</sup> Reinicke (1997) believes that as globalisation impacts more and more on the internal sovereignty of nation-states, citizens may feel that the value of their domestic vote is declining. The power of a domestic vote to shape public policy declines with globalisation's impact on internal sovereignty.
- <sup>2</sup> See Moore (1982) for a discussion of the European Parliament's influence in this regard.
- <sup>3</sup> It is not possible to be strictly faithful to the standard of 'one vote, one value' across the region: vastly different population sizes mean that there is necessarily an element of arbitrariness in determining the sizes of national delegations to the Oceania Parliament. But this standard must be applied in each national election for the Oceania Parliament.
- <sup>4</sup> In twenty years' time internet or text messaging voting could be a feature of the Oceania political order, as the rate of internet and mobile telephone penetration in Forum island countries increases.
- <sup>5</sup> Preamble, Maastricht Treaty. Available at <http://europa.eu.int> [accessed 29 May 2002].

# 12

## Evolution

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Previous chapters have considered the measures needed to deepen the Pacific integration process to promote the first four goals of regional order successfully. This chapter discusses the steps needed to widen the integration process to realise the fifth goal—integration with the wider region.

This chapter first considers the Forum's current efforts to establish wider relations, suggesting that a more dynamic approach is needed to address the concerns of Forum members about being isolated and excluded from other regional groupings in the Asia Pacific region. A commitment to attracting new members to the Oceania Community would win the benefits of a larger market and a more secure region, as well as increasing the Community's bargaining power within other international organisations.

Three possible phases in the development of the Oceania Community are proposed, as well as considering the impact the Community could have in organisations such as APEC, the World Trade Organization and the United Nations.

### **The Forum and wider relations**

The Forum's main vehicle for managing relations with non-Forum members is the Post-Forum Dialogue, created in 1989 to increase the Forum's international standing (Tarte 1998). The Dialogue is held immediately after the Forum Leaders' meeting, and involves meetings with senior representatives from select non-Forum governments. Canada, China, France, Japan, the United Kingdom and the United States attended the first Dialogue. Since then, the European Union (1991), Korea

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(1995), Malaysia (1997), the Philippines (1999), Indonesia (2001) and India (2002) have been admitted to the Dialogue process (Australian Department of Foreign Affairs and Trade 2003b). In 1992, the Forum decided to institute a dialogue process with Taiwan, but these meetings are held in a different location, and participating Forum countries do not represent 'the Forum' as such (Australian Department of Foreign Affairs and Trade 2003b).

### **A dynamic Community**

During the PACER–PICTA negotiations, Forum island country representatives expressed concern about their isolation and the risks of being left behind. Yet the Forum's current emphasis on limiting membership to small Pacific islands, rather than seeking integration with large Pacific islands such as Indonesia, the Philippines or Japan, is self-defeating. Tsakaloyannis argues that the European Union's capacity to enlarge 'was the most irrefutable proof of its vitality, openness and dynamism' (1992:184). Rather than limiting their external relations to dialogue and requests for aid,<sup>1</sup> the Forum should confidently seek out integration with the wider Pacific. A proactive approach to integration would place current Forum members in the centre of Pacific integration, addressing a key strategic challenge confronting Forum members, that of isolation from the nascent Asian regionalism.

Wider integration would further promote sustainable economic development, through secure access to larger markets. Further, it was argued in the European context that enlargement was necessary to ensure 'the lasting peace and stability of the European continent and neighbouring regions' (Hama 1996:91). This is equally valid in the Pacific, because the security of the broader region clearly impacts on current Forum members, as the operations of terrorists in Indonesia and the Philippines and the movement for self-determination in West Papua demonstrates.

Thus, promoting the goals of sustainable economic development, security, the rule of law and democracy in the wider Pacific is as important as promoting them in the parts of the Pacific covered by the Forum. As well, all current Forum members need the added negotiating weight that is only possible through regional integration with bigger states. A larger organisation makes for a more powerful sovereignty: bringing greater resources to solve the problems of members, as well as winning a more prominent position in the world.

This, then, is why the Oceania Community needs to be a dynamic organisation, actively pursuing new members. The European Union provides a useful template in this regard, with its expansion from six to 25 and possibly more members. Table 12.1 lists the current population and gross domestic product (GDP) of the original six European Union members. Table 12.2 lists the population and GDP of all current European Union members, highlighting the difference that wider integration has made.

Table 12.1 Current population and GDP of countries from the first phase of the European Union

	Population (‘000)	GDP (US\$ billion)
Belgium	10,300	246.4
France	59,900	1,438.8
Germany	82,400	1,992.1
Italy	58,100	1,189.0
Luxembourg	500	21.1
Netherlands	16,100	419.6
Total	227,300	5,307.0

Source: Australian Department of Foreign Affairs and Trade, 2004a. *Country Fact Sheets*, Commonwealth of Australia, Canberra. Figures are for 2002.

Table 12.2 Population and GDP of countries from phases one to six of the European Union

	Population (‘000)	GDP (US\$ billion)
Belgium	10,300	246.4
France	59,900	1,438.8
Germany	82,400	1,992.1
Italy	58,100	1,189.0
Luxembourg	500	21.1
Netherlands	16,100	419.6
Denmark	5,400	172.9
Ireland	3,900	122.2
United Kingdom	60,100	1,564.1
Greece	10,600	132.8
Portugal	10,000	122.2
Spain	40,500	655.7
Austria	8,200	204.7
Finland	5,200	132.0
Sweden	8,900	240.7
Cyprus	700	10.1
Czech Republic	10,200	69.5
Estonia	1,400	6.4
Hungary	10,100	65.8
Latvia	2,400	8.4
Lithuania	3,500	13.9
Malta	400	3.9
Poland	38,200	189.3
Slovak Republic	5,400	24.0
Slovenia	2,000	22.0
Total	454,400	9,067.6

Source: Australian Department of Foreign Affairs and Trade, 2004a. *Country Fact Sheets*, Commonwealth of Australia, Canberra. Figures are for 2002.

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Four times as many countries, twice the population and 70 per cent greater GDP make for a formidable bloc, with considerably more potential to influence international affairs. Table 12.2 suggests a further point. The combined population and GDP of the original six members is still considerable. Yet if these countries recognised the need to pursue a larger market, the security benefits of wider integration and the advantages of increased bargaining power, how much more imperative is the need for integration for current Forum members?

The next sections discuss possible phases in the development of the Oceania Community.

### **Phase One**

In the first phase, the focus would be on transforming the Forum into the Oceania Community. The Australian Parliamentary Committee (2003), in its proposal for a Pacific economic and political community, implied that such an organisation could develop independently of the Pacific Islands Forum. This is always a possibility if a minority of Forum members or the Forum's bureaucrats wish to obstruct deeper and wider integration, but it would be preferable for the Oceania Community to build on existing Forum institutions and agreements. Any major new international undertaking will involve vigorous negotiations, but I believe the benefits of integration outlined in previous chapters should facilitate a constructive approach on the part of Forum members and officials.

Thus, the Oceania Community should begin life with sixteen members. In addition, Timor-Leste (East Timor) has already indicated its intention to pursue membership of the Forum rather than ASEAN. Given its high profile, Timor-Leste would usefully focus attention on the Oceania Community. Timor-Leste, along with New Caledonia, has already been granted observer status at the Forum (Australian Department of Foreign Affairs and Trade 2003b).

This first phase should also include membership offers to the United States' and French territories in the region. Forum membership has been understood to be limited to independent or self-governing small Pacific islands. However, the question should not be whether a territory has full independence or not. Rather, the issue should be whether potential new members can take on the obligations of Oceania Community membership and make a meaningful contribution. For example, if a territory can run an independent trade policy and accept the disciplines of the Oceania common market then it should be permitted to do so (for this reason, I do not propose Tokelau, because it is a non-self-governing territory under New Zealand administration) (see Secretariat of the Pacific Community 2004). These territories need to be encouraged to join region-building efforts, in preparation for their possible

independence. The initial modelling for PACER demonstrated, too, that there would be substantial benefits from including these territories in any regional trade agreement (Scollay 1998).

Perhaps the most substantive test of the dynamism of the Oceania Community would be whether, after this first phase, it could continue to expand. But a road map of sorts is starting to form for phase two.

### **Phase Two**

Former Indonesian President Wahid initiated the idea of a West Pacific Forum, or Dialogue, in frustration at ASEAN intransigence ('Forum offers progress for West Pacific', *The Australian*, 9 December 2000). Wahid's vision was for a Forum covering Australia, Brunei, Indonesia, New Zealand, Papua New Guinea, the Philippines and Timor-Leste (of course, more than half of these countries are already currently members or are proposing to join the Pacific Islands Forum). According to Wahid, Australia was to be Indonesia's key partner in the Forum, assuming joint responsibility for promoting development in the region (Callick 2001). Wahid also believed the West Pacific Forum should complement the Pacific Islands Forum. Indonesian Foreign Minister Alwi Shihab said the Forum would encompass economic, political, cultural and social cooperation, and would be a good device for 'face saving' and avoiding misunderstandings ('A welcome thaw', *The Sydney Morning Herald*, 9 December 2000; Garran 2000). The idea survived Wahid's political demise and the West Pacific Dialogue commenced in 2002, with a meeting of the relevant foreign ministers (Australian Department of Foreign Affairs and Trade 2004b).

Arguably, the members of the West Pacific Dialogue already have enough mechanisms for dialogue, through APEC and the ASEAN Regional Forum and various bilateral initiatives. However, a commitment to pursue meaningful integration beyond what these existing bodies allow would prevent the West Pacific Dialogue from falling into disuse. An agenda should be developed for regional integration between the countries of the West Pacific Dialogue and the Oceania Community. Expanding the Oceania Community to this degree may be a medium-term prospect, but it is a worthy goal and would invest the West Pacific Dialogue with substance and energy.

Singapore should also be invited to join the Oceania Community during this second phase. Singapore already has free trade agreements with Australia and New Zealand, a general commitment to free trade, and has often expressed interest in deeper integration than its ASEAN partners are willing to pursue ('Minister says Asia needs its own EU', *The Australian*, 9 September 2001; James 2000). Singapore's Senior Minister, Lee Kuan Yew, has previously expressed support for including Australia and New Zealand in wider regional groupings (Parkinson 2000; Sheridan 2000).

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### **Phase Three**

Beyond Singapore and the countries participating in the West Pacific Dialogue, the key remaining country is Japan. Ideally, Japan should join the Oceania Community at the outset. This would reflect Japan's constructive commitment to the Pacific since the 1980s, its desire to be seen as a regional leader, and its aid partnership with Forum island countries.

In 1987, then-Foreign Minister of Japan, Tadashi Kuranari, visited Fiji to announce an evolution in the relationship between Japan and Forum island countries. Kuranari declared

...Japan has sought a post-war new deal. It realises that it cannot be indifferent to the problems facing the Pacific island nations in the region it belongs to and therefore seeks...to work with them in contributing to their development (Tarte 1998:1).

Thus, Japan, along with Australia, is now the leading donor to the region (AusAID 2002). Japan has attended the Post-Forum Dialogue since its inception in 1989, (Tarte 1998) and has previously expressed interest in membership of the Pacific Community (Tarte 1998) (the Pacific regional organisation, which is focused primarily on development assistance: it includes all of the smaller Pacific islands, as well as former and current colonial powers). It has established a Pacific Islands Centre in Tokyo, to promote trade, investment and tourism between Japan and Forum island countries, and hosts regular summits of leaders from Japan and Forum members.<sup>2</sup> At the 2003 summit, leaders signed the Okinawa Initiative committing Japan to deeper engagements in the areas of security, the environment, education, health and trade.<sup>3</sup>

Since the 1960s, 'Japanese scholars and business leaders have led debates about and proposals for a pan Pacific community' (Tarte 1998:151). Former Japanese Prime Minister Masayoshi Ohira promoted a 'Pacific Basin Cooperation Concept', because it would

- promote a wider Pacific view
- promote the well-being of the wider region for the prosperity and peace of participants, but it would also defuse and prevent future political and economic problems
- prevent sub-regionalism, and the forming of closed shops among South Pacific and ASEAN countries (Moore 1982).

The key stumbling block to Japan's initial participation in the Oceania Community, however, is its reluctance to embrace completely free trade, particularly in its agricultural sector (see de Brouwer and Warren 2001; Mulgan 2000). Ensuring more liberal trade in agriculture with Japan would be of interest to most Forum members, and any free trade agreement with Japan must include a timetable for



agricultural liberalisation to comply with WTO rules on free trade agreements. Thus, Japan could not participate in the Oceania common market from the outset. This situation should change over time, though, through a succession of WTO rounds and internal pressures within Japan.

Even if full membership for Japan is a longer-term prospect, commencing discussions with Japan now would inject greater dynamism into Japan–Forum relations, and to the prospects for the Oceania Community as a whole. A Japanese report in 2001 on the Australia–Japan relationship, for example, warned that ‘relations between the two countries may be stable, but there is a possibility the relationship will become one where both are satisfied with maintaining the status quo, while having no real interest in each other’ (‘Growth with Japan’, *The Sydney Morning Herald*, 1 May 2001). Fukui believes that ‘the last time Japan got excited about Australia was during the formative years of APEC...Japanese politicians and academics took great interest in Australia’s role in promoting the new regional body’ (Fukui 2001).<sup>4</sup> New proposals for integration would ensure ongoing Japanese interest and engagement in the region. The prospect of Japan joining may also lead to heightened Forum island country interest in the Oceania Community proposals, as they would enjoy greater economic benefits from a larger, developed country participating alongside Australia and New Zealand.

Some countries, such as Japan, may be interested in joining the Oceania Community, but be unable to make the necessary commitments from the outset. In these cases, the Oceania Community should develop a form of associate membership until such countries join the Oceania Community as full members. This would be similar to the relationship between the European Union and the Central and Eastern European countries before these countries became full members of the European Union. Such associate members could sign ‘Closer Economic Partnerships’ with the Oceania Community to facilitate trade in goods, services and investment.<sup>5</sup> Associate members would not be represented in the Parliament or the Oceania Forum of Heads of Government, but could participate in a more substantive form of the Post-Forum Dialogue: discussions with potential Oceania Community members would obviously be more dynamic and advanced than discussions with those countries whose role is limited to donating aid. Associate membership would be a vital first step towards fully integrating Japan and other potential members into the Oceania common market and Community in the future.

Table 12.3 provides an overview of the countries proposed for phases one to three of the Oceania Community, while Table 12.4 lists the population and GDP of the countries proposed for the first phase of the Oceania Community. The combined population of the Community in its first phase is over 32 million, and its combined

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Table 12.3 Possible phases in the development of the Oceania Community

Phase			
1	Australia	New Zealand	Vanuatu
	Cook Islands	Niue	American Samoa
	Timor-Leste	Palau	French Polynesia
	Fed. States of Micronesia	Papua New Guinea	Guam
	Fiji	Samoa	New Caledonia
	Kiribati	Solomon Islands	Northern Mariana Islands
	Marshall Islands	Tonga	Wallis and Futuna
	Nauru	Tuvalu	
2	Brunei	Philippines	
	Indonesia	Singapore	
3	Japan		

Table 12.4 Current population and GDP of countries proposed for phase one of the Oceania Community

	Population (‘000)	GDP (US\$ billion)
Australia	19,800.0	398.69
Cook Islands	17.8	0.08
Timor-Leste	800.0	0.37
Federated States of Micronesia	112.6	0.23
Fiji	800.0	1.60
Kiribati	88.1	0.05
Marshall Islands	54.0	0.01
Nauru	12.1	..
New Zealand	3,900.0	58.20
Niue	1.7	..
Palau	20.3	0.12
Papua New Guinea	5,100.0	2.90
Samoa	180.0	0.28
Solomon Islands	500.0	0.24
Tonga	100.0	0.14
Tuvalu	10.2	0.01
Vanuatu	200.0	0.21
American Samoa*	70.3	0.50
French Polynesia	245.4	3.90
Guam*	163.9	3.20
New Caledonia	200.0	2.70
Northern Mariana Islands*	80.0	0.90
Wallis and Futuna*	15.7	0.03
Total	32,473.0	474.36

Source: Australian Department of Foreign Affairs and Trade, 2004a. *Country Fact Sheets*, Commonwealth of Australia, Canberra. Figures are for 2002, or nearest year. The source for figures for countries marked with an asterisk is Central Intelligence Agency, 2004. *The World Factbook*, Central Intelligence Agency, Washington, DC.

GDP is US\$474 billion. Table 12.5 lists the same criteria for the countries that have been proposed for phases one to three of the Community.

Thus, if all these countries became members, the potential population of the Community (based on today's figures) is 461 million, and its combined GDP is over US\$4,800 billion. In population, the Oceania Community would be similar to the European Union, though its GDP is only a little over half that of the European Union. Nonetheless, such a Community would have considerable negotiating weight.

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Table 12.5 Current population and GDP of countries proposed for phases one to three of the Oceania Community

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	Population (‘000)	GDP (US\$billion)
Australia	19,800.0	398.69
Cook Islands	17.8	0.08
Timor-Leste	800.0	0.37
Federated States of Micronesia	112.6	0.23
Fiji	800.0	1.60
Kiribati	88.1	0.05
Marshall Islands	54.0	0.01
Nauru	12.1	..
New Zealand	3,900.0	58.20
Niue	1.7	..
Palau	20.3	0.12
Papua New Guinea	5,100.0	2.90
Samoa	180.0	0.28
Solomon Islands	500.0	0.24
Tonga	100.0	0.14
Tuvalu	10.2	0.01
Vanuatu	200.0	0.21
American Samoa*	70.3	0.50
French Polynesia	245.4	3.90
Guam*	163.9	3.20
New Caledonia	200.0	2.70
Northern Mariana Islands*	80.0	0.90
Wallis and Futuna*	15.7	0.03
Brunei	340.8	4.00
Indonesia	214,200.0	173.30
Philippines	83,000.0	77.90
Singapore	4,200.0	87.00
Japan	126,900.0	3,986.30
Total	461,112.9	4,802.86

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*Source:* Australian Department of Foreign Affairs and Trade, 2004a. *Country Fact Sheets*, Commonwealth of Australia, Canberra. Figures are for 2002, or nearest year. The source for figures for countries marked with an asterisk is Central Intelligence Agency, 2004. *The World Factbook*, Central Intelligence Agency, Washington, DC.

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## **Pacific Regional Order**

These are, of course, long-term plans. Yet the European Union, with its expansion from six to 25 to possibly more members, demonstrates what can be achieved when guided by a clear strategic vision from the outset. Baldwin, for example, has advanced a domino theory of regional integration, arguing the initial formation of a bloc will increase the willingness of outsiders to join (Andriamananjara and Schiff 1998; Baldwin 1993).<sup>6</sup> What is needed in the Pacific context is the initial strategic vision, and the ongoing commitment to realising it.

## **The Community and APEC**

APEC was created in 1989, following a proposal from Australian Prime Minister Bob Hawke (Evans and Grant 1995). It involves meetings of heads of government, ministers and senior officials. APEC's main goals are to promote business facilitation, technical cooperation and trade liberalisation (Australian Department of Foreign Affairs and Trade 2004c). Its headline achievement in this third area is the Bogor Declaration (1994), a non-binding commitment by members to work towards free and open trade and investment in the Asia Pacific by 2010 for developed economies, and by 2020 for developing economies.<sup>7</sup>

Having the leaders of all the APEC countries meet annually is useful for international diplomacy, as the APEC Leaders' Meeting in 1999 demonstrated when the great powers of the region settled on an approach to Timor-Leste (Ravenhill 2000). On current indications, APEC is an effective mechanism for dialogue and trade facilitation, and for maintaining some normative pressure for trade liberalisation.<sup>8</sup>

However, initial hopes that APEC would develop into a European Union-type body were misplaced (see Watson 2002).<sup>9</sup> European Union-style integration depends on legally binding commitments. Yet the APEC Secretariat states that 'APEC is the only intergovernmental grouping in the world operating on the basis of non-binding commitments' (APEC 2004:1), a curious boast. Further, 'unlike the WTO or other multilateral trade bodies, APEC has no treaty obligations required of its participants...commitments are undertaken on a voluntary basis' (APEC 2004). The inclusion of the United States, important for security reasons, meant that APEC would always be limited to shallow integration. APEC's initial membership—Australia, Brunei, Canada, Indonesia, Japan, Korea, Malaysia, New Zealand, the Philippines, the United States, Singapore and Thailand—already made it too large and diverse for deep integration. Since then, Chile, China, Hong Kong, Mexico, Papua New Guinea, Peru, Russia, Taiwan and Vietnam have also joined.<sup>10</sup>

The problem for Forum members is that they are currently not engaged in, nor creating, an organisation that answers the question of 'what next?' after APEC's shallow integration. The contrast with other APEC members, and their efforts to

pursue deeper integration in addition to the APEC process, is marked. ASEAN is pursuing the ASEAN Free Trade Area, as well as attempting to develop more substantive cooperation with China, Japan and Korea through the 'ASEAN Plus Three' initiative; the United States, Mexico, Chile and Peru are pursuing their Free Trade Area of the Americas; Russia pursues its Commonwealth of Independent States with former Soviet republics.<sup>11</sup> While others are moving forward, it seems naive for Forum members to be relying solely on APEC for integration with the region.

I suggest Forum members view APEC as a feeder organisation for those states that wish to pursue deeper integration through the Oceania Community. This would be analogous to the relationship between the Council of Europe and the European Union. The Council of Europe is a wider body, covering some 45 countries. Its chief achievement is its human rights jurisprudence, but it is also a mechanism for dialogue on other issues, such as social cohesion, education, culture and the environment. Its role continues to be important because it covers a wider membership than the European Union—in the same way, arguably, that APEC is currently important for involving most Asia Pacific countries in dialogue. Both the Council of Europe and APEC are useful organisations for states to establish the initial processes of dialogue and cooperation before committing to greater integration.

Forum members need to create and promote the Oceania Community to other APEC members as a dynamic, attractive organisation, with sufficient sovereignty to deliver substantive outcomes for aspiring members. The Community needs to position itself as the logical next step countries can take when they wish for more than APEC can provide. Such a situation would bring greater focus to APEC, but would also increase the chances of the Community integrating with the wider region.

## **The Community and the world**

From its first phase on, members of the Oceania Community should use the organisation to achieve benefits in global institutions. This is important as a means of addressing the power imbalances that Forum members, particularly Forum island countries, suffer in their international relations. Andriamananjara and Schiff argue that

...because of their weak bargaining power and high fixed costs of negotiation, microstates are at a severe disadvantage in dealing with the rest of the world. They do not have the human and physical resources to unilaterally conduct the various bilateral and multilateral negotiations a developing nation typically conducts (Andriamananjara and Schiff 1998:i).

They suggest two key advantages of regional integration to address these issues—reduced negotiating costs and increased bargaining power in dealing with the rest of the world, in part through increased market power. They further suggest that

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integration between developing countries may also attract more aid, because the donor community can 'deal with the group as one entity rather than deal individually with each single country' (Andriamananjara and Schiff 1998:4).

CARICOM again provides a useful model in this regard. Integration was 'intended to equip the region, an English-speaking enclave in a largely Spanish-speaking area, with a more powerful voice and presence to defend its interests in international affairs' (a situation not dissimilar to the position of the Forum in the wider Asia Pacific) (Andriamananjara and Schiff 1998:28). Andriamananjara and Schiff believe that by pursuing regional integration, CARICOM countries have 'succeeded in making their voices heard on a variety of issues in a way none of them could have done alone' (Andriamananjara and Schiff 1998:i). CARICOM has been particularly active in

- negotiating preferential access to the European and North American markets
- obtaining more aid
- winning a heightened profile for the Caribbean in multilateral institutions, to voice the concerns of CARICOM members on economic, environmental and security issues (Andriamananjara and Schiff 1998; Byron 1994).

By trading support, CARICOM countries have also succeeded in having their nationals elected to leadership positions such as the Commonwealth Secretary-General and ACP Secretary-General (the group of developing countries that negotiates with the European Union on trade access and aid) (Andriamananjara and Schiff 1998).

Other regional organisations have also found benefit in developing common positions. The Nordic Council, for example, has found regional cooperation assists in 'achieving influence at the international level while at the same time safeguarding national interests' (Nordic Council of Ministers 2001:8). In the European Union context, the Single European Act of 1986 emphasises the 'responsibility upon Europe to aim at speaking ever increasingly with one voice and to act with consistency and solidarity in order more effectively to protect its common interests and independence' (Single European Act, Preamble; see also Article 30.2d). The European Union's common commercial policy makes it the world's largest trade bloc (see European Commission 1999; Fontaine 1995). Thus, along with the United States, it is one of the two major players in the WTO. Its bargaining power gives it the ability to demand new liberalisation of other WTO members whilst maintaining protection of its own market, in a way that would be unachievable for any individual European Union member.<sup>12</sup> Although individual European Union members maintain their own aid programs, the size of the European Union's common aid program gives it considerable scope to exercise soft power among the world's developing countries.<sup>13</sup> Notwithstanding the encouragements in the Maastricht Treaty, the European Union does not yet have a common foreign policy, as its divisions over the 2003 war in Iraq demonstrated.<sup>14</sup>

This, however, should not disguise the fact that European Union members work to develop common positions on many UN issues (see Brückner 1990).

Thus, the Oceania Community should develop joint positions in international fora, and support each other in having representatives elected to international bodies.<sup>15</sup> This has advantages for Forum island countries. As is apparent from the CARICOM experience, Forum island countries would collectively have a more powerful voice in international settings through the Oceania Community than any individual member would enjoy. In 1999, the Deputy Prime Minister of Vanuatu, Willie Jimmy Tapaga Rarua, said

[t]here is a growing conviction among Forum island [t] countries that regional economic integration will form a sounder basis for the negotiation and promotion of regional interests in multilateral trade fora. This is not to mention that such a collective grouping would simultaneously act as a vehicle, which ensures that our voices are heard clearly and in a more acceptable fashion at international meetings (Rarua 1999:3).

This would avoid the situation that occurred at the first APEC meeting—the Pacific Islands Forum was invited to send an observer, but no individual Forum island countries were invited (South Pacific Policy Review Group 1990).

Yet larger members such as Australia and New Zealand would also enjoy advantages through the exercise of a wider sovereignty. New Zealand's Ministry of Foreign Affairs states

[t]he total number of Pacific states in the UN (including Australia and New Zealand) now numbers 14...their support in multilateral organisations is often of key importance in achieving our objectives. We cannot take this support for granted, but we can continue to develop a tradition of partnership and of shared interests which are likely to be conducive to securing this support when it is required (New Zealand Ministry of Foreign Affairs and Trade 2001).

Thus, all Forum members would benefit from developing common positions in the United Nations. However, Australia and New Zealand are currently hamstrung in the United Nations by their membership of the Western European and Others electoral group. Appendix 4 suggests various UN reforms to address this situation and further promote the interests of the Oceania Community.

The Oceania Community could also work to develop common positions among members in the WTO. Even if the Oceania Community does not have the weight of the European Union in its first phase, the Uruguay Round of global trade negotiations presents a good example of coalition-building among less powerful nations. Australia established the Cairns Group of 17 agricultural trading nations, which became the third force in the trade negotiations behind the European Union and the United

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States (Keating 2000; Evans and Grant 1995). The group succeeded in having agriculture included in GATT negotiations for the first time, resulting in a significant reduction in the barriers to trade in agricultural products (Keating 2000; Evans and Grant 1995). Since the WTO operates on a consensus-basis, a committed bloc of countries can do a great deal to advance their mutual interests.

## **Conclusion**

This chapter has considered the steps that should be taken to widen the Pacific integration process, suggesting that ultimately the South Pacific, West Pacific and North Pacific integration processes should be merged. Widening the integration process would signal the dynamism and confidence of the Oceania Community, as well as winning the benefits of larger markets, a more secure region, and a greater presence in international fora such as APEC, the WTO and the United Nations. If fully realised, the Oceania Community would be promoting a secure and prosperous region for some 460 million people.

In terms of the impact of these proposals on the single undertaking treaty, there should be a provision stating that a majority of Community members can approve the accession of a new member, provided the new member can meet the terms of the treaty. The treaty would also express the desirability of members working together in other international fora.

It may be that the Oceania Community does not evolve in the way proposed here; or that some other Asia Pacific structure evolves where members finally embrace binding legal commitments, and the Oceania Community becomes a subset of this wider structure. The Oceania Community would still be a worthwhile initiative if it successfully promoted the first four goals of sustainable economic development, security, the rule of law and democracy among the current 16 members of the Pacific Islands Forum. The Nordic Council, for example, is a vibrant, active regional grouping, even though three of its members belong to the wider European Union.

Yet, for as long as other regional groupings in the Asia Pacific exclude Forum members, the Oceania Community should pursue a dynamic agenda designed to attract new members, so that the Community comes to cover more and more of the Pacific. Thus, the fifth goal of Pacific regional order—integration with the wider region—will remain a vital one for the foreseeable future.



## Notes

- <sup>1</sup> See the Sixteenth to Eighteenth Forum Communiqués (South Pacific Forum 1986–88), where the emphasis is on establishing ‘a dialogue with Japan with a view to obtaining further assistance’. See also Tarte (1998).
- <sup>2</sup> This is the Pacific Islands Leaders Summit (PALM), held every three years.
- <sup>3</sup> The security initiatives, for example, will include efforts to reduce regional tensions, combat terrorism and address internal instability, through the collection of small arms, infrastructure rebuilding, vocational training for ex-combatants and involuntarily displaced people, and law enforcement programs (Australian Parliamentary Committee 2003).
- <sup>4</sup> Shanahan suggests that ‘Japan wants Australia to be more active in the region, less hesitant and to take a longer-term view. Specifically, the Japanese want Australia to put more effort into making existing groups, particularly APEC, more effective and to enliven the Australian-Japanese relationship’ (Shanahan 2002).
- <sup>5</sup> To comply with the WTO rules on free trade agreements, such partnership agreements could not contain schedules for liberalisation.
- <sup>6</sup> In addition to the European Union, Baldwin cites the example of integration between Argentina and Brazil, which Uruguay and Paraguay then wanted to join; and integration between the United States and Canada, which Mexico joined (and this latter arrangement may yet become the Free Trade Area of the Americas). Dent refers to ‘the magnetic pull’ of the European Union. He believes countries are motivated to join the European Union to win: improved access to European Union markets; membership of the world’s largest trading bloc; the opportunity to directly influence European Union policy and law; and economic assistance. This latter factor is further discussed in Dent (1997).
- <sup>7</sup> Beeson questions how politically realistic this scenario is: ‘for ten years—and two US electoral cycles—the “developing nations” [particularly China] will have free access to the markets of the US without the necessity or the guarantee of immediate or even eventual reciprocity...in the event of this fairly unlikely scenario being realised, there is no guarantee that such exemplary conduct will be repaid as none of the APEC commitments are binding or subject to sanctions in the event of non-compliance’ (Beeson 1995:11).
- <sup>8</sup> Even APEC proponents have noted that reductions in trade barriers by APEC members ‘are principally a result of individual APEC member economies choosing, through both multilateral trade negotiations and unilateral action, to liberalise their trade and investment regimes’ (Australian Department of Foreign Affairs and Trade 2000:14). A former chair of the APEC Eminent Persons Group admitted that there was ‘no hard evidence to date that any APEC country has taken additional liberalisation steps solely due to APEC’ (Ravenhill 2000:323).
- <sup>9</sup> ASEAN and other participants made it clear that APEC was not to develop into a negotiating forum, and that any agreements would be informal: there would be no legally binding commitments. Further, APEC’s ideal of ‘open regionalism’, whereby reductions in trade barriers by APEC members are passed on to all WTO members, is a distinct contrast to European Union-style integration (Elek 1996b; Rudner 1995).

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- <sup>10</sup> Notwithstanding this membership, the APEC Ministerial Statement on Membership (1997) suggests that APEC 'will remain limited in size both on account of its Asia Pacific character and because of the need for the group to remain manageable and effective'.
- <sup>11</sup> Given such developments, Ravenhill's description of APEC 'as a *trans*-regional rather than a regional body' seems apt (Ravenhill 2000:329).
- <sup>12</sup> Through much of the Doha Round, for example, the European Union demanded the negotiation of new rules on competition and investment, whilst resisting the reduction of its agricultural subsidies.
- <sup>13</sup> As discussed in Chapter Three, the impetus for a free trade agreement among Forum island countries came about because of the dictate of the distant but powerful European Union.
- <sup>14</sup> Article I(B) of the Maastricht Treaty encourages 'the implementation of a common foreign and security policy including the eventual framing of a common defence policy'. Available at <http://europa.eu.int> [accessed 29 May 2002].
- <sup>15</sup> Already, Forum Communiqués do occasionally note support for Forum nationals' campaigns in efforts to win, for example, a place on the UN Security Council, or the position of President of UN General Assembly.

# 13

## Forging regional order

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Any change effort involves three essential steps (Backhard and Pritchard 1992). The first involves identifying the need for change. The second involves creating an attractive alternate vision of the future, promulgating the guiding philosophy of the vision and the detailed plans required to realise it (Collins and Poras 1991). The third step is implementing those plans.

This concluding chapter begins by re-considering the first step, namely identifying the need for change in the Pacific context, by revisiting some of the salient features of the present state of the Pacific. Next, I return to the importance of a strategic vision for the Pacific, and the need for a guiding philosophy that will enable the Pacific to address its challenges and realise an attractive alternative future. The chapter reviews the detailed plans that have been proposed and how they meet the five goals of regional order, promoting sustainable economic development, security, the rule of law, democracy and integration with the wider region.

### **Identifying the need for change—the present state of the Pacific**

Chapters Two to Four considered various aspects of the present state of the Pacific. Chapter Two analysed some of the Pacific's current challenges to regional order: the failure in most Forum island countries to implement the policy settings needed to realise sustainable economic development; the dangers of failing states, internal conflicts and transnational actors taking advantage of states with weak central authority; the failure amongst most Forum island countries to commit to the rule of supranational law, notably the key human rights instruments, and the egregious

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breaches of domestic law in some Forum island countries; the challenges to democracy in some Forum island countries; and the failure of Forum members to address adequately their isolation from regional integration around the world, particularly in the wider Pacific region.

Abraham Lincoln once said that 'if we can know where we are and something about how we got there, we might see where we are trending—and if the outcomes which lie naturally in our course are unacceptable, to make timely change' (quoted in Thompson and Strickland 2003:328).

After some years of researching and working on Pacific issues, I do not know of anyone who is arguing that the Pacific's present trends are acceptable. There may rightly be disagreement on the solutions, on the role Australia can usefully play in encouraging change, and on where the responsibility for fixing the problems lies between individual states and the international community, but there is widespread recognition of the need for change.

It is particularly noteworthy that two key actors have recognised the need for change: Australia, and the Pacific Islands Forum, as discussed in Chapters Three and Four. A third key actor, New Zealand, has long been a fruitful source of ideas for promoting Pacific integration.

In 2003, Australian policymakers realised that the 'hands-off' approach to Pacific policymaking was no longer working, and, indeed, constituted a threat to Australia's substantial Pacific interests. Prime Minister John Howard said '[a] number of our friends in the Pacific are experiencing economic collapse, corruption and lawlessness to a degree which threatens their very sovereignty...Our friends and neighbours in the Pacific are looking to us for leadership and we will not fail them' (Howard 2003a:1). The most obvious manifestation of Australia's new approach was its Solomon Islands intervention. After previously resisting any Australian role in Solomon Islands, under the new policy of cooperative intervention, 2,250 Australian police, military and civilian personnel were deployed.

Yet, throughout various phases of its Pacific relations, Australia has been focused, often solely, on promoting the goal of security. This narrow approach has risked antagonising Forum island countries, and has mostly failed to address the internal causes of instability and regional disorder. These dangers are apparent in the current cooperative intervention phase. Australia is the key actor in the Pacific, and the pursuit of regional order requires Australian leadership and resources. Australia cannot, however, lead change from 'outside' the region. It can be a catalyst for change in the Pacific, but it must be an integral, intimate partner in the change effort, and this demands a new phase in Australia's Pacific relations.

For much of its history, the Forum has avoided regional initiatives that would impact on members' internal sovereignty, as some members have ignored or resisted the possibilities of deeper and wider integration. A key example is the PACER–PICTA negotiations, where the Forum Secretariat was able to pursue a sub-optimal outcome—trade integration between Forum island countries alone—for political reasons, rather than providing a fair analysis of the costs and benefits of wider integration. Ultimately, the Forum's resistance to developing shared sovereignty has proven unsustainable in light of the region's challenges. As a result, the Forum's attitude has begun to change, as evidenced by the Biketawa Declaration and the region's high-level intervention in Solomon Islands, and the Forum Leaders' Auckland Declaration.

Thus, the first requirement for change, recognition of the need for change, has largely been met. What the Pacific currently lacks is a shared, strategic vision of how to accomplish change.

### **A strategic vision—the guiding philosophy**

The preamble to the European Union's founding treaty reads that members are

...resolved to substitute for historical rivalries a fusion of their essential interests; to establish, by creating an economic community, the foundation of a broad and independent community among peoples long divided by bloody conflict; and to lay the bases of institutions capable of giving direction to their future common destiny (Treaty of Paris, Preamble).

In the preamble to CARICOM's founding treaty, members announced their 'common determination to fulfil the hopes and aspirations of their peoples for full employment and improved standards of work and living' (CARICOM Treaty, Preamble). Thus, CARICOM's key objective was 'the economic integration of the Member States through the establishment of a common market regime' (CARICOM Treaty, Article 4).

The Forum, in contrast, was established without a founding treaty or strategic vision. Thompson and Strickland argue that the general disadvantages of a lack of strategic vision include organisational drift, mediocrity, internal wheel-spinning and lacklustre results (Thompson and Strickland 2003). It should be unsurprising, then, if the Forum has often seemed directionless, not working toward specific goals. Differences in size and capacity between the Forum and other regions can always be identified, but these should not be excuses. Both the European Union and CARICOM, two very different regions, had a clear idea of what they were working towards, and have consequently been far more successful in promoting the five goals of regional order.

## **Pacific Regional Order**

The creation of a comprehensive strategic vision would have a number of advantages for the Pacific. It would

- crystallise Pacific leaders' views about the region's long-term direction
- reduce the risk of rudderless decision-making
- help the region prepare for the future
- convey purpose to Forum members, the wider region and the world
- provide a beacon, and hope, for Pacific citizens.<sup>1</sup>

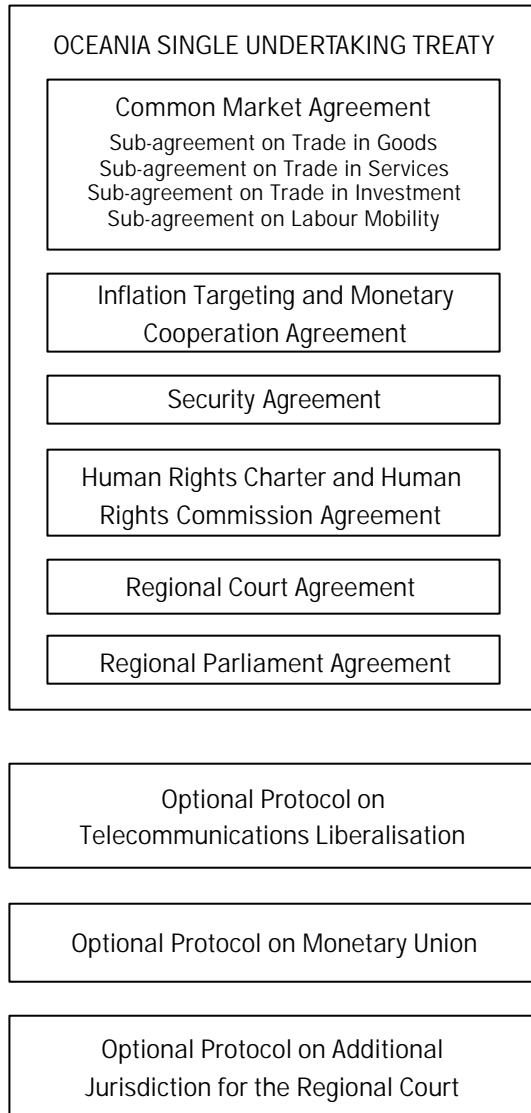
The beginnings of such a strategic vision are evident in the Australian Parliamentary Committee's report, *A Pacific Engaged: Australia's relations with Papua New Guinea and the island states of the south-west Pacific* and the Forum Leaders' Auckland Declaration (Pacific Islands Forum 2004). The Committee's key recommendation was that 'the idea of a Pacific economic and political community...is worthy of further research, analysis and debate' (Australian Parliamentary Committee 2003:xiii). The Committee envisaged that such a community would involve, over time, establishing a common currency, a common labour market and common budgetary standards (Australian Parliamentary Committee 2003:xiii). As discussed in Chapter One, though, neither the Committee nor the Forum Leaders presented a holistic vision. However, a Pacific economic and political community is precisely the vehicle needed to realise the Auckland Declaration's vision of a peaceful, harmonious, secure and prosperous Pacific (Pacific Islands Forum 2004). Such an integrated vision would energise Pacific policymakers, and provide a beacon of hope for its citizens.

Collins and Porras suggest that there should be two components to any new vision: a guiding philosophy, and the detailed plans, or tangible images, of the vision (Collins and Porras 1991). This book has proposed that the Pacific's guiding philosophy should be the pursuit of regional integration through the Forum, so that the Forum follows, and improves on, the European Union model of regional order. To reflect this development, the Forum should be renamed the Oceania Community.

To realise this guiding philosophy, current Forum members need to embrace the legally binding commitments, and shared sovereignty in certain critical areas, that they have often resisted. Giving effect to regional integration will involve a number of agreements covering trade, monetary policy, security, human rights, the rule of law and democracy, bound up in a single undertaking treaty that all Community members would have to accede to. Figure 13.1 summarises the key features of the single undertaking treaty.

The following section summarises the key plans needed to promote the goals of regional order.

Figure 13.1 Structure of the Oceania single undertaking treaty



## **A strategic vision—the detailed plans**

### **The Oceania Community and goal one: sustainable economic development**

The promotion of free trade is the most vital contribution that regional integration can make to sustainable economic development, to facilitate the development of competitive, prosperous economies. A comprehensive Oceania common market has therefore been proposed, to facilitate free trade in goods, services, investment and labour.

There is no doubt that the Oceania common market would demand substantial reform of Forum island economies. In return though, their goods would receive improved access to Australia and New Zealand through a lowering of the rules of origin threshold, and assistance to improve the quality of the goods they export. They would enjoy the benefits of more productive, profitable service industries. They would attract the foreign investment needed for their economies to grow and to improve the employment prospects of young islanders. They would win access to the Australian and New Zealand labour market through a labour mobility program that would include a specific stream devoted to skills development. The Oceania Community would offer a number of carrots to Forum island countries, but labour mobility is arguably the key one. As Dobell argues, it would ‘open up new vistas, give new hope and opportunity’ (Dobell 2003:18).

Former New Zealand Prime Minister and WTO Director-General Mike Moore has said that ‘countries preparing for entry to the EU and the WTO do better than those without such objectives. The economic discipline brings with it growth, social progress and better governance’ (Feizkhah 2003:31). This is the contribution the Oceania common market would make in the Pacific context.

Yet further regional measures are possible to promote sustainable economic development. A regional commitment to inflation targeting would stabilise prices, steady national business cycles, and promote a sustained, even rate of economic growth. Many Forum island countries would benefit, too, from monetary integration with Australia. This would contribute to sustainable economic development by encouraging trade, investment and tourism, and freeing up money and expertise in Forum island countries for other areas of government services, as well as avoiding currency instability.

### **The Oceania Community and goal two: security**

There is much that the Oceania Community could do to promote the goal of security. The key new institution should be the Oceania Security Centre, which would be charged with preventing, limiting and resolving conflict in the Pacific. It would also promote



cooperation to combat terrorism, and work to ensure greater adherence to the Geneva Conventions, to lift the professionalism of the region's military and paramilitary forces.

The creation of an Oceania Peace Monitoring Group would also make a substantial contribution to Pacific security. Its deployment would aim to contain disputes, or assist in securing the peace when parties to a conflict are ready to negotiate.

When higher-level interventions are required, security would best be promoted through joint action between the Community and the United Nations. This would usefully share responsibility in the event of future interventions in a failing or failed state. Thus, a framework agreement between the Community and the United Nations would be an important addition to the Pacific's security architecture.

Regional integration cannot guarantee a benign security environment; but these security measures represent a comprehensive regime for preventing and limiting conflict, and have the potential to save many lives.

**The Oceania Community and goal three: the rule of law**

The Oceania Community would be a vital promoter of the rule of law in a number of respects.

The single undertaking treaty establishing the Oceania Community would establish an overarching legal order, governing relations between Pacific states and securing the rights and responsibilities of all states, large and small.

The Oceania Human Rights Charter would give local expression to key human rights instruments, and the Oceania Human Rights Commission would have the local representation, dynamism and relevance to encourage a shift in the Pacific's approach to human rights. Thus, the Charter and Commission would together secure greater adherence to the supranational rule of law.

The Oceania Court would be an important normative model, peacefully resolving constitutional, trade, human rights and environmental disputes between Forum members and, in some instances, assisting Pacific citizens directly.

**The Oceania Community and goal four: democracy**

The Oceania Parliament, featuring direct elections and the opportunity to deliberate over a number of essential regional issues, would be an effective mechanism for promoting democracy and engaging Pacific citizens in the regional integration effort. Establishing such an institution from the outset of the Community would avoid the democratic deficit that has occurred in the development of the European model of regional order.

Thus, the Oceania Community would be a model of transnational democracy between its members. However, addressing the challenges to democracy within

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states is vital. The European Union's Copenhagen criteria insisted that Central and Eastern European states hoping to join the European Union had to be democracies. In contrast, the Oceania Community's promotion of democracy within states would be more normative. Since I have proposed that the Oceania Community should proceed from the Forum, the Community would commence with some members with existing challenges to democracy. Over time, the example of the Oceania Parliament, the work of the Oceania Human Rights Commission and the economic development that would occur as a result of the common market would be a persuasive normative framework for correcting democratic deficits within members.

Nonetheless, there should be more direct mechanisms in the event of a coup. In such instances, the benefits of Community membership—such as aid and participation in labour mobility programs—should be suspended for the relevant member.

### **The Oceania Community and goal five: integration with the wider region**

A commitment to a wider and more powerful sovereignty is vital if Forum members are to address their isolation from the regional integration occurring around the world. The European Union, as an attractive model of regional order, has proven a magnet for further members and as a result has become an increasingly powerful global actor. The Oceania Community should be aiming to emulate its success.

This requires a change in mentality on the part of Forum members and the Secretariat to embrace the dynamism needed to pursue integration with the wider region. Once this initial barrier is overcome, there are possibilities for expansion. A strategic vision of wider integration would revitalise the West Pacific Dialogue, and ensure dynamic relations with Japan.

In many respects, the success of this fifth goal of widening the integration process is dependent on the success of the efforts to deepen the integration process through the first four goals. A prosperous and secure Oceania Community would attract new members. Further, a legal order guaranteeing fairness for all states, and a democratic order involving individual citizens, would be attractive to states and citizens in the wider Pacific.

Ultimately, a commitment to ensuring the realisation of the first four goals of regional order, combined with a commitment to widening the integration process, would enable the Oceania Community increasingly to project soft power into the region and the world.

### **A regional community and its citizens**

The aim of this book has been to identify the minimum regional integration necessary to address the Pacific's challenges, rather than proposing 'ever closer union' with the goal of creating a unified Pacific state (see, in contrast, the Treaty of Rome and

the Maastricht Treaty). Thus, the goal is an effective confederation—'a union of states (and secondarily of peoples) that locks together carefully specific sovereign functions under an intergovernmental treaty-constitution'—rather than a federation—'a union of peoples in a single state' (Lister 1996:106).

Even if the union of peoples is a secondary aim of a confederation, this is not to undersell the benefits of what the Oceania Community would offer the people of the Pacific. In the initial phase of the Oceania Community, Oceania citizenship would convey the following rights

- the right (and responsibility) to vote in regional elections for the Oceania Parliament
- the right to stand for election to the Oceania Parliament
- the right to petition the Oceania Parliament directly
- the right to human rights protection through the Oceania Human Rights Commission and Oceania Court, with support from the Oceania Peace Monitoring Group
- the right to enforce economic rights through the Oceania Court
- for citizens in developing countries, a qualified right to seek work in developed countries.

More generally, citizenship in the Oceania Community would imply a right to rising standards of development. A small list to start off with, perhaps, but one with the potential to evolve over time.

Eveli Hau'ofa (1993:8) usefully distinguishes between 'the Pacific islands region' which he says denotes 'small areas of land surfaces sitting atop submerged reefs or seamounts', and 'Oceania' which he regards as 'a sea of islands with their inhabitants' (see also Thynne 1996). In pre-colonial times, this 'sea of islands' concept meant that 'Oceania was a large world in which peoples and cultures moved and mingled unhindered by boundaries of the kind erected much later by imperial powers' (Hau'ofa 1993:8). We need to return to this concept of Oceania, the idea that the Pacific is neither small, nor deficient in resources or potential (Hau'ofa 1993). A common Oceanian citizenship is part of this quest. As Hau'ofa states,

Oceania refers to a world of people connected to each other...This view opens up the possibility of expanding Oceania progressively to cover larger areas and more peoples than is possible under the term Pacific Islands Region. Under this formulation the concepts Pacific Islands Region and Pacific Islanders are as redundant as South Seas and South Sea Islanders. We have to search for appropriate names for common identities that are more accommodating, inclusive and flexible than what we have today (Hau'ofa 2000:36).

### **Conclusion**

In recent years, there has been growing concern about the present state of the Pacific, and Pacific leaders and policymakers have recognised the need for change. Thus, this first essential step in the change effort, identifying the need for change, has largely been accomplished.

The second step, creating an attractive alternative vision of the future, has proven more problematic, although the Forum's Auckland Declaration is an encouraging development. As a rule, a strategic vision should have a long-term time horizon (Thompson and Strickland 2003). This book has presented a vision of what is needed for the Pacific to be a prosperous, dynamic region in 2020. The vision is vital, timely and optimistic, and eminently achievable if all Pacific states commit to a new phase in their relations.

The third part of any change effort, indeed the most difficult part, is implementing a new vision. A strategic vision must become a shared vision amongst the Pacific's leaders, policymakers and people. This is where the ultimate challenge lies.

The book builds on the previous work of Pacific scholars and policymakers. It has presented an overall strategic vision, and the detailed plans needed for each of the necessary elements of high-impact Pacific regional integration. It is an integrated vision, including proposals for overcoming difficult issues. Movement on communal land tenure, for example, will only come through the offer of labour mobility to developed countries. The Forum's richer and poorer members will only be able to resolve the region's challenges when they embrace the shared future, and the mutually binding legal commitments, represented in the Oceania Community.

It is my conviction that this detailed strategic vision answers the Australian Parliamentary Committee's challenge when it stated that it was

...putting forward the idea of an economic and political community for public debate...because insufficient evidence and analysis has been received by our inquiry to enable us to be categorical about all of the likely issues such a community raises (Australian Parliamentary Committee 2003:7).

It also provides a basis for the planning process that Forum Leaders are currently engaged in as a result of the Auckland Declaration. This vision provides something to work towards, focusing debate and avoiding arguments in the abstract.

Although the voyage will not be easy, the promise of regional order awaits the Pacific and its citizens.

It is time to begin.

### **Note**

<sup>1</sup> Adapted from Thompson and Strickland (2003:41).

# Appendices

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## **Appendix One**

### **Key facilitation measures for the Oceania common market**

A number of measures are needed to provide institutional support to the Oceania common market; this appendix briefly outlines some of the more important measures.

First, the Oceania Community should create a dynamic framework for dealing with e-commerce. It should launch an Internet portal, Oceania Online, to showcase Oceanian businesses, and allow consumers to order Forum island country goods and services online. The Community's development program should help Forum island country businesses get computers and get them online, and support Forum island countries that are committed to overcoming the digital divide by ratifying the optional protocol on telecommunications liberalisation.

Second, the existing Pacific Islands Trade and Investment Commissions in Sydney and Auckland should be expanded to exploit the opportunities that the Oceania common market should provide. These trade promotion offices currently have no facility for e-commerce for Forum island country businesses. The offices should integrate their efforts with the proposed Oceania Online to showcase Forum island country businesses and facilitate e-commerce throughout the common market and beyond.

Third, a regional stock exchange also needs to be developed to facilitate investment into, and within, the region, otherwise Forum island countries will not

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reap the full benefits of the Oceania common market. Papua New Guinea and Fiji have stock exchanges, but both are small—in 1997 the Fiji exchange had only four listings (AusAID 1997). The key test of an effective market is its level of liquidity, which is measured by

- width—the spread of buy–sell prices
- depth—the volume of buyers and sellers
- immediacy—how quickly trades can be done
- resiliency—how quickly prices respond to a large imbalance (Australian Securities Institute 2002).

Clearly, an exchange with only four listings is a very thin market that will have little activity (Australian Securities Institute 2002). In contrast, the Australian Stock Exchange (ASX) is the tenth largest in the world, with a market capitalisation of US\$379 billion in 2001 (Australian Securities Institute 2002). Thus, the ASX is the obvious vehicle through which the Oceania stock market should be developed.

The challenge here is to establish a system that does not demand overly onerous levels of market capitalisation for Forum island companies and can be easily accessed throughout the region. A solution could be to establish Oceania Online as an adjunct to the Australian Stock Exchange. Having Oceania Online also function as an online stock exchange would encourage Forum island companies, with appropriate technical assistance, to publicly list and raise capital throughout the region.

The ASX has previously sponsored an internet-based capital market for unlisted businesses, but it did not attract enough interest (Australian Securities Institute 2002). However, suitable promotion of the Oceania Community generally, and the Oceania stock market specifically, should generate sufficient interest to make Oceania Online successful as an exchange. For instance, the ASX already has a Trans Tasman 100 Index (the top 100 companies from the Australian and New Zealand exchanges), and an Asian Index (Australian companies that base more than 75 per cent of their operations in Asia) (Australian Securities Institute 2002). The ASX could also initiate an Oceania 200 Index, which could include companies from Oceania that have 25 per cent or more of their operations in Oceania, as a way of promoting Oceania Online.

Australia and New Zealand also need to encourage Forum island countries to adopt International Accounting Standards to improve the transparency of Forum island companies, and further attract investment to those countries (Bazley et al. 2001).

## Appendix Two

### Further features of the Oceania labour mobility agreement

This appendix briefly outlines some additional features of the Oceania labour mobility agreement.

The immediate families of those individuals who receive an Oceania work visa should be eligible to travel to Australia with the primary worker for the duration of the visa. Partners of Business Skills Development Program (BSDP) participants would be eligible for an Oceania work visa, which would be part of their source country's quota for that year. For non-BSDP participants, partners should be helped to get Oceania work visas, should they wish.

In the European Union, individuals can access training and unemployment services in any participating country, without discrimination. As part of Australia's aid program, these services should be available to those participating in the Oceania work visa program. Unemployment services would be important in the initial period after arrival. Additional training should be available at Australian prices—that is, an individual on an Oceania work visa should pay the same fees as an Australian (fees for Australian education and training programs are typically higher for overseas customers).

Under the European system, temporary workers are responsible for their own health costs (they must have health insurance). As additional aid, Oceania workers should be able to access the Australian public health system for emergency, non-discretionary healthcare (those with pre-existing illnesses would not have met Australia's visa requirements). Australia grants this assistance to New Zealanders, and to citizens of other countries with which it has Reciprocal Health Care Agreements.

Beyond these benefits, individuals and their families would not be entitled to Australian and New Zealand welfare payments, such as unemployment benefits.

Participants in the labour mobility programs should pay income tax to the host country. Otherwise they would put little into the host economy, because much of their salary would be sent home. This is consistent with the approach Australia takes to other holders of temporary residence visas.

Only those aged 45 and under should be eligible for the BSDP. To ensure their home countries enjoy the benefits of the skills they have developed in Australia, participants should not be eligible to apply for permanent migration to Australia for a period of 10 years after they have returned to their source country. There is less of a need for age restriction on those with a regular work visa. These participants should not be eligible to apply for permanent migration to Australia for three years after they have returned to their source country.

**Appendix Three**

**Tourism—the Oceania trade order in action**

The travel and tourism industry is already the world's biggest employer (World Tourism Organization 1995). The Forum's 1997 Communiqué states that private sector development 'should include the development of tourism, particularly in the FICs with limited or no exploitable resources', with Leaders noting the potential for tourism in the region in the 21st century (South Pacific Forum 1997). Tourism is an important driver of economic growth in the Caribbean (Worrell and Fairbairn 1996), and the Australian Senate Committee noted its potential to replace development assistance in the Pacific (Australian Parliamentary Committee 2003).

But, despite having some of the world's most beautiful locations, Fiji and Papua New Guinea's global exports of travel services have grown by only small amounts since 1970 (Levantis 1998). Much of the poor performance of Forum island countries is due to sociopolitical factors—coups in Fiji, the security situation in Papua New Guinea. Opportunities must be seized to improve the economic framework, so as to increase the performance of this sector.

To consider how the Oceania trade order may work in practice, and growth in tourism could be achieved, I present the following scenario, which assumes that, 20 years from now, the Oceania Community agreements on free trade have been fully implemented.

A transnational hotel chain is interested in establishing a major new hotel complex in a Forum island country. One of the country's 12 investment priority zones is identified as the site of the hotel. The local community offers to convert parts of their communal land to freehold land, subject to compensation, employment opportunities and skills development. Those in the priority zones have the right of first access to the Business Skills Development Program and Oceania work permits.

Through the performance requirements negotiated between the government and the company, the company commits to hiring 300 people from the local area, and to meeting the cost of 10 people undertaking a private sector Business Skills Development Program in its overseas hotels. The hotel will remain owned by the chain. The government offers it no investment incentives.

Planning for the hotel commences. Following an independent assessment of the environmental implications by the Oceania Community, the plans are modified.

The hotel starts operations. Its general manager is an Australian, but she has not paid for a work permit. Many other managers in the hotel are local graduates of the Business Skills Development Program. Other people in the area have worked in hotels in Australia and New Zealand on Oceania work visas, and so become eligible for early promotion.



Over the last 20 years, the telecommunications infrastructure in Forum island countries has improved, leading to a surge in e-commerce and to increased interest from overseas consumers in attractive holiday packages. Using the tourism gateway on the Community's internet portal, Oceania Online, overseas consumers easily combine holidays in Australia or New Zealand with the relevant Forum island country, or combine holidays between Forum island countries. Since the Forum island country is committed to the Oceania Community's rules on e-commerce, customers know their transactions are secure.

The development of e-commerce and the reduction in tariff barriers also means that the hotel can source the freshest food from a number of Forum island countries at short notice.

## **Appendix Four**

### **UN reform to aid the Oceania Community**

Chapter Twelve considered the impact that the Oceania Community may have on other international organisations. This appendix briefly considers the reform that would be necessary for Community members to maximise their impact within the United Nations.

Australia and New Zealand are currently hamstrung within the United Nations by their membership of the Western European and Others electoral group. Table A4.1 lists the countries proposed for phases one to three of the Oceania Community, and the UN electoral group to which they belong. As can be appreciated, Australia and New Zealand are divorced from neighbours with which they share vital interests.<sup>1</sup>

The Asian Group is itself an impractical configuration, comprising 54 members as diverse as Saudi Arabia, Mongolia and Tonga. A new Oceania, or Pacific, group would represent a fairer division of countries, as well as reinforcing a sense of regional identity and allowing Australia and New Zealand to work with their neighbours.

The United Nations' unfortunate regional division is also reflected in its Economic and Social Commission for Asia and the Pacific (ESCAP). ESCAP's goal is to promote 'economic and social development through regional and subregional cooperation and integration'.<sup>2</sup> It is an ineffective vehicle for promoting integration, however, given its membership, which covers 52 countries, from Azerbaijan to Palau to the United States.<sup>3</sup> As with the United Nations' regional human rights efforts, discussed in Chapter Nine, ESCAP can add little value to the United Nations itself, or to the assistance provided by global UN bodies such as the United Nations Development Programme. A UN regional organisation reflecting the potential membership of the Oceania Community would provide a more useful focus, and would better enable the United Nations to contribute to the development of the Oceania Community. This too would usefully reinforce the link between the global and regional systems.

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### Notes

- <sup>1</sup> Brückner (1990) notes that Australia and New Zealand have expressed misgivings about joint positions being developed by European Union members of the Western Europe and Others Group, before they have been discussed with the entire membership of the Group.
- <sup>2</sup> See UNESCAP website, 'About Us'.
- <sup>3</sup> See UNESCAP website, 'Members and Associate Members'; and Arndt (1993).

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Table A4.1 Proposed Oceania Community members—membership of current UN electoral groups

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Country	Group
Australia	Western European and Others
Cook Islands	-
Timor-Leste	-
Federated States of Micronesia	Asian
Fiji	Asian
Kiribati	Asian
Marshall Islands	Asian
Nauru	Asian
New Zealand	Western European and Others
Niue	-
Palau	Asian
Papua New Guinea	Asian
Samoa	Asian
Solomon Islands	Asian
Tonga	Asian
Tuvalu	Asian
Vanuatu	Asian
American Samoa	-
French Polynesia	-
Guam	-
New Caledonia	-
Northern Mariana Islands	-
Wallis and Futuna	-
Brunei	Asian
Indonesia	Asian
Philippines	Asian
Singapore	Asian
Japan	Asian

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Source: Willetts, P., 2002. Division of the 189 Members of the United Nations into Regional Groups, Department of Sociology, City University of London, London (unpublished). Available online at <http://www.staff.city.ac.uk/p.willetts/UN/UN-GRPS.DOC> [accessed 15 December 2002].

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