NEW DIRECTIONS FOR REGIONAL COOPERATION IN THE SUPPRESSION OF TRANSNATIONAL CRIME IN THE SOUTH PACIFIC

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INTRODUCTION

The Honiara Declaration on Law Enforcement Cooperation, adopted by the Pacific Islands Forum (hereinafter the Forum) in 1992, marked the formal beginnings of a significant regional effort to suppress transnational crime in the South Pacific. I have charted the development of this regional response – the threat assessment process, the measures taken by the Forum, and the implementation of these measures by Forum members - elsewhere.[1] This piece begins with a summary of the shortcomings of the current approach, but it is mainly concerned with exploring the possible movement of the Forum away from a reliance on soft law towards a regional transnational crime control treaty or treaties in response to the challenges presented by transnational crime to the region and to Forum Island Countries (FICs) in particular.

THREAT ASSESSMENT[2]

The justification for collaborative action in the region is the threat presented by transnational crime to the safety and security of Forum members. In 1992 the Forum considered that if it increased in scale transnational crime could threaten the sovereignty of member states and the stability of the region.[3] By 2001, however, the Forum stated that there was 'clear evidence of serious transnational crime moving into the region and posing serious threats to the sovereignty, security and economic integrity of forum members.'[4] These threats included money laundering, terrorist recruitment, identity fraud, West African fraud, people smuggling, issuing passports of convenience, engaging in electronic crimes, small arms trafficking, illegally trading in endangered wildlife, drug trafficking and organised crime.[5] Closer examination reveals that some threats have materialised.

There is strong evidence of extensive money laundering within the region,[6] corruption is manifest in FICs,[7] small arms have proliferated,[8] the region is being used as a transit zone for both human trafficking and people smuggling, and identity document fraud compounds the problem.[9] But other threats remain more potential than actual. Organised crime appears to have penetrated some areas and not others,[10] drug trafficking in the region is largely directed at supplying illicit markets elsewhere and is planned and financed from elsewhere,[11] and finally the region has the potential to serve as a platform or conduit for terrorist activities directed outside of the region.[12] Globalisation, the size of the region and its nature as a high seas transit zone, and the manifest internal problems of FICs, have all been given as additional reasons for a regional response.[13] The case for a regional response would, however, be far stronger if policy-makers had access to better information and analysis about the regional and external impact of all crime including transnational crime. The establishment of a regional organ to analyse

criminal activity in the South Pacific would give regional policymakers the kind of information necessary to shape an appropriate response and to expose inappropriate responses.

THE HONIARA DECLARATION[14]

The Forum's response to the threat was to adopt the 1992 Honiara Declaration,[15] with the aim of suppressing threatening transnational criminal activities through the implementation and use of national legislative measures in key areas.[16] The Declaration calls for a range of procedural and substantive measures to provide for law enforcement cooperation,[17] mutual assistance in criminal matters,[18] money laundering control, asset forfeiture and banking regulation,[19] extradition,[20] suppression of drugs offences,[21] suppression of environmental offences,[22] suppression of terrorism,[23] maritime surveillance,[24] cooperation in respect of taxation,[25] assistance in prison administration,[26] and to address indigenous issues.[27]

Further areas identified post-Honiara by the Forum include human trafficking,[28] regional security,[29] small arms proliferation,[30] identity fraud[31] and corruption.[32] These measures are generally worded signposts to relevant international treaties and serve as invitations for detailed legal change though consultation with technical experts. They prioritise the smoothing of criminal justice processes between different jurisdictions by reducing barriers to all forms of legal assistance, rather than provide for the establishing of a comprehensive regional criminal law. Regional concerns such as indigenous issues appear to have been tacked on to the list of measures.

Legal responses in Forum members[33]

Implementation of the Honiara Declaration depends first on treaty adherence by Forum members and second on legislative modernisation.

Treaty adherence by FICs has been poor. Adherence to the 1988 Drug Trafficking Convention[34] is indicative: Although the treaty has been in force for fifteen years and currently has 169 states parties, of the 16 Forum members only Australia, the Federated States of Micronesia, Fiji, New Zealand and Tonga are currently parties. This poor adherence is nicely contextualised by the singling out of a number of Forum member states by the US State Department[35] and the Financial Action Task Force (FATF) as countries of concern because of money laundering activities.[36] Poor treaty adherence may be explained by disinterest because of the perceived absence of local impact coupled with weak legal and political infrastructures. Even more prosaically, most FICs are unable to attend the negotiations of these treaties.[37]

The aim of the Honiara Declaration is, however, legislative reform. In this regard, some areas such as mutual assistance, extradition and asset forfeiture have fared better than others such as money laundering, financial regulation, drug trafficking, environmental offences, terrorism, human trafficking, and small arms proliferation. Regional concerns such as indigenous issues appear to have been neglected. The actual use of this legislation is a wholly unexplored topic, although anecdotal evidence suggests extremely patchy use.

The implementation of the Honiara Declaration has been and remains a source of concern to the Forum.[38] Although technical assistance has been given particularly in the drawing up and adaptation of model legislation to local conditions, FICs face a general problem of law reform. Poor coordination and communication between officials and the high implementation costs and low law enforcement capacity compound the problems of implementation. In summary, bolting a new and sophisticated piece of legislation onto many of the existing core criminal laws is a little like clipping a new section of bridge made in Japan onto the old Auckland harbour bridge – it is as weak as the old bridge, but doesn't have its piles in the South Pacific.

Finally, even if enacted and applied no provision has been made for actually monitoring the effectiveness

of this legislation in suppression of transnational crime. Steps need to be taken at the regional level to measure formal legal implementation, actual operational implementation, and the impact of individual measures so that these measures can be adjusted appropriately.

A REGIONAL WAY FORWARD

Issues of transnational crime do not appear in reality to have been considered as crucial 'Pacific problems' from the FIC point of view. Thus while the Honiara Declaration was adopted by the Forum, its subsequent application by Forum members has not been considered a matter of real import because of a failure to connect with national realities.[39] It may be possible to respond more appropriately to the local aspects of transnational crime[40] and thus engage local participation through the negotiation of regional crime control conventions that adequately meet regional as well as external concerns.

The process set in motion by the Forum Eminent Person's Group Review of the Forum in 2003-2004 may provide an opportunity for change. The Review considered that 'processes for meeting international legal demands' and 'regional law enforcement aimed at transnational crime' are areas that would benefit from greater shared effort. In response, the Forum Leaders adopted the Auckland Declaration, which proposed a Pacific Plan that 'would create stronger and deeper links between sovereign countries of the region and identify the sectors where the region could gain the most from sharing resources of governance and aligning policies.'[41]

An early 'Working Draft' of the Plan[42] considered security one of four priorities[43] and highlighted 'ensuring the successful implementation of regional cooperation at the national level' as a key principle to achieve these goals.[44] The Working Draft identified as elements of the short term security strategy (three years) training through the Pacific Regional Policing Initiative and Pacific Transnational Crime Coordination Centre (PTCCC) and a regional strategy for maritime security that complies with the International Maritime Organisation's International Shipping and Port Security Code (IPS Code).[45] The mid-term (five years) security goals included strengthened relations between regional law enforcement organisations such as the Oceania Customs Organisation (OCO), the Pacific Immigration Directors Conference (PIDC), and the South Pacific Chiefs of Police Conference (SPCPC), ensuring alignment of their strategic planning regimes and in particular with regard to border management and control and Advanced Passenger Information (API) systems.

Also included were better intelligence services through the Customs Regional Intelligence Network and the Customs Asia Pacific Enforcement Reporting System (CAPERS).[46] More aspirational goals such as a regional register of judges and public prosecutors were listed as mid-term good governance rather than security strategy. Longer term goals (ten years) included the 'harmonisation of domestic legislation with relevant regional and international conventions, treaties and agreements,' also a good governance strategy.[47] There were no specific long term security goals.

This Working Draft was weakest in its articulation of the legal platform for a burgeoning regionalism. It called for 'partnership frameworks'[48] but relied, in the short term, on general suppression conventions and the Honiara Declaration to provide the 'legal underpinning for the Forum Secretariat's Pacific Islands Regional Security Technical Cooperation Strategy (PIRSTCS)'.[49] The latter is directed mainly at providing technical assistance and training to FICs to meet these international obligations and regional recommendations.

Before the Final Draft was concluded, Forum Secretary General Greg Urwin, speaking to the Australian Federal Police (AFP) Pacific law enforcement team, pointed to the possibility of a more ambitious programme:

> We can expect, over time that police might see merit in harmonised laws and policies, for example, to support a regional pool of police prosecutors, or perhaps special investigation teams that can be called upon by a member state to assist with cross border crimes. Given

> your knowledge of law enforcement issues, I am sure that you will come up with many more ideas about where we might better share resources for our mutual benefit.[50]

The Final Draft, to be put to the 2005 Forum in late October in Papua New Guinea, singles out inter alia the enhancement and stimulation of 'security for Pacific countries through regionalism as one of the goals to be met by the Pacific Plan'.[51] The strategic objectives under the goal are '[i]mproved political and social conditions for stability and safety.' The Final Draft envisages regionalism being based at this stage on 'regional cooperation', by which it means increased coordination of nationally provided services in the region by, for example, organisations like OCO.[52] Alternative strategies such as 'regional provision of services', meaning pooling national services, and 'regional integration', lowering market barriers between countries, are left for the future.[53]

Largely following the Working Draft, the Final Draft prioritises maritime and aviation security and surveillance, the implementation of PRSTCS, law enforcement training; and disaster management as security measures ready for immediate implementation (by 2008). Its relevant priorities for good governance include regional support for audit and ombudsman offices, leadership codes, anti-corruption institutions and departments of attorneys general, judicial training and education, and support for the Forum Principles of Good leadership and Accountability. Abandoning any further time frame, it denotes as security strategies requiring 'agreement in principle', i.e. the development and approval of a full proposal, plans for urbanisation, bio-security and safety. Relevant strategies requiring 'further analysis' as to whether a regional approach is appropriate, include only the good governance strategies of the establishment of a regional customs revenue service, a regional ombudsman and human rights mechanisms. There are no purely security strategies awaiting 'further analysis'.

Other regional initiatives not taken on board are relegated to Background Paper 2.[54] These include the harmonisation of national court structures, the creation of a regional court of appeal and the establishment of a Pacific Human Rights Charter with implementation mechanisms.[55] With respect to implementation, the Final Draft envisages the Forum Secretariat (ForumSec) being the main agent, with oversight by a Pacific Plan Action Committee (PPAC).[56] The Plan talks of the development of a regional institutional framework to maximise cooperation.[57] Oddly, references to the existing Forum Declarations on security and in particular to the Honiara Declaration have disappeared.

We can only speculate at this stage about what form greater regional cooperation in the suppression of transnational crime might take, if it occurs at all. If there is going to be a longer term legal change, the current legal nature of the Forum and its declarations must first be clarified.

THE LEGAL NATURE OF THE FORUM AND ITS DECLARATIONS

The Forum has proceeded gradually and pragmatically. The declarations it has produced thus far have been adopted by consensus of the leaders present and signed by them. The legal status of these measures is uncertain as is the legal nature of the Forum itself. While the Forum has observer status at the UN, and Forum Secretary General Greg Urwin claims that the Forum is an intergovernmental organisation,[58] it does not appear to have an international legal personality.[59]

The Agreement Establishing the Pacific Islands Forum Secretariat[60] provides in Article 1 for the composition of the Pacific Islands Forum, and provides for the legal immunity of the ForumSec and for some immunity for its officials, but it is not yet in force. Moreover, it can hardly be claimed to be a constitutive treaty and these immunities are only operative among the Forum members inter se.

Other *indiciae* of international personality such as the claim to such status and the establishment of international obligations and or responsibilities between the Forum and non-member states or international organisations, are absent.[61] Thus participation in a declaration generates no treaty-derived obligation. The declarations are articulated in a non-binding form, they contain vague and imprecise terms, they

emanate from a body lacking international law making authority, they lack a theory of responsibility, and they are based solely on voluntary adherence.[62] The declarations are non-binding soft-law. They may provide evidence of state practice or *opinio iuris* of emerging regional norms of customary international law,[63] but they may also fail to provide such evidence because they have only generated soft compliance. Indeed, the aspirational nature of many of the Forum's declarations and the poor record of implementation fatally weakens the case for a customary basis.

In relying on soft law declarations the Forum has deliberately adopted an approach that runs counter to orthodox modes of regional law making.[64] The 'Pacific Way' considers inter alia that the Forum should generate Pacific solutions to Pacific problems and place political goals before legal goals.[65] The adoption of declarations by unanimous compromise leads to general instruments that are then fleshed out by committees of experts and officials to achieve detailed hard law instruments.[66] But unlike the case with environmental and fisheries issues where soft law declarations have been followed by the adoption of regional treaties,[67] the Honiara Declaration has been followed only by the expert committee production of model domestic laws.

However, there are indications that the Forum's approach appears to be changing. New concerns about orthodox security matters such as the stability of members indicate a movement to a more orthodox approach where the de facto veto implicit in the 'unanimous compromise' insisted upon by the Forum to support its declarations until recently is being abandoned and processes and products are becoming more formal.[68] As former Forum Secretary General put it: 'There are limits to cooperation based in voluntary commitments and moral persuasion... This is not always strong enough to ensure effective implementation of the regional agreements.'[69]

Are there good reasons to move away from the current approach to the suppression of transnational crime in the region?

THE UTILITY OF SOFT REGIONAL TRANSNATIONAL CRIMINAL LAW

It appears that the Forum has used soft law in respect of transnational crime because of the political necessity of enabling leeway in terms of implementation. This kind of approach is commonly adopted when there are concerns about the obligations imposed by hard law, concerns about non-compliance because of domestic political opposition, lack of ability or capacity, uncertainty about whether compliance can be measured, and disagreement with the proposed norm.[70] Soft law can set the programme for emergent hard law by playing an educative role socialising leaders and officials into the kinds of measures necessary, for example, to suppress transnational crime. Compliance, if it occurs, is based on a range of political and other non-legal factors: ethical or moral obligations, conformity to the group, peer pressure, fear of being labelled a rogue state, acquisition of international legitimacy, or through some other vested interest. It has been argued, however, that the very nature of soft laws makes it impossible

> to determine whether a state is living up to its commitments and therefore creates opportunities to shirk. They also weaken the ability of governments to commit themselves to policies by invoking firm international commitments and therefore make it easier for domestic groups including other branches of government, to undo the agreement.[71]

Soft law enables some states to stay inside the regime and not comply, thus undermining its efficiency, credibility, and confidence in the regime.

There is also a serious and largely unexplored issue about whether soft law is conceptually appropriate to the generation of international legal cooperation to suppress crime. Soft law has arguably been used quite effectively in the environmental sphere where principles such as the precautionary principle have effectively moulded state practice. Some of these principles have been difficult to define and even more difficult to implement, and thus soft law has provided an appropriate vehicle to introduce them. Where

soft law has been singularly inappropriate is where it has been used in place of 'hard' obligations, in situations where hard obligations were obviously necessary to get the required change to meet a patent problem.[72]

It seems that there is no real place for soft law where the aim is to define and tackle harmful conduct that has or is very likely to emerge in the region, where the first step must be harmonising substantive offences and penalties. Soft law may, perhaps, be appropriate to harmonising criminal process across jurisdictions, but to some extent without alteration of substantive criminal law much of this process articulation will be in vain. Law enforcement cooperative strategies or plans that rely on soft law for their legal frameworks are legally unenforceable.

The current perceptions of the use of soft law by the Forum appear to be negative. Forum Secretary General Greg Urwin notes that 'we have many examples in the region where countries have signed up to declarations and pledges and nothing has come of it.'[73] Dominant members of the Forum like Australia seek clearer commitments. Should they seek 'hard law'? Or to be more precise, "legally binding obligations that are precise (or can be made precise through adjudication or the issuance of detailed regulations) and that delegate authority for interpreting and implementing the law."[74]

Regional Crime Control Treaties and Institutions

While concerns about transnational crime may see the Forum adopt a more formal regional approach that goes beyond the Honiara Declaration's soft-law, it is unlikely to take the form of supra-national criminal law; even within the EU the regulation of criminal matters is still dealt with largely through international treaty.[75] Currently, the Forum cannot pass regional criminal laws. In the absence of the transformation of the Forum into a supranational regional organisation in the South Pacific, which is politically unlikely, any regional criminal law must thus be a product of an intergovernmental treaty adopted by the member states of the Forum. Similar treaties have been proposed for other congruent regions.[76] A possible next step for Forum members is to provide for a range of regional treaties to suppress a range of transnational crimes. Such an approach would have a number of advantages.

It would provide a vehicle to expand and update the existing regional framework. One of the problems the region faces is that many FICs do not have substantive crimes and appropriate punishments upon which to build an articulated regional criminal process. It seems fairly clear that formal regional treaty obligations would also make a difference to compliance, because they would be formally binding and there would be a greater expectation of conforming behaviour and more serious consequences flowing from non-compliance.

The advantage of hard law is that while the potential for participation without any intention of implementation still exists, it makes it possible to set fairly rigorous standards particularly by prohibiting reservations to treaty provisions so that a situation of 'in and cheating' is avoided and replaced with 'out and exposed'. Hard law is usually opted where immediate unification or harmonisation of national law is sought,[77] and this is a goal the region may need to take seriously in respect of transnational crime.

It is worth noting that the Forum has already used treaties elsewhere. One of the major successes of the region has been in fisheries control through the adoption of treaties like the 1979 South Pacific Forum Fisheries Agency Convention,[78] which made possible the agreement of the 1992 Niue Treaty on Cooperation in Fisheries Surveillance and Law Enforcement in the South Pacific Region.[79] Indeed, the Convention for the Protection of Natural Resources and Environment of the South Pacific Region (SPREP Convention)[80] and its associated protocols cover ground that was originally covered by Forum Communiqué rhetoric. Significantly, their entry into force was welcomed by the Forum at its 1991 Meeting in Palikir.[81]

Soft law may have been used for the suppression of transnational crime in contrast to the treaty basis used for environmental issues and for fisheries control because the latter are issues in which FICs have an immediate internal interest while suppression of transnational crime is imposed externally. The regional

treaties that Forum members have adopted have also focussed on travel and trade matters, all matters close to the region's heart.[82] This indicates the necessity of developing a transnational crime control treaty that responds to regional as well as external concerns. Another possible reason is that treaty bases already exist in the drug conventions and so forth, and the Honiara Declaration points to these treaties.

However, these lowest common denominator global crime control treaties are not comprehensive in areas such as legal assistance and extradition, they are unresponsive to local legal and operational conditions, and they are selective of the offences to be criminalised because they respond largely to the demands of the developed world.

What is more? Just as the SPREP Convention and its associated protocols were adopted under the UNEP regional seas programmes, the UNODC (UN Office on Drugs and Crime) driven crime conventions rely on bilateral and regional conventions. They clearly anticipate regional fleshing out of these large multilateral treaties. Consider, for example, the adoption by SADC of the Protocol on the Control of Firearms, Ammunition and other Related Materials in the Southern African Development Community[83] as a regional response to the UN Firearms Protocol.[84]

A regional treaty has the potential to respond to regional demands for criminalisation and develop an integrated regional criminal justice system. It may provide a greater opportunity to counterbalance the negative effects of the suppression of transnational crime by guaranteeing due process in inter-state cooperation on investigation, the gathering of evidence and the transfer of suspects.[85] Such a system, if it was ambitious, could stipulate regional transnational crimes and penalties, articulate national criminal processes, and perhaps even remove the burden of suppressing serious transnational and international crime from the member states by delegating jurisdiction to a regional court that deals with such offences, staffed by regional judges and procurement processing offences investigated by a regional investigation bureau. This court would face all the disadvantages of a court potentially operating far from the site of the actual offence, such as the availability of witnesses and physical evidence, and the fact that the harm caused is not addressed locally. But these problems can be overcome by the funding of a single institution that only deals with serious offences and which drives the suppression of these offences on behalf of the region as a whole.

It was just such reasoning that prompted Trinidad and Tobago to lead a coalition of Caribbean states calling upon the UN General Assembly to create an International Criminal Court with jurisdiction over illicit drug trafficking across national frontiers, because these states were unable to cope with the prosecution of transnational crimes that threatened their sovereignty.[86]

Papua New Guinea and Vanuatu were among the many small island states that co-sponsored the General Assembly Resolution 44/39 which made specific reference in its preamble to the 'established link between illegal trafficking in narcotic drugs and other recognised criminal activities which endanger the constitutional order of states and violate basic human rights.' Treaty crimes were ultimately excluded from the jurisdiction of the ICC for various reasons including the difficulties of getting states parties to the Rome Statute to sign the relevant treaty, but these problems could be overcome by the Forum through the operation of a regional treaty.

Moreover, the International Criminal Tribunal for the Former Yugoslavia (ICTY)[87] already serves as a working model of a criminal court with a regional jurisdiction that covers the states that now make up the Western Balkans. And while a Forum regional criminal court may have a permanent base, there is nothing to prevent it going on circuit and taking justice to a specific FIC. Proposals for a regional court are not new. Samoa proposed a regional Appeal Court in 1974 and Forum Secretary General Greg Urwin proposed a regional 'privy council' in 2004 and again in 2005.[88] In addition, such a proposal was made during the drafting of the Pacific Plan.[89] According to Forum Secretary General Greg Urwin, however, the acid test for implementation of any major regional change will be practicality.[90]

A regional treaty response may be most practical when it comes to funding, because of the potential to concentrate funding in one regional system, to develop an obligation to sustain that funding in an environment when the regional power is currently engaged with the Pacific but may well disengage in the

future,[91] and to call for technical support from other Forum Partners on an issue driven basis. Technical assistance to individual FICs for law reform could then be directed towards replacing colonial era laws and practices and building the essentials of a modern criminal law or code of general jurisdiction, while the regional institutions dealt with the actual implementation of special crimes of special jurisdiction.

A stronger legal partnership framework will erode sovereignty, which may be an insurmountable hurdle for the developers of the Plan if they propose such a radical agenda. Tighter legal regulation of Forum members will be resisted; as Crocombe points out, the Forum has thus far 'successfully kept the lawyers at bay'.[92] On the positive side, however, a stronger independent regional organisation may provide some compensation for loss of sovereignty if it offers FICs a greater opportunity to exercise a new regional sovereignty. In responding to transnational crime, for example, the region may have more control over choosing what to consider criminal, to respond with appropriate legal measures and to adjust this response according to the efficacy of these measures, than an individual state responding to outside pressure.

As an interim step, it may be sensible, in order to overcome sovereignty concerns, to avoid a full scale treaty that spells out a detailed range of obligations. Following the example of environmental law a 'compromise instrument' could be adopted which would strike more of a balance between soft and hard law obligations, by setting up a framework for regional institutional change, a set of obligations with respect to participation in that development and a time-table for change. Such a treaty could speed up the already extant process to full-scale substantive change by building into the treaty processes for re-visiting the matter and to thus create the institutions for reform.

CONCLUSION

The Forum is meeting soon and the Forum Secretary General is proposing that a treaty be adopted formalising it as an intergovernmental institution.[93] Some delegation of the sovereignty of Forum members has been anticipated since the Biketawa Declaration called for the Forum members to 'constructively address difficult and sensitive issues'.[94] Influential Pacific leaders such as Samoan Prime Minister Tuilaepa Aiono Sailele Malielegaoi accept that the current policies and infrastructure are not as effective as they might be in a globalising world, and that losing sovereignty might be necessary for the gains to be achieved through regionalism.[95] He suggests two tests for determining whether a regional approach should be taken. First, the economic test: If the good or service is being provided adequately by the market then the region should not be involved. Second, the subsidiarity test: If the good or service is being provided adequately by national governments then the region should not be involved. [96] Application of both tests to the suppression of transnational crime reveals the clear role for regionalism. But he notes that only genuine public support can lead to significant legal change. Support is likely to be dependant on the total package, and particularly on what is to be gained from Australia and New Zealand – access to markets, freedom of movement and regional human rights guarantees.[97] That total package appears to be hovering in the wings at the moment; the Pacific Plan is largely, at least in its current form, about improved functional cooperation. However, it is significant that steps are being taken to establish formal legal relationships, and it may be as this gathers impetus the Forum's previous soft law will decline in significance. Ultimately the choice between soft and hard law is context specific; it is determined by local conditions. If transnational crime is of high salience to the South Pacific the likelihood is a switch to hard law. If economic and environmental concerns dominate to the exclusion of other concerns, we are unlikely to see much change in this regard.

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Developments and Debates', The University of Queensland, Tuesday 14 June 2005.

[1] This piece builds on a chapter entitled 'Regional Cooperation in the Suppression of Transnational Crime in the South Pacific' in G Leane and B Von Tigerstrom (eds), *International Law in the South Pacific* (London: Ashgate, forthcoming), 35-93.

[2] See Boister, above n 1, 44-52.

[3] *Declaration by the South Pacific Forum on Law Enforcement Cooperation*, Annex to the *Forum Communiqué*, Twenty-Third Pacific Islands Forum, Honiara, Solomon Islands, 8-9 July 1992 ('Honiara Declaration'); all Forum communiqués were available at The Pacific Islands Forum Secretariat <http://www.forumsec.org.fj/> (Accessed 04 November 2005), paragraphs 1 and 2.

[4] *Forum Communiqué*, Thirty-Second Pacific Islands Forum, Republic of Nauru, 16-18 August 2001, paragraph 38.

[5] *Forum Communiqué*, Thirty-Fourth Pacific Islands Forum, Auckland, New Zealand, 14-16 August 2003, paragraphs 21-25. See generally, on the criminal threats facing the Pacific, Andreas Schloenhardt, 'Transnational Crime and Island State Security in the South Pacific' in Eric Shibuya and Jim Rolfe (eds), *Security in Oceania in the 21st Century* (2003) 171; UNODC, *Profile on the Pacific Islands* (2003), UNODC Regional Center Thailand <http://www.unodc.un.or.th/material/document /2004/Regional%20Profile%20Pacific%20Island.pdf> (Accessed 04 November 2005).

[6] Anthony Van Fossen, 'Money Laundering, Global Financial Instability, and Tax Havens in the Pacific Islands' (2003) 15(2) *Contemporary Pacific* 237, 239-41; Schloenhardt, above n 5, 178-83; UNODC, above n 5, 18.

[7] *The Kooralbyn Declaration*, Transparency International, <http://www.transparency.org.au/documents/Kooralbyn_Declaration.pdf > at 4 August 2003.

[8] Pacific Islands Forum Secretariat, *Small Arms Control*, PIFS (03) FRSC 11 Session 1, Paper prepared for the Forum Regional Security Committee Meeting, 18-20 June 2003, (2003).

[9] Schloenhardt, above n 5, 174.

[10] Ron Crocombe, *The South Pacific* (2001), 569.

[11] Crocombe, above n 10, 85; see UNODC, above n 5, 8.

[12] Australian Senate Foreign Affairs, Defence and Trade Committee Report, *A Pacific Engaged: Australia's Relations with Papua New Guinea and the Island States of the South West Pacific* (2003) 194, Parliament of Australia, <http://www.aph.gov.au/senate/Committee/fadt_ctte/png/report/C07.pdf> (Accessed 04 November 2005).

[13] Phil Williams and Ernestor Savona, 'Problems and Dangers Posed by Organised Transnational Crime in the Various Regions of the World' in Phil Williams and Ernestor Savona (eds.), *The United Nations and Transnational Crime* (1996) 1, 38.

[14] See Boister, above n 1, 59-72.

[15] *Declaration by the South Pacific Forum on Law Enforcement Cooperation*, Annex to the *Forum Communiqué*, Twenty-Third Pacific Islands Forum, Honiara, Solomon Islands, 8-9 July 1992 ('Honiara Declaration'); all Forum communiqués were available at The Pacific Islands Forum Secretariat <http://www.forumsec.org.fj/> (Accessed 04 November 2005).

[16] Ibid, paragraph 4.

[17] Ibid, paragraph 3.

[18] Ibid, paragraph 7.

[19] Ibid, paragraphs 7 and 10.

[20] Ibid, paragraph 9.
[21] Ibid, paragraph 13.
[22] Ibid, paragraph 15.
[23] Ibid, paragraph 16.
[24] Ibid, paragraph 17.
[25] Ibid, paragraph 18.
[26] Ibid, paragraph 19.
[27] Ibid, paragraph 20.
[28] *Forum Communiqué*, Thirtieth Pacific Islands Forum, Koror, Republic of Palau, 3-5 October 1999.
[29] *Nasonini Declaration,* [1]. The Declaration is annexed to the *Forum Communiqué*, Thirty Third Pacific Islands Forum, Suva, Fiji Islands, 15-17 August, 2002, paragraph 1.
[30] *Forum Communiqué*, Thirty-Fourth Pacific Islands Forum, Auckland, New Zealand, 14-16 August 2003.
[31] *Forum Communiqué*, Thirty-Fourth Pacific Islands Forum, Auckland, New Zealand, 14-16 August 2003.
[32] *Forum Communiqué*, Thirty-Fifth Pacific Islands Forum, Apia, Samoa, 3-10 August 2004, paragraph 29.
[33] See Boister, above n 1, 72-105.

[34] *1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances*, Vienna, 20 December 1988, 185 UNTS 453, entered into force 11 November 1990.

[35] US Department of State, *International Narcotic Control Strategy Report 2003*, Bureau for International Narcotics and Law Enforcement Affairs, March 2004 <http://www.state.gov/g/inl/rls/nrcrpt/2003/vol2/html/29919.htm> (Accessed 04 November 2005).
[36] FATF, *Annual Review of Non-Cooperative Countries or Territories* (2004) ('*Annual Review 2004*'), 1.

[37]For example, only Australia, New Zealand and PNG attended the 1988 Diplomatic Conference that adopted the Drug Trafficking Convention. See the*United Nations Conference for the Adoption of a Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, Official Records, Volume I* (New York, 1994) UN Doc E/CONF 82/16, UN Publication Sales No E 94 XI 5, 197.

[38] *Forum Communiqué*, Thirty-Second Pacific Islands Forum, Republic of Nauru, 16-18 August 2001, paragraph 38.
[39] Address by Greg Urwin at the Australian Federal Police Pacific Team Leaders Conference, Forum Secretariat, Suva, 5 April 2005, *The Brown Pages*, <http://www.brownpages.co.nz /news_forum20050405.htm> (Accessed 04 November 2005).
[40] See generally Richard Hobbs, 'Going Down the Glocal: The Local Context of Organised Crime' (1998) 37 *The Howard Journal of Criminal Justice* 407-422.
[41] *Auckland Declaration*, Pacific Island Forum Leaders Special Retreat, Auckland 6 April 2004, paragraph 1, Pacific Islands Forum <http://www.forumsec.org.fj/docs/Gen_Docs /Auckland_Declaration.pdf> (Accessed 04 November 2005).
[42] See Pacific Islands Forum Secretariat, *The Pacific Plan for Strengthening Regional Cooperation and Integration, WorkingDraft*, Ministry of Foreign Affairs and Trade Website, <http://www.mfat.govt.nz/foreign/regions/pacfic/pifsec/pifsec/pacificplan.html> (Accessed 04 November 2005).
[43] Editorial, 'More Consultation Sought on Plan' (2005) *Pacific Connection*, Issue 4, 6.

[44] See above n 42, paragraph 3(b).

[45] Ibid.

[46] See above n 42, Annex C, column IV.

[47] See above n 42, paragraph 17.

[48] See above n 42, paragraph 2.

[49] See above n 42, paragraph 11.

[50] Address by Greg Urwin to the Australian Federal Police Pacific Team Leaders Conference, Forum Secretariat, Suva, 5 April 2005, *The Brown Pages*, <http://www.brownpages.co.nz /news_forum20050405.htm> (Accessed 04 November 2005).

[51] Available on the Pacific Islands Forum Secretariat Website, <http://www.forumsec.org.fj/> (Accessed 04 November 2005).

[52] See above n 51, paragraph 9.

[53] See above n 51, paragraph 9.

[54] Also available on the on the Pacific Islands Forum Secretariat Website, <http://www.forumsec.org.fj/> (Accessed 04 November 2005).

[55] See above n 54, strategic objective 12, suggestions iv, v, and xvi.

[56] See above n 51, paragraphs 17 and 18.

[57] See above n 51, paragraph 20.

[58] Editorial, 'More Consultation Sought on Plan' (2005) *Pacific Connection*, Issue 4, 6.

[59] Richard Herr, 'South Pacific Forum' in Brij V Lal and Kate Fortune (eds.), *The Pacific Islands: An Encyclopaedia*, (2000) 329.

[60] Tarawa, 30 October 2000, not yet in force. Available at <http://www.austli.edu.au/au/other/dfat/treaties/notinforce/2000/14.html> (Accessed 04 November 2005).

[61] See generally Malcolm Shaw, *International Law*, 5th edn (Cambridge: CUP, 2003), 241-246.

[62] See Christine Chinkin, 'Normative Development in the International Legal System' in Dinah Shelton (ed.), *Commitment and Compliance: The Role of Non-Binding Norms in the International Legal System* (Oxford, OUP, 2000), 21.

[63] See the conditions for soft law articulated by Chinkin, ibid; Jan Klabbers, 'The Redundancy of Soft Law' (1996) 65 *Nordic Journal of International Law* 167-182; Jan Klabbers, 'The Undesirability of Soft Law' (1998) 67 *Nordic Journal of International Law* 381-391.

[64] Jim Rolfe, 'The Pacific Way: Where 'Non-Traditional' is the Norm' (2000) 5 *International Negotiation* 427, 428.

[65] See Rolfe, above n 64, 434, citing M. Haas, *The Pacific Way: Regional Cooperation in the South Pacific* (New York: Praeger, 1989), 5.

[66] See Rolfe, above n 64, 435, citing M. Osmond, *The South Pacific: A Regional Approach to Environmental Law Reform*, (Wellington: Unpublished LLM Research Paper, Victoria University Wellington, 1992), 49.

[67] Thus the 1989 *Tarawa Declaration* which called for a ban on drift net fishing was followed by the adoption of the 1989 *Wellington Convention for the Prohibition of Fishing with long Drift Nets in the South Pacific*, 1899 UNTS 3, opened for signature1989, entered into force 1990.

[68] Rolfe, above n 64, 435, 436.

[69] Noel Levi, *Speech to Forum Review Eminent Persons Group*, Pacific Islands Forum, Suva, 17 November 2003, Press Statement 110/03, cited in Graeme Dobell, 'Australia-Oceania and Pacific Asia', in Peter Cozens (ed.), *Engaging Oceania with Pacific Asia* (Wellington: Centre for Strategic Studies, Victoria University Wellington, 2004), 79, 83.

[70] Dinah Shelton, 'Introduction: Law, Non-Law, and the Problem of 'Soft Law' in Dinah Shelton (ed.), *Commitment and Compliance: The Role of Non-Binding Norms in the International Legal System* (Oxford, OUP, 2000), 1, 12.

[71] KW Abbot and D Snidal, 'Hard and Soft Law in International Governance' in J. Goldstein et al (eds.), *Legalisation and World Politics* (London: MIT Press, 2001), 37, 62.

[72] An example might be the 1995 Washington Declaration on the Protection of the Marine Environment from Land Based Activities, 6 *Yearbook of International Environmental Law* (1995) 883, which has been heavily criticised by commentators – see Patricia Birnie and Alan Boyle, *International Law and the Environment*, 2nd Edition (Oxford: OUP, 2002), 419.

[73] Editorial, 'Shaping the Pacific' (2005) *Pacific Connection*, Issue 4, 8.

[74] Abbot and Snidal, above n 71, 37.

[75] See Steve Peers, *EU Justice and Home Affairs Law* (2000), chapter 1 generally.

[76] See Gregory Rose and Diana Nestorovska, *Towards an Asean Counter Terrorism Treaty*, Paper presented to the ASEAN Government Legal Officers Programme on Anti-Terrorism, 24-28 August 2003, Bali, Indonesia.

[77] Chinkin, above n 62, 27.

[78] *South Pacific Forum Fisheries Agency Convention*, opened for signature 10 July 1979, 1979 ATS 16, entered into force 9 August 1979.

[79] Done at Honiara 9 July 1992, entered into force 20 May 1993, Internet Guide to International Fisheries Law <http://www.oceanlaw.net/texts/niue.htm> (Accessed 04 November 2005).

[80] Opened for signature 24 August 1986, Noumea, entered into force 22 August 1990, available at <http://www.sprep.org.ws/sprep/about.htm> (Accessed 04 November 2005).

[81] Forum Communiqué of the Twenty Second South Pacific Forum, Palikir, Pohnpei, Federated States of Micronesia, 29 - 30 July 1991, paragraph 13.

[82] See Eric Shibuya, 'The Problems and Potential of the Pacific Islands Forum', in Jim Rolfe (ed.) *The Asia-Pacific: A Region in Transition* (Hawai'i: Asia Pacific Center Press, 2005), 105-6.

[83] Available at Southern African Development Community, <www.sadc.int> (Accessed 04 November 2005).

[84] *Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts, Components and Ammunition, Supplementing the United Nations Convention against Transnational Organised Crime*, UN GA Res. 55/25, 15 November 2000, annex to UN Doc A/55/383.

[85] Mireille Delmas-Marty, *Global Law: A Triple Challenge* (2003), vi. This has happened elsewhere: in the European legal space, criminal law cooperation was made palatable by regional human rights cooperation. See Geert Corstens and Jean Pradel, *European Criminal Law* (2002) generally, Steve Peers, *EU Justice and Home Affairs Law* (2000) 15-30, 48-62.

[86] UNGAOR 6th Comm. 44th Sess. UN Doc. A/c.6/44/SR.38-41 (1989). See generally N. Boister, 'The Exclusion of Treaty Crimes from the Jurisdiction of the proposed International Criminal Court: Law, Pragmatism, Politics' (1998) 3 *Journal of Armed Conflict Law* 27; P Robinson, 'The Missing Crimes' in A Cassese, P Gaeta and J R W D Jones, *The Rome Statute of the International Criminal Court: A Commentary* (Oxford: OUP, 2002), 497, 498.

[87] Established by SC Res 808, 22 February 1993.

[88] Sheryl Boxall, *The Pacfic Islands Forum and the Regional Security Environment*, Paper to the APCSS Conference 'The Impact of the War or Terrorism on Island State Security: Navigating Instabilities', July

19-21, 2005, 26.

[89] See above n 52.

[90] 'Shaping the Pacific' (2005) *Pacific Connection*, Issue 4, 8.

[91] See Dobell, above n 69, 97.

[92] Ron Crocombe, *The Pacific Plan Among Larger and Smaller Regional Approaches* (Plenary Paper presented at the Conference on Securing a Peaceful Pacific: Preventing and Resolving Conflict in the Pacific, University of Canterbury, Christchurch, New Zealand, 15-17 October 2004).

[93] Pacific Magazine, 'Region: New Agreement up for Adoption, 5 October 2005, <http://www.pacificislands.cc/ina/pinadefault2.php?urlpinaid=17219> (Accessed 04 November 2005).

[94] Forum Communiqué of the Thirty First Pacific Islands Forum, Attachment 1 (2000).

[95] 'A Crucial Debate' (2005) *Pacific Connection*, Issue 4, 7. The full text of his address is a <http://www.pcf.org.nz/extras/pdf/PM%20Tuielapa.pdf> (Accessed 04 November 2005).

[96] Ibid.

[97] As the Final Draft of the Pacific Plan notes in paragraph 15, see above n 54.