

Regional Cooperation in the Suppression of Transnational Crime in the South Pacific: Threat Assessment by the Pacific Forum

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Introduction

The Honiara Declaration on Law Enforcement Cooperation, adopted by the Pacific Islands Forum (hereinafter the Forum) in 1992 and pursued as a goal ever since, is an important regional¹ effort to shape a regional legal response to transnational crime. The Forum's efforts in this regard provide a useful example of the adoption and implementation of transnational penal norms in the context of a region made up mostly of developing states. This paper examines why, in the construction of the regional transnational criminal law regime based on the Honiara Declaration, the Forum identified certain activities as threats to the region. It does so with the aim of making some tentative general observations about threat assessment in the process of transferring penal norms from developed states to developing states through regional intergovernmental systems.

Threat Assessment in the Honiara Declaration and Beyond

While other organisations have had what might be considered to be a greater impact on the regionalisation of crime control in the Pacific as a whole,² the Forum appears to have been the

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¹ The South Pacific may be defined as either region or sub-region; in this piece it is intended to use region.

² The number of institutions involved whether at a policy or operative level in transnational law enforcement in the region is hard to gauge but appears to be quite large. For example, A. Schloenhardt, *Migrant Smuggling: Illegal Migration and Organised Crime in Australia and the Asia Pacific Region* (Leiden: Nijhoff, 2003), at 363-380, cites the Manila Process, Asia Pacific Consultations (APCs), the Asian African Legal Consultative Committee (AALC), Regional Ministerial Conferences, the Association of South East Asian States (ASEAN), Asian Pacific Economic Cooperation (APEC), Council for Security Cooperation in the Asia Pacific (CSCAP), Pacific Rim Immigration Intelligence Officer's Conference (PACRIM), The Pacific Immigration Directors Conference (PIDC), and South Pacific Islands Criminal Intelligence Network (SPICIN) as being operative in the suppression of human trafficking

most influential intergovernmental institution working in the South Pacific region. In 1992 the Forum identified the scope for strengthening regional cooperation in the law enforcement field and agreed to a declaration on law enforcement co-operation that identified priorities and established a framework within which to pursue further cooperation. The Honiara Declaration³ provides for regional cooperation in the suppression of transnational crime in the South Pacific. Forum leaders set out the rationale for such a declaration in its opening paragraphs:

1. ...An adverse law enforcement environment could threaten the sovereignty, security and economic integrity of Forum members and jeopardize economic and social development. The threats to the stability of the region were complex and sophisticated, and the potential impact of transnational crime was a matter of increasing concern to regional states and enforcement agencies. The Forum agreed that there was a need for a more comprehensive, integrated and collaborative approach to counter these threats.
2. The Forum considered that law enforcement co-operation should therefore remain an important focus for the region. The scale of criminal activity affecting the region could expand. Forum leaders noted that the balance in economic and social development, the primary goal of all the countries of the region, could not be achieved without the assurance of safety and security. Early action to strengthen the existing framework to tackle potential law enforcement problems should therefore be taken.

The Honiara Declaration prioritises certain law enforcement areas:

and illegal immigration. More generally we have the Asia Pacific group (APG) on Money Laundering, the Oceania Customs Organisation (OCO), the South Pacific Chief of Police Conference (SPCPC) and the Pacific Islands Law Officers Meeting (PILOM) which are both Forum institutions, and the various national customs and police forces that have an extraterritorial presence such as the Australian Federal Police through its network of liaison officers, the Law Enforcement Cooperation Programme (LECP).

³ *Declaration by the South Pacific Forum on Law Enforcement Cooperation*, Annexed to the Forum Communiqué from the 23rd South Pacific Forum, Honiara, Solomon Islands, 8-9 July 1992; see the website of the Pacific Islands Forum Secretariat www.firumsec.org/fj for a copy of the Declaration.

4. The Forum noted that certain areas of law enforcement had emerged as particularly important to members. These included necessary legislation on extradition, proceeds of crime (assets forfeiture), mutual criminal assistance, and other aspects of economic crime. In addition, further legislation might be necessary in some areas concerning drug issues.

The Honiara Declaration is a regional response to policy makers' perceptions of the growth of transnational economic and drug offences in the South Pacific region. The stated goal of the Declaration is effective law enforcement to suppress these activities through the use of legislative measures on extradition, asset forfeiture, legal assistance and so forth. Justification for action depends on linking the threat offered by these activities with the sovereignty, security and economic integrity of Forum States. Although small island members of the Forum are said to be increasingly vulnerable to the embrace of transnational crime, it is difficult to measure the level of threat offered by these activities. The Forum has identified threats of money laundering, terrorist recruitment, identity fraud, West African Fraud, people smuggling, passports of convenience, electronic crimes, the proliferation of small arms and weapons, illegal trade in endangered wildlife, drug trafficking and organised crime.⁴ Prior to the adoption of the Honiara Declaration, the Forum Secretariat engaged in a Law Enforcement Needs Assessment Study which identified the South Pacific as a risk area for money laundering activities.⁵ However, in 1992 the threat of transnational crime in the South Pacific appeared largely potential. The Honiara Declaration states that 'the scale of criminal activity affecting the region could expand.' By 2001, however, the Forum felt able to state 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.' It appeared that this evaluation was based largely on

the terrorist attacks in the United States made on 11 September 2001, the Bali Bombings of 12 October 2002, and on terrorist activities in the Southern Philippines.⁶ None of this activity occurred in the region itself.

Transnational Criminal Activity in the Region: Actual and Potential

The transnational criminal activity that has manifested itself in the region has largely been directed at supplying drug markets elsewhere and has been planned and financed from elsewhere. The physical position of Forum island states between Asia and markets in North America, Australia and New Zealand makes them potential way stations for trans-Pacific smuggling by sophisticated and mobile criminal organisations, while their vulnerability is increased by a desire to attract tourists and investors, small police forces and outdated laws. Yet until recently, there have been few examples of trafficking. Media reports⁷ reveal that in 2000, police in Suva seized 350 kg of heroin bound for Australia, New Zealand and Canada. In 2002, 74 kg of methamphetamine was found on a ship in Singapore headed for Fiji and Australia. In 2002, Hawaiian police broke a syndicate that smuggled cocaine and methamphetamine to the U.S. mainland, Tonga, Fiji, Australia and New Zealand. In 2003, almost 2.5 kg of pseudoephedrine, a key ingredient in amphetamines, was found in scuba tanks shipped to Brisbane from Fiji. In June 2004, police shut down what is believed to be the biggest methamphetamine laboratory in the southern hemisphere.⁸ In a factory cum laboratory located in Laucala, near Suva, they found 5kg of methamphetamines and nearly a tonne of precursor chemicals with an estimated street value once refined of \$522million. The Fijian Police Commissioner stated:

⁴ Forum Communiqué of the 34th Pacific Islands Forum, Auckland New Zealand, 14-16 August 2003.

⁵ Para. 10 of the Honiara Declaration.

⁶ These incidents were noted by the then Forum Secretary General, W. Noel Levi, in his Opening Statement to the 2003 Meeting of the Forum Regional Security Committee, Record of the Forum Regional Security Meeting, 18 – 20 June 2003, Nadi, Fiji, (Suva: Pacific Islands Forum Secretariat, 2003), cited in Aqorau (October 2003) at 5.

⁷ *Time Pacific Magazine*, 21 June 2004.

⁸ *The Guardian Weekly*, June 18-24 2004.

This is a frightening example of transnational organised crime elements using Fiji as a staging ground for their illegal activities. Increasingly we are seeing these elements coming to Fiji and joining up with local organised criminal groups.

A Chinese Malaysian conspiracy allegedly ran the drug factory and bribed a local official to cooperate. The market for methamphetamine is in Thailand, New Zealand and Australia; a 'point', or 0.1 gram, sells for about \$A50 in Australia but costs only about \$A1 to make so the profit margins are an obvious motivation. It is thus not surprising that the Australian Federal Police (AFP) and NZ Police (NZP) played key roles in the law enforcement operation, backing up the Fijian police. The alleged "boss" was arrested in Hong Kong with \$6 million in cash. However, Fijian drug laws only made an 8 year maximum sentence possible, which makes extradition to Fiji unattractive. The motivation for legal change, at least from an Australian and New Zealand perspective, is obvious. New laws with a maximum of life imprisonment and a \$1million fine were before the Fijian parliament the day of the arrest. The Australian Minister for Justice and Customs, Senator Chris Ellison said.

The success of this operation sends a crystal-clear message to organised drug syndicates that the combined efforts of international law enforcement agencies will ensure that transnational crime will not be allowed to gain a foothold in the region. ... Australia has been providing funding and other forms of assistance, such as training, in the Pacific region to ensure that countries in the South Pacific cannot be exploited by drug traffickers and manufacturers, particularly against the backdrop of a world wide growth in amphetamine supply and demand. ...The best way to stop drugs harming Australians

is for our law enforcement and border protection agencies to work closely with our international partners to attack the illicit drug trade offshore.⁹

Cooperation is the proffered solution. Superintendent Larry Reid, acting national manager of the NZP, concludes: 'No single country can deal with the problem on its own.' But do the Forum island states themselves have a problem?

The market in island states and the actual harm caused in their societies is less easy to establish. Drug use appears to be increasing in Samoa.¹⁰ The proliferation of small arms exacerbated recent regional security threats in the Islands such as the civil wars on Bougainville and in the Solomon Islands, and incidents of violence in Vanuatu, Fiji, Solomon Islands and Papua New Guinea.¹¹ Shaun Evans, a former NZ customs agent who is law enforcement liaison officer in the Political, International and Legal Affairs Division of the Forum Secretariat, notes that drug use has caused social and economic mayhem in Guam, Palau and Hawaii and that it has brought crime in its wake. He also notes that they are diversifying into gun running, people smuggling and fraud, and gives as an example the syndicate behind Fiji's 2000 heroin seizure who were involved in illegal immigration and credit card fraud. Nevertheless, evidence of the local impact of these crimes appears to be sporadic and there is no indication of how much harm is actually occurring. The argument for legal change is based largely on the potential for harm. The issuing of passports of convenience by Forum states is viewed as a potential risk from the point of view of terrorist activity.¹² Identity fraud is not considered per se to be a major threat to Forum states; the threat is generated by its link to other transnational organised crime such as

⁹ <http://www.findlaw.com.au/news/default.asp?task=read&id=20505&site=CN> (last visited 14 July, 2004)

¹⁰ See T. Aqorau, *The Pacific: Maintaining the Rule of Law and Regional Cooperation*, Unpublished paper to the 22nd PILOM Meeting, Melbourne 20-22 October 2003, at 3.

¹¹ October (2003) at 5, citing 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, (Suva: Pacific Islands Forum Secretariat, 2003).

¹² See Aqorau note 10 at 6.

human trafficking and terrorism.¹³ The illegal trade in endangered species is said to present a threat to Forum states.¹⁴ Forum states are also said to be vulnerable to money laundering because of increased suppression of this activity elsewhere and weak internal controls.¹⁵

Sensitivity and Vulnerability to Transnational Crime

Thus it appears that at least currently the primary risk posed by transnational crime in the South Pacific is to “externalities”, local regional powers like Australia and more distantly those global powers like the US that have a direct interest in the suppression of transnational crime. It is beyond the scope of this chapter to provide an empirical validation of these threats to external and local interests, but there is clear empirical evidence that the claim that these threats exist has been made. What is interesting is that this claim appears to be enough to set the process of development of a regional response to transnational crime in motion. But it cannot be ignored that the claim is buttressed by a number of further motivating factors.

Much reliance for the potential threat argument is based on the impact of globalisation. In the official rhetoric of the UN criminal justice agencies,¹⁶ all states are said to be unable to control transnational crime because national borders are more porous, there are fewer trade restrictions and finance/telecommunications systems are global. Transnational organised crime is said to exploit global communications and cross-border travel.¹⁷ Terrorism is said to be a ‘global threat to national and international security’ which because it ‘transcends national boundaries

¹³ See Aqorau note 10 at 7 citing Pacific Islands Forum Secretariat, *Identity Fraud: PIFS (03) FRSC.6 Session 1*, Paper prepared for the Forum Regional Security Committee Meeting, 18 – 20 June 2003, (Suva: Pacific Islands Forum Secretariat, 2003).

¹⁴ Pacific Islands Forum Secretariat, *Illegal Trade in Endangered Species*, PIFS (03) FRSC.10, Session 1, Paper prepared for the Forum Regional Security Committee Meeting, 18 – 20 June 2003, (Suva: Pacific Islands Forum Secretariat, 2003), cited by Aqorau note 10 at 5.

¹⁵ See T. Aqorau, *Current Developments on Forum Initiatives to Combat Transnational and Organised Crime: the 2003 Extradition Act*, Unpublished Paper presented to the 2003 Fiji Attorney-General’s Conference, Outrigger Hotel, Sigatoka, 14 - 16 November 2003, at 3.

¹⁶ See for example, the *Discussion Guide to the Eleventh United Nations Congress on Crime Prevention and Criminal Justice*, UN Doc. A/Conf.203/PM.1 to be held in Bangkok, UNDCP Regional Centre for East Asia and the Pacific, in April of 2005.

¹⁷ See note 16 at para. 9.

[means that] no region or country remains immune'.¹⁸ Corruption is said to affect both 'developing countries and countries with economies in transition' and developed countries.¹⁹

Finally, it is claimed that economic and financial crimes have wrought damage in the developed world as evidenced by high profile cases and has long-term impact' in the developing world.²⁰

With respect to the South Pacific, Aqorau notes:

Developments in communications technology suggest that the types of threats and violence facing the region are changing, and could rapidly alter the ability of many Pacific island governments to cope with this shifting dynamics.²¹

However, the hypothesis that it is highly probable, even inevitable, that criminal activity follows interconnectedness, is difficult to establish empirically. If it has happened elsewhere will it happen in the South Pacific just because of greater interconnectedness? The success of this argument depends in part on illustrating the new advantages open to criminals in participating in such activity in the region. These opportunities obviously do exist – consider the undisturbed production of “P” in Fiji. But they may take unexpected forms, such as the recent attempt by Israeli agents to fraudulently obtain New Zealand passports apparently because of ease of access to other states.²² Sceptics might argue that transnational crime has been constructed as a ‘folk devil’, as an enormous threat deserving of the most serious response, by the machinery of suppression. This may be out of self-interest because it enhances their power. It may be out of moral panic. Stanley Cohen points out that criminal behaviour as a phenomenon is shaped at least partly by the moral panics of elements of society, the media, the police and the courts –

¹⁸ See note 16 at para. 44.

¹⁹ See note 16 at para. 63 and para. 64.

²⁰ See note 16 at para. 102.

²¹ See Aqorau note 15 at 4.

²² *National Business Review*, 19 July 2004.

rather than entirely by the criminals themselves.²³ It may be that there is a regional moral panic about transnational crime. Whether or not this is the case, it does seem likely that the global and regional dimensions of crime are not necessarily identical, and that arguments about the penetration of a regional economy by transnational crime must be buttressed if not by concrete regional examples, then at least by concrete regional opportunities.

A more compelling argument for change in the regional context, based on opportunity and advantage, is the link made between external threats and the manifest internal problems in island states. At a general level, poorer developing states are said to be particularly vulnerable to transnational crime, because they have weak internal sovereignty. 'Relative immunity' from law and enforcement in developing states makes them attractive to criminals to use as bases for provision of illicit goods and services to areas where the risks are higher. Governments may prove unwilling rather than unable to suppress these activities because they fear the disruptive effects of suppression or because they benefit from the criminal activity.²⁴ More specifically, Aqorau notes that within the region it is trite that external threats are minor compared to internal threats to sovereignty and stability such as land disputes, economic disparities, ethnic tensions, and failure of governance.²⁵ Aqorau notes that the absence of good governance and the ineffective application of the rule of law provides the environment in which transnational and organised crime can permeate in the Pacific Islands,²⁶ and this realisation is reflected in the link made in the 2000 Biketawa Declaration between good governance and security.²⁷

Finally, we cannot ignore the fact that much of the real compulsion for change emanates directly from threats made by the "externalities". In early 2004 New Zealand Prime Minister Helen Clark urged Pacific states to comply with rules aimed at cutting the flow of funds to

²³ S. Cohen, *Folk Devils and Moral Panics: The Creation of Mods and Rockers* (London: McGibbon and Kee; 1972), 9.

²⁴ P. Williams and E.U. Savona, 'Problems and dangers posed by organized transnational crime in the various regions of the world' in Williams and Savona (eds.), *The United Nations and Transnational Crime* (Frank Cass; London; 1996) 1-42, at 38.

²⁵ See Aqorau note 15 at 3.

²⁶ See Aqorau note 10 at 8.

²⁷ Attachment 1 to the Communiqué of the 31st Pacific Island's Forum, Tarawa, Kiribati, 27-30 October 2000.

terrorists and at rules ensuring the security of imports into the United States by saying: ‘All countries face economic risks if they fail to comply with these measures’.²⁸ New Zealand had itself been forced by the threat to its export market in the US to spend millions upgrading the security of its ports; it was simply passing this threat on to Island states through which it routed its exports to the US. These views were echoed by the current Forum Secretary General, Greg Urwin, who noted that Forum States would have to meet new shipping and aviation security requirements or lose markets and tourists and increase the costs of imports.²⁹ In essence, the economic threats made by the externalities are a major motivation for change.

Conclusion

The process of threat-assessment points to a participation gap. To some extent the political leaders of the Forum States are marginalised when it comes to the establishment of a threat because in large degree it appears that they “receive” this threat as a given. The most important negative consequence of this is that it undermines the validity of the regional legal response and the effectiveness of that response. Thus the most important step in threat assessment is to conduct research and gather information about transnational criminal activities in the region. Forum leaders need to know more about transnational criminal activity in the South Pacific and about its local and external impact, in order to shape an appropriate response and to expose inappropriate responses. It is salutary in this regard that when Europe began to evolve its third pillar of regional cooperation around justice and home affairs, it set up regional organs both to survey criminal activity and to respond to that activity.³⁰

²⁸ *The Press*, 15 April 2004.

²⁹ *Forum Monthly Review*, May 2004; see < <http://www.forumsec.org.fj/>>.

³⁰ In Lisbon, the European Monitoring Centre on Drugs and Drug Addiction (EMCDDA) was established in terms of Council Regulation 1302/93 in order to gather and analyse reliable data on the full range of drug problems and the control strategies being developed in Europe. In the Hague, the European Drugs Intelligence Centre, a non-operational agency for the exchange and analysis of drug trafficking and then later non-drug offences, rapidly evolved into the European Police Organisation, Europol in terms of the 1995 Europol Convention - see Council Act of 26 July 1995, OJC No.C, 316.