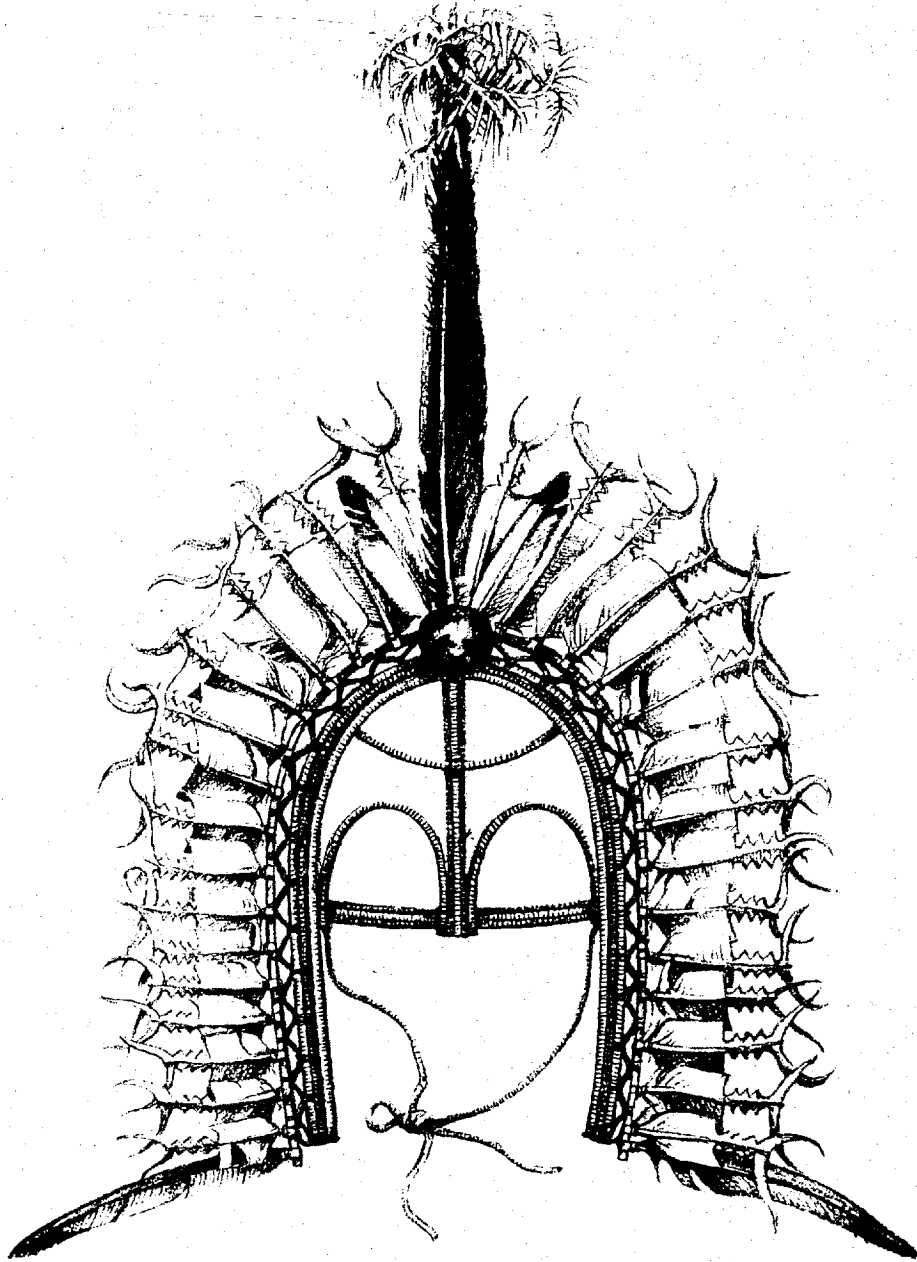


Managing the unmanageable?

The Torres Strait Treaty: its effectiveness today.



Source: Torres Strait Protected Zone Joint Authority,
Annual Report 1993-1994, p.6.

Sandra Vlacci
Australian National University
MA(International Relations) sub-thesis
10 000 words
Peter Dauvergne: Supervisor

7/21 Halifax Close
Palmerston
ACT 2913

25 March 1996

Colleen Pyne
Librarian
North Australia Research Unit
ANU
Po Box 41321
Casuarina
NT 0811

Dear Mrs Pyne,

Peter Jull of NARU asked me to send you a copy of my MA thesis, 'Managing the Unmanageable' for your library. The thesis deals with the Torres Strait Treaty and its effectiveness as it relates to its key objectives of maintaining the 'traditional' lifestyle of the Torres Strait Islanders and protecting and preserving the marine environment of the Torres Strait.

Should you wish to discuss the paper, I am available at the above address, or telephone (06) 2428777.

Yours faithfully,



S.J. Vlacci

Managing the unmanageable?

The Torres Strait Treaty: its effectiveness today.

The 1990s promises to be a crucial decade for the state of the environment and for the rights of indigenous peoples. Internationally, the outlook has perhaps never been more favourable for harmonising environmental and social justice agendas.¹

This paper examines an international treaty which deals with not only sovereignty and boundary delineation, but indigenous and environmental issues. It addresses the Torres Strait Treaty and the relationship between it, the Torres Strait Islanders, and the Torres Strait environment. In considering the case of the Treaty this paper examines the extent to which it meets its stated aims of boundary delineation, protection of the traditional inhabitants lifestyle, and preservation of the marine environment. It also considers the impact of the Treaty upon the Islanders and the Torres Strait environment.² I contend that, in terms of meeting its objectives, the Treaty has had dubious results and requires a thorough review to ensure its future effectiveness. Many of the Treaty's provisions have at once benefited and adversely affected the Islanders and/or the marine environment. The Treaty has been useful and effective in creating boundaries; preserving the environment; and, to a lesser degree, protecting 'traditional' inhabitants, as defined by the Treaty. Yet the admirable sentiment expressed within the Treaty has not always been effectively translated into practice, resulting in several well-intended provisions being at best ineffective and occasionally deleterious. The Treaty's ambiguity in terms of meeting

¹Cordell, *Managing Sea Country. Tenure and Sustainability of Aboriginal and Torres Strait Islander Marine Resources. Report on Indigenous Fishing.* 1991. n.p., p.127.

Note that due to the restricted timeframe of this research essay, it has not been possible to visit Torres Strait. To compensate, I have conducted telephone interviews with people involved with and living in the Strait.

²Some examples are Käkönen (ed), *Perspectives on Environmental Conflict and International Politics.* Great Britain: Pinter, 1992; and Thomas, *The Environment in International Relations.* London: Royal Institute of International Affairs, 1992.

current environmental and indigenous needs illustrates the complexity of this issue, and suggests that Treaty provisions alone are not sufficient to ensure the preservation and promotion of Islander traditional lifestyle and a healthy marine environment.

To illustrate the changing situation within which the Treaty must function and provide an understanding of the global context, this paper initially discusses the global nature of 'indigenous'. The case of the Treaty is then taken up with a brief background of the Strait to provide some understanding of the area, its politics and pluralistic status. This includes delineation of the Treaty's key purposes. The paper then examines these key purposes, and the Treaty's effectiveness in achieving them. This examination includes consideration of the ways the Treaty has established boundaries, the effects of these boundaries upon the Treaty's other purposes, and the extent to which the Treaty's traditional lifestyle and environmental provisions have succeeded. Following this, the vital issue of interpretation, understanding and implementation of the Treaty will be addressed. The remainder of the paper considers several key issues relating to the Treaty, including the requirement for the Treaty to be reviewed, the advantages of increased ecological understanding of the Strait, the need for international consensus building, the value local input provides to management of the Torres Strait, and possible means for resolution of the above issues.

Indigenous Issues - International Issues?

Indigenous peoples such as the Islanders are increasingly internationalised, and international politics are increasingly affected by indigenous issues. Consequently, it is worth discussing the relevance of indigenous matters to international relations, particularly in relation to the Islanders.

International relations is currently widening its world view. Old assumptions are being re-examined, and issues previously silenced are being heard and documented in an attempt to understand changing global relations.³ Amongst the silences are those of indigenous peoples.

³Halliday, 'International Relations: Is there a New Agenda?' in *Millennium*. 57-72, 20(1) 1991.

Previously indigenous peoples were regarded as an 'internal' problem for states and consequently 'assimilated', annihilated or simply ignored. Like gender and the environment, 'natives' have been excluded from international relations as being irrelevant to the 'high' politics of relations between states.

However, the gendered nature of international relations is being addressed,⁴ and, belatedly, the world and international relations is acknowledging the significance of environmental issues. Yet the internationalisation of 'indigenous' issues goes apparently unremarked: it seems that it is easier to not hear indigenous issues than recognise them as a legitimate field of inquiry within international relations. Just as Enloe demonstrated that the personal is political, so too is indigenous international, affecting state actions both inside and outside state boundaries.

The internationalisation of indigenous peoples and related issues results from several factors. The globalisation of world politics and increasing interstate accountability⁵ has resulted in a requirement for states to be observed doing 'the right thing'.⁶ Increasingly the treatment of indigenous peoples by first world, particularly settler, states is subject to global scrutiny. This affects the international arena, not least in that a state must have an acceptable record of human rights before being able to chastise another for its failures. Without such a record, a nation's criticisms of another are dismissed as hypocritical and lacking authority such as accusations of double standards over human rights abuses against the Australian government by the Indonesian Government where Australia's (ill) treatment of its indigenous peoples nullified and

⁴Notably: Elshtain, *Women and War*. Great Britain: Harvester Press, 1987; Enloe, *Bananas, Beaches and Bases. Making Feminist Sense of International Politics*. Berkeley: University of California Press, 1990; Petersen, 'Theories of Knowledge, Gender and Power' in *Millennium*, 183-206, 21(2) 1992; Sylvester, *Feminist Theory and International Relations in a Postmodern Era..* Great Britain: Cambridge UP, 1994; and Tickner, *Gender in International Relations. Feminist Perspectives in Achieving Global Security*. New York: Columbia UP, 1992.

⁵In addition to the scrutiny of their 'peers', states must also consider the policies, opinions, and influence of international organisations such as the UN, World Bank, and IMF when pursuing a particular course of action.

⁶The UN Declaration on rights of indigenous Peoples is one such document. Sarah Pritchard. 'Declaration on Rights of Indigenous Peoples Drafting Nears Completion in UN Working Group' in *Aboriginal Law Bulletin*. 2 (60) February 1993, pp.9-13.

delegitimised Australian criticisms of Indonesia over East Timor. This presents the nation responsible for its abuse negatively to the world,⁷ and is often used to claim the moral high ground for political gain.

Indigenous peoples are aware of this 'international conscience' and its influence on states, and have used it as a means of drawing their grievances to global attention. This transforms a 'social' situation⁸ into an 'international' one. It forces states to consider their 'internal' actions in terms of international issues and the possible effects state actions have upon indigenous peoples and international attitudes.⁹ The Islander refusal to be divided for the sake of political expediency between Papua New Guinea (PNG) and Australia, their threat to take their case to the International Court of Justice and the United Nations, insistence on an area preserved for traditional activities¹⁰ and desire for protection of the Torres Strait had an undeniable impact on

⁷Australian Government's need for a favourable international opinion is shown by Prime Minister Keating's remark, pertaining to the Mabo decision, that 'the world around us will feel better about us.' Australian Broadcasting Corporation, 'Four Corners' program, 12 February 1996.

⁸The Australian Department of Foreign Affairs and Trade (DFAT) provided an example of what they regarded as a social situation being raised in (unspecified) discussions relating to the Treaty. It concerned a group of PNG Nationals raising the issue of health funding - they wanted accessible medical facilities. I was informed that this was not the forum for raising this issue as it was a domestic issue. Initially this appeared reasonable, however one of the problems of the Treaty is PNG Nationals moving into the Strait to obtain medical aid. This movement carries with it the risk of malaria, foot and mouth disease, pests such as the papaya fruit fly and screw worm. This points to the issues of PNG's health care being of interest to the Australian Government, even more so considering Australia contributes in excess of Au\$300 million a year in untied aid to PNG. The complexity of relations between the two nations has resulted in health care for the PNG Nationals being both a domestic and international issue. Conversation with DFAT's Thursday Island representative, 30 January 1996.

⁹I am not suggesting that this is always the situation - merely that international opinion has an effect, particularly on 'settler' states such as Australia, Canada, New Zealand and the US. Other nations take a 'damn the lot of you' approach - France's decision to resume nuclear testing and China's one child policy are two examples of this approach.

¹⁰The concept of a protected zone can be found in a resolution adopted by the Queensland Parliament on 3 April 1974 which included a clause recommending that the Strait be designated as an international marine park within which fishing would be limited to the Islanders and coastal Papuans. Such a marine park was central to a statement of Islander views, asserting that 'the Islanders must be free to move and have unrestricted access to all parts of the Straits, and the sea and seabed for all traditional purposes and activities, and that there must be

the final form of the Treaty.¹¹ Even if states give only a passing thought to indigenous issues, particularly in the form of indigenous rights, it constrains alternative courses of action.

By ensuring they are represented in such obligations and agreements as treaties and international legislation, states further internationalise and politicise their traditional inhabitants. This has happened to the Torres Strait Islanders and people of the Western Province of PNG. As the Islanders are primary subjects of an international agreement, can they be excluded from the study of international relations? They, like the other indigenous people,¹² live in the borderland¹³ and call into question the assumption of a state's impermeable boundaries.

States have also established treaties with indigenous people, curious when one considers that treaties are regarded by the casual observer as an agreement *between independent sovereign states*.¹⁴ If we accept that only states may enter into treaties, we must query these indigenous people's status - are they sovereign states (First Nations, original occupants), or not? If not what is their status? If so, why have their rights, laws, customs, and lives been forfeit with apparently little more than isolated murmurs from the international community? And why is it

established an environmentally protected zone...controlled so as to ensure the preservation of the total environment of the Strait as the basis for the traditional way of life of the islanders...' Ryan and White. 'The Torres Strait Treaty' in *Australian Year Book of International Law*. 7, 1976-1977, p.103.

¹¹Originally, there was talk of dividing the Islanders between Australia and PNG. That the two nations were willing to negotiate the border providing the Islanders agreed to any settlement indicates considerable Islander influence on the decision making process. Joint Committee on Foreign Affairs and Defence, *The Torres Strait Treaty. Report and Appendixes*. Canberra: AGPS, 1979, p.3.

¹²Jull, *A Sea Change. Overseas Indigenous-Government Relations in the Coastal Zone*. Canberra: Commonwealth of Australia, 1993.

¹³See Denoon, *The Boundaries of Australian Cultural Studies*. n.p, n.d.; Pettman, *Living in the Margins*. St. Leonards: Allen and Unwin, 1992; and any of Jull's cited works for more detailed information on the ways people relegated to the margins challenge accepted ideas.

¹⁴Jull, *The Concept of Regional Agreements and Torres Strait. A Resource Paper for the Island Coordinating Council (ICC) of Torres Strait*. 1995, n. p.; and *A Sea Change*. Treaties, or agreements, over areas such as the Nanavut Territory, Northern Quebec, Alaska, and Sapmi (previously the land of the Lapps) have been entered into between the state and indigenous peoples.

that these protests have generally not been acted upon by states? Although outside the scope of this paper, the status of indigenous people and their political relations between, inside and outside states requires further examination.

During the late 1980s and 1990s, indigenous issues have come under scrutiny from international non-governmental organisations, which have then affected state policy. Some examples of the internationalisation of indigenous peoples through non-state avenues are the Brundtland report which specifically singles out the roles of indigenous peoples within a broad framework of environmental management.¹⁵ Similarly, UNCED has acknowledged the significance of traditional ecological knowledge in environmental matters.¹⁶ As part of the Year of Indigenous Peoples, Getano Lui (Jnr) presented a lecture noting the international and common nature of indigenous peoples aims.¹⁷ The influence of these non-governmental organisations is observed in the catchphrase 'ecologically sustainable development', popularised by the Brundtland report, and the resultant Australian Government's commitment to ecologically sustainable development.¹⁸

Internationalising and politicising indigenous peoples has far reaching consequences.¹⁹ Increased access has shown indigenous groups that the desire to have their customs, laws and ways of life acknowledged is not unique. One result of this is what could be termed an

¹⁵Mulrennan, *Towards a Marine Strategy for Torres Strait (MaSTS)*. Published jointly by the Australian National University North Australia Research Unit and the Torres Strait Island Coordinating Council, 1993, pp.1-2.

¹⁶Smyth, *A Voice in All Places. Aboriginal and Torres Strait Islander Interests in Australia's Coastal Zone*. Commonwealth of Australia, 1993. Appendix 6, pp.121-126.

¹⁷Lui (Jnr), 'A Torres Strait Perspective' in Australian Broadcasting Commission and Yunupinga, *Voices From the Land*. Sydney: ABC Bookshop, 1994, pp.62-75.

¹⁸A selection of Australian Government commissioned reports are contained within the bibliography.

¹⁹For example, in 1976 whilst Australia and PNG were negotiating the terms of the Treaty, Getano Lui (senior) sent a telegram to the Australian Prime Minister Fraser 'stating in part that if Australia does not support them, the Islanders will take their case to the International Court of Justice and the United Nations.' Joint Committee on Foreign Affairs and Defence, *The Torres Strait Treaty Report and Appendixes*, p.3

international indigenous community, where common dilemmas and their solutions can be discussed.²⁰ Increased use of the 'white man's' system to gain recognition of their rights and laws²¹ is the result of growing political sophistication, particularly by indigenous peoples from within 'settler states'.²² As in the environmental arena, silences²³ are being heard, and new ways of seeing acknowledged.²⁴ Getano Lui (Jnr) illustrates the international nature of Islander concerns in his Boyer lecture stating that:

...Torres Strait is unique because all of us who live there can never forget for a moment that our world is international and multinational. We live with the effluents from the mines, new development projects, and international shipping swirling around in the waters from which we

²⁰This is shown in the increasing number of international conferences on indigenous issues. Two examples are the Turning the Tide conference, and the Politics and Self Government conference in Tromsø. *Turning the Tide. Papers presented at conference on indigenous peoples and sea rights 14, 15, 16 July 1993*. Darwin: Northern Territory University, 1993; Brantenberg, Hansen, and Minde. *Becoming Visible. Indigenous Politics and Self-Government. Proceedings of the Conference on Indigenous Politics and Self-Government in Tromsø, 8-10 November, 1993*. Norway: University of Tromsø Centre for Sámi Studies, 1995.

²¹Lui (senior) declared that the Islanders 'are entitled to full recognition of [their] institutions, culture and territories. [Their] right to control and develop our resources and economy is paramount. ...The system of laws, politics and economy introduced and imposed upon [the Islanders] by the British colonial forces has never been accepted by [them]. [They] expressly reject the legitimacy of the control exercised by the successors of the British...' quoted in Scott, 'Torres Strait Independence. Issues in Island Development' in Babbage. *The Strategic Significance of the Torres Strait*. Canberra: Strategic and Defence Studies Centre, Research School of Pacific Studies, ANU, 1990, p.405. Yet to have this rejection partially recognised, it was necessary for the Mer people to use the entrenched political and legal system.

²²For discussion of settler states, see Pettman. 'Second Class Citizens? Nationalism, Identity and Difference in Australia', in Sullivan and Whitehouse (eds), *Governing Gender*. Kensington: University of New South Wales Press, forthcoming; and Pettman, *Living in the Margins*. St. Leonards: Allen and Unwin, 1992.

²³Halliday, 'International Relations: Is there a New Agenda?' in *Millennium*. 57-72, 20(1) 1991.

²⁴The notion of place not time in Aboriginal and Islander culture is presented as central to their way of knowing by Swain in *A Place For Strangers. Towards a History of Australian Aboriginal Being*. United Kingdom: Cambridge UP, 1993. Allen, 'Some Shadow of the Rights Known to our Law' in *Turning the Tide*, pp.53-64, notes the different perceptions between Europeans and indigenous peoples in relation to 'sea country', contrasting the indigenous notion that sea can be owned by individuals, groups or communities with the European belief that the sea is communal property and there can be no ownership of it. These are just two ways indigenous knowledge provides different ways of interpreting the world.

obtain our daily food. When we express concern to the government about standards of pollution, we are told that Indonesia and Papua New Guinea and world shipping are immune to Australian interference. The Australian policy may be politically correct, but we islanders and our children live with its uncertain effects - on our health, the natural resources which are the basis for our livelihood, and our future(emphasis added).²⁵

'Indigenous' is also internationally significant because of its association with 'environment'. As Jull and others point out, 'northern regions', often the home of indigenous groups, are subjected to conflicting demands - exploitation, preservation, and 'sustainable development'.²⁶ Indigenous peoples dependence - cultural, spiritual, and physical - on the land and/or sea, ensures that native peoples have a vested interest in preserving their environment. As George Mye says:

Our link with the land, sea and the environment is strong and is crucial to our ways of life. Our strength and inspiration comes from our unique Ailan Kastom²⁷ and the special relationship between us and the environment.

Most of us still live in our traditional homeland and have had a long and close association with the seas, coast and reefs, as did our forefather [sic]. *We, as the original occupants of the waters and lands of the area must protect and preserve the environment that is fundamental to our future* (emphasis added).²⁸

²⁵Quoted in 'Torres Strait: We are a Distinct People with Traditions Widely Shared in the Pacific', *Pacific News Bulletin*, 10(6) 1995, p.8.

²⁶Cordell. *op. cit.*, p.16. Jull and Roberts note in *The Challenge of Northern Regions*. Darwin: North Australia Research Unit, the Australian National University, 1991. that 'northern regions' are subject to conflicting demands. See Smyth. *A Voice in All Places. Aboriginal and Torres Strait Islander Interests in Australia's Coastal Zone*. Commonwealth of Australia, 1993.

²⁷Loosely translated as Island Custom. For a discussion of Ailan Kastom, see Beckett, *op. cit.*, especially pp.1-23.

²⁸Commissioner's Overview, *TSRC Annual Report 93-94*, p.4.

From this, it is obvious indigenous people's interests are inseparable from the environment and its internationalisation. As the environment is increasingly studied within international relations, it must be remembered that environment may be examined in many ways - and that indigenous management, use and knowledge of their traditional areas may provide insights in such analysis, particularly at a global level.

The Torres Strait Background²⁹

The Torres Strait extends from south western PNG to Cape York in northern Australia and from the Arafura Sea in the west to the Coral Sea in the east (See Fig.1). The Torres Strait comprises approximately one hundred and fifty islands, islets, cays, and reefs, sixteen of which are permanently inhabited.³⁰ It has been described as:

...the most ecologically complex area of one of the world's most extensive continental shelves... Containing volcanic, continental, coral and alluvial islands, and fringing, platform and barrier reefs, the Strait offers a multitude of habitats and niches for the indo-Pacific marine fauna, which in itself has the greatest diversity of the ocean world...³¹

²⁹Of necessity this will be brief, but there are several excellent books devoted to a general perspective of the Torres Strait. These include: Babbage, *op. cit.*; Beckett, *The Torres Strait Islanders*; Mullins, *Torres Strait: A History of Colonial Occupation and Culture Contact 1864-1897*. Rockhampton: Central Queensland UP, 1994; and Singe. *The Torres Strait people and History*, Australia: University of Queensland Press, 1989.

³⁰Babbage, *op. cit.* p.6. Comprehensive accounts of the geographical nature of the Strait can be found in the section of the 'Physical Environment of the Torres Strait Region' Lawrence and Cansfield-Smith (eds). *Sustainable Development for Traditional Inhabitants of the Torres Strait Region. Proceedings of the Torres Strait Baseline Conference Kewarra Beach Cairns Queensland 19-23 November 1990*. GBRMPA: Commonwealth of Australia, September 1991; and in the section on Environment and Monitoring in Haines, Williams and Coates (eds), *Torres Strait Fisheries Seminar Port Moresby 11-14 February 1985*. Canberra: Australian Government Publishing Service, 1986.

³¹Nietschmann, quoted by Haigh, 'Torres Strait and Customary Marine Tenure - a legal baseline' in *Turning the Tide*. p.133.

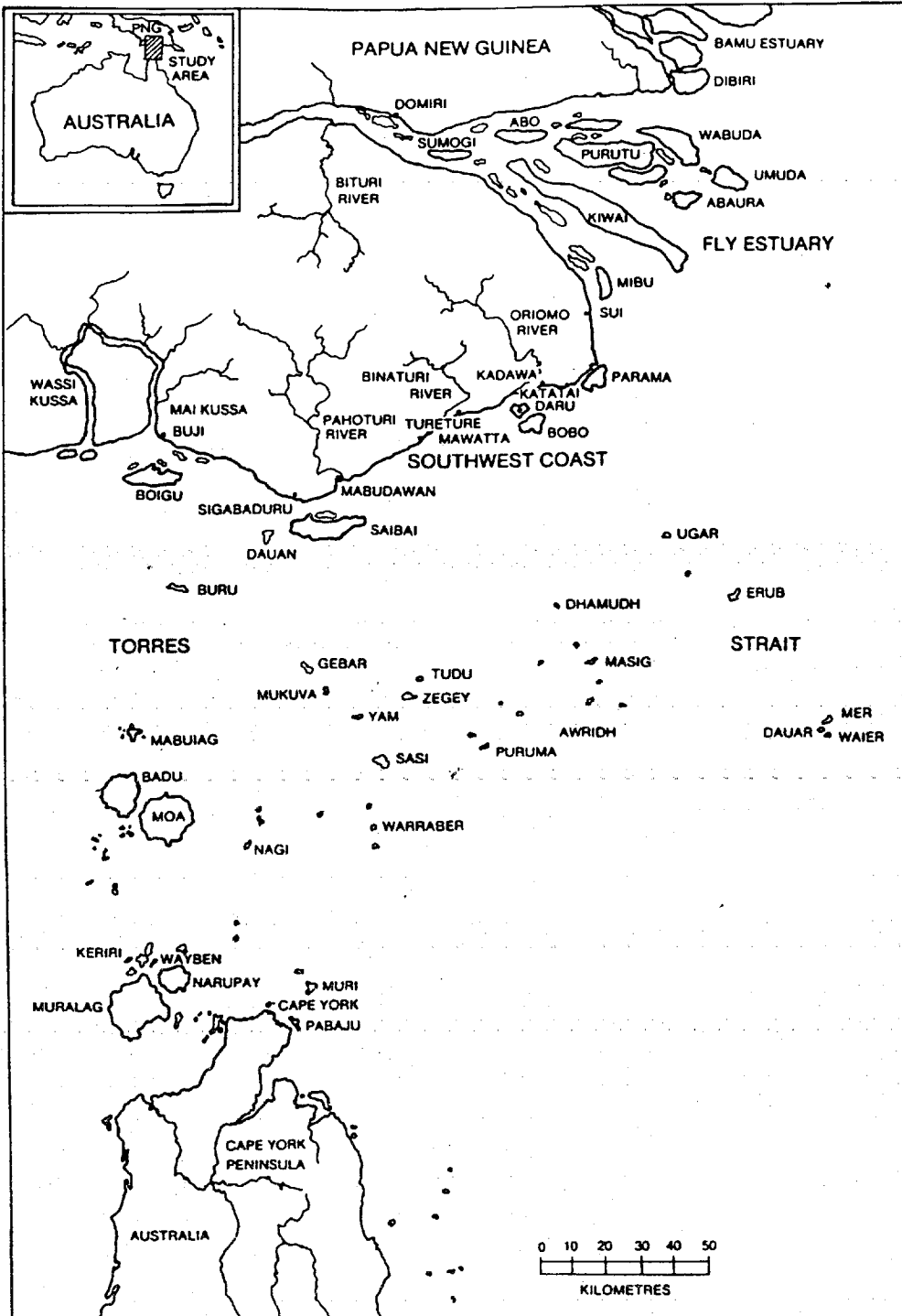


Figure 1. Map of the Torres Strait region

³²Lawrence and Cansfield-Smith, *op. cit.*, p.1.

An area so ecologically complex and fragile "should be ranked on par with the Great Barrier Reef"³³ in terms of conservation value. This ecological diversity is supported by an equally complex geophysical makeup.³⁴ Importantly from an environmental perspective, the waters of the Strait tend to remain within the Strait - that is, there is little through-flow of water in the Strait.³⁵ Consequently, pollutants which enter the Strait disperse only over an extended timeframe, and the circular motion of the Strait's waters has the effect of amplifying the effects of even a relatively insignificant pollutant, further endangering the environment.

This relatively small and diverse area contains four separate island groups: an Eastern Group, Central Group, Western Group, and Northwestern group.³⁶ These groups roughly correspond to geographic, cultural, economic and social divisions amongst the traditional inhabitants.³⁷ These traditional inhabitants are the Torres Strait Islanders, "a minority within a minority".³⁸

³³MacFarlane, *Torres Strait: Conservation Planning and Environmental Protection*. Queensland Department of Environment and Heritage, 3 February 1995. n.p., N.pag.

³⁴Further information about the geophysical nature and marine life of the Strait can be found in Lawrence and Cansfield-Smith, *op. cit.*; Haigh, *op. cit.*, p.134; Williams, *Fisheries and Marine Research in Torres Strait*. Canberra: AGPS, 1994; Babbage, *op. cit.*; and Haines et al., *Torres Strait Fisheries Seminar*.

³⁵Wolanski, 'The Physical Oceanography of Torres Strait' in Haines et. al., *op. cit.*, p.288. Wolanski suggests that the pattern of water circulation "implies that long-term trapping of water-borne material in Torres Strait is likely to occur."

³⁶Mulrennan and Hanssen with the Island Coordinating Council. *Marine Strategy for Torres Strait Policy Directions*. Joint publication between the ANU North Australia Research Unit and the Torres Strait Island Coordinating Council, 1994, p.50.

³⁷Lawrence and Dight, 'The Torres Strait Baseline Study: Environmental Protection of a Tropical Marine Environment in Northern Australia', in *Coastal Zone '91 Proceedings of the 7th Symposium on Coastal and Ocean Management*. California: ASCE, July 8-12 1991, p.1127. For information on the economics of the Strait see Altman, 'The Economic Future of Remote Aboriginal and Torres Strait Islander Communities' in *Australian Aboriginal Studies*. 2, 1990, p.48-52; Altman, Ginn, and Smith, *Existing and potential Mechanisms for Indigenous Involvement in Coastal Zone Resource Management*. Commonwealth of Australia, 1993; Arthur, 'Culture and Economy in Border Regions: the Torres Strait Case' in *Australian Aboriginal Studies*. 2, 1992, 15-33. Also see various publications from the ANU Centre for Aboriginal Economic Policy Research centre, 1991-1995.

³⁸Lui (Jnr) in Torres Strait Regional Council, *Annual Report 93-94*. p.1.

Of Melanesian decent, the Islanders are Australia's 'other' indigenous people.³⁹ Their culture, tradition and lifestyle have some similarities with both their adjacent neighbours - Australian Aborigines and indigenous peoples of PNG. A seafaring people, the Islander culture and lifestyle developed around life within a "sea of islands",⁴⁰ and "[i]t is impossible to understand the history of the Torres Strait Islanders apart from their relationship with the sea."⁴¹ They relied heavily upon fishing and hunting dugong and turtle for physical and spiritual sustenance.⁴² They developed strong sea-faring, horticultural⁴³ and trading links⁴⁴ with other islands and the people of PNG and Australia.

The Torres Strait Islanders first settled in the region 700-800 years ago.⁴⁵ European contact with the islands was first recorded in 1606 by Luis Vaez de Torres.⁴⁶ The history of Torres Strait since white settlement is one of boom and bust.⁴⁷ Exploitation of the Strait's marine

³⁹The others being the Australian Aborigines.

⁴⁰Hau'ofa, *op.cit.* This refers to a different perception from that of the traditional European perspective of an island in a sea, that is, a remote piece of land, rather than the Islander way of seeing the sea as part of their world, or territory.

⁴¹Beckett, 'A Historical perspective: Torres Strait Islanders and the Sea', in Mulrennan and Hanssen, *op. cit.*, pp.5-9.

⁴²Beckett, *Torres Strait Islanders*. p.28. Islanders have one of the highest consumption rates of seafood in the world (Mulrennan and Hanssen, *op. cit.* p.4., and Dight and Gladstone, *Torres Strait Baseline Study: Pilot Study Final Report June 1993*. Research publication No.29, Great Barrier Reef Marine Park Authority, July 1994, p.4). For more information about the Torres Strait Islanders see Singe, *op. cit.*; Babbage, *op. cit.*; Nietschmann, *Eight Decades on an Island: Social and Ecological Relationships in the Torres Strait. Seminar Paper Monday 22 August 1977*. Canberra: Department of Human Geography, Research School of Pacific Studies, ANU, 1977. n.p.; Beckett, *op. cit.*, and *Politics in the Torres Straits Islands*. 1963. Thesis, n.p.; and Lawrence and Cransfield-Smith, *op. cit.*

⁴³Horticulture is practised primarily in the East where soil fertility is more conducive to cultivation. Babbage, *op. cit.* p.1.

⁴⁴*Ibid.*, p.6. Note that there are cultural differences which correspond to the geographic divisions mentioned above. See Lawrence and Dight, *op. cit.*, pp.1125-1127; Singe, *op. cit.*; Mulrennan, *op. cit.*; and Mulrennan and Hanssen, *op. cit.*

⁴⁵Haigh, *op. cit.*, p.134.

⁴⁶Singe, *op. cit.*, p.15.

⁴⁷See Beckett, *Torres Strait Islanders*; Babbage, *op. cit.*; and Singe, *op. cit.*

resources began in the 1860s. Initially trepang, then pearl shell, and after 1916 trochus were collected.⁴⁸ Apart from the influence of European trade and wages, the most significant event was the 'coming of the light'.⁴⁹ With increased influence from various other cultures in the past early century and a half,⁵⁰ Islanders today nonetheless retain many older traditions, blending all in a contemporary cultural and social mix unique to the Torres Strait.⁵¹

The Islanders as an entity are becoming increasingly politicised, and are currently attempting to attain a greater degree of management over the Torres Strait area. Islander attempts to gain acknowledgment of their rights is one many indigenous peoples now face.

The Torres Strait Treaty

The Torres Strait Treaty is a bilateral agreement between PNG and Australia. The Treaty was necessary to delimit a border between the former Australian colony of Papua New Guinea and Australia.⁵² On 15 December 1972, the Whitlam Government instigated border negotiations with PNG. There were few concrete outcomes during the Whitlam era, however, and it was not until 18 December 1978 that the Torres Strait Treaty was signed by Prime Ministers Malcom

⁴⁸Beckett in Mulrennan and Hanssen, *op. cit.*, p.7; Mullins, *Torres Strait: A History of Colonial Occupation*.

⁴⁹Singe, *op. cit.*, pp.57-66. Note that the Islanders still celebrate this festival, which marks the coming of Christianity to the Strait.

⁵⁰Denoon, *op. cit.* An example of cultures which have had an impact upon the Islanders are Japanese, European (particularly Christianity), Melanesian and other Pacific Islander culture, Papuan, and Aboriginal. The ability to adapt aspects of other cultures and incorporate them into Islander tradition has been remarked upon in Beckett, *Torres Strait Islanders*.

⁵¹Lui (Jnr), in Torres Strait Regional Council, *Annual Report 93-94*, p.4.

⁵²As Burmester points out, "one must keep in mind the unique background to [the treaty's] negotiation: that it was negotiated between a developed country and its former dependant territory, which had recently gained independence." Burmester, "The Torres Treaty: Ocean Boundary Delimitation by Agreement" in *The American Journal of International Law*, 6 (2) 1982, p.323.

Fraser and Michael Somare, and their respective Foreign Ministers.⁵³ The Treaty was ratified and entered into force on the 15 February 1985.⁵⁴

The Treaty has been cited as "one of the most creative maritime boundary agreements in the world".⁵⁵ It establishes the PNG/Australia boundary, not by the traditional method of arbitrarily drawing a line on a map, but through the more complex separation of fisheries and seabed jurisdiction lines.⁵⁶ "The most striking and original feature of the Treaty lies in the establishment of a protected zone" (Protected Zone),⁵⁷ a feature to which both PNG and Australian Governments attached importance (Fig.2).⁵⁸ The principal purpose of the Protected Zone is:

to acknowledge and protect the traditional way of life and livelihood of the traditional inhabitants including their traditional fishing and free movement.⁵⁹

Its further purpose is

to protect and preserve the marine environment and indigenous fauna and flora in and in the vicinity of the Protected Zone.⁶⁰

⁵³A chronology of 'major developments' can be found in the Joint Committee on Foreign Affairs and Defence, *op. cit.*, pp.1-5.

⁵⁴Department of Foreign Affairs and Trade, *Treaty Between Australia and the Independent State of Papua New Guinea*. Treaty Series 1985 No.4. Canberra: Australian Government Publishing Service, 1985.

⁵⁵Kaye, 'The Torres Strait Islands: Constitutional and Sovereignty Questions Post-Mabo', in *University of Queensland Law Journal*, 18 (1) 1994, p.38.

⁵⁶Joint Committee on Foreign Affairs and Defence, *op. cit.*, p.7; Department of Foreign Affairs and Trade, *op. cit.*, Part 2, Sovereignty and Jurisdiction, pp.5-10.

⁵⁷Ryan and White, *op. cit.*, p.103.

⁵⁸'Australia - Papua New Guinea Ratification of the Torres Strait Treaty' in *Australian International Law News*, 1985, p.321.

⁵⁹Department of Foreign Affairs and Trade, *op. cit.*, Article 10(3), p.16.

⁶⁰*Ibid.*, Article 10(4), p.16.

The three key objectives of the Torres Strait Treaty, then, are border delineation, protection of 'traditional' rights, and protection of the marine environment.

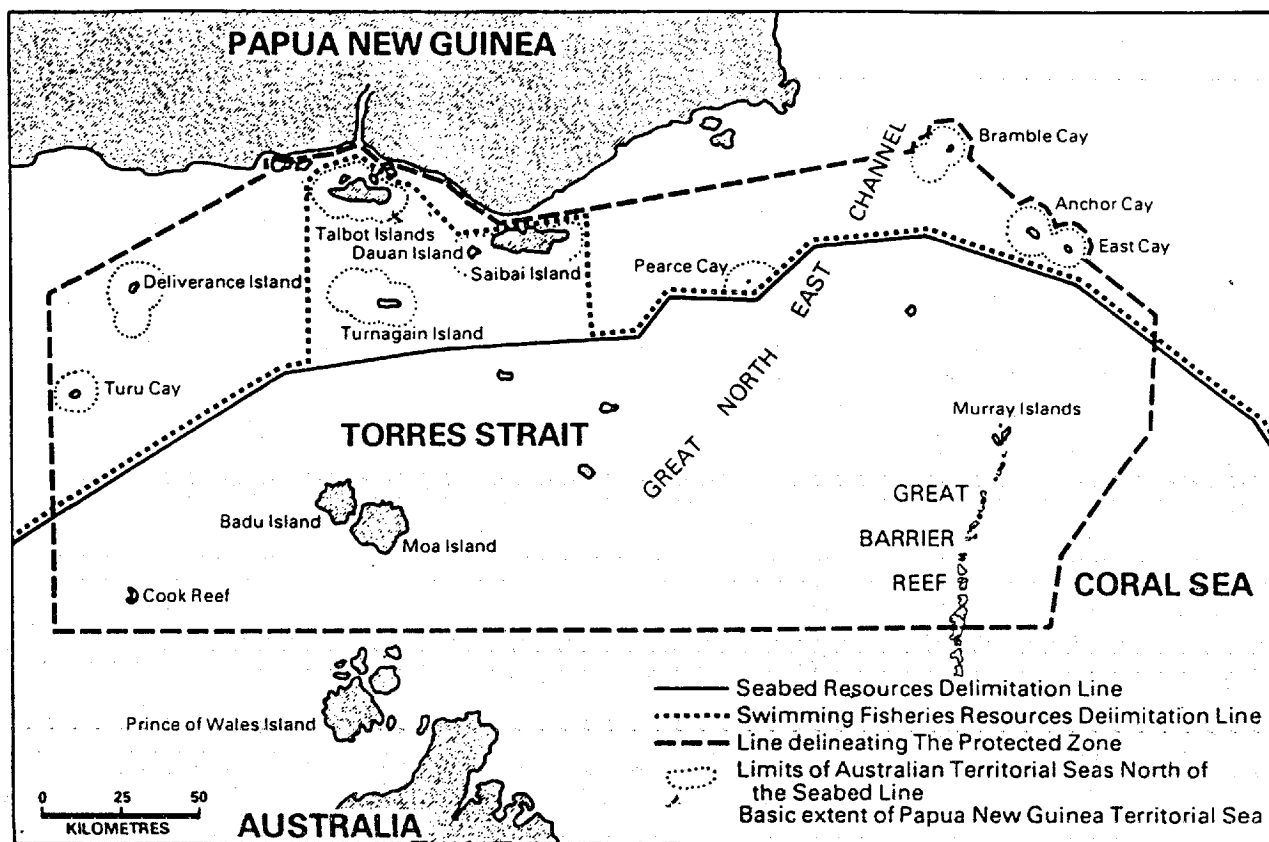


Fig.2. Torres Strait Treaty boundaries.

61

The Torres Strait Treaty - meeting its key objectives?

Boundaries

As mentioned above, the first objective of the Treaty is to "set down [Australia and PNGs] agreed position as to their respective sovereignty over certain islands, [and] to establish maritime boundaries" in the Torres Strait.⁶² That the Treaty was effective in establishing borders is undeniable. Yet it has had mixed success, as the following consideration of boundaries demonstrates. This discussion initially considers boundary delineation and resultant positive outcomes. It then focuses upon problematic effects of the Treaty, and the effects of the

⁶¹Joint Committee on Foreign Affairs and Defence, *op. cit.*, p.6.

⁶²*Ibid.*, preamble, p.1.

permeable boundary, both in relation to the area and international relations. It concludes with an overview of the effectiveness of the Treaty's borders.

The Treaty was conceived as a means of resolving the delimitation of boundaries between Australia and PNG, taking into account the Islanders' desire to remain Australian.⁶³ Part 2 of the Treaty specifically resolves matters of sovereignty and jurisdiction within the Torres Strait.⁶⁴ The Treaty defines the area of the Torres Strait it pertains to, delimits the Protected Zone, resolves issues of sovereignty over islands within the Torres Strait, and determines national jurisdiction over seabed and fisheries resources.⁶⁵ In defining these boundaries, it also serves to denote the citizenship of the inhabitants of the area.

The Treaty also includes provisions for administration of the area, and defines the right to a traditional lifestyle - incorporating free movement across boundaries - for the Islander and Papuan peoples. The Treaty anticipated and provided for potential conflict over certain boundary issues, such as exploration of the seabed and subsoil for the purpose of exploiting mineral resources, and unauthorised trans-border interaction between the Islanders and Papuans. The border's proximity to PNG provides security for the Australian Government by placing the Torres Strait between another nation and the Australian mainland. As one Government representative commented, the successful implementation of these boundaries has ensured management of an otherwise unmanageable situation.⁶⁶

The borders established by the Treaty have provided relative security for the Islanders as well as helping secure the defence of the Australian mainland. The Islanders are entitled to the rights and responsibilities of all Australian citizens. This includes military and economic security, with the social security safety net catching economically disadvantaged Islanders as it does the

⁶³Conversations with DFAT officials leave one with the impression that this may be the *only* significant issue to many!

⁶⁴Department of Foreign Affairs and Trade, *op. cit.*, Part 2, pp.5-10.

⁶⁵*Ibid.*, pp.5-10 and Annexes 1-9.

⁶⁶Conversations with DFAT representative, 18 January 1996.

rest of Australia. As members of a first world nation Islanders are guaranteed the provision of social services such as education and health care.⁶⁷ The contrast between this and the living standards of the underdeveloped Papuans is marked, as noted below.

Likewise, shared authority between PNG and Australia over the Protected Zone and positioning of borders has provided security to the marine environment through prohibition of mining exploration and a requirement to consult on issues which may affect the Torres Strait environment. This has not been without its difficulties, but the Treaty has noted the importance of, and provided for, environmental protection and preservation. Thus the Treaty's creation of boundaries between the two nations has been and continues to be beneficial to the Islanders and environment as it has provided a degree of security unlikely to be obtained from a single Government possessing unilateral authority over the area.

Despite the above provisions, the effective creation of boundaries, and relative security obtained from the borders, the implementation of these boundaries is not without problems. The free movement provision,⁶⁸ aimed at preserving traditional interaction between two cultures, is attacked by the Islanders on social, economic and political grounds. Article 11's purpose was to resolve the dilemma of establishing borders while ensuring the traditional rights of the indigenous inhabitants were met. Although novel in approach, the provision is contentious because of the increasingly unidirectional flow of visitors. Creating a semi-permeable border through the free movement provision may have resolved the issue of maintaining traditional connections initially, but over the last ten years the contact between the two peoples has altered to such an extent that, to the Islanders at least, the permeable boundary contributes to social problems and potential health risks.

⁶⁷The extent to which the indigenous people actually have the same services as the rest of Australia is itself debated.

⁶⁸Department of Foreign Affairs and Trade, *op. cit.*, Article 11, pp.16-17.

The security Australia has gained from the Treaty could be undermined by the Islanders. Although state security is generally regarded in terms of external threat, indigenous people can pose an internal threat. This threat increases when the state cannot simply suppress disagreement due to international interest in affairs of state, and indigenous peoples awareness of their rights. Indigenous unrest provokes security concerns at the domestic and national level: domestic as unsettled internal affairs places pressure upon the government, the people and economic security of the nation; international because indigenous peoples, such as the Islanders, often live within the borderland and have recourse to international institutions.⁶⁹ There are possibilities for borders to be compromised, for security to be threatened by another state, and for sovereignty to be undermined. An example of the potential security threat to Australia should the Islanders become a separate state⁷⁰ is that the Torres Strait, deemed an international strait, could be closed by the Islanders, thus raising questions of sovereignty and ownership. The cohesive nature and unified demand for 'self-determination' by the Islanders has the potential to threaten Australia's economic and military security. Were their 'frustrations' to continue unabated, their secession (albeit improbable) would damage the Australian fisheries catch, and pose an immigration, customs, quarantine and military risk.⁷¹ The proximity of the Torres Strait to, and the ease of, island-hopping from PNG facilitates the transmission of disease, smuggling, and drug-running which could be exacerbated by an independent state in Torres Strait.

An integral aspect of the Treaty is the permeability of its boundaries, best shown in the free movement provision. The following is a discussion of the ways boundaries have been/are blurred and the effects of this. The blurring of 'internal' and 'external', social/local/domestic and international is significant as it acknowledges and implements 'grey' areas of joint jurisdiction, and notes that the states cannot prevent interaction of their respective indigenous

⁶⁹Denoan, *op. cit.*

⁷⁰Scott argues that '[i]ndependence per se is not a real issue, [but that] effective recognition and maintenance of Torres Strait Islander identity is a very real issue'. Scott, 'Torres Strait Independence. Issues in Island Development'. Babbage, *op cit*, p.402.

⁷¹Babbage, *op. cit.*

groups.⁷² This demonstrates the impracticality of many of the traditional understandings relating to 'relations between states'. The Treaty was certainly fabricated as a means of attaining each state's interests;⁷³ however this was not achieved in a realpolitik manner. The Treaty is a curious mix - a liberal document implemented to obtain realist objectives. This raises questions about understandings of the state as a discrete entity whose border distinctly separates the inside and outside of the state.

The transborder nature of indigenous peoples, local yet international character, and traditional boundaries which are usually very different from official boundaries, challenge the state-centric view that there is a distinct division between inside and outside the state. This transborder nature is legitimised by the Treaty as it entrenches the right of specified citizens to freely move from one national jurisdiction to another. The awareness that the distinction between border and boundary is a matter of semantics, that the border is arbitrary, and the need to acknowledge its permeable nature are clearly outlined in the Treaty. Boundary distinctions are blurred by the separation of fisheries and seabed borders, the creation of a Protected Zone, and sharing of fisheries catch. The Treaty acknowledges shades of grey in border delineation, challenging the notion of a fixed impervious state.

The duality of understanding which the Treaty represents blurs the lines of the traditional internal/external dichotomy - the social informs the international and vice versa. The influence of the Islanders in deciding the positioning of the border is an example of the way the internal affairs of states can affect their external actions.⁷⁴ The Islanders are local - Australian citizens,

⁷²Worth noting is the interchangeable use of boundary and border in the Treaty. The Joint Committee on Foreign Affairs and Defence notes that these two terms are used deliberately, and explains the difference between boundary and border. *op. cit.*, p.1.

⁷³Such as the maximum reasonable access to fisheries, placing the border in a position ensuring maximum security, ensuring that Islanders were consulted in this issue between two nations to prevent it being brought into the wider international arena by the Islanders, and attempting to ensure the resources of the Strait will remain there for the two nations by prohibiting other nations fishing without permission.

⁷⁴See the chronology in The Joint Committee on Foreign Affairs and Defence, *op. cit.*, pp.1-5.

with 'social' concerns. They are also international - part of the international indigenous community, by virtue of the Treaty, and in having to deal with the international shipping passing through their Strait. The subjective and arbitrary nature of 'local' and 'international' is shown by the Islanders' regarding issues usually deemed to be social, such as the burden placed upon their resources by traditional visitors, as international issues, requiring attention from the Treaty's administrators, while the administration holds that these issues are domestic and should be dealt with by domestic agencies.

Although dismissed as social, the interactions (traditional visits) between the indigenous peoples of the area have been made international through the Treaty. Their movement, fishing and 'other activities' are as much a matter of international as domestic concern. Being an international strait, PNG and Australia are obliged to allow free passage of shipping and overflight. This international traffic is an issue of local concern - the Islanders cannot stop these people tramping through their backyard, and have misgivings over the possibility of destruction of their environment by these international passers-by.⁷⁵

These indistinct divisions between local and international affairs have led to different understandings of the Treaty, its purposes, administration and effectiveness. What one party regards as social is not to another, enabling issues to be dismissed as the responsibility of respective domestic authorities. This confusion is discussed in detail elsewhere, and is one of the major difficulties in assessing the Treaty's effectiveness.

⁷⁵The potentially devastating effects of introducing foreign marine organisms into Australian waters can be seen in the concern raised by the release of the exotic Northern Pacific Sea Star, which 'appears capable of greatly altering the natural ecology of soft-bottom habitats', and poses a threat to the Tasmanian shellfish industry, in terms of control alone (the cost controlling the seastar is estimated to be in excess of Au\$12 million in 3 regions of Japan alone). Tasmanian Museum, Sea Fisheries Division, draft pamphlet on the Northern Pacific Sea Star. n.p., n.d., N. pag.; 'Wanted Dead or Alive! The Northern Pacific Seastar. Asterias amurensis', pamphlet, n.p., n.d., N. pag.

Interestingly, the grey areas of the borders contrast with the boundaries drawn around the people the Treaty 'protects'. Traditional inhabitants, activities and lifestyle are broadly defined, to the extent that island-hopping by dinghy powered by outboard motor is 'traditional'. The wording, however, neglects to note that for the Islanders political activism is traditional,⁷⁶ as is the Islander belief that the Torres Strait is theirs.⁷⁷ The boundaries of what constitutes 'traditional' extends only to those living in the Torres Strait, or in the two mainland Islander communities of Bamaga and Seisa. Islanders living elsewhere for whatever reason are not traditional, even if they "maintain traditional customary association" with the Torres Strait.⁷⁸ This stark boundary differentiation surely robs the many Islanders living on the mainland of part of their identity.

The boundaries not only divide the Islanders into 'traditional' and 'non-traditional', but separate two peoples with a long history of interrelations. This has been an unforeseen consequence of the free movement provision. The differentiation between the wealthy Islanders and poor Papuans, the one-sidedness of exchange, and resultant resentment, has effectively separated the two people from the traditional lifestyle the provision intended to preserve. From the Islander view, life without the provision is preferable to life with it.⁷⁹ Similarly, the boundaries - you can only fish 'traditionally' in the Protected Zone, traditional activities are not traditional outside the defined area - are seen as alien rules and laws imposed upon the two indigenous peoples.⁸⁰ These regulations were imposed upon the indigenous peoples over a decade ago. At that time indigenous rights to land or sea were not an issue of high priority to the Government, and the

⁷⁶Lui (Jnr), 'A Torres Strait Perspective', *op. cit.*, p.62.

⁷⁷Beckett, *Politics in the Torres Strait Islands*.

⁷⁸Department of Foreign Affairs and Trade, *op. cit.*, Article 1(1)m(iii), p.4.

⁷⁹Lui (Jnr), *op. cit.*; *Pacific News Bulletin*, 'Torres Strait: an ocean-based culture under threat from others' (sic) decisions'. 17 (3), March 1992, pp.8-9; Paper presented by Gaffney on Behalf of Mura Kosker Sorority at the Darwin "Turning the Tide" conference, in Mura Kosker Sorority, *Turning the Tide. Conference on Indigenous Peoples and Sea Rights. Report from the representatives from Mura Kosker Sorority*. n.p., n.d.; Mulrennan and Hanssen, *op. cit.*, pp.29-32.

⁸⁰Lui (Snr), quoted by Scott in Babbage, *op. cit.*, p.405.

paternalistic condescension represented by the Protector of Aborigines still existed.⁸¹ Given today's emphasis on indigenous participation and contribution, particularly to ecologically sustainable development, and the focus on allowing indigenous peoples to define themselves, the Treaty's imposition of identity and physical boundaries on the Islanders would appear outdated.

Extending the analysis of boundaries a little beyond the Treaty, indigenous peoples contribution to the popular notion of simultaneous globalisation and regionalisation can be observed in the Strait. Global in that indigenous cooperation is increasingly international, regional in the increasingly differentiated categorisation of which particular groups an individual belongs to and why they belong to that specific community. Internationalisation is seen in the indigenous peoples conference in Tromsø, while an example of regionalisation observed within Australia is the Islanders insistence that they be acknowledged separately from the Aborigines.⁸² The Treaty has contributed to this in its definition of the Islanders as a distinct region, and under its shadow the Islanders have expanded their political repertoire, integrating into the wider international indigenous community. Although the Treaty may not be entirely responsible for either of these effects, it has certainly contributed.

The Treaty has, undeniably, addressed issues relating to sovereignty, maritime borders, fisheries jurisdiction, protection of the marine environment and traditional movement. Officially, the simple fact that the Treaty has established borders and resolved issues relating to sovereignty⁸³ proves that the Treaty is fulfilling its objective. Indeed, the belief that this is the

⁸¹Gaffney in MacFarlane, *op cit.*, p.12.

⁸²Transcript of an address by Prime Minister, Keating Address in Anzac Park, Thursday Island, 12 September 1995, p.2. The recent acknowledgment by the Australian government of the Aboriginal and Torres Strait Islander flags goes some way to note the distinct nature of the Islanders. However, many of those spoken to at the time had no idea of the symbology behind the second flag stood for, nor why the Islanders have their own flag.

⁸³Lumb questions the resolution of sovereignty of certain uninhabited islands within the TS. Lumb, 'the Torres Strait Islands: Some Questions relating to their Annexation and Status', in *Federal Law Review*, pp.154-168.

only matter of relevance when discussing the Treaty was confirmed by two separate sources on three occasions.⁸⁴ However, the borders imposed by the Treaty have limitations and, if they do not actually cause, they may exacerbate difficulties, such as preservation of the marine environment and ensuring maintenance of the traditional lifestyle.

Traditional Lifestyle

To "acknowledge and protect the traditional way of life and livelihood...including...traditional fishing and free movement"⁸⁵ of the Islanders is the second objective of the Treaty. Part 4 of the Treaty, The Protected Zone, is ostensibly designed to protect both the traditional inhabitants and the marine environment within the Protected Zone. Initially, the Treaty appears to be an admirable and workable document, particularly in relation to its treatment of the Islanders. Unfortunately, practice has resulted in conflicts over 'protected' areas such as fisheries, free movement, interpretation of the Treaty, the internal/external dichotomy, and administration of the area. This section outlines the effectiveness of the Treaty, in relation to its second objective.

In addition to Part 4, the Treaty provides the Islanders with various fora within which they can raise concerns. The interaction with 'non-local'⁸⁶ representatives of government possibly provides an arena for 'learning the political ropes'. The skills learned from this may then be utilised to present a politically sophisticated position to the world, a skill required to gain international attention. These skills may also be used to assist other indigenous peoples in attaining their political agendas, thus broadening the international indigenous community's strength.

⁸⁴Conversations with DFAT representatives. Various dates.

⁸⁵Department of Foreign Affairs and Trade, *op. cit.*, Article 10(3), p.16.

⁸⁶Jull, *Changing Political Contexts for Torres Strait: New Realities and Necessary Techniques*. 1994, n. p.; Keohoe-Forutan, *Torres Strait Independence: A Chronicle of Events*. Brisbane: Department of Geographical Studies (Geography, Planning, Surveying) Research Report No.1. University of Queensland, July 1988, pp.20-22.

The Treaty has provided "unspecified benefits"⁸⁷ to the people and environment within the Strait. The creation of various fora for discussion of areas of concern, and the management regime implemented for administration of the Strait are two such benefits which cannot be quantified. Without the creation of the Treaty, its Protected Zone, and the administration and liaison arrangements, the traditional movement, fishing and other ways of life may have been irrevocably altered or lost entirely, and the environment damaged beyond repair.⁸⁸

Although Islanders have various fora in which they may raise areas of concern, gain access to various Governmental agencies, and ensure that they are heard,⁸⁹ they feel that their opinions are often ignored.⁹⁰ The Treaty does not have the capacity to acknowledge Islander concerns over the increasingly one way free movement of PNG Nationals into the Strait - it contains provisions for review upon a regular basis, but this has not occurred.⁹¹ Islander perceptions that "the Treaty was in many respects a novelty",⁹² suggests that there are many significant aspects of Islander lifestyle which remain unacknowledged by the Treaty.⁹³ Unfortunately, many of the issues raised are regarded as social problems by the authorities managing the Protected Zone, and thus dismissed as irrelevant to the smooth functioning of the Treaty.⁹⁴

At the time of implementation, the Treaty was admirable for its novel management of transborder movement, and preservation of indigenous lifestyles. However, the free movement provision is now the source of numerous Islander contentions against the Treaty. Free

⁸⁷Conversation with Dews, 22 January 96.

⁸⁸*ibid.*

⁸⁹Although the Islanders have the opportunity to be involved in these fora, they contend that this is a matter of form, and that their concerns are not addressed. Part of the reason for this may be, as discussed, the different emphasis placed on these concerns by the Islanders and Commonwealth Government.

⁹⁰Lui (Jnr), 'A Torres Strait Perspective', *op. cit.*, p.70.

⁹¹Department of Foreign Affairs and Trade, *op. cit.*, Article 19, p.24; Lui in Mulrennan, *op. cit.*, p. v.

⁹²Lui in Mulrennan, *op. cit.*, p. v.

⁹³That the Islanders see the Treaty as a *novelty* is interesting - one might ask what sort of novelty - something new and interesting, or something which has outlived its usefulness?

⁹⁴Conversation with DFAT representative, 18 January 1996. See footnote 12.

movement has led to conflict between all parties involved.⁹⁵ These disharmonies range from raising dissatisfactions with the situation in the various approved fora to violence and banning certain Papuans from visiting the Strait.⁹⁶ Islander concerns centre around the unidirectional flow of traditional visits, primarily the result of substantial socio-economic disparities between the two indigenous groups. As Australian citizens the Islanders are members of a first world nation and therefore quite well off in comparison to the PNG Nationals. As a complex and newly emerging nation-state with countless isolated areas, including the Torres Strait coast, PNG has not had the financial means or sufficiently developed delivery systems to provide many services to many of its people, such as medical care.⁹⁷ Conflict arises when 'traditional' visitors overstay their welcome, overextending Islander hospitality and scarce island resources.⁹⁸ PNG Nationals visit Saibai Island to obtain stores or enter the Torres Strait in order to receive medical attention unavailable in PNG. Officially sanctioned maintenance of 'traditional' ties between the two peoples has created or exacerbated a situation of 'haves' and 'have nots', altering the purposes, frequency, and significance of 'traditional' visits. This alteration has created and then exacerbated tensions between the two nations, the Islanders and the Papuans, and the Islanders and the Commonwealth Government.⁹⁹ What was a local issue, exchange across cultures, prior to the implementation of the Treaty has become one of international significance.

As Australian citizens, many Islander concerns about the effectiveness of the Treaty in relation to the economy of the region, the extended traditional visits, and a desire for a way of life equal

⁹⁵This conflict periodically flares up, as the *Pacific News Bulletin*. 'Influx of PNG mainlanders stirs Torres Strait tension'. 3, 1986, pp.40-41; and *The Australian*, 'Gatecrashers jeopardise Torres Strait Treaty', 3 January 1996, p.3, demonstrate.

⁹⁶*The Australian*, *op cit*.

⁹⁷Lawrence, 'The Subsistence Economy of the Kiwai-speaking People of the Southwest Coast of Papua New Guinea' in Lawrence and Cansfield-Smith, *op. cit.*, p.375. See this paper for an information about the Papua New Guinean people affected by the Treaty.

⁹⁸Conversation with Gaffney, 22 January 1996. Mura Kosker Sorority, *Turning the Tide report from the representatives from Mura Kosker Sorority*, n.p., n.d., pp.12-14.

⁹⁹See footnote 89.

to other Australians have been relegated to the 'social' realm. As noted above, for the Islanders these social issues are also international. Yet, perhaps understandably, DFAT relegates these ambiguous issues to the 'too hard' basket, declaring them to be domestic concerns. The 'socialisation' of issues which are, or have been made international, may be seen as an attempt to marginalise legitimate indigenous complaints.¹⁰⁰

The Islander unhappiness with the free movement provisions may be the price the Australian Government is willing to pay to ensure good relations with the PNG Government. This could be a 'good neighbours' ploy, where it is politically wiser for the Commonwealth Government to provide medical care to PNG Nationals from the Western Province. There are a number of possible reasons for this. The first is that it is a way of tying Australian aid to a specific purpose - medical assistance - something the PNG Government is reluctant to accept. Secondly, this could be a way of ensuring Australian security as providing medical assistance may encourage some PNG Nationals to view Australia as a sanctuary; and finally, provision of medical treatment indicates Australian goodwill towards those less fortunate. If any of these hypotheses are accurate, it may be justification for the Australian Government to regard the Treaty as an incontrovertible success. However, this does not alter the issues at hand for the Islanders, and the difficulties they face daily, nor does this influence the effectiveness of the Treaty provisions in preserving the environment, except negatively by overtaxing available resources.

Protection of the Marine Environment

The third key factor of the Treaty considers the extent of the protection and preservation of the marine environment "in and in the vicinity of the Protected Zone".¹⁰¹ Article 13 states that:

¹⁰⁰Whether the establishment by the Commonwealth Government of the Torres Strait Regional Council in mid-1994 with a wide coordination mandate and ambitious policy development agenda has an impact on these problems in coming years remains to be seen.

¹⁰¹Department of Foreign Affairs and Trade, *op. cit.*, Article 10(4), p.16.

Each Party shall take legislative and other measures to protect and preserve the marine environment in and in the vicinity of the Protected Zone. In formulating those measures each Party shall take into account internationally agreed rules, standards and recommended practises which have been adopted by diplomatic conferences or by relevant international organisations.¹⁰²

It continues with:

The measures that each Party shall take...shall include measures for the protection and control of pollution or other damage to the marine environment from all sources and activities under its jurisdiction or control...¹⁰³

Until now the Treaty has benefited the environment to some extent as it has prevented wholesale degradation of the Strait for short term economic gains. As an underdeveloped nation, PNG is subject to various fiscal obligations. To meet its obligations it is encouraging 'development' - of mines, oil fields, and forests. The Treaty helps prevent exploitation of these resources in or in the vicinity of the Protected Zone. The security provided by the Treaty goes towards meeting Commonwealth goals of intergenerational equity and environmental sustainable development.¹⁰⁴ This security can be improved by actively involving the Islanders in all issues relevant to their Strait. This participation is beneficial in that it is the Islanders' home and it is in their best interest to ensure its long-term protection. Despite all the rhetoric, it is not home for either national Government, nor is the Torres Strait usually a region of high public interest, allowing for a certain degree of Government neglect. Although not specifically provided for, if the Treaty were reviewed, the Islanders could contribute to the Treaty's environmental objectives by 'thinking globally, acting locally', which also furthers their longer term political

¹⁰²Ibid., Article 13(1), p.17.

¹⁰³Ibid., Article 13(2), p.17. Also see footnote 48.

¹⁰⁴See *National Strategy for Ecological Sustainable Development*. Canberra: AGPS, December 1992, especially, pp.6-7.

goals. The shared authority over the Protected Zone has been beneficial, and continues to be, merely by the fact both nations must agree on actions within the Protected Zone, forcing each country to be more aware of its actions as they relate to it.

The Torres Strait Treaty has specifically provided for protection and preservation of the marine environment through legislative and other means,¹⁰⁵ benefiting the environment through joint administration. However, the Treaty and its administration has done little to actually *solve* issues or *implement* means of ensuring environmental protection.¹⁰⁶ Compulsory reporting for ships passing through the Strait has been introduced, and ships over 70 metres long, all loaded oil tankers, chemical carriers and gas carriers are required to be piloted through the Strait,¹⁰⁷ and an oil spill plan, 'Torresplan', has been developed. But these means are, currently, largely ineffective.¹⁰⁸ The protection has been limited to benefits such as the moratorium, and the indirect advantages to the Islanders and environment this and the joint administration provides. The reluctance of Government representatives to discuss what has been achieved, and is being done, to protect the environment intimates that this poor record is not likely to be rectified in the near future, which furthers Islander 'frustrations' and ignores Commonwealth-funded consultancy recommendations.

The Treaty's provisions for the well being of the marine environment have been ambiguous, although whether this success directly results from the Treaty is unclear. Perhaps the most significant Treaty provision is Article 15 which provides a moratorium on mining and drilling on the seabed in or in the vicinity of the Protected Zone.¹⁰⁹ By avoiding the research, development, environmental degradation and/or increased risk to the environment which tends

¹⁰⁵Department of Foreign Affairs and Trade, *op. cit.*, Article 13, especially 13(1), pp.17-19.

¹⁰⁶MacFarlane, *op. cit.*, p.18.

¹⁰⁷Laffan, 'The Torres Strait Treaty and the Environment' in Lawrence and Cansfield-Smith, *op. cit.*, p.456.

¹⁰⁸MacFarlane, *op. cit.*, pp.18-19. Conversation with DFAT representative, 18 January 1996.

¹⁰⁹Department of Foreign Affairs and Trade, *op. cit.*, Article 15, p.20.

to be a result of mining exploration, the moratorium has proven to be successful in protecting and preserving the marine environment.¹¹⁰

I consider the moratorium on drilling or mining an example of the way the Treaty is both beneficial and inadequate to the task of protecting the marine environment. As specified within the Treaty the provisions relating to environmental protection appear sound, yet when one considers the implementation of the theory its overall effectiveness is in doubt. For instance, the notion of mineral exploitation within the Strait area contradicts the provisions ensuring preservation of the environment and traditional lifestyle, yet this was and continues to be a very real future possibility. Therefore it was necessary to incorporate into the Treaty a prohibition on mining and drilling of the seabed. The most obvious and desirable solution would have been a ban upon all exploration within the Strait - akin to the prohibition on mining the Great Barrier Reef.¹¹¹ That this has not been implemented would indicate that it was not a particularly appealing solution to Australia or PNG, necessitating another answer.¹¹² This solution was a ten year moratorium within the Protected Zone on exploration or drilling.¹¹³ The moratorium ensured several benefits to the Islanders and the Strait environment¹¹⁴ and pre-empted the possibility of disputes between the Australian Government, the PNG Government, and the Islanders over ownership, development, exploration, and subsidiary rights to any mineral wealth within the Strait. On 15 February 1995, the moratorium ceased. Due to disagreement over the period of extension, the two nations have recently agreed to an "indefinite extension" of the moratorium.¹¹⁵ The moratorium's uncertain future will possibly cause future frictions

¹¹⁰See footnote 48. Note that the idea of the area being a marine park did not originate with the Treaty, but that the Treaty has effected the aim of a marine park to some degree, and that this is integral to Islander lifestyle.

¹¹¹MacFarlane, *op. cit.*

¹¹²MacFarlane, *op. cit.*, p.13. The Islanders want the Treaty to be renegotiated, however the PNG and Australian Governments are reluctant to do this.

¹¹³Department of Foreign Affairs and Trade, *op. cit.*, Article 15, p.20.

¹¹⁴Many indirect. The presence of the moratorium sufficed to protect the environment from exploration consequently protecting the Islander's way of life.

¹¹⁵According to DFAT and the PNG Consulate, Australia desired a 5 year extension, PNG 3 years, and they ultimately agreed on an indefinite extension.

between the aforementioned groups. Any exploration will endanger the marine environment, and increase the likelihood of environmental degradation. Any detrimental effects to the marine ecosystem will be felt nationally,¹¹⁶ but will be especially devastating for the Islanders whose reliance on seafood for their protein needs have been well-documented.¹¹⁷ This *decision*, temporary at best, does nothing to ensure the long term well being of the Islanders or environment, but it has the effect of *appearing* to solve the problem. The extension is particularly inadequate given the PNG Government's has made it clear that it wishes to carry out seismic testing within the Protected Zone.¹¹⁸ That is, the provisions within the Treaty are beneficial in spirit, but the reality translates as less than ideal, due to Government inertia and reluctance to make difficult decisions.

A benefit of the Treaty is its detailed arrangements for fisheries management and the creation of the Torres Strait Protected Zone Joint Authority in order to manage the fisheries in an ecologically sustainable manner. Part 5 of the Treaty deals with the Protected Zone commercial fisheries.¹¹⁹ Priority is given to traditional fishing; however, "if [it is] necessary for the conservation of the species"¹²⁰ to restrict traditional fishing this can be done providing "the Party...endeavours to minimise any restrictive efforts of that measure on traditional fishing."¹²¹ The difficulty in fisheries management is its complexity - fisheries such as Spanish Mackerel and prawns are administered by the Commonwealth, while responsibility for the coral trout catch is Queensland's. The complex nature of fisheries administration is a disincentive to the

¹¹⁶In 1990-91 Torres Strait fisheries were estimated to be worth Au\$21.5 million at catcher level, excluding pearls. Williams, *op. cit.*, p.53. *A Guide to Management Arrangements for Torres Strait Fisheries*, Canberra: Australian Fisheries Management Authority, February 1995, suggests that the fisheries have an annual catch value in excess of Au\$22 million.

¹¹⁷Beckett, *op. cit.*, p.28. See footnote 47.

¹¹⁸MacFarlane, *Government Approaches to Marine Management in Torres Strait*. n.p., n.d., p.19.

¹¹⁹Department of Foreign Affairs and Trade, *op. cit.*, Part 5, p.26.

¹²⁰*Ibid.*, Article 21, p.26.

¹²¹*Ibid.*

Islanders due to the complexity of the licencing system, and, although the administration protects fishery stocks, it impinges upon the Islander way of life.¹²²

Created by bureaucrats and politicians, the Treaty is about encapsulating areas within neatly defined boundaries in order to manage or control them. Unfortunately the ecologies of the region do not follow such strictly defined geography. This poses several problems to the overall protection of the Strait's marine environment within the area. The Treaty demonstrates concern for the area defined by the Protected Zone and its vicinity, but does not seem to take into account the surrounding areas (the Great Barrier Reef and Gulf of Carpentaria for example), their management and the impact they have upon the Strait. When considering management of complex ecological areas, this administrative compartmentalisation is ultimately inadequate, primarily due to failure to embrace the complexity of relationships between various areas. This is not to ignore the difficulties in shifting our thinking from 'bite-sized' pieces to an awareness of the interrelated nature of the globe, but as MacFarlane and Dews acknowledge, it is only when a more holistic approach is taken that these issues can then begin to be solved.¹²³

The effectiveness of the provisions within the Treaty to ensure the preservation of the marine environment are in doubt. While the provisions within the Treaty are admirable, little concrete has emerged, particularly in relation to issues such as prevention of, and rapid response to, shipping accidents within the Strait, a long term resolution of the moratorium, and addressing potential sources of land-based pollution.¹²⁴ The existence of the Treaty has resulted in, deliberately or otherwise, an overall management scheme of the area's fisheries, and the creation of various organisations to ensure the sustainable development of these fisheries.¹²⁵

¹²²Torres Strait Protected Zone Joint Authority Annual Reports 1986-1995. See *A Guide to Management Arrangements for Torres Strait Fisheries*. pp.15-17 for a list of fisheries and their jurisdiction.

¹²³MacFarlane, *op. cit.*; Dews, *op. cit.*

¹²⁴MacFarlane, *op. cit.*

¹²⁵As published works such as *A Guide to Management Arrangements for Torres Strait Fisheries; Torres Prawn Handbook 1995*. Canberra: Australian Fisheries Management Authority, February 1995; and the Torres Strait Protected Zone *Annual Report 1986-1995* inclusive indicate.

This has been pursued with a view to encouraging traditional people to enter the commercial fisheries, and ensuring that their traditional fishing patterns are not unduly disrupted by commercial fishing. Yet the environmental provisions the Treaty contains are limited in practise by administrative habit, the lack of Islander input, limited research, avoidance of difficult decisions, and lack of implementation and enforcement of environmental safeguards, to name but few. The moratorium upon drilling in the area is possibly the most significant direct benefit to the environment provided by the Treaty. However, given the uncertainty of its extension, the areas preserved for the last ten years may be threatened in the near future by PNG's desire to examine the Protected Zone's potential wealth.

Which Treaty ?

The three key objectives of the Treaty as discussed above have been achieved to varying degrees. The Treaty's effectiveness is often a matter of interpretation, and it is here I see a major problem with the Treaty. The conflicting views held by the Commonwealth and the Islanders, issues of access, the interrelated nature of interpretation and implementation of the Treaty, and the resulting 'decision making by default' all contribute to the confusion over the adequacy, purpose and intent of the Treaty's objectives.

Islander and Government perspectives apparently consider different documents - one designed to protect indigenous people's lifestyle and rights as indigenous peoples, the other delimiting boundaries and establishing an infrastructure for management of movement between PNG and Australia. Certainly, the Treaty is original in recognising for certain traditional rights: freedom of movement for traditional purposes; the right, as traditional inhabitants, to fish, including the hunting of dugong and turtle for traditional purposes; and the right to conduct unspecified traditional activities in the Protected Zone and its vicinity. These provisions, particularly given the period during which negotiations occurred, were liberal and apparently ensured the Islanders would retain their cultural links with the inhabitants of PNG, as well as their distinct

sea faring culture.¹²⁶ However, the disparity between Islander and Government interpretations of the Treaty raises questions as to the Treaty's true intent.

Disagreement, such over what constitutes 'social' and 'international' issues, is a matter of differing understandings of the Treaty. The Islanders believe that the Treaty is the cause of many of the difficulties they face every day, whereas the Commonwealth is certain the Treaty is effectively managed and that these difficulties are domestic in nature.¹²⁷ Contrasting understandings of the Treaty's purpose have created a situation in which the Government cannot (will not?) understand the complaints about the Treaty's ineffectiveness, and Islanders and their supporters have difficulty in reconciling the purported aims of the Treaty with their daily reality. These 'internal' misunderstandings may provide the Islanders with another reason to seek 'autonomy'.¹²⁸

The Australian Government views the Treaty as a document predominantly designed to resolve issues of sovereignty and jurisdiction, and it appears that the aspects of the Treaty lauded by critics¹²⁹ have limited significance. It views the Treaty as a prescriptive document, providing general guidance to the Treaty's administrators. Thus, the Australian Government regards the Treaty as fulfilling its purpose.¹³⁰ The Treaty acknowledges that there will be alterations to what is defined as a traditional lifestyle, and provides for this. The provisions relating to the Islanders or the environment, like Article 29, the settlement of disputes, direct, but do not determine *how* to achieve certain aims of the Treaty.

DFAT views the Treaty as an unqualified success because it has "managed an unmanageable situation" in that it has (apparently) regulated border movement in an area extremely difficult to

¹²⁶Lui (Jr), *Annual Report*, p.2.

¹²⁷Conversation with DFAT representative, 18 January 1996.

¹²⁸For information relating to the Islanders desire for self-determination see Keohoe-Forutan, *op. cit.*; and Scott, *op cit.*

¹²⁹For commentary on the Treaty, see Ryan and White, *op. cit.*; Burmester, *op. cit.*; and Kaye, *op. cit.*

¹³⁰Conversations with DFAT representatives. Various dates.

control movement (of people, flora and fauna, drugs, and weapons, to name a few 'unmanageables'). This starkly contrasts with the Islander understanding that the Treaty was to universally "protect [Islander] rights". From conversations with Government representatives, it seems that the Government sees the Treaty as establishing a broad framework within which to work - that is, as a prescriptive document.

This contrasts with the Islander's view that

[t]he big problem at the moment is with the Torres Strait Treaty...at one stage when it was first implemented we all thought that it was there to protect our rights but now it seems that it is there to protect everyone else except us - the Torres Strait Islanders themselves - and this problem has built up over the years in frustrations.¹³¹

It appears that the Islanders interpret the Treaty as a descriptive document, which fails to provide direction on what the Government regards as 'domestic social policy' areas - economic prosperity and opportunities, social security and health.¹³² Concerns over these issues are seen to be the fault of the Treaty. It is undeniable that the Treaty has affected every aspect of the Islanders lifestyles, although its impact on these issues is sometimes unclear or indirect.¹³³ Islanders view the Treaty as central to their lifestyle - they must live under its umbrella, and the general sentiment is that it is an inadequate shelter.

Although not directly related to the effectiveness of the Treaty itself in achieving its aims, a factor which may influence Islander opinions about the Treaty, and result in the widely disparate opinions reflected above, is the degree to which they are able to obtain accurate, reliable information. Access to information may vary from island to island, contributing to the differing opinions held across the Strait. Without adequate access to information, it is difficult

¹³¹Mulrennan, *op. cit.*, p.11.

¹³²Conversation with Gaffney, 22 January 1996.

¹³³Whether this is due to bureaucratic deafness, Islander difficulties in articulating their complaints, or both is unclear.

to form a balanced opinion. From my own experience, obtaining information relating to the Treaty from the Commonwealth Government is akin to extracting teeth.¹³⁴ As others have noted,¹³⁵ by controlling access to knowledge, one has power over others. This is exacerbated if the information is not only physically inaccessible, but if it is incomprehensible. Controlling access to land, sea country, knowledge, or basic human rights allows the controllers to marginalise, discredit, and silence others.¹³⁶ This can be overcome (if desired) by greater administrative transparency.

A difficulty in assessing the Treaty is the difficulty in separating the document from its implementation and interpretation. While I have specifically noted that this paper is an examination of the Treaty, it is impossible to examine a document in isolation - the effectiveness of the document is related to its effective implementation, administration and maintenance. Bureaucrats from Canberra drew up the Treaty for politicians to sign. Consequently, Islander representation on the various committees and councils designed to administer the Treaty is minimal.¹³⁷ Thus it is the decision making which is also examined here, and it is here the art of 'resolving' issues contributes to the limited success of the Treaty.

The moratorium extension is an example of *resolution*. Extending the moratorium indefinitely only serves to postpone actual decision making, because there is a need to insist on an unreserved commitment to preservation of the marine environment in order to prevent *permanently* the possibility of environmental degradation through exploitation of the Strait's mineral wealth. The tendency to make decisions by putting them off would appear to be an

¹³⁴After several telephone conversations with various departments including DFAT, Department of Immigration and Ethnic Affairs, and the Australian Customs Service, I provided a list of questions to DFAT on 24 January 1996. As at 1 March 1996, I have received no response from DFAT, and my subsequent requests for written confirmation of DFAT's inability/unwillingness to answer these questions have been ignored.

¹³⁵Pettman, *Living in the Margins*; Altman et al., *op. cit.*, pp.65-72.

¹³⁶Feminist theory, particularly Enloe, *op. cit.*, has a great deal to say about this subject.

¹³⁷See the Torres Strait Protected Zone Joint Authority *Annual Report*, (any year) for the numbers of Islanders involved in fisheries recommendations. Note that the Joint Authority does not have authority to implement, only to advise. Altman et al., *op. cit.*, pp.20-21.

aspect of the establishment of the Treaty itself. Within the official chronology contained in the Treaty Report, the decision making has been delayed for various reasons, or acted upon with what may be construed as undue haste.¹³⁸ Decision making, or lack thereof, and bureaucratic red tape, obfuscation, and petty mindedness are themselves cause for conflict and could be interpreted as a conspiracy against obtaining information in relation to the Torres Strait, the Treaty, or the international affairs relating to this area.¹³⁹ Remediating problems like the moratorium, complaints about free movement, and academic queries about the Treaty by ignoring them, 'passing the buck', or acting in such a way that there *appears* to be a resolution when it is only procrastination does little to address concerns about the effectiveness of the Treaty.

The conflicting understandings of the Treaty - its purpose, effectiveness, and future usefulness need to be addressed. Doing this is a way of addressing issues relating to its key provisions, and helps to overcome the conflicting perspectives noted above. I will now turn to ways of improving or resolving various issues.

Key Issues - Towards Resolution?

Review - A Means of Conflict Resolution

As noted above, the Treaty meets its objectives to varying degrees, depending on viewpoint. As the Treaty becomes increasingly dated, an apparently simple method of ascertaining the extent to which it fulfils its purpose would be by reviewing it. Any review must include Islander representatives, PNG representatives, any administrative bodies, both Governments, and other groups with significant interest in the Strait's management. It would also appear common sense for there to be provisions for periodic or regular review of the Treaty. The

¹³⁸Joint Committee on Foreign Affairs and Defence, *op. cit.*, pp.1-5. The chronology shows that negotiations produced few results between 1972 and 1978. The Treaty was then completed within a year. The document then took another seven years to be ratified. This appears to illustrate a stop-start approach to everything from the implementation to administration and review of the Treaty.

¹³⁹The general air of secrecy surrounding Government departments in relation to the Torres Strait is both astounding and perplexing.

Torres Strait Joint Advisory Council's (JAC) responsibilities include resolving problems at a local level; considering and recommending to Australia and PNG issues which may affect either the traditional way of life and livelihood of the traditional inhabitants; and reporting and recommending to Australia and PNG any matters 'relevant to the effective implementation of [the] Treaty', including the provisions on the marine environment.¹⁴⁰ This would indicate that there are provisions for review within the Treaty. However, the JAC has no powers of management or administration, this being left to the numerous relevant authorities.¹⁴¹

Although there are provisions for review of specific areas, there are no provisions within the Treaty for periodic or ongoing review of the Treaty itself. Given the changing, and apparently sensitive,¹⁴² political environment of the Torres Strait the lack of ongoing revision of the Treaty would appear at odds with its liberal sentiment. In light of the development of international thought on indigenous issues and, significantly for Australia, the Mabo decision, by the High Court in 1992 dismissing the legal myth of *terra nullius* and acknowledging the existence of Native Title, the dearth of review or review provisions since then is somewhat disconcerting.¹⁴³ Similarly, the Islander goal of greater participation in administering the Torres Strait, their desire for 'autonomy',¹⁴⁴ concern for the Islander way of life, protecting the environment and seeking to ensure that ecologically sustainable development principles are applied in a manner suited to the Torres Strait are not, and cannot be, provided by the Treaty. This inability or reluctance to address issues which now affect the traditional inhabitants and

¹⁴⁰Department of Foreign Affairs and Trade, *op. cit.*, Article 19, pp.24-26. DFAT has not replied to my request for a copy of the JAC minutes, dated 24 January 1996, from 1995, and efforts to obtain the minutes from Customs and the Torres Strait Regional Authority, although speedily answered, were unsuccessful as they are not available for public perusal.

¹⁴¹See Keohoe-Forutan, 'Self-Management and the Bureaucracy: The Example of Thursday Island' in Lawrence and Cansfield-Smith, *op. cit.*, pp.421-426.

¹⁴²To certain Commonwealth agencies, at least.

¹⁴³Smith. *Mabo: Three Years On: Current Developments in Native Title Law*. Brisbane: Department of Justice and Attorney General, 1995.

¹⁴⁴See footnote 95.

marine environment of the Torres Strait need to be addressed for the Treaty to retain its relevance.

Such a review must factor in other issues such as the increased pressure upon governments internationally to acknowledge the rights, particularly land, sea, and customary law of indigenous peoples; the increasingly international nature of indigenous movements; the shift of emphasis from 'development at any cost' to ecologically sustainable development; the growing awareness of the potential contribution of traditional ecological knowledge; and an increasingly holistic understanding of the complex global ecology. To argue that these factors are irrelevant to interpretation, implementation and management of the Treaty is tantamount to ignoring the changing global political climate.

Reviewing the Treaty has many obvious advantages in terms of alleviating some conflicting issues. This is, of course, assuming that it would be an inclusive, comprehensive review with the capacity to think outside rigid bureaucratic lines - always a difficult requirement. Reviewing the Treaty and establishing *effective* periodic review mechanisms, would ensure its relevance to the changing needs of the 'traditional' inhabitants of both nations, which may aid in resolving dissatisfactions with the Treaty. It would demonstrate an awareness of, commitment to, and acknowledgment of, the changing situation within the Strait by the Australian and PNG Governments, which may aid in reducing cynicism about the Treaty's effectiveness. This would also allow the Treaty to encompass the changing self confidence and experience of the Islanders with political and administrative fora. A review process may also be a way of debunking disinformation about the Treaty, rectifying the conflicting perceptions of the Treaty's purpose, and decreasing the bureaucratic nature of the Strait.

Better Management Through Ecological Understanding

The review process would be complemented by a clearer understanding of the environment of the Strait. The lack of understanding about of the ecology of the Torres Strait is another difficulty with the Treaty's provisions relating to environmental concerns. Despite recent

scientific undertakings to expand understanding of the region, most notably the Torres Strait Baseline Study, information is incomplete and patchy. Without a comprehensive understanding of the area, it is difficult to determine exactly how best to ensure "conservation, management and optimum utilisation of Protected Zone...fisheries".¹⁴⁵ This is slowly being addressed,¹⁴⁶ however, it must be an ongoing commitment by both parties (as per Treaty specifications) to work together to attain a comprehensive understanding of the region, and its interactions with neighbouring regions.¹⁴⁷ Given the area's ecological sensitivity, it would be reasonable to take all possible precautions to ensure environmental preservation until the ecology is adequately documented.

Broadening our ecological understanding is another means of resolving various concerns with the effectiveness of the Treaty. An awareness of the ecology addresses unknowns, helping allay misunderstandings relating to environmental factors - for example, instead of blaming Ok Tedi for naturally occurring fish deaths, people would have a better understanding of the complex factors which may lead to such an occurrence. A comprehensive understanding of the potential effects of mining waste, shipping accidents or other pollutants upon the marine environment aids in establishing effective precautionary and follow-up programs. This knowledge could be used to inform and influence policy decisions, helping to prevent the 'boxing' of disparate ecological areas, and aiding in the integration of neighbouring management programs. This a more holistic approach. A thorough knowledge of the marine environment within the Strait can only prove beneficial to the environment, the Islanders, and the overall effectiveness of the Treaty.

The interchangeability of the 'domestic' and 'international' is a facet of Islander life under the Treaty. The difficulty in this is the difficulty in having bureaucrats accept that the mentality

¹⁴⁵Department of Foreign Affairs and Trade, *op. cit.*, Article 21, p.26.

¹⁴⁶By organisations such as Cape York Land Use Strategy (CYPLUS), the Great Barrier Reef Marine Park Authority (GBRMPA), research programs like the Torres Strait Baseline Study and MaSTS.

¹⁴⁷The interaction of both marine regions, such as the Timor and Arafura seas, and land-based regions, such as Irian Jaya, Cape York and PNG need to be further studied.

which 'boxes' areas in order to deal with them is inadequate if not placed in the broader international context, particularly for environmental management. The Islanders are attempting to take a holistic perspective of the Torres Strait and its management.¹⁴⁸ Again, the issue of different understandings of the Treaty, alternate ways of managing and implementing effective strategies, and a Treaty which is outdated arise. The vision of the Treaty needs to be extended and integrated to incorporate other, neighbouring strategies to be responsive to Islander and environmental requirements. Herein lies the difficulty of creating global interlocking policy - improbable given the incommensurability of different nations' agendas.¹⁴⁹ However, this does not preclude the respective Governments taking a more comprehensive approach to the Treaty.

International Consensus Building

Such a comprehensive approach would necessitate closer ties between PNG and Australia. This would be the first step in practically implementing international consensus on environmental and indigenous issues. Currently, the international consensus that something should be done about the environment is defeated by the lack of substantial results. The Torres Strait borders three states - PNG, Australia and Indonesia. The lack of international agreement between these nations makes the possibility of the Islanders being able to effectively manage the Torres Strait alone unlikely. Without an ultimate agreement and course of action between the three nations to ensure environmental preservation and intergenerational equity, all Islander actions may prove futile. In such situations, a nation's Government may play a significant role for it and its member's long-term benefit.

¹⁴⁸See Mulrennan, *op. cit.*; Mulrennan and Hanssen, *op. cit.* Dews expressed the need for such a holistic approach to me via telephone. MacFarlane, *op. cit.*, says 'In considering the information needs for marine conservation planning in Torres Strait at this point in time, it is proposed to focus on the regional level, with the objective of describing habitat types, arriving at recommendations on protection of representative habitats and key conservation areas, and *establishing a sound framework for management of the whole Torres Strait on an holistic basis to prevent major impacts on the area and sustain healthy ecosystems.*' (emphasis added).

¹⁴⁹Some examples close to home are PNG's program of economic development versus Australia's commitment to ESD, and the barely controlled deforestation within the Solomon Islands versus the Australian 'Greening Australia' program.

The Value of Local Management

Although governments have a role to play in international consensus building, local management, particularly of the Strait, has several advantages over the 'administration by bureaucracy' currently occurring.¹⁵⁰ Reports on the coastal zone repeatedly emphasise the importance of local input, as this is a valuable source of knowledge.¹⁵¹ For the Islanders, preservation of the environment and a commitment to ecologically sustainable development ensures preservation of their lifestyle.¹⁵² A focus on encouraging indigenous peoples owning "institutions to regulate rights and obligations are crucial for maintaining the harmony with nature and the environmental awareness characteristic of the traditional way of life".¹⁵³ Empowering the Islanders in such a way allows them to preserve and define for their own purposes their way of life. The Treaty's provisions do not encourage active Islander participation, nor do they acknowledge the role of the traditional people in the protection and preservation of the marine environment - the management regimes were formed at a time when indigenous participation was not encouraged.

The exclusion, deliberate or otherwise, of the people who have the largest stake in the area by the Treaty is baffling. Islanders have a very clear sense of possession of the Strait: as Lui says "we believe that the islands, reefs and seas of Torres Strait are ours...[but] we have almost no power to manage or protect them."¹⁵⁴ The Treaty's inability to deal with such issues again necessitates a review, particularly given the Commonwealth Government's emphasis on ecologically sustainable development, the United Nations focus on indigenous peoples,¹⁵⁵ and the Brundtland report, which "is very clear in the need for the countries of the world to support

¹⁵⁰Keohoe-Forutan, *op. cit.*, pp.421-426.

¹⁵¹Sitarz, *Agenda 21. The Earth Summit Strategy to Save Our Planet*. Colorado: Earthpress, 1994.

¹⁵²Lui (Jnr), 'A Torres Strait Perspective', *op. cit.*, p.65.

¹⁵³Mulrennan and Hanssen, *op cit*, p.2.

¹⁵⁴Lui (Jnr), *op. cit.*, p.63.

¹⁵⁵Sitarz, *op. cit.*

and 'empower' indigenous peoples in those remaining homelands where they have survived for thousands of years".¹⁵⁶

The contribution the Islanders can make to protect and preserve the marine environment (their home) would be beneficial to the environment especially in terms of Commonwealth Government goals of reconciliation and the maintenance of the traditional lifestyle. This is an area of the Treaty which needs to be reviewed.

Conclusion

In terms of conflict management the Treaty is a qualified failure. It does offer a degree of security for the Islanders and their Strait. However, this alone is not enough. Without a review process, and a reassessment of the Treaty through eyes other than those of the bureaucracy's, the conflicts caused by the Treaty have the potential to multiply and escalate, outweighing the Treaty's advantages. At its inception, the Treaty was an effective means of bringing order to a complex situation. It was farsighted in its approach to the environmental and resident indigenous peoples, providing a broad descriptive framework within which each nation's Government could operate to protect the traditional way of life and the environment upon which it depended. Yet the world has seen radical change over the last decade. Factors such as a greatly increased awareness of the environment imperative and recognition of the rights of indigenous peoples have changed our understanding of the world. These factors have contributed to changes within the Strait that the original drafters could not have anticipated.

The far-sighted nature of the Treaty in terms of its definition of 'traditional', fails to anticipate the need for the entire document to adapt to change. Liberal provisions within the Treaty do not compensate for the absence of effectively implemented provisions or an instituted program of regular review. The Treaty's advantages, most importantly protection of the environment, are minimalised by current events. The disputes over free movement, divergent paths of the two indigenous peoples, misunderstandings over the Treaty's purpose, and, to a lesser extent, the

¹⁵⁶Mulrennan, *op. cit.*, p.1.

indeterminate state of the moratorium are key problems created by the Treaty. These, plus the lack of enforcement provisions cast doubt on the Treaty's effectiveness in terms other than the Government's boundary-oriented perspective.

In terms of the Treaty and its effectiveness, it can be concluded that the Treaty's intent was originally admirable. The ensuing administrative failure, including the failure to regularly review and effectively implement environmental safeguards has shown that the Treaty's overall performance does not satisfactorily meet current environmental and indigenous requirements. Additionally, the inability to adjust to changes relating to indigenous empowerment, ecologically sustainable development, and the convergence of the domestic/international dichotomy has substantially reduced the Treaty's effectiveness. My research has highlighted the need for greater Commonwealth Government transparency, active implementation rather than abstract theorising, and a need for an integrated approach to Strait-related issues.

These findings suggest that, with a move from clearly defined states toward a world of increasing regionalisation and globalisation in which allegiances and identities are increasingly fragmented, the effectiveness of treaties need to be re-examined. This is particularly so in relation to indigenous peoples and the effects, internal and external, they have upon state actions and sovereignty. It may be that, as with the environment, resolving indigenous issues will require a shift from a purely economic focus to a broader, more holistic, and 'other' means of conflict management. Equally, we may discover that a greater comprehension of indigenous peoples and issues offers mediators alternate perspectives to issues currently being resolved.

The problems raised in this study are fundamentally issues of the politics of power, knowledge and legitimacy. The acceptance of 'indigenous' into the mainstream can change the way we understand international relations. The transborder nature of *Ailan Kastom* questions the legitimacy of the Treaty's provision for and restriction of the Islanders' rights. Also challenged is the notion that the 'settler state' has any right in determining the political fate of an indigenous people.

The Treaty illustrates problems in dealing with environmental and indigenous peoples rights within an international arena. It further highlights the need for such documents to be dynamic rather than static. To achieve this a greater understanding of the purposes of and principles behind the Treaty is needed by both bureaucrat and Islander. Achievement of these goals will ensure that the Treaty's rhetoric and sentiment are effectively implemented. The principles and sentiment expressed in the Treaty are an admirable attempt to reconcile the modern state, its indigenous people and the environment they both share. Yet it has been successful only within a narrow framework. The Yolgnu of Arnhem Land would be well advised to learn the lessons of the Treaty as part of their pursuit to have traditional links with the Macassans acknowledged.¹⁵⁷

¹⁵⁷Manbuynga ga Rulyapa (Arafura Sea) Ginytjirang Mala (Steering Committee). *An Indigenous Marine Protection Strategy for Manbuynga ga Rulyapa*. Fax received from Dermot Smyth, 5 December 1994. Courtesy Johanna Sutherland. Further information can be found in: Campbell and Wilson. *The Politics of Exclusion. Indonesia Fishing in the Australian Fishing Zone*. Perth: Indian Ocean Centre for Peace Studies, Monograph No.5, 1993; *Illegal Entry*. Centre for South-East Asian Studies, Northern Territory University. Occasional Paper Series No.1, 1992; Joint Standing Committee on Foreign Affairs, Defence and Trade, *Australia's Relations With Indonesia*. Canberra: Australian Government Publishing Service, November 1993; and MacKnight, 'Macassans and Aboriginals' in *Oceania*. 42 (4) 1972, pp.283-321.

Bibliography

Australian Broadcasting Corporation. 'Four Corners' program, 12 February 1996.

Alley, Roderic. *Order formation in the South Pacific*. n. p., n. d.

Altman, Jon. 'The Economic Future of Remote Aboriginal and Torres Strait Islander Communities' in *Australian Aboriginal Studies*. 2, 1990, pp.48-52.

Altman, J.C., W.S. Arthur, and H.J. Bek. *Indigenous Participation in Commercial Fisheries in Torres Strait: a preliminary discussion*. Canberra: Centre for Aboriginal Economic Policy Research Discussion Paper No.73, 1994.

Altman J.C., A. Ginn, and D.E. Smith. *Existing and Potential Mechanisms for Indigenous Involvement in Coastal Zone Resource Management*. Canberra: Commonwealth of Australia, 1993.

Arthur, W.S. 'Culture and Economy in Border Regions: the Torres Strait Case' in *Australian Aboriginal Studies*. 2, 1992, pp.15-33.

'Australia-Indonesia: Treaty on the Zone of Cooperation in the Area Between the Indonesian Province of East Timor and Northern Australia' in *International Legal Material*. 29 (3) 1990, pp.469-474.

'Australia - Papua New Guinea Ratification of the Torres Strait Treaty' in *Australian International Law News*. March 1985, p.321.

Australia's Offshore Maritime Interests. Canberra: Occasional Papers in Maritime Affairs No.3, 1985. n. p.

Babbage, Ross. *The Strategic Significance of the Torres Strait*. Canberra: Strategic and Defence Studies Centre Research School of Pacific Studies, Australian National University, 1990.

Ban, Paul. 'The Quest for Legal Recognition of Torres Strait Islander Customary Adoption Practice' in *Aboriginal Law Bulletin*. 2 (60) February 1993, pp.4-5.

Bateman, Sam, and Dick Sherwood. *Australia's Maritime Bridge into Asia*. Australia: Allen and Unwin, 1995.

- Bates, G.M. *Environmental Law in Australia*. Sydney: Butterworths, 1995.
- Beckett, Jeremy. *Politics in the Torres Straits Islands*. 1963. Thesis, n.p.
- Beckett, Jeremy. *Torres Strait Islanders: Customs and Colonialism*. Sydney: Cambridge University Press, 1988.
- Bokor, A.G. 'Treaties, Alliances and Aid within the Asia Pacific Region and the Security they Foster' in *Australian Defence Force Journal*. 110, January/February 1995, pp.3-7.
- Boyce, P.J., and M.W.D. White (eds). *The Torres Strait Treaty. A Symposium*. Australian Institute of International Affairs (Queensland Branch) in association with Australian National University Press, 1981.
- Bradley, Vera. *I Didn't Know That: Cairns and Districts, Tully to Cape York, 1939 -1946, Service Personnel and Civilians*. Brisbane: Boolarong Press, 1995.
- Brantenberg, Terje, Janne Hansen, and Henry Minde. *Becoming Visible. Indigenous Politics and Self-Government. Proceedings of the Conference on Indigenous Politics and Self-Government in Tromsø, 8-10 November, 1993*. Norway: University of Tromsø Centre for Sámi Studies, 1995.
- Brennan, Frank. *One Land, One Nation. Mabo - Towards 2001*. Australia: University of Queensland Press, 1995.
- Brown, Jonathan. 'Indonesian Fishing around Ashmore and Cartier Islands' in *Australian Foreign Affairs Record*. 59 (3) March 1988, pp.83-84.
- Burmester, H. 'The Torres Treaty: Ocean Boundary Delimitation by Agreement' in *The American Journal of International Law*. 76 (2) 1982, pp.321-349.
- Campbell, Bruce C., and Bu V.E. Wilson. *The Politics of Exclusion. Indonesian Fishing in the Australian Fishing Zone*. Perth: Indian Ocean Centre for Peace Studies, Monograph No.5, 1993.
- Catch Sharing in the Torres Strait Protected Zone*. Queensland Boating and Fisheries Patrol. Australian Fisheries Service. Pamphlet, August 1990, n.p.

Cordell, John. *Managing Sea Country. Tenure and Sustainability of Aboriginal and Torres Strait Islander Marine Resources. Report on Indigenous Fishing.* 1991. n.p.

David, Joey. 'Letter to the author'. 27 July 1995.

Davis, R. *Looking beyond the borderline: development performance and prospects of Saibai Island, Torres Strait.* Centre for Aboriginal Economic Policy Research Discussion Paper No.80, 1995.

Denoon, Donald. *The Boundaries of Australian Cultural Studies.* n.p., n.d.

Department of the Arts, Heritage and Environment, *Annual Report 1984-1985.* Canberra: Australian Government Publishing Service, 1985.

Dight Ian J., and William Gladstone. *Torres Strait Baseline Study: Pilot Study Final Report June 1993.* Research publication No.29, Great Barrier Reef Marine Park Authority, July 1994.

Duncan, Helen. *The Torres Strait Islanders Vol.1 Socio-Economic Conditions in the Torres Strait: A Survey of Four Reserve Islands.* Canberra: Research School of Pacific Studies, Dept of Economics, Australian National University, 1974.

Doran, Peter. 'Earth, power, knowledge: towards a critical global environmental politics' in MacMillan and Linklater (eds), *Boundaries in Question - New Dimensions in International Relations.* New York: Pinter, 1995, pp.193-211.

Ecologically Sustainable Development Steering Committee. *Draft National Strategy for Ecological Sustainable Development. Discussion Paper June 1992.* Canberra: Australian Government Publishing Service, 1992.

Ecologically Sustainable Development Working Groups Final Report - Fisheries. Canberra: Australian Government Publishing Service, November 1991.

The Economist, 'The Natural Resources Myth' in *The Australian.* 2 January 1996, p.20.

Elshtain, Jean-Bethke. *Women and War.* Great Britain: Harvester Press, 1987.

Enloe, Cynthia. *Bananas, Beaches and Bases. Making Feminist sense of International Politics.* Berkeley: University of California Press, 1990.

IDepartment of the Environment, Sport and Territories. *The Environment Portfolio*. Canberra:
AAustralian Government Publishing Service, 1993.

EEvans, Gareth, and Bruce Grant. *Australia's Foreign Relations in the World of the 1990s*.
AAustralia: Melbourne University Press, 1992.

IDepartment of Foreign Affairs and Trade. *Treaty Between Australia and the Independent State
of Papua New Guinea*. Treaty Series 1985 No.4. Canberra: Australian Government
FPublishing Service, 1985.

AA Guide to Management Arrangements for Torres Strait Fisheries. Canberra: Australian
IFisheries Management Authority, February 1995.

Haines, A.K., G.C. Williams, D. Coates (eds). *Torres Strait Fisheries Seminar Port Moresby
11-14 February 1985*. Canberra: Australian Government Publishing Service, 1986.

IHalliday, F. 'International Relations: Is there a New Agenda?' in *Millennium*. 20(1) 1991,
pp.57-72.

IHau'ofa, Epeli. 'Our Sea of Islands' in *The Contemporary Pacific*. Spring 1994, pp.148-161.

IHenry, Rosita. 'The Road From *Mabo* Towards Autonomy' in *Alternative Law Journal*. 18
(1) 1993, pp.12-16.

IHiggott, Richard, and J.L. Richardson. *International Relations. Global and Australian
IPerspectives on an Evolving Discipline*. Canberra: Department of International Relations,
IResearch School of Pacific Studies, The Australian National University, 1991.

IGAE (*Intergovernmental Agreement on the Environment*) May 1992. n.p.

Illegal Entry. Centre for South-East Asian Studies, Northern Territory University. Occasional
Paper Series No.1, 1992.

Johnstone, M. 'Letter to the author. Reply to request for copy of the Joint Advisory Council
1995 meeting'. 5 January 1996.

Joint Committee on Foreign Affairs and Defence. *The Torres Strait Treaty. Report and
Appendixes February 1979*. Canberra: Australian Government Publishing Service,
Parliamentary Paper 161/1979, 1979.

Joint Committee on Foreign Affairs, Defence and Trade. *Australia's Relations With Papua New Guinea*. Canberra: Australian Government Publishing Service, December 1991.

Joint Standing Committee on Foreign Affairs, Defence and Trade. *Australia's Relations With Indonesia*. Canberra: Australian Government Publishing Service, November 1993.

Jull, Peter. *The Politics of Northern Frontiers*. Darwin: North Australia Research Unit, the Australian National University, 1991.

Jull, Peter. *A Sea Change. Overseas Indigenous-Government Relations in the Coastal Zone*. Canberra: Commonwealth of Australia, 1993.

Jull, Peter. *Changing Political Contexts for Torres Strait: New Realities and Necessary Techniques*. 1994, n. p.

Jull, Peter. *The Concept of Regional Agreements and Torres Strait. A Resource Paper for the Island Coordinating Council (ICC) of Torres Strait*. 1995, n. p.

Jull, Peter. 'Letter to the author.' 17 January 1996.

Jull, Mulrennan, Sullivan, Crough and Lea (eds). *Surviving Columbus. Indigenous Peoples, Political Reform and Environmental Management in North Australia*. Darwin: North Australia Research Unit, the Australian National University, 1994.

Jull, Peter, and Sally Roberts. *The Challenge of Northern Regions*. Darwin: North Australia Research Unit, the Australian National University, 1991.

Käkönen, Jyrki (ed). *Perspectives on Environmental Conflict and International Politics*. Great Britain: Pinter, 1992.

Kaye, Stuart B. 'The Torres Strait Islands: Constitutional and Sovereignty Questions Post-Mabo', in *University of Queensland Law Journal*. 18 (1) 1994, pp.38-49.

Keating, P.J. *Address in Anzac Park*. (transcript), Thursday Island, 12 September 1995, n.p.

Kennedy, Fiona. 'Gatecrashers jeopardise Torres Strait Treaty' in *The Australian*. 3 January 1996, p.3.

Keohoe-Forutan, Sandra J. *Torres Strait Independence: A Chronicle of Events*. Brisbane: Department of Geographical Studies (Geography, Planning, Surveying) Research Report No.1. University of Queensland, July 1988.

Kohona, Palitha T.B. 'Bilateral and Multilateral Treaty Action: Some Recent Developments' in *Australian Foreign Affairs Record*. 57 (7) 1986, pp.588-595.

'Land Rights for Torres Strait Islanders' in *Reform*. 53 January 1989, p.29-30.

Larsen, Chris. 'Raid in Strait Island by PNG Rivals' in *The Courier Mail*. 19 December 1995. p.10.

Lawrence, David. 'Re-evaluating interpretations of customary exchange in the Torres Strait' in *Australian Aboriginal Studies*. 2, 1991, pp.2-12.

Lawrence, David, and Ian Dight. 'The Torres Strait Baseline Study: Environmental Protection of a Tropical Marine Environment in Northern Australia', in *Coastal Zone '91 Proceedings of the 7th Symposium on Coastal and Ocean Management*. ASCE: California, July 8-12 1991, pp.1125-1139.

Lawrence, David, and Tim Cansfield-Smith (eds). *Sustainable Development for Traditional Inhabitants of the Torres Strait Region. Proceedings of the Torres Strait Baseline Conference. Kewarra Beach, Cairns, Queensland 19-23 November 1990*. GBRMPA: Commonwealth of Australia, September 1991.

Lea, J.P., and P.J. Phibbs. *Torres Strait Regional Development Plan 1990-1995*. Prepared for the Torres Strait Island Coordinating Council. Sydney: Department of Urban and Regional Planning University of Sydney, 1990.

Lui, Getano (Jnr). 'A Torres Strait Perspective' in Australian Broadcasting Commission and Mandawuy Yunupinga, *Voices From the Land*. Sydney: ABC Bookshop, 1994, pp.62-75.

Lumb, R.D. 'The Torres Strait Islands: Some Questions Relating to their Annexation and Status', in *Federal Law Review*, 19, 1990. pp.154-168.

MacFarlane, Wallace. *Government Approaches to Marine Management in Torres Strait*. n.p., n. d.

MacFarlane, Wallace. *Torres Strait: Conservation Planning and Environmental Protection*. Queensland Department of Environment and Heritage, 3 February 1995. n.p., N. pag.

MacFarlane, Wallace. 'Letter to the author. Re: Masters thesis'. 17 January 1996.

MacKnight, C.C. 'Macassans and Aboriginals' in *Oceania*. 42 (4) 1972, pp.283-321.

Mam, Stephen, and Matt Foley. 'Land Conflict in the Torres Strait', in *Legal Service Bulletin*. 5 (5) 1980, pp.232-233.

Manbuynga ga Rulyapa (Arafura Sea) Ginytjirang Mala (Steering Committee). *An Indigenous Marine Protection Strategy for Manbuynga ga Rulyapa*. n.p., n.d. Fax recieved from Dermot Smyth, 5 December 1994. Courtesy Johanna Sutherland.

Millar, T.B. *Contemporary Alliances*. Canberra: Canberra Studies in World Affairs No.2, Department of International Relations, The Australian National University, 1981.

Mullins, S. *Torres Strait: A History of Colonial Occupation and Culture Contact 1864-1897*, Rockhampton: Central Queensland University Press, 1994.

Mulrennan, Monica E. *Coastal Management: Challenges and Changes in the Torres Strait Islands*. North Australia Research Unit Discussion Paper No.5, April 1992.

Mulrennan, Monica. *Towards a Marine Strategy for Torres Strait (MaSTS)*. Published jointly by the Australian National University North Australia Research Unit and the Torres Strait Island Coordinating Council, 1993.

Mulrennan, Monica, and Nicola Hanssen with the Island Coordinating Council. *Marine Strategy for Torres Strait Policy Directions*. Joint publication between the Australian National University North Australia Research Unit and the Torres Strait Island Coordinating Council, 1994.

Mura Kosker Sorority Torres Strait pamphlet. n.p., n.d., N. pag.

Mura Kosker Sorority, *Turning the Tide. Conference on Indigenous Peoples and Sea Rights. Report from the representatives from Mura Kosker Sorority*. n.p., n.d.

Murphy, Damien. 'Influx of PNG mainlanders stirs Torres Strait tension' in *Pacific Issues*. 3, 1986, pp.40-41.

National Strategy for Ecological Sustainable Development. Canberra: Australian Government Publishing Service, December 1992.

Nietschmann, Bernard and Judith. *Eight Decades on an Island: Social and Ecological Relationships in the Torres Strait. Seminar Paper Monday 22 August 1977.* Canberra: Department of Human Geography, Research School of Pacific Studies, ANU, 1977, n.p.

Pacific Magazine. Hawaii: Pacific Magazine Corporation, 20 (4) 112, July/August 1995.

Pacific News Bulletin. 'Influx of PNG mainlanders stirs Torres Strait tension'. 3, 1986, pp.40-41.

Pacific News Bulletin. 'Restless Current in Torres Strait'. 3 (1), February 1988, p.12.

Pacific News Bulletin. 'Thinking About Self-Determination "fundamental to all human rights"'. 3 (3), June 1988, pp.8-9.

Pacific News Bulletin. 'An end to colonialism by the year 2000'. 5 (5), June 1990, p.3.

Pacific News Bulletin. 'Torres Strait: an ocean-based culture under threat from others' (sic) decisions'. 17 (3), March 1992, pp.8-9.

Pacific News Bulletin. 'Ok Tedi concerns'. 6 (9), September 1991, p.13.

Pacific News Bulletin. 'Torres Strait water study'. 7 (4), April 1992, p.11.

Pacific News Bulletin. 'Torres Strait concerns'. 8 (4), April 1993, p.14.

Pacific News Bulletin. 'Torres Strait Islands..."Cook stole it, Mabo regained it..."'. 8, (9), September 1993, pp.8-10.

Pacific News Bulletin. 'Self Determination in the Torres Strait'. 9 (1), January 1994, pp.6-7.

Pacific News Bulletin. 'Torres Strait Flag'. 9 (1), January 1994, pp.15.

Pacific News Bulletin. 'Solomons-TSI study'. 9(2), February 1994, pp.13.

Pacific News Bulletin. 'Torres Strait pollution study'. 9 (5), May 1994, p.12.

Pacific News Bulletin. 'Torres Strait autonomy'. 9 (9), September 1994, p.12.

Pacific News Bulletin. 'PNG-Ok Tedi'. 9 (10), October 1994, p.7.

Pacific News Bulletin. Gaetano(sic) Lui, 'Torres Strait: we are a distinct people...with traditions widely shared in the Pacific'. 10(6), June 1995, pp.8-11.

Paterson, Matthew. 'Radicalizing regimes? Ecology and the critique of IR theory' in MacMillan and Linklater (eds). *Boundaries in Question - New Dimensions in International Relations*. New York: Pinter, 1995, pp.212-227.

Peterson, V. Spike. 'Transgressing Boundaries: Theories of Knowledge, Gender and International Relations' in *Millennium*. 21 (2) 1992, pp.183-206.

Pettman, Jan Jindy. *Living in the Margins*. St. Leonards: Allen and Unwin, 1992.

Pettman, Jan Jindy. 'Second Class Citizens? Nationalism, Identity and Difference in Australia', in Barbara Sullivan and Gillian Whitehouse (eds), *Governing Gender*. Kensington: University of New South Wales Press, forthcoming.

Department of Primary Industries and Energy. *Annual Report 1984-1985*. Canberra: Australian Government Publishing Service, 1985.

Department of Primary Industries and Energy. Torres Strait Protected Zone Joint Authority. *Annual Report 1987*. Canberra: Australian Government Publishing Service, 1988.

Department of Primary Industries and Energy. Torres Strait Protected Zone Joint Authority. *Annual Report 1988*. Canberra: Australian Government Publishing Service, 1989.

Department of Primary Industries and Energy. Torres Strait Protected Zone Joint Authority. *Annual Report 1989*. Canberra: Australian Government Publishing Service, 1990.

Department of Primary Industries and Energy. Torres Strait Protected Zone Joint Authority. *Annual Report 1990*. Canberra: Australian Government Publishing Service, 1990.

Pritchard, Sarah. 'Declaration on Rights of Indigenous Peoples Drafting Nears Completion in UN Working Group' in *Aboriginal Law Bulletin*. 2 (60) February 1993, pp.9-13.

Prescott, J.R.V. *Australia's Maritime Boundaries*. Canberra: Canberra Studies in World Affairs No.16. Department of International Relations, The Australian National University, 1985.

Queensland Legislative Review Committee. *Towards Self-Government. A Discussion Paper*. Cairns, August 1991, n.p.

Rees, W.E. *Sustainable Development and How to Achieve It*. Vancouver: University of British Columbia Planning Papers, School of Community and Regional Planning Departmental Paper No.15, August 1988.

Rees, W.E. *The Ecological Meaning of Environment-Economy Integration*. Vancouver: School of Community and Regional Planning, University of British Columbia Departmental Paper No.18, October 1989.

Resource Assessment Commission. *Coastal Zone Inquiry Recommendations from Previous Reports and Inquires Relevant to the Coastal Zone*. Information Paper No.2, Canberra: Australian Government Publishing Service, 1993.

Ryan, K.W., and M.W.D. White. 'The Torres Strait Treaty' in *Australian Year Book of International Law*. 7, 1976-1977, pp.87-113.

Sanders, W. *Reshaping governance in Torres Strait: the Torres Strait Regional Authority and beyond*. Canberra: Centre for Aboriginal Economic Policy Research Discussion Paper No.74, 1994.

Sharp, Nonie. 'A Landmark The Murray Island Case' in *Arena*. 94, 1991, pp.78-93.

Singe, John. *The Torres Strait. People and History*. Australia: University of Queensland Press, 1989.

Sitarz, Daniel. *Agenda 21. The Earth Summit Strategy to Save Our Planet*. Colorado: Earthpress, 1994.

Smith, Paul. *Mabo: Three Years On: Current Developments in Native Title Law*. Brisbane: Department of Justice and Attorney General, 1995.

Smyth, Dermot. *Understanding Country*. Council for Aboriginal Reconciliation Key Issue Paper No.1, Canberra: Australian Government Publishing Service, 1994.

Smyth, Dermot. *A Voice in All Places. Aboriginal and Torres Strait Islander Interests in Australia's Coastal Zone*. Canberra: Commonwealth of Australia, 1993.

Sutherland, Johanna. 'Rising Sea Claims on the Queensland East Coast' in *Aboriginal Law Bulletin*. 2 (56) 1992, pp.17-19.

Swain, Tony. *A Place For Strangers. Towards a History of Australian Aboriginal Being*. United Kingdom: Cambridge University Press, 1993.

Sylvester, Christine. *Feminist Theory and International Relations in a Postmodern Era*. Great Britain: Cambridge University Press, 1994.

Tasmanian Museum, Sea Fisheries Division, 'Wanted Dead or Alive! The Northern Pacific Seastar. *Asterias amurensis*', pamphlet, n.p., n.d., N. pag.

Tasmanian Museum, Sea Fisheries Division, draft pamphlet on the Northern Pacific Sea Star. n.p., n.d., N. pag.;

Tickner, J. Ann. *Gender in International Relations. Feminist Perspectives in Achieving Global Security*. New York: Columbia University Press, 1992.

Torres Prawn Handbook 1995. Australian Fisheries Management Authority, February 1995, n.p.

Torres Strait Fisheries Act 1984. Canberra: Australian Government Publishing Service, Reprint as at 31 January 1993, reprint No.2, 1993.

Torres Strait Fisheries Act 1984 (Queensland). Queensland Government Printer, Reprint as at 14 February 1995 (includes amendments up to Act No.37 of 1994), reprint No.1, 1995.

Torres Strait Islander Advisory Board. Pamphlet. n.p., n.d.

Torres Strait Protected Zone Joint Authority. *Annual Report 1986*. Canberra: Australian Government Publishing Service, 1987.

Torres Strait Protected Zone Joint Authority. *Annual Report 1990-1991*. Canberra: Australian Government Publishing Service, 1992.

Torres Strait Protected Zone Joint Authority. *Annual Report 1991-1992*. Canberra: Australian Government Publishing Service, 1993.

Torres Strait Protected Zone Joint Authority. *Annual Report 1992-1993*. n.p., n.d.

Torres Strait Protected Zone Joint Authority. *Annual Report 1993-1994*. Canberra: Australian Fisheries Management Authority. n.d.

Torres Strait Regional Authority. *1994-1995 Annual Report*. n.p., n.d.

Torres Strait Regional Council. *Annual Report 93-94*. n.p., n.d.

Torres Strait Treaty and You. Pamphlet produced by the Department of Foreign Affairs and Trade, July 1988, n.p, N. pag.

Townsville Bulletin Editorial. 'Independence or sheer impudence?' in *Townsville Bulletin*, 6 October 1995, 4.

Treadgold. *The Torres Strait Islanders Vol.II The Economy of the Torres Strait area: A Social Accounting Study*. Canberra: Research School of Pacific Studies, Dept of Economics, Australian National University, 1974.

Turning the Tide. Papers presented at conference on indigenous peoples and sea rights 14, 15, 16 July 1993. Darwin: Northern Territory University, 1993.

United Nations Conference on Straddling Fish Stocks and Highly Migratory Fish Stocks. Sixth Session, New York, 24 July-4 August 1995. World Wide Web site: <http://www.iisd.cc/linkages/fish.html>.

Walker, Jamie. 'Black Australia's Game Plan' in *The Weekend Australian*. 6-7 January 1996, p.20.

Walker, Ken, (ed). *Australian Environmental Policy. Ten Case Studies*. Sydney: University of New South Wales Press Ltd, 1992.

Wells, Pera. 'Addressing the Challenge of Reconciliation' in *Insight*. 3 (22) December 1994, p.18.

Werther, Guntram Fritz Al. *The Quiet Revolutions: Public Policy and the Structures of Aboriginal Self-Determination Movements in the First World*. USA: Washington University, 1990. Thesis, n.p.

Wiggin, Tom. 'To see us better than before' in *Signals, The Quarterly Magazine of the Australia National Maritime Museum*. 24, Spring 1993, pp.12-14, .

Williams, Geoff. *Fisheries and Marine Research in Torres Strait*. Canberra: Australian Government Publishing Service, 1994.

Wynhausen, Elizabeth. 'The Brothers', in *The Weekend Australian. Review*. 6-7 January 1996, pp.1-2.

Select List of People Consulted

Dr Robert Coles, Queensland Department of Primary Industry, Northern Fisheries Centre. 7

December 1995.

Joe David, Assistant Research Co-ordinator MaSTS. 27 July 1995,

16, 17, 22, 31 January 1996.

Geoff Dews, CSIRO Brisbane. 26 July 1995, 22 January 1996.

Ellie Gaffney, Mura Kosker Sorority. 22 January 1996.

Graeme Glover, Torres Strait Section, DFAT. 26 July 1995, 18, 20, 23, 31 January 1996

Duncan Hockey, Queensland Department of Primary Industry. 7 Dec 1995.

M. Johnstone, A/District Manager, Australian Customs Service. 5, 6 February 1996.

Peter Jull, 16 January 1996.

David Lawrence, Great Barrier Reef Marine Park Authority. 8 September 1995.

Allister MacCaffrey, DFAT. 31 January 1996.

Wallace MacFarlane, Senior Conservation Officer, Queensland Department of Environment and Heritage. 16 January 1996.

Benny Mills, Aboriginal and Torres Strait Islander Commission. 6 September 1995.

Johanna Sutherland, Australian National University. 17, 18, 19, 20, 22 January 1996.

Torrees Strait Regional Council. 31 January 1996.

T. Erii, PNG Consulate. 31 July 1995.