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Torres Strait: Policing the Open Border

John McFarlane

In recent years much has been discussed about trafficking in drugs and guns across the Torres Strait. Attention has focussed on the Strait as a result of the detention of third country illegal immigrants in the region. However, few Australians know much about the Strait and the people who live there, so it is not surprising that some of the commentary about problems in the area is ill-informed or exaggerated. In an attempt to obtain a better understanding of these issues, the Australian Institute of Criminology was pleased to be involved, on 24 February 1998, in a seminar, jointly sponsored by the Australian Defence Studies Centre and the Australian Federal Police, entitled "Torres Strait — Policing the Open Border". This Trends and Issues paper provides an overview of the outcome of the seminar, including some of the practical issues raised in discussion on what, in her opening address, the Minister for Justice described as "one of the most exposed parts of Australia", but one which is "of growing importance from the law enforcement perspective, not only in relation to cross border crime, but also the regulation of our immigration, quarantine, fisheries and other high priority national interests."

Adam Graycar
Director

Recent events in the Asia-Pacific have highlighted the major changes in Australia's immediate neighbourhood. For 30 years we have enjoyed a relatively stable and mutually beneficial relationship with Papua New Guinea (PNG) and Indonesia, but both countries are going through significant changes which may alter many of the political, social, economic and cultural assumptions with which we have become comfortable.

Indonesia is suffering from a major devaluation of its currency as a result of the Asian economic melt-down and is facing potentially serious instability as a result of internal economic and political pressures. PNG appears to be edging towards the resolution of the longstanding Bougainville crisis, but has yet to realise the full potential of its natural wealth. In addition to its flagging economy and deteriorating infrastructure, PNG faces a serious crime problem and is losing international credibility as a result of continuing allegations of endemic corruption. Both countries have suffered severely from *El Nino* and its devastating effect on food production and the availability of water. It is reasonable to conclude that we live in a period of continuing uncertainty, in a region of serious potential instability.

The Open Border

This paper looks at the contiguous border which Australia has with two foreign countries. Unlike almost all other international borders, the Torres Strait has no clearly marked frontier, few signs of border policing or customs controls, and free movement

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Australian Institute
of Criminology
GPO Box 2944
Canberra ACT 2601
Australia

Tel: 02 6260 9200

Fax: 02 6260 9201

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is allowed by “traditional visitors”, with no more formal documentation than a scribbled note from a village leader to confirm that the bearer has “traditional rights” to visit the area.

Overall, this open border arrangement with PNG has worked quite well since the signing of the Torres Strait Treaty in 1985, but warning signs have emerged on both sides of the border - trafficking in cannabis and firearms, the detection and apprehension of third country illegal immigrants, difficulties in enforcing fishing regulations, potentially serious quarantine problems and incidents of violence or theft involving “traditional visitors”. Added to this is the considerable disparity in services and infrastructure available to the people of the Torres Strait compared to those in the Western Province of PNG. The electricity and water supplies, health and education services, plentiful supplies of food, fish and fuel, let alone the luxury of television, is simply not available to most of the people of Western Province, which, at its nearest point, is only 3 km from the closest Australian island. In 1996-97 there were 23 710 recorded “traditional visits” by people from PNG into the Torres Strait Protected Zone (TSPZ).

Geography of the Torres Strait

Between the northern tip of Cape York and the southern coastline of PNG is an area of some 40 000 km², containing over 150 islands, 17 of which are permanently inhabited by approximately 8800 Australians, of whom some 6000 are Torres Strait Islanders, 300 are Aboriginal people, and the remainder are mainly Europeans living on Thursday Island (the administrative centre) or Horn Island (the major airport). Many of the outer islands, where the Islanders live, have their own landing strips which can be used for most of the year. With the exception of a few carefully defined shipping channels, most

of the waters of the Torres Strait are shallow and dangerous for all but small aluminium dinghies. Coral reefs are a dominant feature of the region and comprise more than twice the land-mass. The Strait’s coral reefs, along with the waters, provide much of the region’s wealth.

Since World War II, and particularly in recent years, there has been a steady drift of Torres Strait Island people to the Australian mainland, where about 80 per cent of the Islander population now lives.

Torres Strait Treaty

The primary purpose of the Torres Strait Treaty is to define questions of sovereignty and jurisdiction with PNG, following that country’s independence. First, the Treaty establishes a Seabed Jurisdiction Line (SJL) for which Australia has rights to all things on or below the seabed south of the line and PNG has the same rights north of the line. The SJL also effectively marked the boundary as regards sovereignty, although PNG recognises Australian sovereignty over 15 islands and cays north of the Line, including Boigu, Saibai and Dauan Islands. Second, there is a Fisheries Jurisdiction Line (FJL) which encompasses the so-called “top hat” area and surrounds the inhabited Australian islands north of the SJL. Finally, the Treaty designates the Torres Strait Protected Zone (TSPZ) within which the Treaty explicitly recognises traditional cross-border movement, in accordance with the livelihood and way of life of the traditional inhabitants of the region.

However, the Treaty is much more than a simple border delimitation agreement. It

- acknowledges the importance of protecting the way of life and livelihood of the traditional inhabitants of the region (that is Torres Strait Islanders and Papuans who live in the coastal area adjacent to the Torres Strait);

- acknowledges the traditional relationships of the region’s inhabitants and movement patterns which have persisted for centuries, allowing traditional inhabitants to move freely through the TSPZ in pursuit of traditional activities;
- recognises the importance of protecting the maritime environment and commits Australia and PNG to cooperation in conservation, management and sharing of fisheries resources and in regulating the exploration and exploitation of seabed mineral resources.

However, abuses of the free movement provision frequently lead to tensions between PNG traditional visitors and Islander communities and lead to increased pressure on local infrastructure and resources, particularly the health services. Crossborder drug and weapon trafficking, although difficult to quantify, has created a breakdown of social and cultural values and increasing concern amongst the communities in the Torres Strait.

The human perspective

The Torres Strait Treaty allows for free movement for visits between the traditional inhabitants from both sides of the border, for private or official purposes. The only formality required is for a “pass” to be presented to the Chairman of the community being visited, who will then give his agreement (or otherwise) to the visit. However, the free movement provision is a privilege which many people on both sides of the border are putting in jeopardy. Today the trade between Papuans and Islanders is changing. Drugs, weapons and “sly grog” are amongst the commodities traded and crime is its side effect. Crime is destroying the good relationship which has developed between the coastal people of the region, and is causing real

damage to the Islander society and culture. Young people are losing respect for their elders, domestic violence is on the increase and there is less respect for the law and for religion. Family and friends are turning on each other and people are afraid to speak out.

The Jurisdiction Patchwork

The issues surrounding the exercise of jurisdiction in the Torres Strait region are very complex and are unlikely to diminish in importance. For this reason, the coordination of jurisdictional responsibility between the Governments of Australia, Queensland and PNG is vital, and fortunately has been very close since the enactment of the Treaty.

In brief, as shown in the accompanying map, all the islands up to the PNG coastline, except three immediately adjacent to the Western Province coast, are Australian territory. Agreement was reached that there be a seabed boundary between Australia and PNG, but that there be a separate fisheries jurisdiction boundary, which is designed to accommodate PNG's wishes for a share of the exploitable resources of the Torres Strait, while preserving the right of Torres Strait Islanders to enjoy the fisheries surrounding their islands around which Australia retains a three mile fisheries jurisdiction. The Treaty provides that sovereignty over islands includes sovereignty over the territorial sea and rights to the seabed and sub-soil. This leaves pockets of Australian jurisdiction around the islands surrounded by the PNG Exclusive Economic Zone (EEZ).

Another unique aspect of the Treaty is the "Torres Strait Protected Zone" (TSPZ) in the northern third of the Strait. The TSPZ surrounds all of the Australian islands north of the seabed line, as well as most of the islands in the central part of the Strait. All the islands where the Indigenous inhabitants maintain

their traditional lifestyle are within the TSPZ. More importantly, it provides the right to pursue traditional fishing and freedom of movement throughout the Zone for people from either PNG or Australia to engage in traditional activities, without the usual customs and other controls. The Treaty also guarantees priority for traditional fishing as against commercial fishing activities.

Under the *Law of the Sea Convention*, international vessels have a right of passage through the Torres Strait, providing the passage is without delay, threat or use of force or any other activities, apart from those necessary for normal ship operation.¹

Maritime Activities

A large number of small, hard to detect, high-speed aluminium dinghies move regularly between PNG and the islands in the TSPZ. Whilst most of these craft are no doubt engaged in harmless activity, some are not, and frequently escape detection and interception.

There are also approximately 5000 international shipping movements through the Torres Strait each year, as well as a large number of commercial vessels operating in the Strait.

Review of Commonwealth surveillance arrangements

During his visit to the Torres Strait in July 1997, Prime Minister Howard said that he was struck by how potentially vulnerable this part of Australia is to illegal incursions, and "how easily people who meant no goodwill towards Australia and were engaged in ... illicit activities ... [could] ... run the gauntlet of the resources that are available." On his return, the Prime Minister established a Review of Commonwealth Surveillance Arrangements in the Torres Strait. This Review, which reported in

¹ Article 39, *Law of the Sea Convention*, *supra* Footnote 2.

October 1997, reached the following conclusions:

- The Torres Strait is, from a surveillance perspective, the most intensely patrolled of Australia's maritime zones;
- While the detected level of illegal cross border activity in the Strait is relatively low, the potential threat is significant;
- The high level of shipping activity through the Strait, the close proximity of PNG and lack of resources in adjacent parts of PNG in such areas as policing, customs, health and communications all contribute to the potential for an increase in illegal or illicit cross-border activity;
- The lack of appropriate resources in adjacent parts of PNG, continuing social unrest and serious criminality contribute to the potential for trouble;
- There is a strong perception amongst local communities that current surveillance and intelligence arrangements are inadequate, and some anecdotal evidence that illegal activity is increasing.

The Review recommended upgrading surveillance capability through such measures as establishing a permanent Australian Federal Police (AFP) presence on Thursday Island and devoting more resources to surveillance operations, particularly through the purchase of three additional Australian Customs Service (ACS) fast marine craft for the area. As part of the Government's "Tough on Drugs" policy, a total of \$6.7 million will be allocated over the next three years to upgrade the surveillance, intelligence, response and communications capabilities in the area.

The PNG Perspective

The security of PNG is directly threatened through the traffick-

ing of illegal weapons from any source, including Australia. Whilst it is PNG's view that overall the bilateral border relationship has been smooth and satisfactory, there is concern about evidence of increasing criminal activity in the area, often involving non-traditional inhabitants as well as third country nationals. For example, there have been illegal crossings by Asians, Middle Eastern, Eastern European and African nationals trying to cross into Australia from Daru, sometimes having arrived in PNG from West Irian.

The trafficking in cannabis and weapons in the Torres Strait/Gulf of Carpentaria region, using small boats, fishing vessels or light aircraft is of particular concern to the bilateral relationship. These weapons are sold on to Highlanders who use them in tribal fighting, to *raskol* gangs, to the *Organisasi Papua Merdeka* (OPM—Free Papua Movement) in West Irian, and possibly even to the Bougainville Revolutionary Army, and they contribute to the serious law and order problems currently faced by PNG. The trade generally involves shotguns or .22 rifles, but have also involved handguns and military-style weapons. The demand for firearms in PNG is increasing, particularly in the Highlands which is also the centre for the production of most of the “*Nugini gold*”, that is high quality PNG cannabis, and Daru appears to have emerged as a centre for the purchase of illicit firearms.

PNG does not have the resources or manpower to effectively police its extensive land and sea borders.

Community Policing

The challenge for policing in the Torres Strait is very considerable as it is an extremely isolated area. The Queensland Police Service (QPS) has a presence on Thursday and Horn Islands, with a further detachment at Bamaga on Cape York. There is also a QPS Water Police Unit based on

Thursday Island with search and rescue responsibilities covering the northern tip of Cape York and part of the Arafura Sea, as well as the Torres Strait. In 1997, this Unit coordinated 77 search and rescue operations. There is also a QPS aircraft based in Cairns, which can be made available for use in the Torres Strait area.

Supporting the 25 members of the QPS based in the area are 65 community police, employed under the provisions of the *Community Services (Torres Strait) Act*, who have restricted powers under each Island's by-laws, and who can address some policing issues until the arrival of QPS members, including the preservation of crime scenes and security of exhibits.

The main policing problems within the Torres Strait are substance abuse, domestic violence and search and rescue commitments. The QPS describes the so-called “drugs for arms” trade between Australia and PNG as being of “extreme concern”.

Maintaining the Barrier

Customs issues

The ACS has had a presence on Thursday Island since Federation, although the Colony of Queensland established a customs post there in 1887. Currently, there are eight full-time ACS officers in the Torres Strait, including two Torres Strait Islander officers.

In spite of the fact that the Torres Strait is the closest thing to a land border that Australia has, there are an enormous number of small craft plying throughout the Torres Strait and crossing the border every day. To meet this threat, Customs' risk management relies on proactive intelligence gathering and on the Joint Strategic Assessment of cross border crime.

From the aerial surveillance perspective, the Torres Strait region is the most intensely patrolled area of Australia's maritime zones. Over 900 fixed wing and helicopter Coastwatch

sorties were flown in the Torres Strait in 1996-97. These figures will increase substantially under the funding provided under the Government's “Tough on Drugs” policy. At present the ACS ocean-going vessel *Wauri*, with two crews, can operate in the Torres Strait up to 300 days per year, including 110 days dedicated to fisheries patrol. More recently, the *Wauri* has also been used for joint patrols carrying officers from other Australian and PNG law enforcement agencies.

Immigration issues

The Department of Immigration and Multicultural Affairs (DIMA) facilitates the free movement provisions of the *Migration Act 1958* and the *Torres Strait Treaty*. To do this DIMA has three officers on Thursday Island and 30 contracted Movement Monitoring Officers on the inhabited islands in the TSPZ, in close collaboration with the Island Chairpersons and Councillors, to manage the traditional flow of people and report any other movement in the region. Island Council Chairpersons and PNG village Chairpersons have agreed on a “pass” system whereby a resident of the TSPZ who is a PNG citizen and resident and who wishes to visit an island, obtains a pass from a PNG village Chairperson. The pass lists and identifies visitors and specifies their length of stay. It is important to note that the pass is a matter of convenience; it is not essential for a visitor to possess a pass. There is a generally accepted limit of a three-week stay for traditional visitors.

The Treaty allows traditional inhabitants to visit the TSPZ for “traditional activities”, which cover activities on land (including gardening, collection of food and hunting), activities on water (including traditional fishing), religious and secular ceremonies and gatherings for social purposes (such as marriage celebrations or settlement of disputes) and barter and market trade.

Quarantine issues

Australia has no land borders and derives great economic and environmental benefits from a relative lack of serious pests and diseases of plants, animals and humans. In the Torres Strait, Australia is at its most vulnerable from incursions due to the proximity of PNG and West Irian, which have many pests and diseases of concern to Australia. The extent of traditional movements in the Strait provides particular challenges to the quarantine barrier. Fully qualified Quarantine Officers on each of the inhabited islands and in the major communities on Cape York are backed up by an extensive education campaign, resulting in a high level of quarantine awareness amongst the local people.

Fishing issues

According to the Torres Strait Treaty, there is an overall quota for all stocks in the TSPZ. In areas south of the fisheries jurisdiction line 75 per cent of the allowable catch goes to Australia, with 25 per cent to PNG. North of the line the proportions are reversed, except for areas under Australian control within PNG jurisdiction, where the split is 50:50. However, as an exception to these arrangements, PNG fishermen have complete and unshared access to barramundi fisheries subject to PNG control. Any third country vessel² wishing to fish in the TSPZ must have the approval of both Australia and PNG. The prawn industry, which is capital intensive and requires vessels with on-board freezing capabilities, is dominated by Australian commercial fishing vessels, operating out of northern Queensland ports, rather than Thursday Island.

Fishing is of critical importance to the Torres Strait Islanders and the fishing industry

in the Strait is estimated to be worth about \$30 million annually. However, with over 1280 boats involved in fishing in the Torres Strait — 170 being Cairns-based — there is clear potential for illegal activity. Fisheries surveillance and enforcement is undertaken from both Customs and RAN patrol vessels and Coastwatch aerial surveillance, but due to lack of staff, little response capability and the inability to obtain an armed boarding party at short notice, the effectiveness of fishing enforcement in the Strait is limited. PNG lacks the resources to undertake any meaningful surveillance or response activity in support of Australian efforts.

Cross-Border Cooperation

Since 1993, the annual PNG/Australia Cross Border Crime Conference, held alternately in PNG and Australia, has set the directions for cooperation in this area. This Conference has agreed on a number of practical strategies to encourage cooperation and effectiveness in this area, and has also published several Joint Strategic Assessments of the nature and extent of the cross border crime scenario. Participants in the Conference are the Royal Papua New Guinea Constabulary (RPNGC), the PNG Internal Revenue Commission (incorporating PNG Customs), the QPS, the ACS, and the AFP.

Since 1994, the flow of criminal intelligence has been substantially facilitated by the AFP Liaison Officer at the Australian High Commission in Port Moresby. The Liaison Officer provides the link between PNG and Australian law enforcement agencies and facilitates the exchange of tactical and strategic criminal intelligence between the two countries.

In February 1995, the QPS, ACS and AFP formed the Combined Intelligence Group (CIG) which meets regularly on Thursday Island to exchange operational data of mutual

interest. The CIG seeks input from other locally-based agencies such as the RAN, Army, Department of Foreign Affairs and Trade and Coastwatch. The CIG also receives additional intelligence from the Cairns Regional Intelligence Meeting (CRIM), which ensures that a larger geographic focus is taken when assessing the potential criminal threat level at the border. Following the 1996 Cross Border Crime Conference, PNG established its own CIG, which includes not only the RPNGC and PNG IRC, but also the AFP Liaison Officer. To facilitate the bilateral exchange of intelligence, key members of both CIGs meet in Daru several times a year as a Joint Intelligence Committee (JIC). These initiatives have already led to some promising operational outcomes including the arrest of 11 people charged with 73 offences relating to the possession and trafficking in PNG cannabis, in July 1997. A month later, six military-style firearms were located on Boigu Island and an Australian of West Irianese origins, who had previously been convicted and imprisoned for conspiracy to traffic weapons to the OPM through PNG, was arrested. In another operation, 40 kg of compressed cannabis was recovered from a launch arriving in Cairns from Port Moresby and a further 100 kg was seized in Goroka. One PNG national and two Australians were committed for trial as a result of this operation.

Another useful initiative has been the commencement in November 1997 of joint border marine patrols comprising officers from the ACS, AFP, QPS, RPNGC and PNG IRC, using the ACS vessel *Wauri*. A Memorandum of Understanding relating to these patrols was signed in Daru in February 1998.

Conclusions

As a result of recent Commonwealth Government funding initiatives, the Torres Strait will be well served with aerial and

² There have been a number of Indonesian and Taiwanese fishing vessels detected fishing in or adjacent to the western border of the TSPZ, which resulted in apprehension of two Indonesian fishing vessels in early 1997.

improved marine surveillance capabilities, but the three areas now requiring priority attention are:

- Proactive intelligence collection, coordination, assessment and dissemination;
- Improved law enforcement armed response capability to react to reported or predicted incidents involving a breach of the law;
- Closer coordination and mutual support between the government agencies represented in the Torres Strait.

It is suggested that specific consideration be given to the following:

Coordination. There needs to be some rationalisation and better coordination of the activities of the 23 State and Commonwealth agencies represented in the Torres Strait. This would also assist Torres Strait leaders dealing with the plethora of agencies represented in the Strait.

Intelligence. There needs to be more proactive intelligence collection, collation, assessment and sharing, not only between Australian agencies, but also with PNG agencies. An *intelligence* presence in the Strait, rather than additional enforcement/investigative or surveillance capacity, is needed. Hopefully, the AFP Resident Agent to be posted to Thursday Island will fulfil this role.

Threat Assessment. The assessed level of cross-border crime between Australia and PNG is low to medium, but has the potential to expand. This needs to be monitored carefully so that appropriate decisions can be made if circumstances change. There is an urgent requirement for a public version of the Joint Threat Assessment to be made available.

Torres Strait Islander Involvement. Due to the lack of law enforcement resources in the area, there is a high level of Torres Strait Islander involvement in dealing with problems as they

arise. The local people are generally not trained, nor do they have the resources or authority to deal with the more serious law enforcement problems. Wherever possible, Torres Strait Islanders should be trained and retained by the relevant agencies to assist in the performance of their role.

Aid Considerations. Noting the disparity of economic and social conditions between the Torres Strait and PNG's Western Province, consideration should be given to linking Australian aid to PNG with specific infrastructure development projects in Western Province.

Military Aid to Law Enforcement. There should be more cooperation and sharing of relevant intelligence between the military and law enforcement agencies on both sides of the Torres Strait border. However, the tasking of the military on law enforcement requirements would call for a review of current policy.

Joint Patrols. The initiative taken by the ACS in facilitating joint border marine patrols, involving law enforcement officers from both Australia and PNG, is to be applauded. However, consideration should also be given to joint ADF/PNGDF marine patrols of the Torres Strait whenever feasible.

Identification of Traditional Visitors. The proposal to provide traditional residents on both sides of the border with photo-identity cards should be given further serious consideration to assist in eliminating access to the region by people who do not have traditional visiting rights.

Regional Stability. To the surprise of some, the political and economic problems which have emerged in this region have yet to produce serious violence.

Nevertheless, the public order situation remains delicately balanced, and the level of crime and violence remains high. Furthermore, banking fraud, corruption and other criminal activities have contributed to the Asian financial system meltdown. It also appears that illegal logging practices have contrib-

uted to the continuing fires and haze problems in Southeast Asia. It is reasonable to conclude that this region may now be less stable and predictable than was the case in the recent past.

The Future. The existing level of law enforcement cooperation between Australia and PNG, and, in particular, across the Torres Strait, is most encouraging, as are the plans to increase the level of law enforcement resources on both sides of the border. The establishment of improved surveillance and communications capabilities is also a major step forward. However, further consideration needs to be given to a number of other measures, such as the proposal to increase Australian aid to Western Province, to issue identity cards to the traditional people of the region, or to seal the existing airstrip on Saibai Island. In the long term, these could be good investments in the future welfare of the region and the bilateral relationship between Australia and PNG.

Finally, it is evident from recent events that Australia exists in a region where the unexpected can and does happen, often with little warning. To fail to give appropriate attention to our one common border with the region would be very unwise.

Note. The author is especially indebted to the speakers at the Seminar for permission to draw from papers which they presented. Readers wishing to reserve a copy of the full proceedings of the seminar, to be published by the ADSC later in 1998, should contact Ms Suzanne Brown at the ADSC on (02) 6268 8849.

John McFarlane is the AFP Visiting Fellow at the Australian Defence Studies Centre, Australian Defence Force Academy, Canberra.



General Editor, Trends and Issues in Crime and Criminal Justice series:
Dr Adam Graycar, Director
Australian Institute of Criminology
GPO Box 2944
Canberra ACT 2601 Australia

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