

The Torres Strait Treaty and the Environment

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The Torres Strait Treaty was negotiated between the governments of Australia and Papua New Guinea in order to clearly establish the border of sovereignty and jurisdiction between the two countries in the region of the Torres Strait. The two basic boundaries were established: the Seabed Jurisdiction and the Fisheries Jurisdiction Line. The Seabed Jurisdiction Line is also the boundary of sovereignty with the exception of fifteen islands or cays north of that line (including the inhabited islands of Boigu, Saibai and Dauan), over which Papua New Guinea recognized Australian sovereignty. The Treaty also explicitly acknowledged and sought to preserve the traditional way of life and livelihood of the traditional inhabitants of the Torres Strait region, and established for this purpose the Torres Strait Protected Zone.

The environment provisions of the Treaty are important for the well-being of the traditional inhabitants, for the preservation of the traditional and commercial fisheries, and for general recognition of the fragility of the Torres Strait environment. Though many of you here will be very familiar with the text of the Treaty, I would like to point out here the parts of the Treaty which specifically deal with protection of the environment.

In the Preamble to the Treaty, it clearly states:

'RECOGNISING ALSO the importance of protecting the marine environment ... in the Torres Strait area;'

Under Article 7 pertaining to navigation and overflight, Clause 2(a) states that each Party is to ensure that:

‘those vessels observe generally accepted international regulations, procedures, and practices for safety at sea and for the prevention, reduction and control of pollution from ships’.

Article 10 Clause 4 states:

‘A further purpose of the Parties in establishing the Protected Zone is to protect and preserve the marine environment and indigenous fauna and flora in and in the vicinity of the Protected Zone.’

Article 13 specifies the obligations incumbent upon both Parties in order to ensure the protection and preservation of the marine environment, through legislative or other measures, to prevent or control ‘pollution or other damage to the marine environment from all sources and activities under its jurisdiction or control’. Clause 1 requires the taking into account of ‘internationally agreed rules, standards and recommended practices ... adopted by diplomatic conferences or by relevant international organisations’. Clause 3 specifies that the measures taken by each Party ‘shall be consistent with its obligations under international law’; and Clause 4, that the Parties shall consult each other about any concerns relating to the environment.

Article 14 states the obligations of both Parties to protect and preserve indigenous fauna and flora through:

- identification of endangered species;
- protective measures;
- prevention of introduction of harmful foreign species;
- control of noxious species of fauna and flora;
- exchange of information and consultation between the Parties.

Article 19 states that the Torres Strait Joint Advisory Council (JAC) should advise the two governments on

‘any matters relevant to the effective implementation of this Treaty including the provisions relating to the protection and preservation of the marine environment, and fauna and flora, in and in the vicinity of the Protection Zone.’

The Treaty also recognises the importance of properly managing the commercial fisheries resource of the Torres Strait region in a sustainable way. The Preamble states:

‘DESIRING ALSO to cooperate with one another in that area in the conservation, management and sharing of fisheries resources ...’

Articles 21 through to 28 address the management of the Protected Zone commercial fisheries, with provision to apply conservation measures and management arrangements with respect to a species; and provisions for licensing, inspection and enforcement to control who does how much fishing of which species, including fishing by third states.

The Treaty thus has a major environmental protection dimension. Although originally primarily conceived to delimit the boundary of sovereignty and jurisdiction in the Torres Strait region between Australia and Papua New Guinea, the drafters of the Treaty were conscious of the importance of this environmental dimension. In assessing the comprehensiveness and usefulness of the environmental coverage of the Torres Strait Treaty, we should bear in mind that any treaty is inevitably a reflection of the understanding and concepts of the times in which it was conceived, negotiated, and signed. However the Torres Strait Treaty bears up very well in this regard. It was signed by Australia and Papua New Guinea in December 1978, and came into force in February 1985 upon its ratification by both Parties. Its period of formation was between about 1972 and 1978, a time when general awareness of the importance for man's well-being of his relationship to his natural environment was beginning to take shape, an awareness brought about largely by the recognition of the damage wrought by mainly developed countries on the environment, local and global. The first United Nations environment conference (UN Conference on the Human Environment) had been held in Stockholm in 1972, which adopted a 'Declaration on the Human Environment' recognising the need for development to be sustainable, and which agreed on an Action Plan which the United Nations Environment Programme (UNEP) was created to implement and promote. We are all now preparing for the 1992 United Nations Conference on Environment and Development (UNCED) to be held in Brazil, which is intended to address the central issues of:

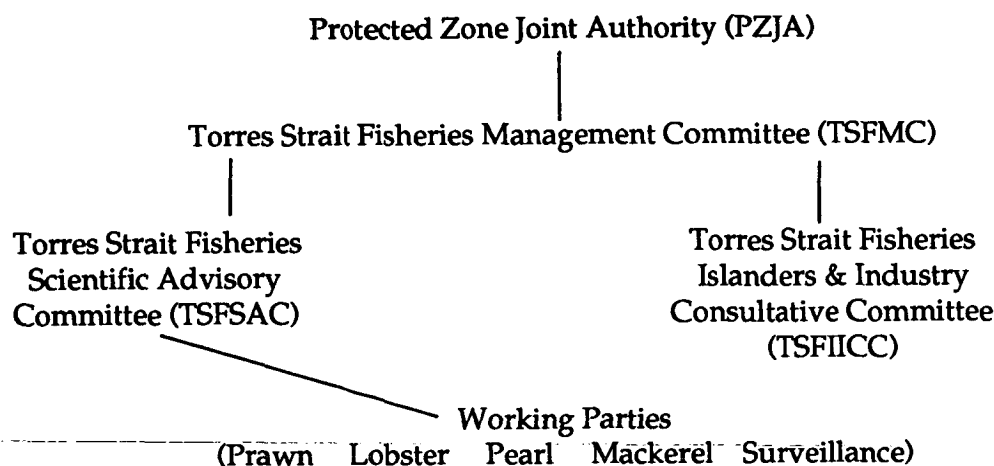
- strengthening international environmental cooperation to contain, reduce and eliminate global environmental damage;
- promoting sustainable and environmentally sound development in all countries;
- finding ways to provide additional financial resources for measures directed at solving major global environmental problems;
- promoting environmental education.

(See UNGA Resolutions 43/196 of December 1988 and 44/228 of March 1990).

Looked at in this light, the Torres Strait Treaty with its considerable environmental protection content, and many of its environmental provisions already being implemented, seems to have been rather ahead of its time. Earlier international treaties with major or sustainable environmental content were not numerous, although the environmental problems were already there; and many of the early treaties addressed only a single environmental issue. For example, the Antarctic Treaty, signed in 1959 and entered into force in 1961 (to which both Australia and Papua New Guinea are parties), is nowadays regarded as a major early environmental treaty, but does not mention the word 'environment' anywhere in the text of the treaty itself, and makes only one reference to 'preservation and conservation of living resources' (Article IX 1.f). It was only in the 1970s and 1980s that substantial Conservation Measures, and the Convention for the Conservation of Antarctic Marine Living Resources (CCAMLR) and the Convention for the Conservation of Antarctic Seals (CCAS) were added to the Antarctic Treaty system. Australia along with France,

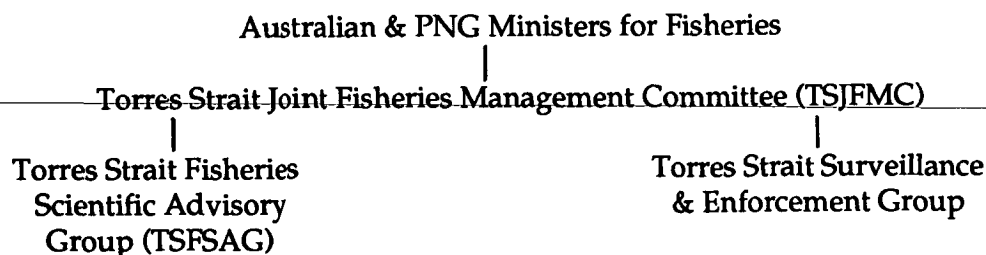
Italy and Belgium, are currently leading an effort to incorporate complete and comprehensive environmental protection provisions into the Antarctic Treaty system. By contrast, the Torres Strait Treaty included provisions for sustainable management of commercial fisheries, protection of traditional fisheries, protection of fauna and flora, prevention of pollution and environmental damage from all sources and activities, and exchange of information and research cooperation, in the original text of the Treaty in the 1970s, and it is still a good tool for achieving environmental protection of the Torres Strait region, quite apart from its several other purposes.

Earlier papers have outlined the consultative and decision-making mechanisms on the Australian side for its share of the fisheries management under the Treaty:



Islander organisations, government agencies, and fishing industry organisations are represented on these committees.

No specific bilateral fisheries bodies are mentioned in the Treaty; but some informal bodies have been established:



The establishment of the Environmental Management Committee (EMC) by the JAC in 1988, as a consultative body for detailed consideration of Torres Strait environmental issues at annual meetings, has further strengthened the environmental protection capacity of the Treaty.

We are all aware of the main environmental issues preoccupying us in the Torres Strait region at present.

One of the most prominent issues is obviously the potential impact and long-term effects of mining and oil development projects in Papua New Guinea and Australia: these currently comprise Ok Tedi and Porgera in the Fly River system catchment area; the Kutubu oil project due to commence production in about mid-1992; and the Horn Island gold mine. Separate papers in these proceedings have given some account of the environmental situation of the Ok Tedi and Porgera projects (see Ross, this volume; Eagle and Higgins, this volume).

The Australian government maintains a regular exchange of information with the Papuan New Guinea government on the environmental aspects of oil and mineral development projects adjacent to the Torres Strait:

- through Prime Ministerial and Ministerial contacts;
- through the Joint Advisory Council Meetings;
- through official contact in Canberra and Port Moresby.

The Australian government also maintains regular contact with Australian and other companies involved in PNG oil and mineral development projects, about their environmental programmes, including through detailed briefings and as necessary, obtaining of specific information. We welcome the contact and cooperation we receive from the PNG government and companies, and attach importance to its continuation. We are all aware that the majority of the data we must rely on at present in assessing the impact of PNG projects on the Torres Strait is that from the environmental monitoring and research programmes of the Ok Tedi and Porgera projects, and formerly from the Horn Island project. It is highly desirable that there should be independent monitoring and research of the Torres Strait environment to complement the monitoring and research programmes of the companies involved in the mining and oil development projects, excellent as some of these programmes are. Thus the Torres Strait Baseline Study will be an important and major element in assessing the current Torres Strait environmental situation and providing a datum against which future change can be compared.

As a sovereign and independent country, Papua New Guinea of course has a responsibility under the Treaty to ensure that mining projects on its territory do not harm the environment of Torres Strait. But the Australian government has made clear it is prepared to help with technical and other assistance on environmental issues. The previous Australian Minister for Resources, Senator Cook, offered such assistance at the Australia-PNG Ministerial Forum in January 1990. In the case of the Kutubu oil development project:

- Prime Minister Hawke agreed during his recent visit to PNG, to a PNG government request for assistance with preparing legislation and regulations for the oil pipeline, and legislation and contingency plans for possible oil spillage from the off-shore oil terminal and tanker traffic;
- Australian government officials have begun to provide this assistance (a team of experts from DOTAC and DPIE visited PNG in early November and had preliminary discussions with PNG officials of DEC and DME);

- Papua New Guinea is a member of the International Maritime Organization (IMO), and is already party to several important international conventions directed at protecting the seas from pollution;
 - International Convention for the Prevention of Pollution of the sea by Oil (OILPOL (1954),
 - Convention relating to Intervention on the High Seas in the case of Oil Pollution Casualties (1969),
 - International Convention on Civil Liability for Oil Pollution Damage (CLC) (1969),
 - Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter (London Dumping Convention) (1972).
- Australia also understands that PNG is considering acceding to MARPOL (International Convention for the Prevention of Pollution from Ships 1973/78) which is the most stringent international convention to date for the protection of the seas from ship-sourced operational pollution;
- Also relevant is the SPREP Convention Protocol concerning cooperation in combatting pollution emergencies in the South Pacific region which requires parties to "within their respective capabilities, cooperate in taking all necessary measures for the protection of the South Pacific region from the threat and effects of pollution incidents" (Article 3.1);
- The PNG government is aware of the recent USA legislation requiring double-hulling of oil tankers entering USA waters, and is looking into this idea. Australia is also considering the effectiveness of this and other measures;
- Australia has now had it accepted in the IMO that governments should instruct ships to comply with Australia's compulsory pilotage scheme for all merchant vessels over 70 metres in length and all loaded oil tankers, chemical carriers and gas carriers, irrespective of size, transmitting the inner route of the Great Barrier Reef between the northern tip of Cape York Peninsula (10° 41'S) and 16° 40'S, as well as through Hydrographers Passage off Mackay. Since most major maritime traffic using the Great Barrier Reef inner route, is coming from or going through the Torres Strait, except for those ships going through the Great North East Channel, this new regulation of compulsory pilotage for the GBR inner route should mean in effect that virtually all of this traffic would have pilots aboard in their passage through Torres Strait as well. The level of compliance with the voluntary pilotage scheme is presently about 90% for vessels using the Great Barrier Reef inner route; under the compulsory pilotage scheme, non-compliance should become minimal. The PNG government also has the option of making compulsory pilotage part of its port entry requirements for tankers loading at Kikori terminal.

These mining and oil development projects are important for Papua New Guinea. Some may fear the economic imperative might override environmental considerations. However one lesson of Bougainville has been the need to achieve a perception of balance with environmental considerations. The Papua New Guinea government

has taken steps to ensure that mining projects are governed by stricter environmental regimes, and companies have also recognised that it is in their interests to ensure that local landowners are not driven by perceptions of environmental damage to demand expensive compensation or to resort to subsequent action against a project. This whole process of course is part of the endeavour to define 'sustainable development', an endeavour in which both Australia and Papua New Guinea are engaged in our respective territories.

In the case of the Horn Island gold mine, the Queensland government has been investigating the possibly anomalous data provided in the monitoring report of the company which was operating it before its closure at the end of 1989 (Torres Strait Gold Pty Ltd). The Queensland government will report on this matter at the coming EMC III Meeting.

Besides the question of the impact and long-term effects of mining and oil development projects adjacent to the Torres Strait, other current and future environmental issues include:

- other land-sourced marine pollution (eg agricultural chemicals, industrial and domestic detergents);
- the effects of seabed mining exploration and development;
- coastal and wetland management;
- preservation of biological diversity, including species identification;
- illegal fishing, illegal and unsustainable fishing practices, and catch underreporting;
- the effects on marine resources of increases in commercial fishing;
- the impacts of global climate change and sea-level rise.

Most of these issues are able to be addressed under the provisions of the Torres Strait Treaty, and several are in the process of being, or are soon to be, so addressed.

In addition to the Treaty, however, the Australian government also attaches importance to other regional and international fora, organizations, and conventions, as part of the means to protect the Torres Strait environment.

The first South Pacific regional environmental instrument, the Convention on the Conservation of Nature in the South Pacific (Apia Convention), was signed in Apia, Western Samoa, in 1976, and came into force in March 1990.

In 1980, the South Pacific Regional Environmental Programme (SPREP) was launched with the objective of:

'helping the countries of the South Pacific to maintain and improve their shared environment and to enhance their capacity to provide a present and future resource base to support the needs and maintain the quality of life of the people'.

With the support of ESCAP, the Conference on the Human Environment in the South Pacific was held in Rarotonga in 1982, and produced the South Pacific Declaration on Natural Resources and the Environment, and agreed on an Action Plan for Managing the Natural Resources of the South Pacific (the SPREP Action Plan). This Plan was intended to:

'provide a framework for environmentally sound planning and management, suited to the needs and conditions of the countries and the people in the region and to enhance their own environmental capacities'

and has four specific objectives:

- further assessment of the environment of the region and the impacts of human activities on it;
- development of environmental management methods suited to the region;
- the improvement of national environmental legislation and development of regional agreements; and
- the strengthening of national and regional capabilities, institutional arrangements and financial support.

The Plan also led to the development of the Convention on the Protection of Natural resources and Environment of the South Pacific Region (SPREP Convention) and its two Protocols, which were signed in 1986 and came into force in July 1990. The Plan is currently being reviewed and it is expected that a revised Plan will be agreed at a Ministerial-level Meeting in mid-1991.

The Apia Convention and the SPREP Convention both apply to the Torres Strait region, and are relevant and useful for the protection of the Torres Strait environment. The SPREP Convention is particularly broad and comprehensive. As an example of the work done under SPREP, the 1988 SPREP Intergovernmental Meeting resulted in a recommendation for a project focussing on the development of arrangements for regional marine turtle conservation and management, which is now proceeding under the guidance of the SPREP Secretariat with funding from AIDAB and the Canadian International Centre for Ocean Development (ICOD).

The SPREP Secretariat, which provides the main environmental advice to the SPC and the South Pacific Forum, will also service and promote the regional sea-level rise question is clearly important for the Torres Strait environment. Several other South Pacific regional organisations have some responsibility for and some expertise in environmentally related fields: the Forum Fisheries Agency (FFA); the South Pacific Commission (SPC); and the South Pacific Forum Secretariat. For example, the Forum Secretariat is investigating the need for a Code of Environmental Conduct for extra-regional countries, to cover the activities of their nationals and agencies within the region. It is interesting that a similar proposal with global application is being considered in the preparations for UNCED 1992.

The Convention for the Prohibition of Fishing with Long Driftnets in the South Pacific (Wellington Convention) is aimed at preventing the use of driftnets within the South Pacific because of their adverse effect on the marine environment, particularly on non-target species such as dolphins; the Convention is administered by the Forum Fisheries Agency.

The South Pacific Nuclear Free Zone Treaty (Rarotonga Treaty/SPNFZ) was adopted by the South Pacific Forum in 1985, and aims to limit activities in the region involving the use of nuclear energy, and completely preventing activities involving nuclear weapons. It arose from concerns over the environmental and health risks posed by radioactive contamination from weapon testing and dumping of wastes. The decisions of the USA, the UK, and particularly France not to become involved obviously limit its effectiveness, although China and the USSR have signed the relevant Protocols.

There are a number of major international environmental conventions, which the Australian government is active in the negotiations for, or a signatory or party to, which are relevant and useful for the protection of the Torres Strait environment. These include:

- Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES);
- Convention on the Conservation of Migratory Species of Wild Fauna (Bonn Convention);
- Convention on Wetlands of International Importance especially as Waterfowl Habitat (Ramsar Convention);
- Vienna Convention for the Protection of the Ozone Layer (1985) – the first international agreement responding to concerns over ozone depletion; and its Protocol on Substances that Deplete the Ozone Layer (the Montreal Protocol 1987);
- United Nations Convention on the Law of the Sea (UNCLOS);
 - Part IX contains a Deep Seabed Mining Regime,
 - Article 192 describes the general obligation of all states to protect and preserve the marine environment,
 - Article 194 places an obligation upon states to act individually or jointly in order to prevent, reduce, and control pollution of the marine environment from any source,
- Basel Convention on Control of Transboundary Movements of Hazardous Wastes and their Disposal;
- Climate Change Convention – the Second World Climate Conference recently agreed to proceed with the negotiation of a Climate Change Convention, which we hope will be achieved by the time of UNCED 1992.

Our understanding of the workings of the global environment, and of local ecological systems, is still at a very early stage. As our knowledge and understanding increases, so our ability to protect and preserve the environment, and manage the effects of human activities on it, should improve; but the growing international commitment to the 'precautionary principle' (a cautious approach to the risk of irreversible or serious environmental degradation), requires that action be taken based on assessments of the risk of degradation using available knowledge. This principle is a component of what is emerging as the key environmental concept, 'sustainable development'. Efforts so far to define 'sustainable development' have yet to find final consensus but have produced broad agreement on several principles, in addition to the precautionary principle:

- the integration of economic and environmental goals;
- the appropriate valuation of environmental assets;
- a cautious approach to the risk of irreversible or serious environmental degradation (the precautionary principle);
- public participation in decision making;
- the acceptance of responsibility for environmental damage (the polluter pays principle).

It will be the task of all authorities and bodies, companies and corporations, responsible for any share of environmental management to tackle the practical implementation of these principles, and to further develop the definition of 'sustainable development'. The Australian government has formed a system of nine special working groups to look at this question as it applies to different sectors of our economy. The Working Groups have commenced their work and will report in October 1991.

To conclude, the Australian government takes the view that the Torres Strait Treaty is a valuable and central instrument through which Australia and Papua New Guinea, and particularly the people of the Torres Strait region, can work cooperatively to protect and preserve the Torres Strait environment. The effectiveness of the Treaty for this purpose clearly depends more upon its good use and implementation than upon its content and provisions, comprehensive and flexible as these are. The requirements of Article 13 Clause 1 to take into account 'internationally' agreed rules, standards and recommended practices adopted by diplomatic conferences or by relevant international organisations', provides the scope for further improvement of the means and measures we apply to protection of the Torres Strait environment under the Treaty, both in the letter and the spirit, to be party to, and support negotiations for, regional and international conventions and agreements which cover regional and global environmental issues which are relevant to the Torres Strait.