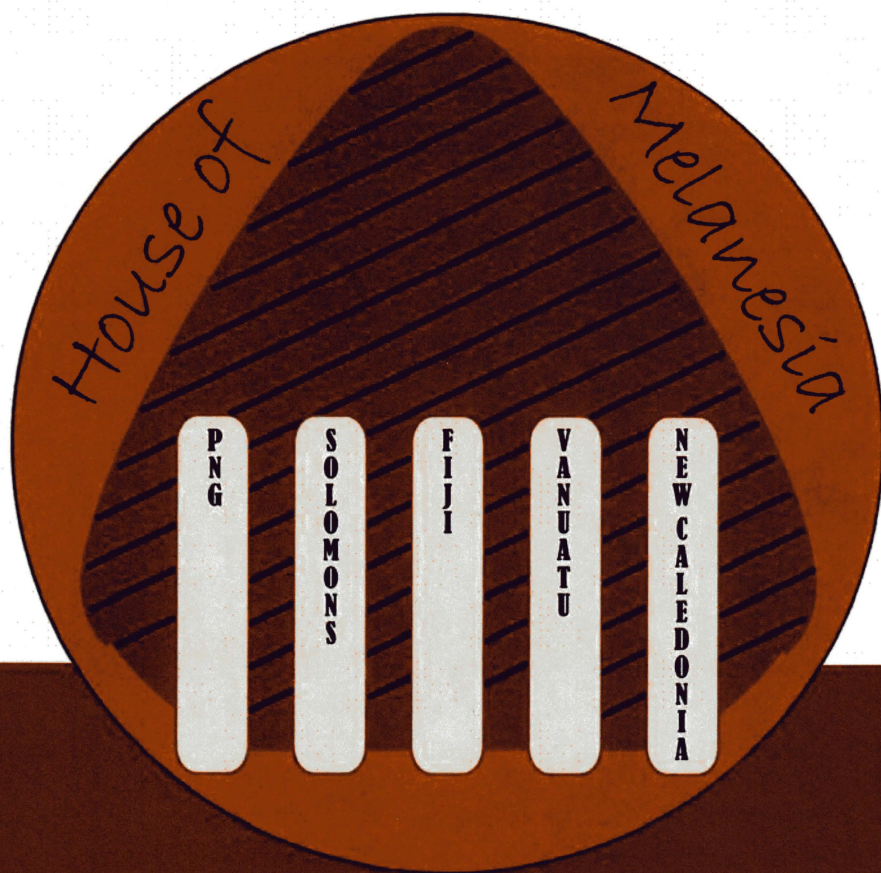


# THE NEW PACIFIC REVIEW

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**THE NEW PACIFIC REVIEW  
LA NOUVELLE REVUE DU PACIFIQUE**

**NEW CALEDONIA  
AND MELANESIAN UNITY**

**Proceedings of the international symposium  
on the occasion of the inauguration of the House of Melanesia  
Noumea, 4-5 September 2008**

**Actes du colloque international  
a l'occasion de l'inauguration de la Maison de la Mélanésie  
Nouméa, 4-5 septembre 2008**

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In memory of Paul De Deckker  
(1950-2009)

Anthropologist and Historian  
President of the University of New Caledonia (2000-2005)  
Founder of the House of Melanesia/Maison de la Mélanésie

and

Gregory Lawrence Urwin  
(1946-2008)  
Australian diplomat  
Pacific Forum Secretary General (2004-2008)

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# Table of Contents

|  |     |
|--|-----|
| Preface  | vii |
| <i>Darrell Tryon</i>   |     |
| 1. Opening Address   | 1   |
| <i>Yves Dassonville</i>  |     |
| 2. New Caledonia is not an uncertain place                                   | 3   |
| <i>Jean-Yves Faberon</i>   |     |
| 3. Prefatory Remarks   | 5   |
| <i>Paul De Deckker</i>   |     |
| 4. Statement from the Prime Minister of Papua New Guinea                     | 9   |
| <i>Rt Hon Grand Chief Sir Michael Somare</i>                                 |     |
| 5. Melanesia – an important region for Australia                             | 11  |
| <i>Anita Butler and Stephan Bohnen</i>                                       |     |
| <b>What is Melanesia?</b>  |     |
| <b>I. Melanesia, the lands and the peoples</b>                               |     |
| 6. Lands and seas: the Melanesian world, a geographical approach             | 21  |
| <i>Christian Huetz de Lempis</i>   |     |
| 7. Political sociology: of men and cultures                                  | 31  |
| <i>Ian Campbell</i>  |     |
| 8. Economy and the environment: which sustainable development for Melanesia? | 39  |
| <i>Paul Néaoutyine</i>   |     |
| <b>II. Melanesia, law and union</b>  |     |
| 9. Melanesia, law and union: customs   | 45  |
| <i>Laurent Chassot</i>   |     |
| 10. Democratic intervention, Biketawa and the 2006 Fiji military coup        | 55  |
| <i>Richard Herr</i>  |     |
| 11. The incorporation of human rights by Melanesian states                   | 69  |
| <i>Daniel Dormoy and Laurent Tesoka</i>                                      |     |
| 12. Discussion: is Melanesia homogeneous enough to contemplate a unity plan? | 77  |
| <b>New Caledonia, a Melanesian land</b>                                      |     |
| <b>I. The Past</b>   |     |
| 13. The works of Jean-Marie Tjibaou, a Kanak permanent reformulation         | 85  |
| <i>Hamid Mokaddem</i>  |     |
| <b>II. The Present</b>   |     |
| 14. Kanak identity in law  | 93  |
| <i>Jean-Yves Faberon</i>   |     |

|  |     |
|--|-----|
| 15. Kanak identity in fact, or what it means to be a Kanak now<br><i>Elie Poigoune</i>                             | 107 |
| <b>III. The Future</b>   |     |
| 16. Discussion: what is the future of New Caledonia's Melanesian identity?   | 111 |
| <b>An integrated Melanesia without New Caledonia</b>   |     |
| <b>I. The Past</b>   |     |
| 17. External influences on Melanesia<br><i>Stewart Firth</i>   | 117 |
| 18. Asserting internal dynamics: the Melanesian Spearhead Group<br><i>Nathalie Mrgudovic</i>                       | 127 |
| <b>II. The Present: the emergence and development of regional organizations in Melanesia</b>                       |     |
| 19. The Diversity of regional organizations: a general overview<br><i>Paul De Deckker</i>                          | 141 |
| 20. Statement by the Director-General, Secretariat of the Pacific Community<br><i>Jimmie Rodgers</i>               | 153 |
| <b>III. The Future</b>   |     |
| 21. Discussion: the strengths and weaknesses in being part of the Melanesian community                             | 159 |
| <b>New Caledonia and Melanesian unity</b>  |     |
| <b>I. The Past: New Caledonia and non-French Melanesians</b>   |     |
| 22. New Caledonia and non-French Melanesians: the Melanesian standpoint<br><i>Jean-Pierre Nirua</i>                | 165 |
| <b>II. The Present: New Caledonia applying to be part of a united Melanesia</b>                                    |     |
| 23. New Caledonia's regional cooperation: what is at stake and what are the prospects?<br><i>Laurent Sémavoine</i> | 171 |
| 24. European Union law resources for Melanesian unity<br><i>Jacques Ziller</i>                                     | 185 |
| <b>III. The Future</b>   |     |
| 25. Discussion: what role can New Caledonia play in Melanesian unity?  | 199 |

# Preface

This volume of the *New Pacific Review/Nouvelle Revue du Pacifique* (Vol.4 No.2) is an edited English-language version of the proceedings of an international symposium on New Caledonia held at the Institut de Recherche pour le Développement (IRD) in Noumea, on 4-5 September 2008.

The original text, titled *La Nouvelle-Calédonie pour l'intégration mélanésienne*, appeared as Volume 4, Number 1 of the *New Pacific Review/ Nouvelle Revue du Pacifique* (Paris: L'Harmattan, December 2008).

The symposium was organized and facilitated by Paul de Deckker, Jean-Yves Faberon and Armand Hage to mark the foundation and launch of The House of Melanesia/La Maison de la Mélanésie in Noumea. The mission of the House of Melanesia is to promote research in the social sciences and the humanities across Papua New Guinea and Island Melanesia (Solomons, Vanuatu, New Caledonia and Fiji) and to foster understanding and unity among the peoples and states of the South Pacific.

It is indeed fortunate that the launch of the House of Melanesia/Maison de la Mélanésie and the symposium on New Caledonia and Melanesian unity took place when it did. For many people did not realize that the chief instigator and co-director of the House of Melanesia, Professor Paul de Deckker, was gravely ill. He survived long enough to see the publication of *La Nouvelle-Calédonie pour l'intégration mélanésienne*, but suffered a tragic and untimely death in Paris on 7 July 2009.

This volume: *New Caledonia and Melanesian Unity*, which appears as Vol.4 No.2 of the *New Pacific Review/La Nouvelle Revue du Pacifique* is dedicated to his memory.

*New Caledonia and Melanesian Unity* is a focused collection of contributions by leading French Pacific, Pacific Islander and Australian scholars, covering a large number of disciplines, all concerned with the position and role of New Caledonia as a Melanesian country, both internally and as an island state in the Southwest Pacific, along with Papua New Guinea, Solomon Islands, Vanuatu and Fiji. The publication of an edited English language version of *La Nouvelle-Calédonie pour l'intégration mélanésienne* brings current French research within the purview of Anglophone readers, in the spirit of the Assises de la Recherche Française dans le Pacifique, which took place in 2004.

Darrell Tryon  
Research School of Pacific and Asian Studies  
Australian National University





# 1. Opening Address

**Yves Dassonville<sup>1</sup>**

Madam Vice President of the Government of New Caledonia, Mr President of the University, Honourable Members of the Government, Honourable Senator, Professors, Mr President of IRD, I can only acclaim this conference on the topic of New Caledonia's incorporation within Melanesia, for the Melanesian issue and the issue of Kanak identity have made up a major part of the French Government's policy for the last 20 years here in New Caledonia, both in domestic matters and external relations.

Regarding domestic matters, I would like to remind you that the French Government, one of the signatories and partners in the Noumea Agreement, has given a paramount place to the notion of Kanak identity in the laws stemming from the Noumea Agreement, and this was restated, not long ago, here in New Caledonia, by Mr Christnacht: Kanak legitimacy is fully acknowledged, both in law and in fact. Identity is a complex notion analysed by historians, anthropologists, sociologists and psychologists. Its roots reach back into the past, but it is built in everyday life, and that is where the Government's responsibility lies. In this area, the Government has initiated many things: first, as part of the Matignon-Oudinot Agreements, it set up the Agency for Kanak culture development; later, it built the Tjibaou Cultural Centre, dedicated on 4-5 May 1998. The Centre turned 10 not long ago. All this made up the early groundwork in the assertion of Kanak culture. The Centre is also a place of contemporary art creation, of encounters and exchange with the other Oceanian cultures. In 2008 the State contributed 2.6 million euros towards this budget.

The Noumea Agreement, and the March 1999 Organic Law that implements it, also created the Customary Senate, which determines its own assignments. The Senate is made up of 16 members representing the eight customary areas. It has decision-making and consultative powers regarding issues dealing with emblematic markers and customary matters. I have recently convened this Senate, as the law empowers me to do, and I referred two issues to it – one is about development of customary lands and the other about the integration of Melanesian youths into modern society. The agency for rural development and land planning, ADRAF, is another instrument that has been set up since 1978. You know that the land problem is still a major concern in economic and social development. It also raises the sensitive issue resulting from the fact that people who are subject to ordinary French law and people who are subject to customary law live on the same territory. These are a few examples of how the French Government has been supporting identity-building and the recognition of and respect for a Kanak identity in New Caledonia.

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<sup>1</sup> Haut-commissaire de la République (Representative of the French State)

Regarding external relations, the State stepped in as well to promote New Caledonia's incorporation into its region, and as part of this policy, the State has been particularly keen on exchanges designed to make Kanak culture better known. We have an instrument called the Economic, Social and Cultural Fund for the Pacific, which is part of the Foreign Affairs Ministry; it has earmarked three million euros for the purpose of promoting the incorporation of French territories within the Pacific area. New Caledonia is one of the major recipients. Among the initiatives relating to Kanak culture, I will mention the following: A New Caledonia season was organized in New Zealand in 2007; it involved a tour by a dance troop and various bands, which the New Zealanders enjoyed very much. A fund was established to help cultural projects tour the region, and expressions of Kanak culture greatly benefit from the funds. A cooperation agreement was concluded with Vanuatu; it is jointly and equally funded by the French State and New Caledonia, with support from the Southern Province. This project, as we can see, relates to a country belonging to the Melanesian area. The purpose of these examples is to show you that the State not only accepts the incorporation of New Caledonia into its geographical area, and more particularly the Melanesian area, but the State fosters that incorporation. Indeed, the State wants New Caledonia as such to be present in the region, to be empowered to conclude agreements and set up cooperation with its neighbouring countries, and to be a member of international organizations as the Organic Law allows it to do, and this is just what it has been doing. We would like to make it possible for geopolitics and the region to be more substantially taken into account by New Caledonia and its Government; despite the discrepancies in political status and in the standard of living, we also want New Caledonia to join its region, and first of all its Melanesian environment.

Some time ago I welcomed a technical delegation from the Melanesian Spearhead Group, and I was struck by how cordial the exchange was between them and the representative of the French State. Things went along in a peaceful atmosphere. I believe the process was initiated in 1988 and enhanced by the 1998 Noumea Agreement; it is considered in a positive light by all countries in the area, both the big countries such as Australia and New Zealand, and the smaller island countries. These realize that there is a new deal, that New Caledonia is being given more and more powers, that it is visible in its own right, and that it has its own life in the Pacific. They also realize that all this is strongly encouraged by the French Government. These were a few thoughts I wanted to share with you. Thank you.

## 2. New Caledonia is not an uncertain place

**Professor Jean-Yves Faberon<sup>1</sup>**

A few years ago, in 2002, Paul De Deckker and I organized in this very place a colloquium on the multicultural State. On that occasion, our colleague Francis Delpérée, a Senator and Baron from the Kingdom of Belgium, pointed out the extent to which Paul and I complement each other by stating that this feature is present in our last names – mine being of Latin origin, faber, meaning a worker, and Paul's Flemish name meaning a roofer. In this context, no wonder we eventually built a house together, and so we introduce the Maison de la Mélanésie – House Blong Melanesia – a multidisciplinary research centre devoted to the five Melanesian countries.

As we were organizing the first event by this new body and defining a founding topic, we chose to start with the foundation, that is, to speak first of the land (and Paul is far from being interested only in roofing).

More than in other parts of the world, in Melanesia land is the essence of being, and as we want to build up House Blong Melanesia in Noumea, we would like first and foremost to assert that New Caledonia is a Melanesian land. At present, many different human communities live on this land, not only Melanesians (we had analyzed multiculturalism in the conference mentioned above), and this situation is not specific to New Caledonia since it can be found in Fiji. For that matter, even the indigenous peoples on the Loyalty Islands have their roots elsewhere – in Polynesia.

What we want to say with this colloquium as well is that not only is New Caledonia, a French land in Melanesia, part and parcel of the Melanesian region, but now it can also play a part in Melanesian unity itself.

New Caledonia is not an uncertain place.

This first House Blong Melanesia colloquium makes the case for the phrase which makes up its title – 'New Caledonia and Melanesian Unity.' This is also a political line keenly advocated by the Governments of New Caledonia and France for over ten years and spelled out in the Noumea Agreement.

It is not a matter of chance if we receive messages from the top governmental levels in France, Australia, Papua New Guinea, etc.

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<sup>1</sup> Joint director of House Blong Melanesia

Our conference is made possible thanks to the presence among us of Fijians, ni-Vanuatu, Papuans, Solomon Islands citizens, New Caledonians belonging to different ethnic groups, and many Australians and French people from the mother country. All Melanesian universities are represented, as are many Australian ones and French universities in Europe. I will not mention all of them. Allow me just to thank my own universities – the University of Montpellier and the University of Aix-Marseille; both have shown great consideration to me.

On opening the 2002 colloquium I quoted the Belgian novelist Amélie Nothomb by saying that we had not been spared ‘Fear and Trembling’ as we were organizing the conference then.

Nothing would have been possible without financial help; thus we have to underscore the fact that we would not be meeting for two days but for the immediate trust put in us by the French Government with the Fonds Pacifique; the New Caledonian Government, the Southern Province of New Caledonia with its indefatigable representative, Bernard Chéroux; the Agence Universitaire de la Francophonie; the University of New Caledonia as well as Société Le Nickel and Goro Nickel. Thank you all for your trust and thanks to IRD for hosting our colloquium one more time in this superb auditorium.

Thank you all for being here.

New Caledonia, a French land for Melanesian union, is not an uncertain place: it knows what it is and it knows its own mind; this colloquium will explain.

### 3. Prefatory Remarks

†Paul De Deckker<sup>1</sup>

It is up to me to provide some explanations regarding our two-day colloquium, which is the outcome of many months of work, of fruitful contacts, and of ambitions that are materializing today thanks to our contributors, whose high qualities and high skills I hereby salute.

But first of all it is essential to know about the Maison de la Mélanésie – House Blong Melanesia; today's conference is its founding event.

Jack Lang and the Minister before him at the Higher Education and Research Ministry wanted French universities to open up to the outside world in a pro-active way. As a result, they supplemented universities with 'Country Homes' and the Ministry would fund those to help them along in their development. That is how the Maison du Japon was created at the University of Strasbourg and the Maison de la Malaisie at the University of La Rochelle, among others.

When I was President of my university I attended the University Presidents' Conference on a very regular basis, and I became friends with many colleagues. One of them, Professor Gérard Binder, then President of the University of Mulhouse Haute Alsace, flew to New Caledonia and Vanuatu on vacation. I asked him over for dinner at my place, and during that meal in 2003 he talked me into setting up this Maison de la Mélanésie, in this instance not a 'Country Home' but a 'Region Home'. In the report that Jack Lang had asked him to write on 'Country Homes', he gave a prominent place to the Maison de la Mélanésie by recommending it be given special consideration both in terms of official recognition and funding.

Governments change, as do also university presidents...

When Sir Michael Somare, Prime Minister of Papua New Guinea, came to New Caledonia in 2005 to be awarded an honorary doctorate from the University of New Caledonia, which he was very proud of, we discussed academic cooperation projects between our two countries. These projects did not materialize as we had expected, as politics and political conflicts are also part of Academe...

I thought, however, that the official opening of House Blong Melanesia would be the doorway to setting up all sorts of cooperation projects. Its bylaws were published in the New Caledonia Official Gazette last January, and they specify its main objectives, namely further research on Melanesia.

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<sup>1</sup> Joint director of House Blong Melanesia

At about the same time – and this shows how right we were – a foundation was set up in Sydney with a similar aim. On the dedication of that foundation, the Australian Parliamentary Secretary for the Pacific, Duncan Kerr, indicated that we should bear in mind that New Caledonia was also part of Melanesia, along with PNG, Solomon, Vanuatu and Fiji.

I asked Mr Kerr to take part in our conference, but he told me he is very sorry he cannot because he plans to be in Noumea on 11 November to join our Minister, Yves Jégo. Just as Sir Michael did, these two officials sent me a message and asked me to read it at the colloquium opening to wish good luck to the Maison de la Mélanésie and full success to the conference. The proceedings will be published, and they will be extremely interesting to the political decision makers involved in Melanesian issues.

This political endorsement and stamp of approval is not only a recognition but also an encouragement, and the Maison de la Mélanésie will definitely show it is worthy of it through its research work. In this respect, the letter from the Prime Minister of Papua New Guinea will be part of the founding documents of the Maison de la Mélanésie. Indeed, Sir Michael Somare gives our organization a road map.

The Agence Universitaire de la Francophonie recognizes the Maison de la Mélanésie, and it has incorporated it into a worldwide institutional network extending from Cairo to Luj in Romania, to Cantho and Hochiminville, to Dakar, to the Americas and to Pretoria in South Africa.

Personally I am pleased to see that the President of the University of New Caledonia agrees to conclude an agreement between the Maison de la Mélanésie and the Agence Universitaire de la Francophonie through our University of New Caledonia. House Blong Melanesia will work for the benefit of the University of New Caledonia.

The idea for and the origin of the colloquium emerged during the annual meeting of the Pacific Forum in Tonga last year. In Tonga, the Speaker of the Congress of New Caledonia, Harold Martin, stated that New Caledonia will ensure continuity in implementing Mrs Thémereau's policy, and he planned to contribute to the development of the Pacific region through a range of expertise. My colleague and friend Jean-Yves Faberon and I decided there and then that the Maison de la Mélanésie can play a part in this area by providing knowledge which is specific to Melanesia. That is what we will see during the coming two days.

Our project benefited from the interest shown by several institutions, which contributed funds. I gratefully acknowledge their involvement, for it shows, as the French President and the Minister of Higher Education and Research Valérie Pécresse wish, that the public and private sectors can work together in the general interest. The financial support provided by the Prime Minister of Papua New Guinea is also remarkable.

I can assure you that I have convened conferences in difficult times, at Paris 7-Jussieu University with Pierre Lagayette on 'State and Power in the Pacific' in 1985, even as the events in New Caledonia made discussion of this question politically incorrect; on 'Evolution of Indigenous Law and Custom' with Jean-Yves Faberon in Noumea in 1994. The

proceedings were published both in French and in English and were used as a basis for the drafting of the Noumea Agreement. Also, and again with Jean-Yves, we published *The Multicultural State*, published in Brussels – with no subsidies – by the prestigious publisher Bruylant, and it is now out of print.

For all these conferences we had very few no-shows among those who had been contacted and agreed to attend. In sociology, the Founding Father of the discipline, Emile Durkheim, set up a typology of suicides – spectacular suicide, honour suicide, suicide for love, anomic suicide, etc. In this instance, I have half a mind to set up a typology of withdrawals related to diplomatic illnesses – as early as the times of Ancient Rome, diplomatic illness was known, but it did not involve as many people as the one that is affecting our colloquium – backache, lovesickness, scientific inability to draft the paper, compulsory school attendance, etc.

Some have told me, and still do, that the topic is too sensitive and it is not a good thing to be involved in it... I had trouble believing this. But if it were so, I would again think that the Maison de la Mélanésie is blazing a trail which is clearing the way to serve the future of our people, their identities, their cultures and their children.

In closing, the Pacific Islands has just lost one of those who have served it most. Greg Urwin passed away in Apia, the Samoan capital, on 9 August. Greg was an Australian diplomat appointed Pacific Forum Secretary General. He was the driving force behind the Pacific Plan, to which the Forum has turned for the last few years for its social and economic development. This diplomat worked all through his career for the peoples of the Pacific, whom he loved. Australian to the core and married to a Samoan woman, Greg was all for inclusiveness and would brook no exclusion; he was constantly moved by a constructive mind. We in New Caledonia are beholden to him for our place within the Forum with an associate member status now, and eventually as a full member.

So we invite you to go along with my suggestion that our colloquium today and tomorrow be dedicated to the memory of this great diplomat who brought people together.





## **4. Statement from the Prime Minister of Papua New Guinea**

**Rt Hon Grand Chief Sir Michael Somare GCL GCMG CH CF KStJ**

I sincerely regret not being able to make it in person to mark a great moment in the establishment of a permanent place for our Melanesian cultures that are some 50,000 years old and are at risk of being forgotten and lost.

It would be a tragedy if we were to allow our rich traditions and customs to fade into oblivion and deprive our children and grandchildren of knowing who we are: Melanesians.

I thank the Governments of New Caledonia and France for this worthy initiative to preserve, research and promote our Melanesian heritage as well as monitor the changes that are taking place to the Melanesian polity.

This initiative complements the other collective efforts that are being undertaken to promote Melanesian identity under the auspices of the Melanesian Spearhead Group, the Melanesian Cultural Festival and the Melanesian Soccer Tournament.

As one of the founding fathers of my country, Papua New Guinea, it gives me great satisfaction to see New Caledonia and the Government of France through Haus Blong Melanesia and the University of New Caledonia, leading the way in giving Melanesia a home dedicated to preserving our cultures and recording our customs and traditions in all their forms.

In the past our legends, genealogies and customs were passed on orally from generation to generation. Fortunately today, this dialogue will continue and this time it will be recorded and housed at the Maison de Mélanésie.

May I also suggest that the Maison de la Mélanésie considers including in its scope of activities the restitution of cultural property back to their rightful places. As you are aware, many of our most treasured cultural properties and sacred objects of art are stored in many museums and private collections around the world.

The Maison de la Mélanésie could serve as a vehicle to coordinate efforts among Melanesian countries to retrieve some of these precious artefacts under the aegis of UNESCO's program on restitution of cultural property.

Coming from a country that boasts a thousand Melanesian tribes, we have today 832 different languages among our many peoples. I know Fiji, Solomon Islands, Vanuatu and New

Caledonia would be the same but in smaller proportions. I believe all of us would therefore also share the same views on this matter.

While some work is being done in our respective countries of Melanesia to preserve our languages, our traditional ways of life are being confronted by modern ideas, technologies and thought.

I therefore wholeheartedly appreciate the aim of this great institution that is being established, not only to preserve our past but to engage in constructive dialogue and research so we can continue our journey as Melanesians along side the other cultures in our region and in the world.

I believe the progress of indigenous cultures in today's modern environment can be greatly enhanced as a result of having institutions like this that gives us all an understanding of who we are and where we can add value to the world around us.

I commend you for embarking on this noble enterprise and wish you every success in your conferences, research and the establishment of your directory and collections.

For my part, I am humbled to have been invited to be an Honorary Committee Member of the Maison de la Mélanésie. It gives me great pleasure to accept this honour. On behalf of the Government and people of Papua New Guinea, I pledge US\$50,000 towards research at the Maison de la Mélanésie.

# 5. Melanesia - an important region for Australia

Anita Butler<sup>1</sup> and Stephan Bohnen<sup>2</sup>

The islands of Melanesia are some of the most populous in the Pacific and are also some of Australia's nearest neighbours. Geographically, it is no surprise that Australia has had a long association with the countries of Melanesia – from early European explorers, whalers, traders and, in the case of Papua New Guinea, colonial administration, to our strong present involvement in development cooperation.

Australia's bilateral relations with the countries of Melanesia have not always been rosy, and continue to experience highs and lows, partly because some of the most serious problems of governance and inter-ethnic tension in the region have been found in Melanesia. Our relationship with Papua New Guinea is made more complex by the history of Australia's role in administering that country from 1906 to 1975.

At present, our relations with Papua New Guinea, Solomon Islands and Vanuatu are particularly amicable, but those with Fiji are obviously more difficult. Regardless, however, of the challenges that have arisen in our relations over time, we can see clearly that there has never been a period when Australia did not consider its engagement with its Melanesian neighbours to be of importance and was not strongly focused on developments in this region.

## **Australian policy in relation to New Caledonia**

The same is true for New Caledonia, which is part of Melanesia both geographically and culturally through its indigenous population. The proximity which makes the other countries of Melanesia important to Australia applies equally to New Caledonia, even if its status as an overseas collectivity of France and its advanced level of development make it different. At only two and half hours from Sydney, New Caledonia is arguably the closest neighbour to the most populous region of Australia. We clearly have an interest in maintaining strong, constructive and friendly relations. And it is clearly of equally importance to us that this near neighbour is stable and prosperous, and a full participant in regional affairs.

This has always been the case. Australia's interest in developing relations with New Caledonia and in the country's development and political stability have been at the core of our policy towards the collectivity for at least the last thirty years. But, as a consequence of changing regional and global contexts, our interest has not always been expressed in the same way. This is most evident in the evolution of our position on New Caledonian independence. To understand the path by which Australia came by its current policy in relation to New

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<sup>1</sup> Australian Consul General

<sup>2</sup> Australian Deputy Consul General

Caledonia, and our attitude towards the subject of this conference (New Caledonia and Melanesian integration) it is helpful to cast our minds back to the start of the 1980s and remind ourselves how the regional context and the international political environment have changed in the last three decades.

### **Historical overview – the early 1980s**

It is no secret that the position held by Australia thirty years ago in support of New Caledonian independence brought us into conflict with a majority of the New Caledonian population and of course with France.

It is important to understand that Australia took that position in the context of a regional environment in which many Pacific island countries, Melanesian as well as Polynesian, had only recently become independent. The future of these countries seemed promising, and they had not yet come face to face with the challenges of micro-state independence which are a regional preoccupation today. Australia, which had only given up its role as administrator of Papua New Guinea five years previously, was eager to demonstrate support for this new regional independence, and believed genuinely in the possibility of its success. For us, in this context, the situation of New Caledonia – largely dependent on and under the direction of France – seemed an anomaly.

It also seemed to be an impediment to New Caledonia's full participation in regional affairs. In 1981, the South Pacific Forum (as the Pacific Islands Forum was then known) was only ten years old and had undergone rapid expansion to incorporate the newly independent states. It had become the pre-eminent forum for discussion of regional political and social affairs, and New Caledonia's relationship with France was excluding it from this discussion. The region considered independence a pre-requisite for Forum membership and thus for participation in dialogue on the future of the region and in the development of regional solidarity at the international level. Once again, New Caledonia's absence from these discussions and this process of regional evolution seemed like an anomaly or, at best, a transitional situation.

To return to the subject of our conference, it is therefore reasonable to assert that Australia's interest in seeing New Caledonia participate in regional affairs – to be integrated into the region – in part contributed to our position during that period in support of Kanak independence. For the Pacific at that time, independence was a priority before all else, so Australia took a position which, along with our stance in relation to French nuclear testing in the Pacific, distanced us from France and New Caledonia for a time.

But times change, as do priorities and contexts. Thirty years is a long time for a country as young as Australia, where the first European colony was established only 220 years ago and which has been federated as a single country for only 107 years.

### **The Matignon and Noumea Accords**

Australia's position had already changed considerably from that of the early 1980s by the time of the signing of the Matignon Accords in 1988. Just as 'Les Evènements' pushed New Caledonians towards the handshake, Australia came to see that the most important objective for the future of New Caledonia was the re-establishment of civil security.

It was with this objective in mind that Australia wholeheartedly supported the approach of Michel Rocard which led to the signing of the Matignon Accords. Along with New Zealand, we lent our official support at the time and have done so in international fora since. We reiterated this support through the official attendance at the signing of the Noumea Accords in 1998 of the then Speaker of the Australian Parliament (the third highest Australian authority), Ian Sinclair.

In short, our policy had become, and remains today, one of support for a democratic process put in place by the French State to permit increasing autonomy for New Caledonia, a process which is enabling New Caledonia's inhabitants to determine the future political structure of their country.

### **The present**

The regional context in which this discussion takes place today is unrecognisable from that of the early 1980s. Stability and prosperity are now the principal objectives of the majority of the independent Pacific island states, and political structures are of less importance. On the global plane, as Michel Rocard noted during his speech in Noumea at the end of May, countries are increasingly ceding elements of their sovereignty in response to the changing demands of globalisation.

In this context, it is no longer necessary to know the future political status of New Caledonia to be sure that the country has a role to play in the region. Whether it retains significant autonomy while remaining a part of France or decides to take on the final sovereign powers will not change the fact that New Caledonia is geographically part of the Pacific region.

There is no doubt that the New Caledonia of today, while of course having specific preoccupations of its own, already shares many interests with the other countries of the zone. It may not face the same challenges of governance and weak institutions, and the significant gap in living standards between New Caledonia and the Forum island countries may pose a challenge for bilateral and regional engagement, but the stability of the region as a whole, its ability respond to climate change and the challenges of geographic isolation – access to maritime and air transport, communications, and the importance of renewable energies – are of importance to all countries of the region. What happens in New Caledonia's neighbourhood is of relevance to New Caledonia, part of its population has strong cultural links with its near neighbours and, importantly, the country has something to contribute to regional discussions.

### **Australia's support for the regional integration of New Caledonia**

Accordingly, Australia sees as crucial the Noumea Accord's insistence on New Caledonia's regional integration and the undertaking by the French State to support this (which we hope to see continue, even if France's strategic interests in the region are no longer what they were).

Australia has done its best to support this process, through words but also through action. It is predominantly to foster regional integration that we have, since 1989, provided a modest number of scholarships in addition to our small grants program. The scholarships allow New Caledonian students to undertake tertiary studies in Australia, develop English language skills

that will facilitate their engagement with regional neighbours, and broaden their knowledge and understanding of one near neighbour – Australia.

Increasingly, we are also promoting regional integration through facilitating the participation of New Caledonian officials and technical experts in regional workshops and seminars. This enables them to keep abreast of regional developments in their fields and build ties with their regional counterparts. We encourage this participation in full awareness of the significant gap in technical needs between well-developed New Caledonia and its regional neighbours, but see as beneficial the possibilities for mutual exchange.

### **The particular case of Melanesia**

Our support is aimed at aiding New Caledonia's engagement with the region as a whole but the arguments in favour of broader regional engagement are even more pertinent in relation to Melanesia. It is no surprise that New Caledonia's regional outreach is most developed with the countries most geographically proximate to it and with which it shares cultural links through its indigenous population.

These links have long been recognised by the other countries of Melanesia, including through the inclusion of the FLNKS in the Melanesian Spearhead Group (acknowledging of course that this was initially for political reasons relating to the demand for independence). The cultural links between the populations of New Caledonia and Vanuatu, both European and Melanesian, are undeniable.

The joint engagement of the New Caledonian Government and Provinces and the French State on development projects in Vanuatu is an excellent example of the way in which the particular characteristics of francophone New Caledonia can benefit its regional neighbours. Australia is pleased to be cooperating with France and New Caledonia on some of these projects, for example in the area of public health.

### **The role of New Caledonia**

There is no doubt that New Caledonia has much to offer. And the timing is right to push this regional engagement further.

Discussion of regional integration has blossomed in the Pacific over the past few years. Most of the independent Pacific island states have now had 25 or 30 years to fully appreciate the difficulty of going it alone to confront the serious challenges faced by the region. As a result, there is an increasing tendency within the Forum and particularly in relation to the Pacific Plan, to speak of the pooling of regional resources and of working together; of regional integration.

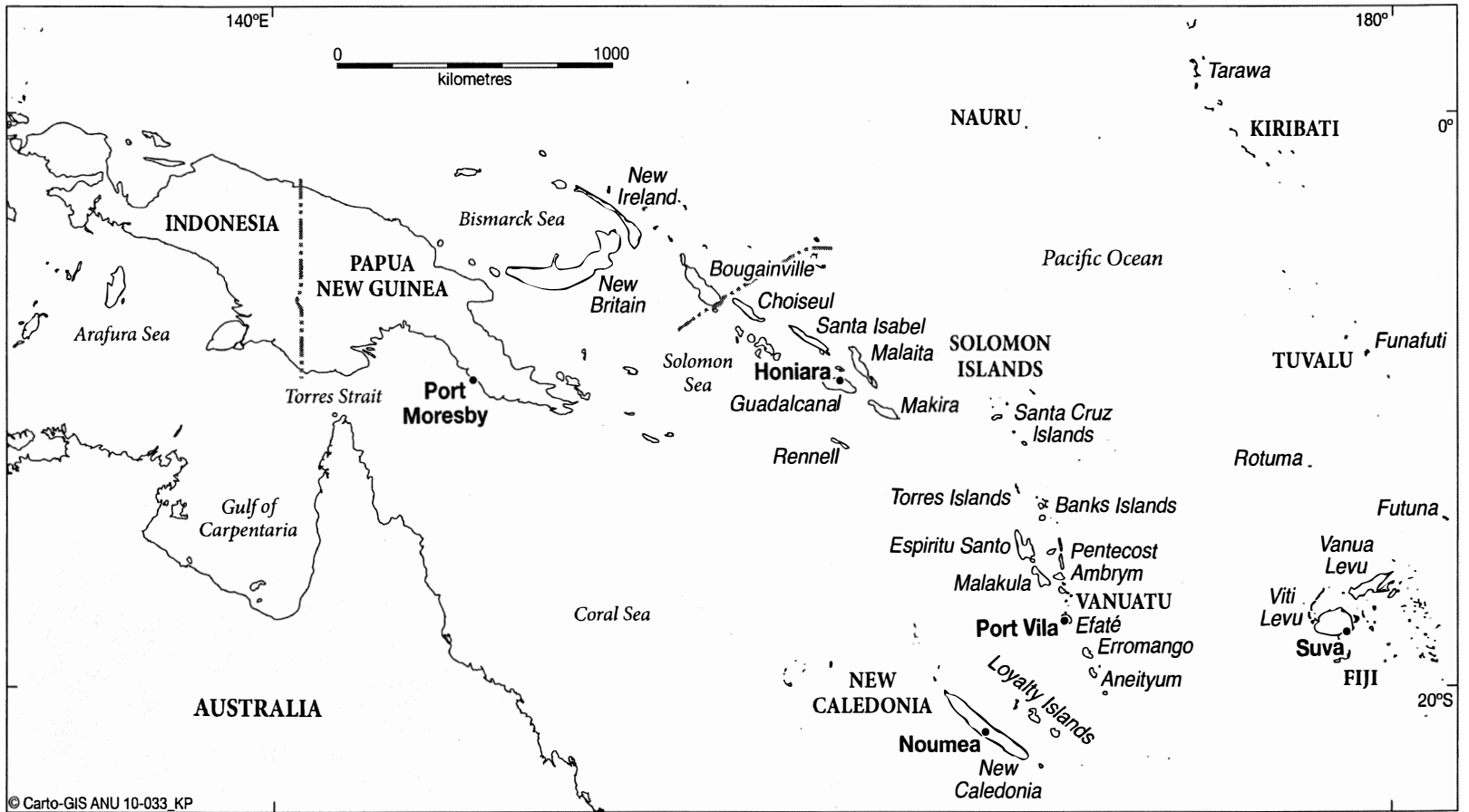
In this context, Australia's wish to see New Caledonia participate fully in the region, which we understand to be shared by the French State, is increasingly the wish of the independent Pacific island states. We all appreciate that New Caledonia is a regional neighbour with a contribution to make to regional debate, and a country which can bring a different perspective to the serious challenges the region must surmount. This new attitude was reflected in the Forum's willingness to accept New Caledonia as an Associate Member in October 2006.

We all wish to see New Caledonia play an active role in the future of the region; to participate fully in cooperative efforts to ensure broad regional stability and economic development, with the objective of improving living conditions for the people of the Pacific islands, so that we can all live in a region where peaceful and sustainable economic development can be envisaged by all.





**What is Melanesia?**



Map 1: The Melanesian World

## THE MELANESIAN WORLD: SOME FIGURES 2007

|                 | Area<br>Km <sup>2</sup> | Population<br>(1000) | Population<br>density<br>(persons/km <sup>2</sup> ) | EEZ<br>1,000<br>km <sup>2</sup> | Fertility rate<br>(children<br>per woman) | Life<br>expectation<br>(years) | % urban<br>population | GNP<br>(billions of<br>US dollars) | GNP/person<br>US dollars |
|-----------------|-------------------------|----------------------|---|---------------------------------|---|--------------------------------|-----------------------|------------------------------------|--------------------------|
| PNG             | 461,691                 | 6,335                | 13.7  | 3,210                           | 3.8                                       | 57                             | 13.7                  | 5.45                               | 860                      |
| Solomon Islands | 28,796                  | 495                  | 17.2  | 1,340                           | 3.8                                       | 64                             | 17.7                  | 0.36                               | 722                      |
| Vanuatu         | 14,763                  | 226                  | 15.3  | 680                             | 3.7                                       | 70                             | 24.3                  | 0.39                               | 1,741                    |
| New Caledonia   | 19,100                  | 241                  | 12.6  | 1,740                           | 2.2                                       | 75                             | 64.7                  | 7.8                                | 32,289                   |
| Fiji            | 18,272                  | 838                  | 45.8  | 1,290                           | 2.7                                       | 69                             | 51.7                  | 3.41                               | 4,065                    |

## Figures relating to some neighbouring countries

|             |           |         |       |       |     |    |      |        |        |
|-------------|-----------|---------|-------|-------|-----|----|------|--------|--------|
| Australia   | 7,686,848 | 21,005  | 2.7   | 8,148 | 1.8 | 81 | 89.1 | 898.82 | 41,534 |
| New Zealand | 270,530   | 4,235   | 15.6  | 4,083 | 2.0 | 80 | 86.9 | 128.14 | 30,253 |
| Indonesia   | 1,904,570 | 225,539 | 118.4 | 2,914 | 2.2 | 68 | 50.1 | 414.71 | 1,839  |

Source: Christian Huetz de Lempis. Sources: *Atlas Eco 2009*, *Images économique du monde*, 2009 and other yearbooks



# I. Melanesia, the lands and the peoples

## 6. Lands and seas: the Melanesian world, a geographical approach

Christian Huetz de Lemps<sup>1</sup>

### **The expanse of Melanesia**

When my colleagues and friends Paul De Deckker and Jean-Yves Faberon assigned me the task of providing this cursory geographical introduction of the Melanesian area, I thought it necessary to ponder over the nature and limitations of the concept of Melanesia.

### **The origin of the definition**

In its initial definition, that is, the one originating in the 1830s, Melanesia was the island area where the ‘Black Islanders’ lived – here we find the Greek root, melas, meaning black. It is to be distinguished from the Malay world further west, from Micronesia, the ‘small islands’ area to the north, and from Polynesia ‘the numerous islands’ to the east. These last two words are only geographical words and do not refer to the nature of the people inhabiting these vast units, as opposed to the much more identity-oriented definition of the Melanesian space with its would-be anthropological claim.

This division into vast areas was at one with observations made by European discoverers/explorers during the latter third of the 18th century and the early 1800s regarding the existence of populations in the Pacific which are very different from each other. But it was the big French scientific expeditions of the 1820s and 1830s that brought a real spirit of classification of nature and peoples and a spirit of logical division of the world to those vast Pacific expanses. Freycinet, Duperrey, Hyacinthe de Bougainville and Dumont d’Urville made up a first group, followed a little later by Laplace, Vaillant, Dupetit-Thouars and Cécile. As a group, they achieved what might be called an intellectual appropriation of Oceanic expanses, long before those expanses were divided between the colonial powers.

All this happened in the context of an excitement to attain knowledge, in particular geographical knowledge, in line with the establishment of numerous geographical societies, the oldest being that of Paris in 1821. Regarding more specifically the name Melanesia, two French travellers and writers are responsible for its imposition, through their best-selling

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accounts of Oceania that were considered authoritative for decades. The first was the great explorer Dumont d'Urville in his *Voyage Pittoresque autour du monde*, published in 1834 in two thick volumes, and the second was Domeni de Rienzi, who travelled all over the Pacific and wrote three books summarizing his findings. They were published in 1839 in the 'Univers pittoresque' collection. In these books the bounds of Oceania were not clearly drawn, as it included Australia. But both Dumont d'Urville and Domeni de Rienzi sensed that Oceania was a heterogeneous whole and that it was necessary to distinguish between Papua, centred around New Guinea and extending eastward all the way to Fiji, and an 'endaménie' – the word was coined by De Rienzi – centred around Australia, whose Aboriginal population was evidently very different from that of the 'Papouas' or 'Papous' (Papuan). Gradually the name Melanesia came to be used to designate the first group, made up of the five big geographical entities – New Guinea, the Solomon Islands, the New Hebrides (now Vanuatu), New Caledonia, and Fiji. Much more recently, the name Melanesia has been not only accepted but also taken up by the former colonies, the newly independent states which gained independence in 1970 and thereafter. From then on, the name Melanesia has designated a vast area populated very long ago by groups belonging to a common and original pool. Thus a cultural approach superseded the original definition based on race or on racism.

### **The boundaries**

#### *To the east*

The issue of the limits to be assigned to Melanesia is still a current one; not toward the east, where the boundary between Melanesia and the vast triangle with Polynesian peoples is undisputed. From a physical standpoint, the small Polynesian archipelagos scattered in the vast expanses of the central and eastern Pacific contrast with the 'big islands' to be found in the south-western Pacific. Their scattered distribution and their isolation have resulted in their flora and fauna growing poorer as we move eastward and in a very high level of endemic animal and plant species. Most of all, because the Polynesian archipelagos were populated at a much later period, probably between the second century BC and the 14th century AD, they feature a basic linguistic unity which makes them totally different from the linguistic diversity characteristic of the Melanesian lands which were populated much earlier. As a reminder, we will state that Papua New Guinea alone has over 800 different languages, and the Solomon Islands has 87 languages, and so on. This is due to the fact that these islands were populated very long ago – up to 50,000 or 60,000 years. During those remote eras, the low level of the sea corresponding to the last Quaternary glaciations (Würm's) laid open the huge continental shelf at Sahul and made it easier for the ancestors of the present-day Papuans and Melanesians to migrate from Asia. It is to be noticed that the separation between Melanesians and Polynesians (who also originally came from Asia) is not absolute, even from a geographical standpoint, as in the course of their migrations some Polynesians managed to be isolated deep in the heart of the Melanesian area. Thus the Solomon Islands include both the Ontong Java Atoll to the north of the string of main islands, and the Rennell Islands to the south of these, and both places have a Polynesian population.

#### *To the west*

We have a problem with the western boundaries of Melanesia, not from a physical, human or cultural standpoint, but on account of political problems, the heritage of colonial history. One of the first problems is the issue of whether there exists a 'natural' break between Asia and

the Melanesian world. With regard to fauna, for example, the field biologist Wallace (1823-1913) had drawn a line west of Celebes separating Asia from Oceania. Oceania, as he saw it, featured specific animal families such as marsupials. The line was somewhat arbitrary; it was amended many times and replaced by a transition area (Wallacea) covering the major part of Moluccas. On the human level as well, we find from the east of Moluccas to New Guinea a number of islands whose populations evidently show affinity with Papuans. Today, however, the line has been moved much further east, halfway through New Guinea itself, as a result of a colonial distribution reaching far into the past. Indeed, the western part of New Guinea had been sighted very early by the Portuguese sailors coming from Moluccas, whereas the eastern part was sighted by the Spaniards, and then later by the French and the British sailing westward across the Pacific.

As early as the 17th century, the Dutch, having ousted the Portuguese, settled in Moluccas, and thereafter included the western part of New Guinea in their colonial empire known as 'the Dutch East Indies', whereas the eastern part was divided between the British and the Germans. This artificial break dividing New Guinea in two has only grown more pronounced ever since. Indonesia, which after independence acquired what was the Dutch East Indies, would not rest until in 1963-1965 it recovered the western half of New Guinea. This part was integrated with some difficulty under the name West Papua; the outcome of the Indonesian government's population (transmigration) and development policy.

I will not go further, but it seems to be more logical to restrict my paper to 'geopolitical' Melanesia, consisting of the five big states and territories mentioned above, despite physical and human similarities in 'West Papua'. Even without the western half of New Guinea, Melanesia makes up a vast whole: the total area of the five states and territories is 542,622 km<sup>2</sup>, or the area of France, or twice the area of New Zealand. Papua New Guinea has the lion's share, with 461,691 km<sup>2</sup> (or 85 per cent of the total), far ahead of the Solomon Islands (28,796 km<sup>2</sup>, 5.3 per cent), New Caledonia (19,000 km<sup>2</sup>, 3.5 per cent), Fiji (18,272 km<sup>2</sup>, 3.3 per cent) and Vanuatu (14,763 km<sup>2</sup>, 2.7 per cent). Thus it can be said that there is a 'continental' Melanesia and an island Melanesia made up of archipelagos that are more or less fragmented.

#### *The oceanic expanse*

These archipelagos are scattered over vast ocean expanses, which as per the new sea law – the Montego Bay Convention – enables them to control vast Exclusive Economic Zones (EEZ) within the 200 nautical mile-limit from the shore.

For example, the 'sprawling' islands of PNG enjoy a 3,210,000 km<sup>2</sup>-EEZ thanks to its island extensions – the Bismarck, Bougainville and Buka archipelagos as well as the smaller Admiralty, d'Entrecasteaux and Louisiade archipelagos. PNG's EEZ is seven times as big as its land area. But this ratio of EEZ to land area is much higher in the central and eastern Melanesian archipelagos, ranging between 46:1 in the Solomon Islands and Vanuatu and 91:1 in New Caledonia, including the Loyalty Islands. This is, however, a far cry from the 1000:1, and sometimes much more, in the small Polynesian and Micronesian archipelagos, where EEZ to land area ratios are extreme.



Overall, the five Melanesian States and territories enjoy an EEZ extending more than 8,260,000 km<sup>2</sup>. This makes it easier to understand why the large powers interested in ocean development, such as the United States and Japan, pay close attention to them. One example is the multilateral agreement signed lately by the United States and a number of Pacific island states including Papua New Guinea. The agreement allows American tuna boats access to the EEZ of signatory nations that cannot afford to develop it on their own, in return for financial compensation.

### **The features of Melanesia**

Melanesian expanses seem all the vaster as they are sparsely populated. In 2007, the five countries making up Melanesia had a population that hardly reached eight million, and six million of those live in Papua New Guinea. This amounts to a density of 15 per km<sup>2</sup>. It is true that there is a significant contrast between PNG (13 per km<sup>2</sup>), the Solomon Islands and New Caledonia on the one hand, and Fiji, with 47 people per km<sup>2</sup>, on the other. Fiji is a special case since an immigrant Indian population was brought in and added to the Melanesian population. Indians prospered to the point where, until a few years ago, the Indian population had caught up and even exceeded the indigenous population. Be that as it may, on the whole, the Melanesian world, on account of its low population densities, is set apart from both the overpopulated and congested Asian cities and the heavily populated Polynesian and Micronesian island states. The Melanesian world, however, is also very different from the human void to be found in Australia's vast expanses, where the population density is just 2.5 people per km<sup>2</sup>.

Perhaps we must link these low human densities to two major geographical features of the Melanesian world, the importance of natural hazards on the one hand, and the constraints stemming from their extremely dispersed character on the other.

### **The importance of natural hazards**

First of all, the splendour and extreme diversity of landscapes in Melanesia should not set us to dreaming about mythical tropical paradises which are lush and peaceful as they are shown in tourist literature. Nature is often harsh to people in Melanesia. It threatens people in many ways likely to jeopardize their safety and even threaten their lives, but to a certain extent it also endangers the prospects for sustainable development. Melanesia is an unsafe world, and no part of it is hazard-free, as it has to face physical, weather and health hazards.

The first hazard, which we will call the physical hazard, is the result of the inner structure of this south-western part of the Pacific. In this area, the plates making up the shell of the earth's crust clash and collide with each other. They are mainly the Pacific plate and the Indo-Australian plate. I will not dwell on plate tectonics; we must notice, however, that Melanesia is sideswiped by part of the huge Circum-Pacific Belt along which large scale tectonic movements occur. To make things simple, we will say that the contact between the plates takes place in New Guinea and in the Solomon Islands; it branches off in Vanuatu and runs to Fiji, and from there, it moves on to Wallis, Tonga and New Zealand. New Caledonia alone lies a little away from these particularly sensitive areas.

The most spectacular form of the violence of this physical hazard in Melanesia is volcanic activity along the line where the plates meet. While volcanoes are not to be found everywhere, and not all volcanoes are permanently active, nonetheless there are at least 16 volcanoes regarded as active in New Guinea, 14 in New Britain, nine in New Ireland, several in the Solomon Islands, in Vanuatu (in *Lovevi*, in *Tanna*, in *Ambrym*), and so on.

These volcanoes during eruption periods erupt into fiery clouds or spew huge quantities of gas and ash that lay waste the neighbouring areas and force people to flee. People in Papua New Guinea still remember the huge eruption that occurred with the reawakening of the *Tavurvur* and *Vulcan* volcanoes overlooking *Rabaul*, the provincial capital in the *Bismarck Archipelago* in September 1994. They had not erupted since the 1937 paroxysm which forced the transfer of the Papuan capital from *Rabaul* to *Lae*. By contrast, they have been in the news almost every year since 1994, although their eruptions are not as intense as that of 1994 when huge amounts of gas and ash forced the evacuation of some 40,000 people from the area. On the other hand, there were few casualties unlike what happened during the explosive eruption of *Mount Lamington* in January 1951 which caused over 4,000 deaths. It would be easy to find many other examples. This explosive and unpredictable volcanic activity is a serious threat, but luckily the threat is restricted to certain geographical areas.

This, however, is not the case with seismic activity which develops in the areas where the plates clash, releasing gigantic amounts of energy in the form of abrupt earthquakes followed by less violent aftershocks. A major part of Melanesia is threatened by such destructive and deadly phenomena. Every year hundreds of earthquakes occur, but fortunately few with a dangerously high magnitude and an epicentre located close to heavily populated areas. Nevertheless, Papua New Guinea has suffered a number of serious earthquakes since the terrible disaster that occurred on 26 June 1976, causing 6,000 fatalities as a result of a quake reaching 7.1 on the Richter scale. The *Bismarck Archipelago* area seems to be particularly prone, but other countries have also experienced these destructive phenomena, such as the *Solomon Islands* (in 1988 and 1989) and *Vanuatu* (in 1999). In addition, temblors (sea earthquakes) can cause tsunamis, which can wreak havoc very far from the earthquake's epicentre. But in Melanesia's case, tsunamis usually hit the shores of areas or islands that are more or less close to the origin of the quake which does not leave enough time to warn the population as in the case of remote Pacific archipelagos which are equipped with the early warning system set up all around the Ocean. That is how a terrible tsunami was greatly responsible for the 8,000 casualties caused by the 17 July 1998 7.1 earthquake.

Of course, we should not picture the Melanesian world as living in perpetual fear of earthquakes, tsunamis or volcanic eruptions. Actually, judging from the fact that earthquake-resistant buildings in fast-growing cities are very few, it may seem that people are not sufficiently aware of the dangers. But then, the lack of earthquake-resistant buildings is actually due to the fact that these countries cannot afford it.

Not all Melanesia is exposed to those physical hazards in the same way. *New Caledonia*, for example, is mostly free from them. On the other hand, it has to face another type of hazard, 'the weather hazard'. We will not use this term to cover ordinary hazards linked to weather fluctuations from year to year, with drought years in one area or torrential rain over long

periods in another, which may have terrible effects on crops, for example. This is a common feature of most climates in the world and it is often associated with general phenomena such as El Nino. Melanesia, however, being situated in the south-western Pacific, is subjected to tropical cyclones. However, cyclones do not occur everywhere, since, as we know, areas with equatorial climates are cyclone-free, just like a part of northern New Guinea. The devastating effect of these whirling low-pressure depressions is well known. They affect Fiji and New Caledonia (see the excellent paper by Fabrice Fussy), the Solomon Islands and Vanuatu, and we needn't draw up a list of the disasters they have caused.

In Melanesia the hazards that affect the populations' health are more insidious. We will not mention the HIV-linked hazards because they are recent and not specifically Melanesian developments. On the other hand, malaria is a major hazard throughout a significant part of Melanesia, except New Caledonia and Fiji. For example, malaria has turned the coastal areas in New Guinea into a grave for Europeans, and it is a disastrous cause of infant mortality for the indigenous populations; that is because in New Guinea the four species of parasites that attack human beings can be found (*plasmodium vivax*, *falciparum*, *malariae* and oval). This is how Father Dupeyrat (whose numerous books on Catholic missions in Melanesia are well known) speaks about malaria: 'This cursed dog which fiercely watches over the boundaries of Melanesia'. Here, Father Dupeyrat reminds his readers of the very heavy death toll on European missionaries and, even before the missionaries settled, the horrendous casualties among the LMS Polynesian 'teachers' who came from archipelagos in the Central Pacific which was free of the disease. Indeed, not all Pacific islands are infected with malaria, and the limit between the non-infected and the infected ones, which runs across the heart of Melanesia, is a moving boundary. In the Solomon Islands, for example, the disease recurred very abruptly in the 1980s after preventive measures – massive DDT spraying – were relaxed. Theoretically, altitude prevents the presence of anopheles above 2,000 meters, which accounts for the existence of the highest population concentrations in the high lands. Nevertheless, in that area nowadays we can find a certain number of Papuans who have developed the disease; they may have caught it in the lowland plantations or in the cities during their work-related migrations.

We must add that from a historical perspective, during the century that followed European discoveries, the fact that the island populations were isolated from continental sanitary hazards has also made them very vulnerable to the 'germ shock' resulting from the outbreak of new diseases, such as smallpox, measles, whooping cough, influenza, and so on, with devastating demographic consequences.

### **The constraints resulting from scattered dispersal**

Scattered dispersal is another geographical feature. It may be thought that it can go a long way to account for the essential and original character of the Melanesian world, namely the large number of languages, of ethnic groups and societies. This phenomenon can be observed both on the New Guinea 'mainland' and in the other Melanesian archipelagos.

#### *The widespread character of scattering*

a) First of all, on the 'small continent' made up by New Guinea, the division of space is the result of a dual logic: on the one hand, the contrast between the seashore and the hinterland,

and on the other hand, the contrast between highlands and lowlands. The two logics are closely intertwined. Nowhere else in the world, maybe not even in Black Africa, has a 'hinterland' been ignored for so long as in New Guinea. Knowledge about the central areas of the main island did not grow in earnest until the 1930s, or even the 1950s. One must be aware, however, that this 'isolation' of the hinterland is a European view, and it is not at one with the Papuan civilizations, which were familiar with exchanges and contacts, even over long distances. One 'anecdotal' proof is the frequent use of seashells in men's outfits all the way to the apparently isolated valleys, which implies long and complex exchange routes. More significant still, is the role played by the sweet potato in the hinterland highlands. Sweet potatoes have become a characteristic staple although, as they are originally an American plant, they were probably brought to the coast by travellers, possibly Portuguese travellers, in the 16th century. This could be one of the most impressive instances in world history of a civilization built around an imported plant, and it could bear out the extreme inventiveness of the Papuan horticulturalists. They may have achieved the very ancient domestication of those plants that have a paramount importance such as banana trees and sago palms.

Besides, in New Guinea, space is also divided between highlands and lowlands, and in the huge central range, partition makes for deep valleys separated by extremely high ridges (4,694 m at the Wilhem peak). That is where those surprising long-unknown landscapes developed, with a perfectly regular mix of woodland, farmland and pasture-land used for intensive farming of the major staples of sweet potatoes and pigs. It could support high population densities up to 200 per km<sup>2</sup>. On the other hand, in the lowlands by the big rivers and on the coastal plains, the vast swamp areas and mangroves which were hard hit by malaria left little opportunity for habitation in the forest mass, at least until the development of the plantations and the harbour cities.

b) Secondly, in island Melanesia, scattered geographical distribution corresponds in the first place to the diversity of the islands and to the identity of each of them in complex systems of inter-island relationships. Each island tends somewhat naturally to develop its own personality, hence the existence of 'centrifugal forces' in the island countries, of which the Solomon Islands, even Vanuatu, constitute excellent Melanesian examples. Besides, in the larger Melanesian islands we can find, albeit somewhat attenuated, the spatial differentiation we found in New Guinea, namely a dichotomy between inland people, i.e. those of the 'bush', and the coastal people, that there is also an opposition between low-land people and high-land people in the valleys in the New Caledonia central range, for example. All this translates into territorial fragmentation which could account for the fact that in Kanak languages there is no name for the main island as a whole.

#### *The consequences of scattered island distribution*

a) It is worth asking to what extent this geographical fragmentation is the origin of the basic feature of Papuan and Melanesian societies, namely the existence of many languages, communities and territories that are different and even rivals to an extent not to be found anywhere else in the world. In New Guinea alone, there are over 800 different languages; in the Solomon Islands the number is at least 87, and New Caledonia has about 30, and so on. Some languages are spoken by only a few hundred or even a few dozen people and are

sometimes endangered. Of course, we will not revive an outmoded geographic determinism which sets a causal link between natural environments and societies. Many other ways of accounting for this situation can be suggested, such as how long the area has been populated, the small size and the scattering of human communities, the cultural bases of societies and, of course, colonial and post-colonial history, which introduces a major difference between the archipelagos with enough people of foreign origin to match the indigenous populations (Fiji, New Caledonia) and those that did not experience a major change in their population.

b) In any case, there is no denying the importance of nature in accounting for the scattered nature of space and societies which, for outsiders, is one of the most striking features of the Melanesian world. This feature makes for a kind of Melanesian paradox consisting in the conjunction of both an overall indisputable unity and a great diversity in details and in local features. There *is* a certain unity in the Melanesian world, based upon an ancient population, which is unevenly distributed and relatively sparse; upon societies with oral traditions, with little hierarchy, built around the rivalry between the ‘big men’; and, in the material field, upon a civilization based upon plants and upon an Oceanian food-producing system whose staples are roots, tubers, banana trees, coconut trees, sago palms and pigs. But besides this basic unity, there are so many partitions, divisions and oppositions! The physical and human partitioning of space leads to a jealous and persistent attachment to a specific territory, exacerbated by the deep-seated and corporeal attachment to the land which is peculiar to populations in the island world.

c) This scattered physical and human dispersal can be regarded initially as a very serious hindrance to the search for Melanesian unity on any scale. As a result, it is difficult, for example, to build coherent nation states that would not be constantly threatened by the risk of implosion and exempt from vulnerability to outside pressures and influences. The very large number of languages (the term ‘Modern Babel’ has been used in connection with Papua New Guinea) made it necessary to find in the blending of the colonizer’s language and the indigenous language a *lingua franca*, a pidgin allowing exchange between communities like Bislama in Vanuatu. But what can be viewed as a crippling scattering can also be viewed in a very different way as an enriching diversity. First of all, there is diversity in resources; some are exploited and some are rather still untapped. Melanesia has a huge potential for agricultural development, vast EEZ areas that are not yet developed, and most of all energy resources (oil and gas) and minerals (copper, gold, nickel, etc.). These resources, in the context of high demand and high prices, are now at last likely to provide the financial basis for sustainable development. While the five archipelagos do not have the same potential – yet another instance of diversity! – on the whole prospects are good. I will not dwell on these prospects, as other papers will be devoted to them. Further, human, social and cultural diversity is also a boon. Even the great number of languages – as noted above, Melanesia as a whole has more than 2,000 languages out of the 7,000 that exist on the planet! – can be seen as unequalled cultural riches. Diversity can be viewed not from the standpoint of the weaknesses that can result from it, but as providing many irreplaceable experiences. This is obvious to those who are interested in the art of indigenous societies. In the very individuality of artistic expressions there is a diversity, an inventiveness, a rich creativity which is astonishing if we consider the small size of each of the communities.

## **Conclusion**

Thus Melanesia appears to the geographer as a culture-area with both formidable challenges and prospects and potential for development that make it a region for the future. This implies, as Joël Bonnemaïson stated ten years ago, that unbridled development should be discontinued and Melanesian nations should opt for less radical models softer models and sustainable development, set up democratic governments, and remain true to their history. In short, they should preserve an 'Oceanian' way which shows respect, among other things, for the remarkable geographical peculiarity of the Melanesian world.



## 7. Political sociology: of men and cultures

Ian Campbell<sup>1</sup>

The Melanesian people occupy the islands in the south-west of the Pacific Ocean, from Fiji in the east to New Guinea in the north and west. Early impressions of their coherence as a single population and culture arose from the swarthy complexion, generally smaller stature than the Polynesians to the east, and their characteristically crimped hair superficially resembling that of Africans. Closer examination revealed considerable diversity both in culture and physical types, and this diversity is what most attracts attention. There remains, however, a good deal in common which justifies classifying Melanesia as a culture-area.

### **Ethnic origins**

Ethnologically, Melanesia is an uneven blend of two distinct peoples. In the beginning were those who came into New Guinea perhaps 40,000 years ago or more, when there was still dry land connecting New Guinea, Australia and the eastern end of the Indonesian archipelago. Their ultimate origin is obscure, their relationships with other populations lost in the darkness of remote antiquity, but they achieved three remarkable things: they crossed wider ocean distances than anyone had done before them or was to do for tens of thousands of years after them; they transferred domesticated plants and animals across those ocean gaps to New Britain, New Ireland and Buka and possibly further down the Solomon chain; and third, they were among the first people in history to practice agriculture. There is nothing to suggest that any of these accomplishments was followed, as they were later and elsewhere in history, by occupational specialisation, the creation of towns, extended political units, or systems of writing. These people succeeded in settling the high valleys of New Guinea, adapting to a wide range of climatic and geographical conditions, and have become known to later ages as Papuans: short in stature, dark in complexion and vivacious and colourful in their artistic expression.

The second people to come into the Western Pacific were a different group altogether: lighter in skin colour, straight haired and probably taller than the Papuans. Their movements have been traced back to southern China 5000 to 6000 years ago, and their descendants form the basic stock of the pre-Chinese populations of Taiwan, of most of south-east Asia and all of the Pacific Islands, including Micronesia, and to the outer extremes of the Pacific, Hawai'i, Easter Island and New Zealand. Anthropology has called these people the Austronesians and their principle distinguishing characteristics culturally were the use of a highly distinctive style of pottery, and relatively sophisticated outrigger and double canoes for ocean voyaging. These people visited the north coasts of New Guinea and settled on New Britain 3,400 years

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ago. Their maritime capacity was at the time the most advanced in the world, and the quality of their pottery and subtlety and regularity of its decoration were equal or better than pottery made elsewhere among pre-urban, pre-metallurgical societies. They were not a backward people.

What impelled their movements is unknown, but it is unlikely to have been land shortage or rising sea-levels. Mobility was presumably a cultural tradition, and within 500 years they had spread through the island chains of the western Pacific, forming scattered settlements all the way to Tonga and Samoa. Subsequently colonists from these two places dispersed through the eastern Pacific where their descendants constitute a remarkably homogeneous cultural group identified as Polynesians. Having become distinctively Polynesian some of these people also colonised to the westward during the last thousand years, coming back into Melanesia whence their long-forgotten ancestors had come two thousand and more years earlier.

Meanwhile, the Austronesian settlers of the archipelagos from New Britain to New Caledonia, had mixed with Papuan populations. The chronology of this process is unknown because of insufficient human remains from remote times, but the distinctive physical appearance of Polynesians in contrast to modern Melanesians suggest that the mixing was not well advanced at the time of the Austronesian dispersal. It therefore arose through subsequent contact. At all events, the mixing in Melanesia of Austronesian with Papuan was thorough and spatially extensive though possibly genetically uneven. The physical type or types that we regard as characteristically Melanesian, developed in Melanesia, and this type seems to have developed sometime before Austronesian Fiji was 'Melanesianised' by migrations probably from Vanuatu. The same might be said of the cultures and languages: thoroughly but unevenly mixed, and continuing in process up to the time of European contact.

### **The 'ethnographic present' or Melanesia at the proto-historical moment**

One word describes Melanesian culture: fragmentation. It may be suggested that Melanesian society is so diverse, that the label is merely a negative definition: Melanesian cultures are those of the Pacific that are neither Micronesian nor Polynesian, nor Australian. Yet this negative definition ignores that fact that amid the diversity of Melanesian societies there are definite common features which distinguish them from cultures elsewhere.

The diversity itself may be exaggerated, and is expressed in linguistics: perhaps 1200 languages in Melanesia, one quarter of the world's total spoken by less than 0.1 per cent of the world's population; 900 alone in Papua New Guinea; 70 or 80 in Solomon Islands, over 100 in Vanuatu, 20 or so in New Caledonia. Linking some hundreds of them is the fact that they are Austronesian languages, all derived from the tongue spoken by the first Austronesians who came to New Britain in 3400 BP. The remainder are the majority, called Papuan, and once also considered a negative definition. Nevertheless, patterns and affinities between them have been found. Extraordinary multiplicity can therefore be reduced to a very small number of language families, perhaps no more numerous than the language families of Europe.

Early European travellers do not mention hierarchical socio-political units comparable to those of Polynesia or parts of Micronesia. Apart from small islands of an obviously Polynesian type such as Nukumanu or Tikopia which was home to a single socio-political unit, there were no island-wide or archipelagic political systems in which a single political order was universally recognised. Throughout the early contact period ship-based traders generally found that they could engage only with small populations and that to treat with the people of one bay was to incur the enmity of people in the next. By the time that literate settlers became established and early ethnographers were writing in the last third of the nineteenth century, the social reality that they described was one of small societies, generally lacking hereditary chieftainships, or at least not according such chiefs marked differentials in status or physical possessions. Societies were small. The first missionary on Aneityum in the Southern New Hebrides was clearly of the impression that small discrete communities were the norm. At the opening of a church in 1854 when almost 1000 people gathered, he wrote that 'Such a gathering had never been seen in the island since the world was; for the people lived in such hatred and fear of each other that they seldom crossed the narrow boundaries of their own tribes'.<sup>2</sup>

Twentieth century anthropologists reinforced this perception of Melanesia as a heterogeneous collection of small and antagonistic societies, and coined the term *acephalous* to denote the lack of clear hierarchy. This is not to say that societies were without acknowledged leaders, but in the distinction drawn by sociologists between 'ascribed status' and 'acquired status', Melanesian societies overwhelmingly and clearly fell into the latter. Even among those societies which appeared to have hereditary chiefs, what was inherited was not so much rank as the means of acquiring status: that is, possessions and ritual secrets; in a word, *mana*.<sup>3</sup> Later, the term 'Big Man' was taken into the literature from the usage of many Melanesians themselves to describe the leadership system. Common in the New Guinea highlands, it also fitted many parts of the Solomon Islands and Vanuatu.

Social and political leadership in small societies cannot be distinguished, and leadership or at least pre-eminence was attained by the competitive accumulation and distribution of wealth in what has been described as a caricature of capitalist society, revolving around the cyclical creation and consumption of wealth. A young man with social ambitions would make a start by borrowing a quantity of traditional wealth, including perhaps lengths of shell-money ropes, mats, and pigs. This would be borrowed at a known rate of interest. The borrowed wealth would be his working capital, the first use of which was to pay the bride-price to get married. Some of it would be given away to other young men, creating obligations. Favours would be called in when needed; but in the meantime, the young man's wife would demonstrate her economic usefulness by work in the gardens and raising pigs. As the young man's credit-worthiness increased with the industry of his wife, he could perhaps borrow more (still at interest) and obtain a second wife. Presently the accumulation of pigs and other wealth might enable him to repay some of his debts, or to become a creditor in his own right.

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<sup>2</sup> FA Campbell, *A Year in the New Hebrides, Loyalty Islands, and New Caledonia*, Melbourne: George Robertson, [1873], p 24

<sup>3</sup> RH Codrington, *The Melanesians. Studies in their Anthropology and Folklore*, New York: Dover Publications 1972 (first published 1891), ch 3

Meanwhile, he would also apply his accumulating wealth to provide feasts for his village in order to pass through various hierarchically arranged initiation stages. The better his credit-rating and better his connections with other men of standing, the more he could borrow; the more he could borrow the more he could invest in creating obligations and expanding his workforce (his wives) and thereby the greater his own consequence. By adroit application of these principles he might eventually become the greatest man in his village or district. Other criteria for leadership included prowess in war, expertise in ritual and arcane knowledge, and mastery of the ceremonial exchange within and between communities. The pre-eminence thus achieved depended on success, and was maintained through continued success. While such a man exercised real authority in his own community, and his reputation might spread far, it was not accompanied by the assertion of power over adjacent communities.

The values that this system reflected were materialistic and utilitarian. It emphasised individual achievement through competition, but also drew on an underlying ethic of mutual assistance and reciprocity.

This system has come to be part of the definition of 'Melanesian' in that it is characteristic of most of the region, and distinguishes Melanesia from other cultures. Whether it derives ultimately from the Papuan or Austronesian heritage may be debated, and the extent to which it was constant throughout Melanesian history may be questioned. Archaeological evidence of complex settlement sites and large scale agricultural engineering – that is, elaborate terracing and irrigation systems – suggests a degree of social control and mobilisation of labour more consistent with hierarchical, territorial chieftainships than with acephalous societies of competitive individuals. Christophe Sand suggests that the prevalence of small, egalitarian societies was a nineteenth century adaptation to massive population loss and dislocation resulting from western contact.<sup>4</sup> This might very likely be so in some cases. On the other hand, the multiplicity of languages and accompanying smallness of social scale implies a longer history of fragmentation. Similarly, the broad similarities and wide dispersal of the Big Man system across an extensive area, among inland and coastal people, highlands and low, suggests that the historical causes must be more remote than the last 150 to 200 years, and is probably part of the original Papuan contribution to Melanesia.

Whatever the antecedents, and whatever the causes, the twentieth century reality was of societies with limited geographical horizons, restricted manpower, and linguistic fragmentation. Notwithstanding these fissiparous characteristics, there are well known instances of collaboration of networking, marriage exchange, gift exchange or trade. Examples include the Kula cycle in the Trobriand Islands made famous by Bronislaw Malinowski,<sup>5</sup> and the lakatoi fleet expeditions of southern Papua. In many parts of Melanesia different communities would assemble for festivals, sometimes ephemeral ones apparently inspired by a need to be sociable, whereas others were parts of complex ritual cycles which took many years to work through, and which brought people of different communities together for shared social or religious purposes. Communities that were traditional enemies

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<sup>4</sup> Christophe Sand, 'Melanesian Tribes vs. Polynesian Chiefdoms: Recent archaeological assessment of a classic model of sociopolitical types in Oceania', *Asian Perspectives*, 4:2 (Fall 2002)

<sup>5</sup> Bronislaw Malinowski, *Argonauts of the Western Pacific. An Account of Native Enterprise and Adventure in the Archipelagos of Melanesian New Guinea*, London and New York: Routledge & Kegan Paul, 1922

were also bound together in marriage partnerships which were repeated generation after generation. Melanesian society on the whole is mischaracterised as being totally atomistic and anomic. It is more like an extended, somewhat dysfunctional family the members of which continually bicker or fight, but are joined by common needs, common traditions, and common blood, and who expend enormous amounts of human energy in competing, combating and collaborating. In such a family the members can neither live with one another, nor live without one another.

### **The historical experience to the Second World War**

European observers have generally been more aware of the divisions in Melanesian society than the connections, and of the violence and warfare between them. There was certainly plenty of that and from many different parts of Melanesia are reports or anecdotes of one tribe driving out another, of tribes being totally exterminated in warfare, of constant raiding so that people seldom travelled beyond well established limits; where people alone on the reefs or in their gardens were not safe from being murdered as a payback killing or just to give an aspiring social climber a reputation as a warrior.

In its encounter with the modern world this Melanesian reality was challenged and became obsolete. The encounter occurred in three dimensions: missions, plantations and government. Missions were opposed to violence on principle. They taught peace, respect for human life, the dignity of the individual, equal status for women and brought freedom from supernatural imperatives, the tyranny of sorcery, and the fear of neighbours and strangers. Missionary testimony from across Melanesia and throughout a century of evangelism is consistent if not unanimous on the point that the coming of Christianity made it safer for people to go about and allowed communities to expand their range of interactions with other communities. Plantations had a similar effect. Labourers were recruited from villages over a wide territory and different islands, with the result that traditional enemies and strangers who had no ground for friendship were brought together in large work forces and kept together in enforced peace and shared work, learning a common language, usually that of their employers or a creole variant of it. One of the defences offered of the plantation labour system was that this shared experience broke down enmities and made interaction safer and possible over a wider area. After the term of employment – usually three years – was over, labourers returned to their homes knowing that people from elsewhere could be and were friends. Their horizons were enlarged and their attitudes changed. With a new language, a barrier was taken away. Distant peoples were in a new sense, ‘wantoks’.<sup>6</sup> Finally, there was the direct role of government which in imposing an imperial peace, system of law and centralised administration opened new possibilities for Melanesian society and Melanesian lives and promised to transcend the restricted communal horizons.

For most people during the colonial period this did not make an enormous difference, except to give people greater security and peace of mind. Most men would have had the experience

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<sup>6</sup> The plantation system and its social dimensions before World War 2 are well described in SW Reed, *The Making of Modern New Guinea, with special reference to culture contact in the Mandated Territory*, Philadelphia: The American Philosophical Society, 1943, and HI Hogbin, *Experiments in civilization: The effects of European culture on a native community of the Solomon Islands*, London: Routledge & Kegan Paul, 1938

of working away from the village on plantations or for government for a period of time – but for most of those, that was a three-year episode in early manhood, and their lives were otherwise worked out in the village engaged in traditional activities but without the warfare and raiding of former times. This was the scenario until World War Two.

### **The era of development colonialism and independence**

Colonial policies in the Pacific after the Second World War were founded on two principles: economic development to raise standards of living; and political education to prepare people for independence. This is not to say that there was a timetable for independence from the beginning, or that colonial powers had a definitive blueprint for the process. They were embarked on a process without precedent, and colonial development policies were hostage both to domestic politics and to international, geo-political pressures. In the end, the process was hastened to conclusion far earlier than people anticipated was possible, and far faster than many of those involved on both sides of the colour line thought advisable.

In Anglophone Melanesia economic development had two main props that were common throughout, with local variations. These were education and the use of co-operative societies. Primary schools were begun where large numbers of village children would be able to attend; high schools followed in central places to which the most successful pupils from primary level would proceed; specialist tertiary institutions – teachers' training colleges, trade or technical colleges, and administrative training programmes were instituted early in this process to create the class of skilled people on which the process needed to feed. At length the Universities of Papua New Guinea (1966) and the University of the South Pacific (1968) were launched. The first was national institution, the second a regional institution. A subliminal purpose, and sometimes declared hope was that school and university experience would bring together people of different languages and cultures and help to forge a new, national culture in which indigenous people saw each other not as strangers or enemies, but as fellow nationals and fellow citizens – and beyond that as fellow team members in the great enterprise of nation-creation.

Cooperative societies were not quite the economic analogue of schools and colleges, but were intended to train people in entrepreneurship, building on the supposed communal, cooperative ethos of island society to enable primary capital formation, and to retain the ownership of resources in indigenous hands. There was also a proxy-nationalist purpose by colonial officials who were frequently hostile or at least unsympathetic to foreign investors and capitalism, and for ideological reasons wanted to see grass-roots development rather than capital intensive enterprises. Cooperative societies were initially village based; larger and more broadly-based societies were intended to follow. Like schools and colleges, this process would encourage the erosion of local identities and strengthen the development of wider ones.

In political development there were likewise two main props: drawing indigenous representatives into national legislative institutions, and democratising local administration by creating local government councils which it was hoped would be both instruments of development and training grounds in the practice of democracy and responsible government,

from which experienced people would graduate to national politics. This was the evolutionary pathway characteristic of both British and Australian models of decolonisation.

In all cases independence came before this process was complete, and it would have been utopian to suppose that perfect readiness could have been attained before the transfer of power. The compressed process however, did succeed in producing indigenous figures for the national stage who could be presented as nationalist; the rhetoric and symbols of nationalism were called on both by the departing colonial powers and the new leaders who accepted their mantle. In each case, except Fiji, independence was threatened by separatist movements showing that the forging of nationalist sentiments was only partially complete, but also that it had succeeded to the extent of creating regional identities in opposition to national ones. It might have been supposed that the process of national identity formation would continue after independence, but if it has the process is still awaiting completion. In Papua New Guinea the state is in retreat and local identities are reviving to the point of renewed tribal warfare; in Solomon Islands in recent years, civil war and political crisis have shown deep, unresolved animosities, and the thinness of the veneer of national unity has been exposed even within the indigenous Fijian population. Vanuatu remains an imperfectly integrated state in which there is limited engagement between peripheral communities and the central institutions.

Assessments for the United Nations Development Program's Human Development Reports place all the Melanesian countries in the 'medium' category, all in the lower half of the total of 177 countries, and significantly lower than Samoa and Tonga.<sup>7</sup> These statistics suggests that much more domestic development is necessary before concepts of integration below the level of the state and corporations can be very meaningful.

| Country          | HDI Ranking (/177) | Life expectancy at birth | Adult literacy | Educational enrolment ratio | GDP US\$ Purchasing Power Parity | Human Development Index |
|------------------|--------------------|--------------------------|----------------|-----------------------------|----------------------------------|-------------------------|
| Papua New Guinea | 145                | 56.9                     | 57.3           | 40.7                        | 2563                             | 0.53                    |
| Solomon Is       | 128                | 63                       | 76.6           | 47.6                        | 2031                             | 0.602                   |
| Vanuatu          | 120                | 69.3                     | 74             | 63.4                        | 3225                             | 0.674                   |
| Fiji             | 92                 | 68.3                     | [94.4]         | 74.8                        | 6049                             | 0.762                   |

In all parts of Melanesia very high proportions of the population have very little contact with the modern nation. Much as people travel for education, and rural people migrate to the towns and capitals, village life remains the backbone of support for the majority, along with the ideas and values characteristic of small, largely self-sufficient settlements. The political sociology of the past continues to shape the social and political horizons of the great majority.

### **Implications for greater Melanesian integration**

On the whole the continuing fragmentation and isolation of Melanesian communities is irrelevant to the Melanesian integration project. Reciprocally, integration is largely irrelevant to them. They are members of imperfectly integrated states, and some of them so marginally

<sup>7</sup> See <http://hdr.undp.org/en/statistics/> for the latest data

connected to those states as to be living independently of them. A change in the relationship between states is not going to draw these people any closer to their own state or to a regional counterpart.

Further, whatever connection villagers might make across national boundaries through closer integration is not likely to be different qualitatively from becoming better integrated at a district, provincial or national level. Village producers will not find markets easier to find because tariff barriers between say, Papua New Guinea and New Caledonia are eliminated. Freer labour markets that enable a villager to move internationally are not really any different from national markets that allow movement to a factory or other facility in the same country. Closer relationships between the states will need to make a much greater difference to the overall level and character of economic activity before it has a significant effect on the predominantly village and subsistence experiences of most people.

Closer integration might very well bring benefits to commercial farmers, to manufacturers, to transport and communications, revenue collection, policing and control of international crime. Individuals as individuals will be drawn into these activities but the fragmented political sociology of Melanesia is, as the distinguished French historian Fernand Braudel would have called it, 'a structure of the *longue durée*'.

## 8. Economy and the environment: which sustainable development for Melanesia?

Paul Néaoutyine<sup>1</sup>

First of all, allow me, before I start my paper, to greet the distinguished members of this excellent assembly, the eminent academics, of course, but also the representatives of the different authorities, the intellectuals, the researchers and the decision-makers.

Secondly, I would like to congratulate and thank the conference organizers, who have chosen to gather us together in order to exchange our insights on the theme *New Caledonia and Melanesian Unity*. This occasion is necessary to enrich our thoughts, our visions and our actions for a better advancement and a better development of our societies.

### **Which sustainable development for Melanesia?**

I do not claim to master all aspects of so vast a topic; there is, however, a first point of view that I would like you to ponder – Melanesia should be a privileged area for sustainable development, for the cultures of the peoples of Melanesia are inseparable from the concerns which are currently called ‘environmental’.

*Sustainable development must meet the needs of the present without endangering the ability of future generations to meet theirs.*

I think we can contend that our Melanesian societies practiced sustainable development long before this definition was given.

Indeed, the relation to nature is deeply rooted in our culture and our way of life. Regardless of living conditions, in J-M Tjibaou’s words, ‘yams, like water taros, are planted, gathered and eaten on a permanent basis’.<sup>2</sup> Our people have always known how to save natural resources and they have shown respect for nature and biodiversity. Our customs have developed a deep knowledge of nature’s rhythms and learned how to protect plants. As for animal species, the links customs set between totemic animals and the clans show that Melanesian cultures are aware of the unity of the living world.

The second point of view I want to share with you is the following: Melanesian countries have embarked on economic development, and now they have to take up the sustainable development challenge; the preservation of their values in a different world is at stake.

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<sup>2</sup> J-M Tjibaou, Ph Missotte, M Folco, C Rives, *Kanaké, Mélanésien de Nouvelle-Calédonie*, Paris: Hachette, Editions du Pacifique, 1976



Our nations and our peoples have engaged in economic development at different periods and in different ways depending on available resources and our respective histories. Exploiting resources and enhancing products' values are necessary to sustain a development that our peoples aspire and are entitled to in order to improve their living conditions through access to jobs and income generated by these activities.

But as our economic development started later than in other parts of the world, we must and we can rise to the challenge of avoiding the ecological mistakes made, often through ignorance, by the countries that are now developed, and at the same time we must preserve the exceptional natural diversity of our islands even as we retain the traditional values of our culture. Our islands are a precious heritage that our ancestors have handed down to us. They are at the same time an asset with regard to economic development in some industries, and most importantly tourism.

The danger is not really our conscious giving up of our culture, an essential element of our identity, but actually the fact that we accept more or less implicitly the notion that the economic world is a different, globalized world, with our culture having nothing to say about it. In that case, the issues of economic development would be disregarded and lost amid concerns for sustainable development resulting from our cultures; and because we are fascinated by the urgency of development, we would either consider that preserving the environment is a useless luxury – accepting places where custom is preserved and others where development is chaotic – or view sustainable development as just part of a concept which is alien to our culture, and our culture having nothing to say about it. If so, as Melanesians following our tradition we would be respectful of the environment, but as *Homo Economicus* we would be unmindful of the concerns caused by sustainable development.

While sustainable development is dependent on science and technology, it is also a matter of mindset – and everybody is currently aware of that in the world's most developed regions. Since our culture prompts us to respect nature and therefore to have concern for sustainable development, let us rely on it to rise to the modern challenge of sustainable development. For that matter, this is more generally the challenge that our cultures have to take up. We must not repudiate any of our values but we must apply them to a new world, failing which they would turn into something like a mere enclave in our lives.

I do believe that our objectives must be to preserve in our countries the exceptional level of natural diversity – biodiversity – and to raise the standard of living of our peoples in a sustainable way while being true to the values of our culture which is – and this is an asset – traditionally endowed with the environmental value that industrialized countries are discovering belatedly because they are urged on by the pressure of circumstance.

Thus – and this is the third idea I would like to submit – we in Melanesia must act without further delay in order not to lose the battle of sustainable development.

Time is of the essence. In some of our countries the damage is already significant, as they are going through a rapid industrialization and urbanization process. The development of New Caledonia, which has relied on nickel since World War II, is an example. Damage caused to the environment and biodiversity is colossal, and as a result, people are now aware of it.

Techniques for management and exploitation of mineral resources are being developed to allow a better preservation of still extant biological resources but also to develop nickel, a non-renewable resource, in a more sustainable way so it could go on securing the country's development.

For this development to be sustainable, it has become urgent to incorporate the environmental values which underlie our Oceanian and Melanesian culture into the laws that regulate these activities and the urban development schemes.

So please allow me to state again the objectives we must achieve in the matter of sustainable development and put forward some clues for success in our undertaking.

**The first objective is to keep a high level of biodiversity in Melanesia.**

This requires, first of all, being familiar with the present condition of biodiversity. From this standpoint, it is essential to:

- Assess current knowledge about biodiversity in each country. There is a great deal of data, but it is often held by researchers and not always shared in a way that people would readily understand
- Map biodiversity in every region; this is perhaps expensive but essential. It has been already done by BRGM [Bureau of Mineral and Geological Research] for mining sites in New Caledonia and French Guyana, for example
- Complement this research with assessments covering the different areas. If rapid assessments are requested from international organizations such as Conservation International (CI)<sup>3</sup> for example, authorities could require this organization to cooperate with well-established scientific institutions; some of these already operate in the region.

Maintaining a high level of biodiversity in our countries must also be achieved through the promotion of the Agreement on Biological Diversity. In this connection, I think it is worth assessing the way this agreement is implemented. All Melanesian countries are parties to it, and as far as I know, those that signed it and as of now have completed their national strategies and action plans are the following:

- Vanuatu (1999)
- Fiji (1997)
- France (2004) for the Pacific territories and countries
- Papua New Guinea (2007)
- The Solomon Islands are reportedly working out their first national strategies and action plans.

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<sup>3</sup> Conservation International is a non-profit organization seeking to protect biodiversity 'hot spots'. It was set up in 1987 and headquartered in Washington, D.C. It has a staff of over 900.

In particular, we must examine how Article 8J of the Agreement on Biological Diversity is implemented. This article relates both to access to genetic resources and sharing of advantages and to the protection of traditional knowledge. Regional cooperation with a view to implementing the Agreement could result, for example, in a common research laboratory for active molecules or in setting up – why not at the level of Melanesia? – a ‘Conservatory of nature and local knowledge’.

Lastly, I believe that the promotion and development of ecotourism can also be an important vehicle for biodiversity preservation and protection. In this way, the sale and trade in species protected by the Washington Agreement such as corals or endangered plants like wild orchids could be prohibited. Our customs officers could be better trained in recognizing protected species so they can prevent their export.

**The second objective, to which, in my opinion, Melanesian countries should aim, is one that makes sure our peoples’ behaviour takes account of sustainable development.**

To this end, education is surely one of the best methods. In J-M Tjibaou’s words, ‘When walking in a garden while unable to tell a salad from a weed you’ll tread both the salad and the weed. Insofar as somebody explains to you what they are used for, you are more careful’.<sup>4</sup>

We must use appropriate training to inform our elected officials, our decision-makers and people in authority about the possibilities that are available to us if we make up our mind to develop a sustainable economy taking the environment into consideration, and we must make those people aware of the consequences – especially the consequences on public health – that will result if the ‘environment’ component is not taken into account.

We must start awareness-raising actions among newsmen and work out educative programs and play activities with local media.

With the help of educative programs adapted to the culture of each country, people must be taught at all levels about getting familiar with ecology, and we must teach very young children the right steps.

Another significant undertaking seems to be fighting the greenhouse effect.

This concern leads us first to reconsider our energy policies. I think we are so far gone that it is becoming essential for our countries to base their respective national energy self-sufficiency policies on the use of renewable energies. In this regard, it would be useful if each country in the area set up an inventory of its renewable energy resources, of its production capacity and of the required training needs for the purpose of operating and maintaining its equipment and its infrastructures for the production of renewable energy. In this respect, New Caledonia could share its experience.

But the fight against the greenhouse effect also requires using modes of transportation that cause much less pollution.

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<sup>4</sup> J-M Tjibaou, *La Présence kanak*, Paris : Editions Odile Jacob, 1996, p 324

Our countries could set up plans and incentive measures favouring the importation and use of clean 'ecological' vehicles, notably in public transit. Fiji, whose soil lends itself to sugarcane growing, could be a bio-fuel producer. There is, however, one caveat – while bio-fuel is better than fuel obtained from oil, the environmental costs of producing bio-fuel from sugarcane must be lower than if oil were used.

Finally, fighting the greenhouse effect involves our housing policies. In this area, it is not too unrealistic to think that our regulations could include provisions with requirements for any housing project:

- Mandatory use of the HQE standard (environmental high quality), or its Anglo-American equivalent, in the matter of building orientation, the use of renewable energies and the sorting of household waste.
- A mandatory impact study taking into account biodiversity and the carbon print of a project. This implies common training for those involved on the condition that language problems are solved.

Waste processing is also a concern, and we should strive to change our populations' behaviour for the better. Imported merchandise generates waste. Our suppliers could be 'invited' to produce more environmentally-friendly packaging. Recyclable packaging uses fewer raw materials and will always be cheaper to manufacture; besides, it would cut the cost of transportation to our countries.

The question of waste treatment itself is a very complex one. Setting up a garbage collection network is often made more difficult and more costly on account of isolation and the distance between homes. But the growing urbanization of Melanesia and the change in consumers' habits must prompt us to take care of this issue in a more proactive way.

Through education and training, we have to deal now with the garbage sorting system and, wherever such a thing is feasible, set up the appropriate systems and plans. We are aware that waste treatment requires very heavy investments which are often too much for our national budgets. Unless each country can afford such investments to treat its waste on site in appropriate volumes, it is possible, as part of the cooperation process, to conclude agreements allowing trash treatment in recycling centres in the region's industrialized countries.

While the theory is a simple one, it always seems too costly. But do people know how much it costs to burn waste or dump it into landfills? In Melanesia we need a financial assessment and the carbon print of this practice.

The last concern on which I believe it is important to take action in order to bring a change in our peoples' behaviour is that of the preservation of water as a resource.

This is a must for our island countries. It is essential to have a better knowledge of our water resources, and especially of water quality, in order to be able to manage it in a rational way, to limit waste, and master water-use to serve the fundamental needs of the population and development needs.

Educating people is necessary because water is vital for life; otherwise, sustainable development would not mean anything in our countries.

Ladies and gentlemen, these are the ideas that I wished to share with you this morning, and in answer to the query, ‘Which sustainable development for Melanesia?’, I would be inclined to say, in closing, that Melanesia should let it be known that it wants to:

- Preserve the quality of natural diversity, of local knowledge and culture, while developing them.
- Promote economic development that is subjected to environmental standards.

If we make ourselves aware of these common problems, if we exchange solutions and then reach a more structured cooperation, we make significant breakthroughs.

## II. Melanesia, law and union

### 9. Melanesia, law and union: customs

Laurent Chassot<sup>1</sup>

Projecting modern law into the Melanesian traditional systems has made it possible to point out four sources of law: legislation, imposed by authorities and applied to all; case law, set up by judges; legal theory, propounded by jurists; and custom.<sup>2</sup> However, ‘no document gives a definition of custom or delimits the extent within which it is to be enforced, its rules of procedure, or the system that applies in case customary rules conflict. [...] Writings are also silent on being or not part of a customary group.’<sup>3</sup> (Tabani, 1995) What is the content of custom, and how do we characterize it in a multidisciplinary process?

Custom can first of all be viewed as a research area for anthropologists, where populations are approached from outside in order to incorporate their laws into imported systems. Custom regulates social life in most agricultural self-sufficient societies which are ruled by a local leadership but do not have a central government. As components of the judicial system, customs make it possible to keep law and order and to settle litigation, taking into account interpersonal relationships, the value assigned to the land, or the physical environment of individuals. Thus customs are both traditional behavioural standards which can entail penalties imposed by one or more members of the community – generally a chief – on the local scale, but they also incorporate procedures for litigation settlement.<sup>4</sup> This brings us into an area of interest to lawyers.

To some extent, custom and law are antinomic, because custom is based on criteria – practice, tradition, observation – that are free from State control. Thus it is considered a complex system of relationships in which the law, the economy, management and politics commingle and self-manage depending on behavioural changes. Professor Faberon mentions the sacred role given to one’s word, because ‘the customary world is a world of solidarity

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<sup>2</sup> J Vanderlinden, ‘Le Juriste et la coutume, un couple impossible?’ Centre Scientifique et Médical de l’Université Libre de Bruxelles, in *Actes du Cinquantenaire du Cemubac*, Brussels, 1998, p 250

<sup>3</sup> The definition of custom in *Dictionnaire de l’ethnologie et de l’anthropologie* does mention a few features of custom (‘a practice based on routine, and which is not mandatory’), but this definition has too many flaws. P Bonte and M Izard, eds, *Dictionnaire de l’ethnologie et de l’anthropologie*, 2nd ed., Paris: PUF, Collection Quadrige, 2007, p 182

<sup>4</sup> H Gire, ‘Custom is used between individuals and the groups they belong to, ... as well as through litigation settlement’, in ‘La Coutume en Nouvelle-Calédonie’, RJP, 7, 2001, p 499

experienced by individuals.<sup>5</sup> The content of customary law, however, remains ‘fuzzy’ – while people are vaguely aware that it is part of the heritage, ‘depending on immediate personal interest’,<sup>6</sup> it is not really about clear and precise practices; it is merely a traditional practice.<sup>7</sup>

Therefore there is an issue about its ‘existence, its persistence despite so many conflicting currents ... and about the problems it poses to a conception of law which is opposed to the very notion of custom.’<sup>8</sup> How often are customs actually used in litigation settlement, and is their preservation warranted at the present time? To what extent do they show recognition for legal standards? The exercise of endogenous law implies that people are sure it is both real and valid, so they can contemplate its incorporation into the modern legal system, and these criteria are often difficult to determine.

The major hurdle that customs have to face stem from their peculiar nature. Their enforcement is not the same across a given territory because they vary considerably depending on where people are. Besides, it is possible to contend that value systems in the imported law and those in the non official law are incompatible – unusual notions such as individualism or globalization threaten the traditional balance and make contradictions seem irreconcilable. In this paper I will first analyse the role that custom still plays with regard to the evolution of law in Melanesia (I), and then study its delicate incorporation into the legal system of the region’s countries, which endangers it and jeopardizes its future (II).

## **I. Custom as a component of ordinary law in Melanesia**

### **A. Custom as such**

Custom includes local practices, the behaviour of a group and anything that is opposed to colonialism. According to Keesing, it is when they faced colonial powers that Oceanian peoples were prompted to ‘externalize the vision they had of their own culture’.<sup>9</sup> Therefore, custom is made up of ‘the pre-colonial rights as they are still enforced by the populations’ outside formal institutions. It is different from customary law, which does not have the same meaning. Customary law is a framework of rules governing behaviour, ‘pre-colonial rights recognized by the law’.<sup>10</sup> So customary law includes indigenous law as modified by case law and/or the successive codes, but the border line between the two is always difficult to determine. Customary law must also be distinguished from local law – ‘law that is inspired

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<sup>5</sup> J-Y Faberon, *Evolution du droit et coutume autochtone dans les Etats et territoires du Pacifique*, Paris: L’Harmattan, 1995, p 14

<sup>6</sup> R Calinaud, *Évolution du droit et coutume autochtone dans les États et territoires du Pacifique*, Paris: L’Harmattan, 1995, p 162

<sup>7</sup> E Le Roy, *Les Africains et l’Institution de la Justice, entre mimétismes et métissages*, Paris: Dalloz, coll. ‘Etats de droits. Série Regard sur la justice’, 2004, p 98

<sup>8</sup> Faberon, p 13

<sup>9</sup> E Witterschein, ‘Au-delà de la tradition’, in *La Tradition et l’Etat*, 2001, p 14, quoting RM Keesing, ‘Kastom in Melanesia: a theoretical overview’, in RM Keesing and R Tonkinson, eds, *Reinventing traditional culture: the politics of Kastom in Melanesia*, *Mankind* Special Issue, 13 (4), pp 297-301, p 301

<sup>10</sup> J Vanderlinden, ‘A la rencontre de quelques conceptions du pluralisme juridique’, *Revue de Droit de McGill* (50) 2005, p 14

by the State model' – and from popular law – 'which came about outside of State authority' – which are mere additional law sources.<sup>11</sup>

Custom's existence is predicated on the concurrence of several features:

- It must be used repeatedly and on a permanent basis, which makes for some reliability. It must allow reciprocal procedures and be spontaneous so State agents are not needed;
- It must be coercive;
- It must be used universally and people subjected to it must enjoy self-rule.

Norbert Rouland adds another feature: custom must have some 'plasticity', i.e., it must be on the move, because it is not just an archaeological testimony from the past.' Jacques Vanderlinden adds that custom being found in individuals' gestures and movements is neither oral nor written, but definitely predicated on actions. 'As a result, only through protracted observation of the group within which it is practiced can it be known directly without a mediating agent. The group members learn it themselves through practice, all along their lives through observation, and it sinks in gradually.' Thus a knowledge of custom can be acquired continually, and when one has reached a certain age, 'one is familiar with the law that governs life'.<sup>12</sup>

It is the issue of societies' ability to conceptualize non-written traditional standards predicated on action and to identify them in a context that is peculiar to the Pacific region that will hold our attention, for this problem represents an exceptional sociological challenge, as we must always bear in mind the fact that Melanesian societies are founded on community-based values in a limited area, where the impact of modern knowledge is still insignificant.

Nowadays endogenous law remains one of the fuzziest and least understood components of the judicial system. Custom is not made up of general and impersonal standards and is not conceived of as a body of codified rules. Besides, it has no case law or theory. Nevertheless, customary standards will lay down the principles governing the activity and community life of the overwhelming majority of the region's inhabitants. These standards are flexible enough to evolve according to behavioural changes.

Besides, customary law operates in a well-nigh self-contained manner, and as a result, formal law enforcement officials – the police, the courts, lawyers, judges – are powerless and unable to enforce it and interfere in the way it operates.<sup>13</sup>

The influence of customary law remains a structural one because tradition is still inescapable. Rights and duties are still under the control of custom, which affects interpersonal relationships within all strata of the island populations. Each group has its own body of

<sup>11</sup> A Lajoie, *op. cit.*, p. 686, picking up E Le Roy's analysis in his *Encyclopédie juridique de l'Afrique* (1982).

<sup>12</sup> J Vanderlinden, 'Contribution en forme de mascarot à une théorie des sources du droit au départ d'une source délicate', *RTDciv*, 1995, p 69

<sup>13</sup> M Ntumu, 'The Dream of a Melanesian Jurisprudence: The Purposes and Limits of Law Reform', in J Aleck and J Rannells, eds, *Custom at the Crossroads*, UPNG Law School, 1994, pp 7-19



'rules', which are binding, and breaking the rules leads to local penalties. As a result, customary rights vary from group to group depending on various factors such as 'language, proximity, origin, history, ... or the economy'.<sup>14</sup> Yet, customary law will always adjust 'to new facts and different circumstances'. It is recognized and it will develop depending on social behaviour.

This process fits into a dual perspective:

- Protecting society through ancestral customs, which guarantee the physical integrity of individuals;
- Settling of litigation, but always while seeking group satisfaction in order to restore societal balance.

That is why customary practice 'must be deemed essential by the group'.<sup>15</sup>

In case of litigation, the customary process is gradual and measured:

- First of all, it is important to identify the individual(s) who broke the rules within the group, both the victim and his/her family, the family of the accused, and the people who stand between the two families, so they can act as mediators;
- The next step consists of identifying the customary standards that apply, given the nature of the infraction, the facts and circumstances of the case, etc. To this end, chiefs must be resorted to, as they are the only ones to determine the applicable customs accurately;
- Last, a negotiation or mediation starts between the families in a broad sense. To put an end to the conflict, they may decide on compensation, public apologies or penalties in kind of all sorts.

Etienne Le Roy singles out four arguments to vindicate custom:

- The diminished part the law plays in drawing up law;
- The importance of consensus to secure its effectiveness;
- The dependence of the ruling powers on opposition forces;
- Lastly, the concern for keeping the peace.<sup>16</sup>

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<sup>14</sup> P Kuruk, 'Le Droit coutumier africain et la protection du folklore', *Bulletin du droit d'auteur*, vol. 36, no. 2, 2002, p 5

<sup>15</sup> E Le Roy, *Les Africains et l'Institution de la Justice, entre mimétismes et métissages*, Paris : Dalloz, coll. 'Etats de droits. Série Regard sur la justice', 2004, p 35

<sup>16</sup> Le Roy, p 96

The writing of constitutions in the different countries in the region<sup>17</sup> and the subsequent setting up of a legislative power – a tool for the standardization of legal norms – has not crowded out customary laws. The laws enacted by parliaments in the region's young nations have a national scope, but customs have survived in many fields where tradition still plays a major role, because the pre-existence of endogenous rights which have been firmly fixed for generations was implicitly recognized as a given fact. The question arose early as to the precise definition of the area to which they would apply and to what domains. These were readily confined to private law. Melanesians do not readily distinguish between civil law and criminal law and between private and public penalties. 'It is suggested here that what matters is not so much the term that designates misdemeanours in a given legal system as the extent to which these are recognized and punished as such.'<sup>18</sup> Yet, this recourse to custom remains limited and exceptional, since local customary rights that govern these areas of law apply only when national legislation is lacking.

Customary law can be found mostly in the following limited areas:

- Problems related to landholding, which is of major importance in the South Pacific;
- Family matters;
- The settlement of minor litigation;
- Exceptionally in all criminal issues when sentences are being handed down.<sup>19</sup>

### **B. Traditional penalties as guarantees of respect for customary standards**

Modern society has a system that makes law coercive through judges and law enforcement organizations, and it inflicts legal penalties – fines, imprisonment, etc. – whereas customs 'have no mandatory, intrinsic or ontological character'.<sup>20</sup>

Yet, relations within groups lead to 'a series of laws and obligations for members, and members have to abide by those rules and obligations in their relations with other members. Compliance with all traditional norms is secured thanks to a system of penalties depending on the degree of kinship.'<sup>21</sup> For the overwhelming majority of the region's inhabitants, these penalties are extremely serious ones because their effects, both unpredictable and inescapable, may have a permanent influence on their lives. The traditions that are firmly fixed in people's consciousness show a society ruled by custom, but the way it represents law

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<sup>17</sup> This observation does not take into account the peculiar status of New Caledonia, which is ruled by the French Constitution. Yet, since the Noumea Agreement was signed on 5 May 1998, New Caledonia has been a so-called *sui generis* community, a part of France, and no longer an overseas community. The Noumea Agreement provides for a local referendum between 2014 and 2018 on whether New Caledonia will gain independence or remain within the French Republic.

<sup>18</sup> T Elias, *La Nature du droit coutumier africain, présence africaine*, 1960, p 141 (quoted in Le Roy, p 73)

<sup>19</sup> In actual practice, customary law does not make a distinction between civil and criminal law. All through the proceedings, there is no reference whatsoever at any time to their civil or penal character. The notion of 'mitigation' encourages judges to take into consideration the customary penalty before they inflict a criminal penalty. In Vanuatu, it can be found in the *Island Courts Criminal Procedure Rules*, r26.

<sup>20</sup> B Saura, 'Les Règles coutumières en Polynésie française', in P De Deckker, *Evolution du droit et coutume autochtone dans les Etats et territoires du Pacifique*, Paris: L'Harmattan, 1995, pp 95-130

<sup>21</sup> Kuruk, p 9

evolves, and nowadays it tends toward a process of acculturation in which the change in mores and aspirations upsets the system's balance. There are:

- *Religious sanctions*: These are based on 'the concept of the clan viewed as a continuum made up both of the living and the dead, all of whom are concerned with full compliance with the law. The fear that an ancestor's spirit will inevitably inflict penalties on offenders secures compliance with the rules of society. When an offense has been committed, the offender is earnestly asked to make compensation in order to avoid the spiritual punishment that could strike him';<sup>22</sup>
- *Divine, supernatural punishments*: 'Punishments related to superstitions are similar to religious sanction, as they too apply when a taboo has been violated. Thus the mere mention of a public magic ritual or even the threat of an evil spell can lead to such fear of punishment as to prompt the obstreperous to make amends';
- *The notion of group responsibility*: The community is essential, so much so that any offense committed by a member of a family or a clan will be visited on the community. It is a joint responsibility for the action of others in order to guarantee the group's safety. 'Custom's concern is that the community must not be sacrificed for the benefit of the individual.' (Saura, 1995) 'The concept deters individuals from any senseless wrongdoing given the fundamental belief that any offense committed by members of the clan leads to revenge against any of those members. [...] Further, this rule strengthens the deterring effect of exclusion as a form of punishment, for an offender who has been excluded can no longer rely on the support and protection of his group.' (Kuruk, 2002) The fear of being rejected from the group is certain to make the individual aware that he runs an economic risk if he is separated from his group;
- *Fear of being ridiculed and ostracized*: The offender is in danger of losing his status. As a result, he is barred from any activity that is linked to life in a community and branded until he atones for his offense.

The cooperation principle is vital to foster social harmony to avert threatening the family, and, broadly, the group to which one belongs. One member of the community may happen not to abide by any coercive step taken against him despite efforts by traditional authorities to pacify relations and settle differences. The chief could therefore convene the whole village in order to bring ignominy on the seditious individual. He can also mortgage his lands, and even refer the litigation to the formal courts as a last resort. Currently, this premise tends to be more common in villages that are in contact with the official judicial system. The reference to 'modern' law in this instance acts as appellate jurisdiction and reflects the glaring failure of a traditional justice in the process of losing its legitimacy.

## **II. Custom viewed as a component of an incorporating and unifying dynamics?**

As societies develop, the state emerges as the institution controlling the country at the expense of the family, the village or the clan. The direct consequence inherent in this

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<sup>22</sup> Kuruk, p 10  
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development is that the ‘archaic’<sup>23</sup> and the new society coexist side by side, just as moral and civil order, custom and law intermingle. The issues relating to the incorporation of customary law into common law in force in Melanesian countries raise the question of the place customary law has now and of its recognition by the judicial system of Melanesian countries.

The genuine will of lawmakers to assign custom a significant role in the judicial systems of Melanesian countries translated into many provisions tending to this end, but traditional customs cannot run counter to the fundamental principles stated by the constitution and to laws enacted by parliament. Custom would then be a mere substratum of national laws and would play only an accessory role to offset the legal voids left by lawmakers.

Courts of original jurisdiction are the ones most in a position to refer to customary rules depending on the facts in the case. Besides, it has been found that it is not easy to access lower courts’ judgments such as the islands’ courts insofar as these judgments are seldom printed, unless one party requests printing. There are no archives, no written record of the cases that were dealt with and of the rulings handed down by these courts. As a result, it proves difficult, if not impossible, to accurately assess the place of customary law and the influence it may exert on judicial decisions, as these decisions reflect that influence quite poorly. When a file deals with the customary aspect, if this customary issue is not a subsidiary one but actually at the heart of the problem, it takes time to analyse and determine custom. The judge is not necessarily capable of mastering the ins and out of each custom, and therefore he has to lean on customary associate judges. These can help him in his assessments and in the way custom is enforced. The cases referred to high courts require a real introspection of the customary system, which in practice is very complicated.

Because there is little encouragement to appeal to conciliation, because of the permanent references to English law due to the adversarial nature of debates or the well-nigh systematic recourse to British case law – in the case of a legal void – there are formidable obstacles to the development of customary law and its inclusion in the legal system. The potential failure is caused as much by insufficient financial means as by a restriction of the jurisdiction of the lower courts. These structural, institutional or administrative barriers prevent the inclusion of customary law in the legal system.

Yet, the recognition of endogenous law as a source of law incorporated into the judicial system serves two major purposes:

- Respect for customary law, which reflects the significance of this final national echelon which is sanctioned by the constitutions of each of the Melanesian states. We find that the overwhelming majority of the preambles to the constitutions of the Pacific island countries regard traditional values as part of the foundation of the nation;
- The will to incorporate customary law into the legal systems in force in the region.

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<sup>23</sup> Not in the sense of decadent but in the old meaning, i.e., opposed to modernity. This is the definition of *Le Nouveau Petit Robert, Dictionnaire alphabétique et analogique de la langue française*, Paris, 2004

In practice, these objectives have proved very difficult to achieve considering the overall peculiar situation that the legal systems have to face. Whenever traditions and standards of modern law conflict how are they to be reconciled without offending people? Customary law sometimes seems to be impervious to any notion of equality of the sexes or gender equality, and the constitutional principles as well as the international standards reasserting those principles are systematically torn apart by customary courts.

For customary law to be valid it needs to meet the dual conditions of certainty and relevance, because lacking those, it can be subject to interpretation. The problem stems from the fact that customary law is forever changing: How are courts certain they are enforcing the original custom? Because they lack transparency, customary norms and procedures are very difficult to interpret. Their non-written nature ‘includes such a margin of error that it is impossible to reach the same level of clarity and precision that is sought in Western legal concepts. The lack of precision and the uncertain nature of the rules of customary law are further reinforced by the different objectives of the traditional judicial systems, which emphasize negotiation, and negotiation in turn leads to a compromise and the reconciliation of the parties, rather than to applying hard-and-fast rules to a factual situation.’<sup>24</sup>

Hence, customary law is enforced by the courts on three conditions to be met concurrently:

- Customary law must not conflict with a current law;
- It must not conflict with natural justice, with equity and with good conscience;
- Most of all, it applies only in the case of a legal void.

This caution on the part of the courts is necessary in order to diminish the risks inherent in customary law. These risks are essentially linked to the great variety of customs, but also, to a lesser degree, to witnesses’ prejudice, to ignorance, corruption or repeated abuses by the chiefs. So prior to allowing custom to take precedence over common law, it is appropriate to establish with full certainty the existence of the custom in question in relation to a given factual situation, for populations keep moving and customary law applies to very limited geographical zones, and as a result, the rules that are specific to each island or each community are not well known. This confusion about the applicable customs and their intrinsic nature requires unequivocal evidence of their existence. The party invoking customary law must therefore ‘support their petition by assertions and sufficient evidence to allow the court to apply customary law’ (Kuruk, 2002). Two assumptions exist:

1. Custom can be perceived as a factual given. This means that it is regarded not as an element of law but as a mere fact, and that it is up to the victim to state whether he or she wishes to claim its existence. Asserting the existence of the custom entails a dual constraint:

- For the judges – they must make sure it does exist and is relevant;
- For those who deal with justice – if they want the customs they invoke to be recognized and obeyed they must, if necessary, use indirect means or strategies to bring evidence of those customs’ existence and substance.

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<sup>24</sup> Kuruk, p 24

This situation makes customary law subordinate to an adversarial legal system, which is in total contradiction to the consensual and community-based values prevailing in Melanesian culture. So it is legitimate to understand judges when they are little inclined to favour traditional norms, as this is an area they do not master which is very difficult, if not impossible to comprehend. Is custom a norm, a value, a practice, or is it merely behaviour? How old is it and what is its scope? Does it apply to 10, 100 or 1000 people? The judge, through testimony, elders' intervention or any other mode of evidence (stories, tales, legends, etc.) asks the parties to establish the existence of the custom by applying it to the individual case. Besides, the fact that custom is action entails uncertainty, and the uncertainty translates into wariness on the part of the judge. While the judge may be in a position to be familiar with the customs of his village, of his community or his island, he cannot claim to be proficient in those of the other tribal groups. Thus, because he is afraid he cannot comprehend the custom, he had rather refer to laws enacted by Parliament. Formal law affords him the safety and the guarantee of an even and egalitarian justice across the territory, a justice that customs tends to weaken.

2. By contrast, if customary norms are assimilated to rules of law that are well established and recognized in the hierarchy of norms, the courts will be in a position to decide whether or not to base their decision on a customary 'rule' rather than on a legal norm. This hypothesis implies an undisputed legal certainty as opposed to the fact that customary law relies on actions. But the artificial place given it on the hierarchy of norms clearly shows how poorly this hypothesis fits in with the political and judicial wills of the last decades.

At present a conviction is shared in the Melanesian area, namely that a common synergy must be set up in terms of identity, economy and law. Notions of collectivism and of government assistance fade away by the day and are superseded by individualistic concepts dear to our culture. This vanishing of the social fabric makes the islands' populations more and more confused about values and knowledge. Preserving custom is predicated on a collective awareness among the states in the region, because custom guarantees the balance of Melanesian societies and remains an essential factor allowing them to be close-knit. If custom were granted legal validity and a real place in the hierarchy of norms, it would be institutionalized and legally recognized so that the Constitution could give it more weight and a larger role. The dissimilarities inherent in the current system have to do mainly with the lack of the chiefs' commitment to the judicial process, which they deem too far from the actual life of the people. The dissimilarities are also about the uncertainty that custom brings or about the fact that decisions are imposed, which is contrary to the community-based spirit founded on conciliation. To that end, several measures can be contemplated:

- A more appropriate training for judges and court personnel so they can better comprehend custom;
- Identifying the chiefs who would be specifically part of everyday justice and trained in current laws so they are incorporated into the judicial system;
- Gradual and concerted drafting of the major customary principles across the area, which makes for a better recognition;

- Setting up a regional case law by sanctioning the landmark decisions based on custom so these will be in a position to be used as models for future judgments.

Alain Sohier considered that custom allows societies to develop freely because it ‘affords a peculiarity, a soul, and because it adjusts to new situations’.<sup>25</sup> Law must take into account this development, the populations’ mores, their economic situation, and their aspirations. To that end, as noted above, custom enjoys a recognition and a legitimacy peculiar to Melanesia, but the perception of a cultural and religious identity is on the decline, as it is confronted with an ever-growing Western influence. We are witnessing a gradual erosion of the vitality of customary law, and this disintegration can be ascribed to various factors. Customary law, which had judicial monopoly for centuries, now has only a secondary place, or maybe an illusory one, within normative rules. The difficulty that is associated with its identification, the distrust of judges toward custom and the growing place granted to the Western model make it more difficult by the day for custom to survive. Custom is now confined to private matters and is less influential as days go by; it must innovate if it is to survive. Therefore it is urgent for all players to take concerted action, and measures must be contemplated for this purpose. That is a prerequisite if Melanesian unity on customary issues is to be achieved.

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<sup>25</sup> A Sohier, ‘Le Droit coutumier au Congo Belge’, in *Traité élémentaire de droit coutumier du Congo Belge*, Editions Larcier, 1954, pp 1-15

# 10. Democratic intervention, Biketawa and the 2006 Fiji Military coup

Richard Herr<sup>1</sup>

## Introduction

On 5 December 2006, Commodore Voreqe (Frank) Bainimarama ordered the Republic of Fiji Military Forces to depose the Government of Laisenia Qarase. This was the fourth coup in Fiji since 14 May 1987.<sup>2</sup> The ‘events of December 2006’, as this military coup is frequently described locally, set in train a series of international responses to restore parliamentary democracy in Fiji. Regional relationships have been a significant factor in organising and legitimating the reaction of the international community. The region’s leadership through their principal political association, the Pacific Islands Forum, took the lead in imposing sanctions under the Biketawa Declaration. Although the international reaction to the 2006 coup was based on the specific circumstances of that event, the strength of feeling was undoubtedly grounded in long standing images, both within and outside the region, of the presumed fragility of the Melanesian states, which had originally led to this Declaration. In particular, there is a perception that the maintenance of democracy is an ongoing challenge within these developing economies where state building remains a critical priority. This paper considers the role of the regional community and its approach to the restoration of parliamentary democracy in Fiji as a facet of contemporary Melanesian politics. Particularly important to this assessment are the grounds provided by the regional system for democratic intervention by imposing sanctions on the military-backed interim Government to promote the restoration of democracy in Fiji.

The Biketawa Declaration by the leaders of the Pacific Islands Forum broke significant new ground with regard to the protection of democratic values within the South Pacific region and perhaps even globally when first promulgated in 2000. Since the end of the Cold War in 1989, there has been increased worldwide emphasis on ‘good governance’ in aid relationships. While, the concept of good governance has caused some controversy both with regard to its intent and its impact, there have been aspects of the concept that support important elements of democracy. However, coups in Fiji and Solomon Islands in 2000 provoked the Forum leadership to go further in asserting protection of civic values by drafting the Biketawa

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<sup>2</sup> The first coup was conducted on 14 May 1987 by Lt Col Sitiveni Rabuka and was wholly a military affair. The second occurred on 25 September 1987 when recently promoted Brigadier Rabuka intervened again when he believed the draft arrangements under the Deuba Accord did not go far enough to guaranteeing Fijian control of the country. The third, on 19 May 2000, began as a civilian attempt to seize power but was later aided by rebel military forces.



Declaration to add ‘democracy’ to regional obligations. Since then, the Declaration has been used by members of the regional community as a basis for non-coercive intercession in Papua New Guinea, the Solomon Islands, Nauru, Tonga and Fiji. Nevertheless, the application of the Biketawa-based sanctions against post 2006 Fiji is substantially different in character from other regional usages. The intercessions in the other cases were with the compliance of the affected states sometimes regarded as ‘cooperative intervention’, at least by Australia, the country that has been in the vanguard on these occasions.

The current sanctions against Fiji are imposed against the wishes of Fiji and not based on the cooperative engagement with the interim Government. Indeed, the interim Government of Commodore Bainimarama has repeatedly railed against the sanctions and sought their removal or, if this was not forthcoming, a reduction in their severity. Yet, it is especially evident in the wake of the 2008 Niue Forum that support amongst the Forum Island countries (FICs) for maintenance of the sanctions has only strengthened. The substantial nature and duration of the sanctions regime against Fiji raise significant questions about these measures at a number of levels. What legitimates the sanctions as a form of democratic ‘intervention’?<sup>3</sup> Is the international community supporting democracy or merely the return of the previous Government? Are the sanctions fair? And, are they prudent in terms of a politically cost effective intercession? These four questions on the influence external actions including the suite of sanctions and their value to the restoration of parliamentary democracy in Fiji provide the primary framework for the following analysis.

### **Setting the scene: simplified complexity**

This short paper cannot present a complete review of the events leading up to 5 December 2006. Thus, given the complexity of these events and the contested status of claimed ‘facts’, the following should be regarded as an attempt at a brief setting of the scene.<sup>4</sup> The Government of Laisenia Qarase was installed as the result of a coup in May 2000 that attempted to overturn the election of Fiji’s first Indo-Fijian Prime Minister, Mahendra Chaudhry, a year earlier. The tortured path and the basis for its ascension to power are as complex as they were disputed. At least two critical features of these events impacted on the events of 2006 through their influence on Commodore Bainimarama. The disloyalty of the troops who mutinied in November 2000 and attempted to kill him made Bainimarama deeply suspicious of the sway of ultra-nationalist politicians and led him to demand an oath of personal loyalty to him by the senior officers. Those who did not accept this condition were purged early in 2004.<sup>5</sup> This purge appears to have been fairly effective as a civilian-based attempt to remove Bainimarama in weeks before the coup failed in the face of military

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<sup>3</sup> The word ‘intervention’ as used in this work is used more broadly and in a conventional sense, which is probably closer in meaning to the word ‘intercession’ than in the more restrictive, limited international legal usage which implies a coercive intrusion into the internal affairs of a state.

<sup>4</sup> An extended coverage of the events leading up to, and culminating in, the 2006 coup can be found in: Jon Fraenkel and Stewart Firth, eds, *From election to coup in Fiji: The 2006 campaign and its aftermath*, IPS Publications University of the South Pacific and Asia Pacific Press, The Australian National University, 2007 published electronically at: [http://epress.anu.edu.au/fiji/pdf/whole\\_book.pdf](http://epress.anu.edu.au/fiji/pdf/whole_book.pdf).

<sup>5</sup> Fraenkel and Firth, *op. cit.*, p. 35.

solidarity.<sup>6</sup> Secondly and more importantly in motivational terms, these series of events served as a 'learning curve' that appears to have entrenched in Bainimarama's mind a personal responsibility for the actions of the Government he put into power. He undertook a close watching brief on the Qarase Government and increasingly felt alarm at the direction it began to take shortly after he installed it.

Rumours of Bainimarama's dissatisfaction with the Qarase Government emerged publicly from 2003 and deepened in succeeding years. The military campaigned against this Government's return in the May 2006 elections and was seriously disappointed when Qarase won by one seat in results deemed by some to have been suspicious. Civilian critics also regarded the Qarase Government's agenda as having swung around to Speight's ultra-nationalist objectives and that these were basically racist (tending toward the 'apartheid') in their aims. Bainimarama had a number of specific areas of grievance. He believed that the Qarase Government had been too merciful to those involved in the 2000 coup and indeed allowed some back into public life prematurely. He was strongly opposed to proposed legislation, the Reconciliation Tolerance and Unity Bill, which would formalise this. Similarly, Bainimarama saw in the *Qoliqoli* Bill and the Land Tribunal Bill as advancing the ultra-nationalist agenda of the 2000 coup plotters. Indeed, the Qarase Government had already presided over the return of a small but politically significant amount of land into the indigenous Fijian land system. It passed legislation in 2002 that had the effect of increasing Fijian ownership of land from 84 to 87 per cent thus positioning Qarase to build on his ultra-nationalist base and extend his support amongst Fijian voters for the 2006 general elections.<sup>7</sup>

These factors and a perception that cronyism and corruption characterised the Qarase Government led Bainimarama to present his action in overthrowing the Government as a 'clean-up campaign', or, in the view of others, as a counter-coup, to restore Fiji to democratic order and one that would be non-racial in its character.<sup>8</sup> This argument was to be an important factor in the post-coup Government's reaction to the international sanctions. However, as critics point out, Bainimarama was accused of sedition and was facing charges prior to coup so his motives for acting were considered suspect. The divide within Fiji regarding the complicated path to the December 2006 coup has driven so deeply into contemporary Fiji that it would be difficult to find anyone who did not prefer one interpretation of the circumstances to the other. And yet, the perception of whether there was just cause for the coup profoundly influences the willingness to find justice in the subsequent sanctions under democratic intervention.

### **The international status of democratic intervention**

Historically the state as a sovereignty was deemed to have virtually complete autonomy internally; a norm of international law known as the doctrine of non-intervention. Over the

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<sup>6</sup> In October 2006 Prime Minister Qarase persuaded President Iloilo to sack the Commander and replace him with Colonel Saubuliniyau while Bainimarama was overseas but Saubuliniyau declined the Presidential nomination when his brother officers backed Bainimarama.

<sup>7</sup> Biman C Prasad and Clem Tisdell, *Institutions, Economic Performance and Economic Development: A Case Study of the Fiji Islands*, New York: Nova Science Press, 2006, pp 81-82

<sup>8</sup> See, for example, Serafina Qalo and Reijeli Kikau, 'Fiji army sets new demand deadline', *The Fiji Times Online*, 22 November 2006, <http://www.fjitime.com/story.aspx?id=52091>

years since the Peace of Westphalia in 1648, the doctrine of non-intervention has proved neither absolute nor unchanging. However, the establishment of the United Nations in 1945 has significantly revised the degree to which the doctrine could allow a state to remain inviolate within its own borders. Threats to international security (including an ill-defined notion of ‘good order’) can give rise to international authorisation, normally through the Security Council, to circumvent the general norm of non-intervention. Potentially more limiting to the concept of non-intervention is a new principle known as the ‘responsibility to protect’. The case for embracing the new principle was made in a report of the same name by the International Commission on Intervention and State Sovereignty in 2001 sponsored by the Canadian Government.<sup>9</sup> The 2005 World Summit endorsed the concept and in 2006 the Security Council passed a resolution reaffirming elements of the World Summit’s statement regarding the obligation of states to protect their own people from crimes against humanity. Essentially, the concept argues that every state has an obligation to its own members to provide some fundamental protections from abuse including from the state itself. The basis for the responsibility to protect hangs on a view that sovereignty is a ‘gift’ of the international community. Thus, the international community has a right and, even more a duty, to protect people from their own Government if necessary by coercive international humanitarian intervention. Although it is not yet a norm of international law, the growing positive response to the concept of a ‘responsibility to protect’ demonstrates the change in attitude by the international community toward restricting the doctrine of non-intervention when human rights are violated. In time, its logic could come to be used to support a stronger and more general validation of the concept of democratic intervention.

Nevertheless, democratic intervention is not yet a component of the somewhat better established principles of humanitarian intervention.<sup>10</sup> While it is true that there are international treaties that assert elements of rights that support democracy and political rights, these have not coalesced into agreed international norms nor do they provide guaranteed rights for international intervention to protect them. Thus, bases for democratic intervention are even less clear and less well implemented than for the inconsistently applied norms for humanitarian intervention. And, as with humanitarian intervention, there is arguably an issue of timing since the ‘ounce of prevention’ would be worth much more than the ‘pound of cure’ if early intercession were possible. A preventative engagement to preserve an existing democracy, albeit fraught with myriad practical complexities, could be easier to achieve than restoring one overthrown by a coup. It would be necessary to know that the external influences were forestalling a coup rather than merely interfering in the internal affairs of a sovereign and democratic state, of course, just as it would be to identify the precise moment to intervene. There are relative few clear cases where the opportunity for a pre-coup intervention could be made out. One such occasion was the Solomon Islands in early 2000. Had Prime Minister Bart Ulu’falu’s request to Australia for a small number of police to stabilise the situation in Honiara been honoured before the June 2000 coup there, the coup

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<sup>9</sup> Gareth Evans and Mohamed Sahnoun, ‘The Responsibility to Protect’, *Foreign Affairs*, Vol. 81, November/December 2002, pp 99-110

<sup>10</sup> For a survey of these issues, see Morton H. Halperin and Mirna Galic, eds, *Protecting Democracy: International Responses*, Lexington Books, 2005

may have never occurred. If successful, a modest pre-coup intercession might have obviated the damage of the following three years and the vast expense of the RAMSI intervention.

Public opinion often appears to be in front of the international legal practice with regard to democratic intervention, at least in western democracies. Increasingly, the public appears willing to accept, and even expect, that the international community will react to resist anti-democratic coups. Perhaps this explains why so many in democratic states appear to believe that 'democratic intervention' is self-justifying and so reactions to anti-democratic coups should be automatic. Both opinion and international practice tend to be limited, however, to restoring overturned democracies rather than intervening to impose democracy where it was not previously present. This orientation now may be more accentuated in the public's mind especially since the neo-conservative debacle in Iraq and a broader awareness that democracy, as a system, can be restored much more easily than it can be imposed. Overall, for the present, the reality is that there is no international norm for democratic intervention and, consequently, there is considerable inconsistency in the response of the international community to specific anti-democratic events raising doubts about the legitimacy of such intervention.

### **Legitimizing democratic intervention in Fiji**

While the general international basis for democratic intervention may be ambiguous, the regional sanctions against Fiji's interim Government do rest on more solid political, if not legal, foundations. Current regional sanctions against Fiji appear based largely on the Forum's 'Biketawa Declaration', which asserts a claim to, and provides a procedure for, democratic intervention. Under the Declaration issued by the Forum in the wake of the events in Fiji and the Solomons in 2000, the Forum leaders committed themselves *inter alia* to, 'upholding democratic processes and institutions'.<sup>11</sup> The Declaration also contains options for sanctions including 'if necessary, targeted measures'. Since 2000, the Biketawa Declaration has been used as a basis for military and police intercessions in the Solomon Islands and to a lesser extent elsewhere in the region. It has been employed as well to legitimate monitoring activities in support of good governance. Nonetheless, the Biketawa Declaration, being a declaration, is essentially a diplomatic statement of agreement not a treaty. Thus, it does not carry legal weight but rather is a political agreement amongst the Forum members. The non-legal status of the Biketawa does not lessen its political force but it means any activities carried out in its name are acts of political will not legal obligation.

Just how legitimate this makes the Biketawa sanctions is open to speculation. States can impose sanctions as acts of 'retaliation' or retorsion that serve as a penalty for some offending action against the state imposing the sanction. These activities are not illegal acts but are 'unfriendly' even if there is presumed cause. Nevertheless, the use and value of sanctions of this type very much depend on power relationships irrespective of their legitimacy in international law and politics. The powerful can impose sanctions with little risk since retaliation with counter-sanctions or other measures would be imprudent and impractical. The weak must endure their imposition because they have little or no capacity to resist or threaten counter-measures. All the same, the powerful prefer to have their actions

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<sup>11</sup> [http://www.forumsec.org/\\_resources/article/files/Biketawa%20Declaration.pdf](http://www.forumsec.org/_resources/article/files/Biketawa%20Declaration.pdf)

accepted as legitimate and therefore international authorisation is a useful mechanism for reducing the resistance to the use of their strength. Thus, the legitimacy of the regional sanctions as a form of democratic intervention under the Biketawa Declaration has been very important diplomatically to Australia and New Zealand. Yet, while legitimacy may not be in question for the Forum states regarding the sanctions, the fairness of their application may be.

### **Sanctions applied**

Following the execution of the coup, Australia and New Zealand reacted swiftly to impose the sanctions threatened in the months leading up to December 2006. Amongst the targeted measures were 'smart' sanctions inflicting travel bans not only on members of the interim Government but on their families as well. The inclusion of family members was particularly harsh on a number of accounts. Perhaps most important was that a relatively large number of Fiji Islanders have family members living or working abroad in Australia and New Zealand. In addition, Fiji has long placed a high reliance on these two economically advanced neighbours for educational and professional training. Thirdly, countries such as the United States did not include family members in their travel bans. Links with the RFMF were cut and New Zealand's Prime Minister Helen Clark sent a request to the United Nations to cease using RFMF personnel in its peacekeeping operations. Many, but not all, donors reviewed their aid to Fiji and some programmes or projects were cut, frozen and/or had new conditions imposed on them based on a return to democracy or progress in this direction by the interim Government.

The Biketawa Declaration provided the primary justification for Forum members to legitimate the regionally based sanctions against the interim Government but its reach was not limited to just these states. The United States, the Delegation of the European Commission, the Asian Development Bank and other missions and agencies also acted to review and restrict their assistance to Fiji largely in the wake of the regional sanctions. However, without the institutional leadership of Australia and New Zealand, none of the extra-regional responses were as vigorous as those within Forum framework. Indeed, even within the Forum, the sanctions under the Biketawa Declaration were unevenly applied. No FIC appears to have applied travel restrictions on Fiji officials or acted independently on any regional assistance projects or other activities. As far as the FICs were concerned, the primary use of Forum mechanisms under the Biketawa Declaration were those used to establish monitoring arrangements including a Fiji-Forum Joint Working Group and Forum Ministerial Contact Group to assess compliance and progress toward the restoration of parliamentary democracy. These mechanisms were important as part of the regional approach, of course, but, critically for the other Forum Island members, these elements of the process were not overtly punitive toward Fiji. They could even be seen as supportive of the interim Government insofar as they assisted with the lifting of punitive sanctions in the long run.

### **Fairness of sanctions: the vulnerability of small states**

As ambiguous as the concept of 'democratic intervention' may be, it is clear that such intercession can only be used against small states. Thus, power is always a factor in the application of sanctions to support democratic values. The fact that power determines when sanctions in this cause are enforced necessarily undermines their 'fairness' just as it does

their consistency. This is not to assert that sanctions to resist anti-democratic coups are unfair by definition. Rather, the motives of those willing to apply power to protect democracy need to be carefully scrutinised and assessed. The powers applying sanctions need to be mindful of their obligations not to use power arbitrarily as much, if not more, than other states in the international community that help to legitimate sanctions but are unable to apply them.

Small island states are vulnerable to international pressure to an extraordinary degree for two main reasons. Perhaps the primary basis for this observation is that they have been highly dependent on a favourable international climate for their political existence. The reality of this became evident in 1983 when the United States invaded Grenada ostensibly to preserve democracy and to protect it from foreign intervention. The action sent shockwaves around the globe as the issue of small island state vulnerability became an instant cause célèbre for international organisations, security analysts and students of sovereignty. Secondly, and very pragmatically, the asymmetries of power are a fact of life for the very small. These inequalities affect their relations with virtually every other state at every level and in every way.

Since Fiji is a small state rather than a microstate,<sup>12</sup> it is not as vulnerable to external pressure as most of its FIC neighbours in general terms. Nevertheless, the interim Government has increasingly argued that the FICs' vulnerability has impacted on Fiji through their acquiescence in the Forum to sanctions imposed under Biketawa Declaration. The supporters of the interim Government as well as the interim Government itself have sought to blame the two Forum powers, Australia and New Zealand, for these sanctions. Interim Prime Minister Bainimarama made this a theme of his address to the 63rd General Assembly in 2008.<sup>13</sup> In addition, Fiji's scholarly Acting High Commissioner in Canberra, Kamlesh Arya, attributed the use of regional mechanisms to pursue sanctions to 'cheque-book diplomacy' implying that the support of the FICs against Fiji was purchased.<sup>14</sup> Prior to the 2008 Niue Forum meeting, a contrast was drawn between the Forum statements and the generally more supportive line amongst FICs when the two regional powers were not present as, for example, at the Melanesian Spearhead Group meeting in May 2008 in Port Vila, Vanuatu. As noted above, the interim Government's complaint against sanctions as being a result of Australian and New Zealand pressure through the Forum is not unfounded. Beyond monitoring arrangements, the primary sanctions have tended to be bilateral in nature and centred on the actions of Australia and New Zealand. Moreover, the energy and effort in initiating and promoting both the case for sanctions and sanctions themselves have come from the two Australasian states. The uncompromising language used by these two to vilify the interim Government and its leadership have not been adopted by FICs even after the disappointment of Bainimarama's failure to attend the 2008 Niue Forum.

One of the more significant and provocative misuses of the asymmetry of power, from the interim Government's perspective, was New Zealand's approach to the post Niue Forum

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<sup>12</sup> Microstates can be variously defined but this paper uses the 500,000-population benchmark, which basically only finds two FICs as being well above microstate status – Fiji and PNG. Another definition, sometimes used by the UN sets the threshold at one million, a metric that would include Fiji in the ranks of microstates.

<sup>13</sup> [http://www.fiji.gov.fj/publish/page\\_13023.shtml](http://www.fiji.gov.fj/publish/page_13023.shtml)

<sup>14</sup> <http://www.radioaustralia.net.au/programguide/stories/200808/s2349461.htm>

bilateral talks. In 2006, PM Qarase noted the importance of the bilateral talks when welcoming participants to the Post Forum Dialogue in Nadi.<sup>15</sup> This arrangement had been a part of the annual Leaders' Meeting since the arrangement was inaugurated by the Forum in 1989. Admittance to a partnership relationship was by agreement of the Forum leaders and attendance arrangements were administered by the Forum Secretariat and the host Government of that year's meeting of the Forum. However, at the 2006 Forum it was agreed that the following year in Tonga there would be a plenary meeting between the Forum and the dialogue partners. Nevertheless, a press release by the Forum Secretariat after the 2007 Forum in Nuku'alofa showed that this plenary mechanism had not replaced the bilateral arrangements. It noted that the 'Post Forum Dialogue Partners welcomed the new process of engaging with the Pacific Islands Forum as a region and indicated their support in developing it further including through strengthened bilateral consultations with the Forum.'<sup>16</sup> New Zealand's offer to provide a venue for the post-Forum bilateral talks but to exclude Fiji from them on the basis that it would only transit visas for Fiji's delegation was a breach of the meeting practices within the comity of the Forum. These talks were the responsibility of Niue and New Zealand's assistance was a continuation of the obligations that Niue accepted when it agreed to host the 2008 Forum. The interim Government did have a legitimate grievance at New Zealand's abuse of the Forum process but its critics appeared both unaware of the slight and unwilling to accept it as sufficient grounds for Fiji to refuse to attend the Forum. Australia's Prime Minister, Kevin Rudd, continued the name-calling referring to Bainimarama as not being a 'person of substance' and that his failure to attend was to 'chicken out'.<sup>17</sup>

However, unlike the previous year in Nuku'alofa where Bainimarama was present, the Australia and New Zealand criticisms did enjoy some genuine resonance with the FIC participants. Whatever reservations there may have been in the strong position taken by the two Australasian powers, the general position of the FICs moved genuinely closer to Australia and New Zealand after Niue. The interim Government had an opportunity to build on a relatively favourable reception at the May 2008 Melanesian Spearhead Group's Summit where Bainimarama did make an appearance to deliver a strong speech in favour of the country's right to chart its own path for returning to parliamentary democracy.<sup>18</sup> The failure to attend, and to confront its critics, has clearly eroded the interim Government's standing within the Forum and therefore diminished its capacity to challenge the legitimacy of the sanctions imposed by the Forum. The consequence for the interim Government is that its attempt to play the victim in a regional power play has also been undermined significantly. The issue of the asymmetry of power that enabled the pursuit of the sanctions has not been sidelined entirely as a result of Bainimarama's tactical error of judgment in absenting himself from the Niue Forum but its utility to Fiji as a foreign policy lever appears less effective.

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<sup>15</sup> <http://www.pacificleadersforum.fiji.gov.fj/news/41.html>

<sup>16</sup> <http://www.forumsec.org/pages.cfm/newsroom/press-statements/2007/pif-plenary-with-post-forum-dialogue-partners.html>

<sup>17</sup> [http://australianetwork.com/news/stories\\_to/2340590.htm](http://australianetwork.com/news/stories_to/2340590.htm)

<sup>18</sup> Interim Prime Minister Bainimarama's address to the MSG summit can be found at [http://www.fiji.gov.fj/publish/page\\_11988.shtml](http://www.fiji.gov.fj/publish/page_11988.shtml)

**Pre-emptive intervention: a failure to act?**

In light of the asymmetrical power relationships within the Pacific Islands region, it might be argued that some form of pre-emptive intervention to support democracy in Fiji before the events of December 2006 might have been possible and effective. It is always difficult to establish that events would have taken a different course had Governments made different choices and pursued another course. Certainly, in the case of Fiji, there was nothing as explicit as there was with regards to the Solomon Islands in 2000. Then the Australian Government refused a request for assistance from the Prime Minister Bart Ulu'falu for a modest number of police. Had that request been honoured, the need for the massive RAMSI intervention three years later might well have been avoided. It is arguable that there were opportunities for the regional international community to act to prevent the 2006 coup whether any single act or moment could have been decisive is moot. Nevertheless, it is arguable that some careful intercession by friendly democratic powers would have been more useful than what actually occurred in the years leading up to 2006.<sup>19</sup> The Australian Government, for example, was well aware of the tensions between Bainimarama and the Qarase Government yet it appears that the Howard Government did not attempt to moderate Qarase's 'apartheid' policies despite fears from 2003 of a coup by the Commander of the RFMF due to his opposition to these policies. Some critics have even intimated that there are grounds to believe Australia contributed to growing tensions between Fiji police and the RFMF in 2006 through political interference. Certainly the RFMF felt the warnings by the two Australasian powers that it would lose its UN peacekeeping opportunities if it overthrew the Qarase Government. Concern that these Governments were far more anxious to prevent a coup than serve as intermediaries willing to broker an acceptable solution to Fiji's domestic political impasse was confirmed for senior members of the RFMF when, days before the coup, three Western ambassadors – Australia, UK and US – allegedly attempted to foment military mutiny during a visit to Queen Elizabeth Barracks while Bainimarama was absent in New Zealand at an ill-fated last ditch meeting with Qarase.<sup>20</sup>

If the diplomatic efforts to avert the December 2006 coup were relatively weak, other steps actually appeared to raise tensions. The RFMF was suspicious of some of the activities by external powers prior to the coup some of which they regarded as intimidation or even pre-positioning to forestall a coup. Australia brought additional military resources into Suva shortly before the coup. This was subsequently attacked as heightened tensions by pre-positioning an intelligence capacity to assist Australian troops if needed to counter a military overthrow.<sup>21</sup> Another focus for complaint was the sending of a small naval contingent to the area. More than 800 navy, air force and army personnel were sent as a taskforce made up of the *HMAS Kanimbla*, *HMAS Newcastle* and *HMAS Success* to waters near Fiji by the Australian Government in early November 2006. The RFMF regarded the presence as a show of strength that was intended to intimidate. However, Canberra maintained that it was merely prudent preparation by having an immediate capacity to evacuate Australian citizens should

<sup>19</sup> RA Herr, 'External Influences and the 2006 Fiji Military Coup', *Harvard Asia Pacific Review*, Vol. 9 no. 1, 2007, pp 10-13

<sup>20</sup> This intention is hotly denied by the Western powers involved and they have argued that their purpose for the visit has been mischievously misrepresented. The visit was merely to ascertain whether there was to be a military coup.

<sup>21</sup> <http://www.abc.net.au/news/stories/2008/04/02/2206163.htm>



the need arise. Tragically, a Blackhawk helicopter training accident on the *HMAS Kanimbla* cost the lives of two Australian servicemen during this exercise.<sup>22</sup>

### **Do sanctions support democracy or the previous government?**

The issue of whether the post-coup sanctions are intended to support democracy generally or are acts of subversion to support the ousted Qarase Government is a critical point of departure for the interim Government in responding to these punitive measures. In theory, sanctions in support of democratic change are intended to undermine a post-coup regime but it is not essential that this change be specifically directed to restoring an ousted Government. Nevertheless, Fiji's interim Government has generally regarded the sanctions from 2006 as support for the deposed Qarase Government. Such external support for Qarase would have been expected and accepted initially by the interim Government. However, Bainimarama appears to have also anticipated that, as with previous coups, a more pragmatic attitude would emerge over time to allow Fiji's traditional friends to work with the new Government on a return to an election-legitimated successor. In the event, the international community has declined to follow the path of returning quickly to a pragmatic engagement with the post-coup Government. Resident diplomats from Australia, New Zealand, the United Kingdom and the United States have been reported in the local media from time to time offering opinions on the path to restoring parliamentary democracy in Fiji. These have included demands that the interim Government adhere to the 1997 Constitution, that the overturned Parliament be reconvened and that the existing electoral arrangements be used in any new national elections. These interventions have been taken as clear signs of continuing support for restoring the Qarase Government. Naturally, the sanctions imposed in aid of these demands made them appear designed to achieve the same outcome.

Perhaps one of the more hurtful lines of intervention by some Western missions, from the perspective of the interim Government, has been the use of the local media to discredit the People's Charter.<sup>23</sup> This perception of injury inflicted to assist the previous Government is linked to the importance interim Prime Minister Bainimarama attached to the People's Charter. Although the Peoples Charter is intended to be his means for returning Fiji to parliamentary democracy, it is not just a procedural issue for Bainimarama. The Charter has always been meant to embody a substantive content since it is to reverse or preclude discriminatory aspects of the 1997 Constitution including anti-democratic features such as race-based voting. That this banner of democratic reform failed to attract the comprehensive public support early expected for it begged some explanation especially as the People's Charter's success depended on the legitimacy of general community endorsement. The interim Government found it easy to associate the unwillingness of the international community to provide an independent funding base with the opposition of the Qarase's *Soqosoqo Duavata ni Lewenivanua* Party (SDL) and other political parties to participation in the Charter process. Thus, the interim Government could perceive its local difficulties in selling the Charter as stemming, in part, from the international community's failure to be more supportive. Had external funding been extended to the Charter process then the ties to the interim Government would have posed fewer issues for the SDL and other parties that

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<sup>22</sup> Nicholas Stuart, 'Poor links with Fiji part of wider Pacific problem', *Canberra Times*, 7 October 2008

<sup>23</sup> This can be found at [www.fijipeople charter.com.fj/](http://www.fijipeople charter.com.fj/)

refused to become participants. This circular argument made backing of the SDL and taking an anti-Charter position mutually compatible.

The Charter is to be a result of the deliberations of a specially constituted National Council for Building a Better Fiji (NCBBF) and the consultations the NCBBF would undertake with the people of Fiji on the proposed Charter.<sup>24</sup> The NCBBF itself was established under authority of President Ratu Josefa Iloilovatu Uluivuda to separate the Charter process from the interim Government. The Charter has pursued a comprehensive review of Fiji's governance, economic and social systems to restore democracy and end the 'coup culture'. At the time of writing, a draft Charter had emerged from this process and is being subject to public consultation. Initially, it had been proposed that the Charter would go to national referendum for confirmation. This seems to have been quietly dropped for a variety of, perhaps, mutually reinforcing reasons. The risk of re-opening political divisions once the Charter was drafted, the absence of demonstrated overwhelming public support during the period of drafting of the Charter, a fear that this could be used to amend the 1997 constitution and the need to secure broader political support from Fiji's party elites are amongst the rationales mooted for the apparent disappearance of the referendum option for legitimating the Charter.

Without international financial support, the Peoples Charter process was forced to depend upon the interim Government for funding. This factor, along with Bainimarama as co-chair (alongside Archbishop Petero Mataka) and a large minority of members of the interim Government serving on the NCBBF convinced many critics that the process was essentially an interim Government device to build support for the regime and its agenda. These concerns were underscored at times by maladroit actions of interim Government in dealing with its critics.<sup>25</sup> Thus, it mattered little to its opponents that the NCBBF had reserved seats for them to participate or that the agenda for its various deliberations was reasonably open. The interim Government has taken a strongly different view arguing that it has sought to restore 'real' democracy. The agenda of the People's Charter and the extensive consultations leading up to the Charter and the subsequent public consultations are designed to make Fiji more democratic and participatory than at any time in its modern history. Reforming the electoral system to ensure that voters do not need to declare their race in order to obtain a ballot, that seats in Parliament are not dependent on race, and that all votes are counted and distributed fairly are, the interim Government argues, thoroughly democratic by any standard. So too are the abolition of reserved seats, of constitutionally mandated power-sharing, and of the excessive influence of unelected and unaccountable traditional chiefs. Thus, the interim Government holds to the belief that international sanctions are not intended to restore democracy to Fiji but rather return the previous Government to power that maintained a highly discriminatory and divisive political system that embraced many elements that were anti-democratic and, often, violated basic human rights.

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<sup>24</sup> Details of the NCBBF, its membership, structure and operations can be found at [www.fijipeople charter.com.fj/](http://www.fijipeople charter.com.fj/). The author assisted the NCBBF as an honorary, part-time adviser on parliamentary and electoral reform from January-June 2008.

<sup>25</sup> The unceremonious expulsion of two foreign media figures were amongst the more celebrated cause celebres serving as a focus for national and international concern over the interim Government's claims for democratic credentials.

### **Cost benefit of intervention: the effectiveness of sanctions?**

Thus far, the post-coup sanctions do not appear to have assisted with the return to parliamentary democracy. Indeed, it is difficult to discern any direct positive impact from the international sanctions on Fiji since December 2006. The interim Government has failed to respond to any of the demarches by its critics. Interim PM Bainimarama has disavowed the promise made at the 2007 Nuku'alofa Forum to hold elections by March 2009 claiming it had been extracted by 'ambush'. By July 2008, he was prepared to announce publicly that he would not meet the March 2009 deadline but it was widely suspected that this would be the case several months previously. Bainimarama subsequently insisted that he would not hold elections until the changes proposed under the Peoples Charter were complete. The interim Prime Minister was particularly explicit on this during his address to the United Nations when he advised the 63rd General Assembly that his Government would proceed to elections, 'only after we have achieved broad consensus in Fiji for a non-racial and truly democratic electoral system, and agreed on a Constitutional and legal way to introduce the changes.'<sup>26</sup>

There were other grounds for taking a somewhat jaundiced view of the efficacy of sanctions as an element of democratic intervention in the case of Fiji. The lack of consistency and comprehensiveness undermined their effectiveness and, some might argue, their legitimacy. The UN declined to move on the NZ proposal to exclude RFMF troops from participating in peacekeeping missions. Although the regional Biketawa Declaration was the justification for democratic intervention against the coup, it does not appear to have been whole-heartedly supported by the FIC membership of the Forum. Indeed, the failure of the FICs to impose their own bilateral sanctions under the Biketawa Declaration raises questions of how 'regional' was the adherence to the principles of the this agreement or the actions taken in its name. The touted 'smart sanctions' hurt the interim Government but did not alter the Government's course. Moreover, they may have been dysfunctional, as they have interfered with making timely progress toward a return to parliamentary democracy. It seems many Fiji citizens living abroad or with families living overseas were unwilling to accept positions with the interim Government even though their participation may have helped to speed the return to democracy.<sup>27</sup> As noted above, internally, sanctions have been seen by the interim Government as encouraging Qarase not to engage in the People's Charter process so undermining the capacity of the interim PM to implement his 'exit strategy'.

### **Is there a way forward?**

At the time of writing, there are several 'irons in the fire' with regard to finding a political accommodation to ease the path in restoring parliamentary democracy. These have included the 'moli tea' private talks between interim PM Bainimarama and the deposed PM Qarase that began in May 2008. Somewhat earlier, the Secretariat of the Commonwealth of Nations offered good offices to provide Sir Paul Reeves as an international mediator but this subsequently ran afoul of those critical of his previous involvement in the process leading to the 1997 constitution of which the interim Government opposes. Possibly an extension of the

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<sup>26</sup> [http://www.fiji.gov.fj/publish/page\\_13023.shtml](http://www.fiji.gov.fj/publish/page_13023.shtml)

<sup>27</sup> Australian and New Zealand officials are inclined to dispute this consequence of the smart travel sanctions on the grounds that positions related to elections were exempt. However, even some internal critics of the interim Government believe there was an effect that was unhelpful.

Commonwealth's initiative but rather separate in practice is President Iloilo's 'political dialogue' process which has yet to get underway. None is entirely promising at this stage in the process but hopes are still held that at least one might bear fruit despite the evidence so far and the obstacles that will beset any political dialogue that might take off.

Certainly, the way forward has become more problematic since the Niue Forum both because of the threat of elevated sanctions as well as the hardening of support amongst FICs for sanctions. Niue Forum has set in train a process to expel Fiji from the Forum if it does not adhere to the 'promise' made by interim PM Bainimarama to hold elections by March 2009 despite the clear statement by the interim PM subsequently he would not do so. The present situation plainly cannot persist. The existing sanctions are hurting Fiji but not enough to force a change in direction by the interim Government. It does not appear that intensifying these will be any more effective. The interim Government's desire to secure the changes embodied in the People's Charter may present an obstacle to flexibility on its side. On the other hand, if the Charter becomes a *sine qua non* for admission to a political dialogue, the price is likely to be perceived as too high with the result that much of the useful and constructive aspects of the Charter will be de-legitimised.

The prospects for the future appear highly fraught with all parties manoeuvring for advantage in an increasing uncertain international economic climate. As one knowledgeable Australian official remarked recently, the status quo in Fiji 'is not the worst that could happen there'. There are no guarantees of a peaceful transition back to parliamentary democracy. Shortly after the Niue Forum, New Zealand's Defence Minister, Phil Goff, canvassed the possibility that civil disorder could occur, requiring direct military intervention to extract New Zealand citizens from a disintegrating Fiji. The deaths that occurred during the George Speight coup in 2000 were a result of a breakdown within the RFMF when rebel troops attempted to support the coup. A mutiny by elements of the RFMF at some point in the future against the interim Government could be an even bloodier affair. The risks of violent civil strife would escalate if civilians became involved directly or in the wake of subsequent military purges seeking retribution. These scenarios appear extreme on the basis of what has occurred historically but then it would take something on the scale of these for Goff's concerns to have any validity.

Former Vice President of Fiji, Ratu Joni Madraiwiwi, made one telling observation on the way forward in an address in New Zealand when he said, 'In spite of the divisions that have been exacerbated by the December coup, it is absolutely critical that the next government is one of national unity.'<sup>28</sup> Many thoughtful observers believe he is correct but the means for securing such a Government require some prior political dialogue and accommodation. Whether these will require an intervening election is not yet clear although it appears that Ratu Joni expects that it should. There has been some speculation that there may be a 'transition Government' established to follow the interim Government without necessarily the complication of an election. Such an arrangement might appeal as a way of securing some

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<sup>28</sup> Ratu Joni Madraiwiwi, 'The Challenges in Building A New Fiji', Annual Pacific Co-operation Foundation Address, Press Release: Pacific Cooperation Foundation, 13 May 2008. <http://www.fijilive.com/archive/showpdf.php?pdf=2008/05/Challenges%20in%20Building%20New%20Fiji%20-%20Rt%20Joni.pdf>

power-sharing while the knotty legal and constitutional problems were worked out in a more leisurely pace. Even this will require the revival of the political dialogue that seemingly has been stalled since the promising moli tea talks in May 2008. A politically negotiated, and agreed, means to restoring parliamentary democracy can be the only way forward but how long it will take to get this process back on track is impossible to predict.

What does seem clear at this time is that the use of international sanctions as a form of democratic intervention has not worked the way its sponsors had hoped. These can scarcely be seen to have been efficacious or timely in their influence on the internal politics of Fiji to return to parliamentary democracy. From an Australian and New Zealand perspective, the application of these sanctions may have created a long-term impediment to good relations with the single most regionally significant island member of the Pacific Islands Forum. Links with the RFMF have been damaged severely and the RFMF have replaced training and other ties with the ANZAC defence establishments to some extent with support from China, India and Malaysia. Weaknesses in the Biketawa Declaration have been exposed. It can really only be employed effectively where the target state is supportive as in the case of the Solomons or, perhaps, where it is too weak to resist. The impact on regional relations and cooperation on intra-regional security and good governance may only be clear when Fiji is fully restored to parliamentary democracy and diplomatic relationships amongst all members of the Forum are on an even keel again. However, if democratic intervention is to be practical at the regional level, especially within the large and complex societies of Melanesia, the sanctions regime will have to operate more smoothly than it has in the case of post 2006 coup Fiji.

### **Postscript**

One of the difficulties that occur when analysing current events is that they are subject to rapid change. As this paper was in its final revision for publication, the Fiji High Court delivered its verdict in the case of *Qarase and Others v Bainimarama and Others*.<sup>29</sup> The courts verdict that the President had the authority to legally empower the interim Government has changed the dynamics of Fiji politics. Just where this will take Fiji has yet to be seen but already it has made the interim Government more confident in dealing with its critics despite the very real likelihood that the decision will be appealed. On the positive side, the judgment appears to have encouraged all parties to engage with the interim Government, which may augur well for a negotiated settlement to the domestic political impasse since December 2006. Critics, on the other hand have predicted that interim Prime Minister Bainimarama will be tempted to hold onto power for a longer period.

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<sup>29</sup> The decision of the court is available at:  
<http://www.fijilive.com/archive/showpdf.php?pdf=2008/10/Qarase%20vs%20Bainimarama%20Judgment.pdf>

# 11. The incorporation of human rights by Melanesian states

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Laurent Tesoka<sup>2</sup>

The incorporation of Human Rights as binding standards in the different legal systems of Melanesian states<sup>3</sup> is a recent process, and it has many particular features. It is recent by reason of the fact that the states are 'young' ones. The Fiji Islands gained independence in 1970, Papua New Guinea in 1975, Solomon Islands in 1978 and Vanuatu in 1980. Besides, this incorporation is to some extent homogeneous. The basic rights proclaimed are few and must coexist with practices and customary law which may run counter to them. This poses the usual problem of conflict of standards, especially because proclaiming Human Rights is essentially done through written sources, whereas in those societies, the oral process is an important means of communication and a vector for the communication of standards.

Lastly, talking about the incorporation of standards raises the major question of their effectiveness and of respect for them. In this connection, there are great discrepancies among the different territories. The practices of incorporation differ widely from state to state. Moreover, domestic political developments in some of those states regularly lead to violations of Human Rights. Assessing the incorporation of Human Rights in the different Melanesian states presupposes the study of international and regional incorporation sources (I), domestic incorporation sources (II), and an appraisal of the effectiveness of the practices that are followed (III).

## I. International and regional sources of human rights incorporation

In the matter of Human Rights, the large number of declarations of principle, whether at the domestic or international level, is not significant, as the protection of Human Rights can be achieved only by a positive legal order providing for appeal proceedings. This order can be an international, regional or internal one. While Melanesian states are a party to some

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<sup>3</sup> New Caledonia not being a state, it is theoretically subject to commitments by France in the matter of Human Rights. As a component of the French State, it is thus subject to commitments, and notably to the protection mechanism provided by the European Convention of Human Rights (ECHR): See M. Levinet, 'Coutumes et droits de l'homme. Universalité et pluralisme dans la Convention Européenne des droits de l'homme,' in J-Y Faberon and G Agniel, eds, *La Souveraineté partagée en Nouvelle-Calédonie et en droit comparé*, Les études de la Documentation Française, Paris, 2000, pp 89-105. This paper, therefore, will deal only with Melanesian states as subjects of international law.

international instruments of Human Rights set up within the framework of the United Nations (A), they scarcely have compelling commitments at the regional level; however, they have to take into account the commitments binding them to the European Union (B).

### **A. Taking part in multilateral international agreements**

The proliferation of international documents proclaiming Human Rights must not delude the public, for their real scopes are very much varied indeed. We will deal here only with conventions. After they gained independence (Fiji on 13 October 1970; Papua New Guinea on 10 October 1975; Solomon Islands on 19 September 1978; and Vanuatu on 15 September 1981), the Melanesian states adhered to the UN Charter, and consequently to its provisions regarding Human Rights. But they have made few other international commitments to protecting those rights:

- Fiji (11 January 1973), Papua New Guinea (27 January 1982), and Solomon Islands (17 March 1982) are bound by the 7 March 1966 International Convention on the Suppression of All Forms of Racial Discrimination,<sup>4</sup> in force since 4 January 1969.
- Fiji approved on 28 August 1995 the Convention on the Elimination of All Forms of Discrimination Against Women adopted on 18 December 1979,<sup>5</sup> which came into effect on 3 September 1981. Papua New Guinea approved it on 12 January 1995, Vanuatu on 8 September 1995 and Solomon Islands on 6 May 2002.
- The Convention on the Rights of Children adopted on 20 November 1989,<sup>6</sup> and which came into force on 2 September 1990, was ratified by Fiji on 13 August 1993, by Vanuatu on 7 July 1993, and by Papua New Guinea on 2 March 1993. Solomon Islands approved it on 10 April 1995. Vanuatu was the only Melanesian country to ratify (on 17 May 2007) the optional Protocol to the Convention on the rights of children, regarding the sale of children and pornography staging children, which was approved on 25 May 2000<sup>7</sup> and came into force on 18 January 2002. Fiji approved the protocol on 16 September 2005, but has not yet ratified it.
- Regarding the International Pact on Civil and Political Rights adopted on 16 December 1966<sup>8</sup> and in force as of 23 March 1976, only Papua New Guinea adhered to it, on 21 July 2008. Vanuatu signed it on 29 November 2007.
- Papua New Guinea also adhered on 21 July 2008 to the International Pact on Economic, Social and Cultural Rights adopted on 16 December 1966<sup>9</sup> and in force as of 3 January 1976, and Solomon Islands adhered to it on 17 March 1982.
- Lastly, only Vanuatu signed, on 6 February 2007, the Convention on the Rights of Disabled Persons adopted on 20 December 2006.<sup>10</sup>

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<sup>4</sup> United Nations, *Treaty Series*, vol. 660, p 195

<sup>5</sup> United Nations, *Treaty Series*, vol. 1249, p 13

<sup>6</sup> United Nations, *Treaty Series*, vol. 1577, p 3

<sup>7</sup> Doc. A/RES/54/263 ; C.N.1032.2000.TREATIES-72, 14 November 2000

<sup>8</sup> United Nations, *Treaty Series*, vol. 999, p 171 and vol 1057, p 407

<sup>9</sup> United Nations, *Treaty Series*, vol. 993, p 3

<sup>10</sup> Doc.A/6/1/488, as yet not in force.

## **B. The lack of regional compulsion and the influence of agreements with the European Union**

Regional organizations are increasingly taking care of proclaiming Human Rights and they are eager to see them put effectively to work. Generally speaking, the regionalization of Human Rights enables states in the same geographical area claiming they belong to the same culture to set up more efficient legal protective systems than those with a universal scope. That is the case with the protective system set up within the framework of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

With regard to Melanesia, however, there is no strictly speaking regional prescriptive conventional instrument for Human Rights. Thus, among the objectives of the Pacific Community, none really concerns Human Rights in general. This does not mean that there is a lack of political will to promote Human Rights within the Community. Within the Secretary General's office there is, for example, a 'Human Development' department one of whose purposes is to promote women's condition and women's rights. Anyway, these are public policies meant to raise Melanesian societies' awareness, not obligatory standards. At the level of the Asia-Pacific Forum, the office of Commissioner for Human Rights has been set up. But in this instance too, and although we do not mean to downplay his action, we must say that the norms are not binding on the states.

Overall, Melanesian states do not have laws or regional Human Rights protection mechanisms allowing appeals before a court (unlike the provision of the European mechanism in the European Convention for Human Rights or that of the American Convention on Human Rights).

However, the incorporation of fundamental rights into the legal systems of Melanesian states can be influenced by the agreements between the European Union and ACP countries. The third Lomé Convention, adopted on 8 December 1984, for the first time referred to Human Rights in its preamble, in particular in Articles 9, 10 and 114. Article 114 provides that 'Cooperation contributes to autonomous development of the ACP states, focused around Man and rooted in the culture of each people.' This concern can be found in the partnership agreement signed at Cotonou on 23 June 2000.

But unlike international treaties that are specific to Human Rights, here the commitments are actually economic rather than legal. Indeed, through these conventions, the European Union clearly means to predicate payment of its financial aid on the different states' advancement in the field of Human Rights. In this respect, the European Union's stance toward Fiji is commendable.

Following the political and constitutional troubles in Fiji in 1999, the Council of the European Union, in its 9 April 2001 decision, clearly stated, 'The European Union attaches the highest importance to the provisions of Article 9 of the ACP-EU partnership agreement. Respect for Human Rights, democratic institutions and the rule of law are essential components of the partnership agreement and they make up the basic principle of our relationships.' The Council specified thereafter that the EDF endowment would be notified



only when free and regular elections had been held and a legitimate government taken office.’<sup>11</sup>

## **II. Partial incorporation of human rights through internal sources**

The guarantee of rights and freedoms should first be sought in the Constitution and its potential interpretation by a constitutional judge regardless of the title he holds.

Constitutions are very important in pluralistic societies as is the case in Melanesian societies, for during the nation-building period they lay down a general framework for developing relationships between the various communities, and most of all, they reveal the thought processes and the attitudes of the autochthonous majority group towards other groups as well as the problems inherent in community-based societies and nation building.

Among Melanesian nations, Fiji is the one whose domestic law affords the greatest protection for fundamental rights. Since it gained independence from the United Kingdom in 1970, Fiji has had three Constitutions (1970, 1990 and 1998) all of which include provisions regarding the protection of Human Rights.

The 1970 Constitution included several provisions relating to the protection of fundamental freedoms and rights in a specific chapter. They were close to those of the Universal Declaration of Human Rights and to those of the European Convention for the Protection of Human Rights and Fundamental Freedoms; the Constitution defined in great detail rights and freedoms and the exceptions attached to them. For instance, Article 15 explicitly prohibited any discrimination based on a law or through a practice by any public authority because of race, national/geographical origin, political opinions, colour or beliefs. But curiously enough, gender was not listed among the reasons for which any discrimination was prohibited although it appeared among the reasons for which the exercise of other rights could not be denied, such as the right to life, liberty, personal safety, the protection of the law, freedom of conscience, religious freedom, freedom of assembly and association and the protection of private life as well as the right not to be deprived of one’s property without compensation. Most of all, Article 17 granted to all citizens the right to appeal to the Supreme Court against any government decision restricting their guaranteed constitutional rights.<sup>12</sup>

The second Fiji Constitution (1990) retained most of the rights sanctioned in the 1970 Constitution but extended their scope. It reasserted the prohibition of any discrimination on account of race, colour and national/geographical origin and added the prohibition relating to sex. At the same time, however, it made it legal to use discrimination in certain situations

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<sup>11</sup> Regarding this provision in the Cotonou Agreement and the criticism that can be levelled at it, see M Gallié, *L’Accord de Cotonou et les contradictions du droit international: l’intégration des règles de l’Organisation mondiale du commerce et des droits humains dans la coopération ACP-CE*, Doctoral dissertation, Universités de Montréal et de Paris, Faculté de droit, Université Paris-Sud, 7 June 2006.

<sup>12</sup> Paragraph 6 of Article 17, however, provides that the Supreme Court can decide not to consider an appeal if it thinks that the appeal by the wronged person is frivolous or improper. The rulings based on the provisions of the Constitution relating to fundamental freedoms and rights are few. The Supreme Court, in *Fiji Waterside Workers Union v. Reginam* ((1997) 23 FLR 196) ruled that ‘public interest’ could warrant a restriction of freedom of speech, although this possibility did not appear in the article protecting freedom of speech.

(emergency situations; tax allowances; appointment in government jobs; the exercise of judicial power).<sup>13</sup>

The current Fiji Constitution dates back to 1997. It includes a Bill of Rights which sets out many fundamental freedoms,<sup>14</sup> making up a specific chapter (chapter 4). As per this Constitution, enjoying those rights and freedoms is inherent in being a member of society and can be restricted only by virtue of a democratic decision by the Parliament.

While asserting the principle of equality between citizens, however, the Constitution allows the adoption of discriminatory measures tending to ensure good governance for Fijians and Rotumans or the Banaban community. Likewise, it authorizes adopting laws or administrative measures that may restrict the right to equality with a view to allowing the enforcement of Fijian, Rotuman or Banaban customs in many areas (imprisonment, the use or conveyance of land rights or fishing rights or the distribution of derivative products; the right of each individual to the title or rank of chief; the imposition of a restriction regarding the transfer of land rights or fishing rights held in compliance with Fijian, Rotuman or Banaban customs, or the temporary transfer of these lands or rights against the owner's will).

Similarly, pursuant to Article 42 of the Constitution, the Human Rights Commission was created in 1999. It is the first Human Rights Commission in the South Pacific. The Commission is in charge of raising the public's awareness of Human Rights and of making recommendations to the government regarding compliance with these rights. It is also in charge of any commission that parliament can entrust to it; of investigating and ruling on arbitrary discrimination and of investigating allegations of breaches of the Bill of Rights included in the 1997 Constitution.

The Constitution also provides for an Ombudsman. The Ombudsman is authorized to investigate any measure that allegedly or apparently constitutes a breach of the fundamental rights and freedoms guaranteed to individuals by the Constitution. He can remedy such a situation by recommending that the official bodies involved study the complaint more closely; he can recommend an omission be redressed or the decision be cancelled, struck down or changed, or he can recommend that the applicable law be reconsidered. The Ombudsman also investigates complaints of administrative abuses directed against government employees.<sup>15</sup>

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<sup>13</sup> The provisions of the 1990 Constitution relating to fundamental rights have seldom been invoked in court.

<sup>14</sup> The rights protected by the Bill of Rights of the 1997 Constitution are: individual freedom; the right not to be subjected to servitude or to forced labour; the right not to be subjected to cruel or degrading punishment; the right to freedom from unreasonable searches and seizure; the rights of arrested or detained persons; the rights of charged persons; access to courts or tribunals; freedom of expression; freedom of assembly; freedom of association; labour relations; freedom of movement; the right to vote using a secret ballot; the right to privacy; freedom of religion and belief; the right to equality; the right to education; protection against compulsory acquisition of property.

<sup>15</sup> The 1998 Ombudsman law specified the system of law and the framework in which he acts. He has jurisdiction in investigating complaints against the Board that administers autochthonous lands and the Banaba and Rotuma boards. The 1997 Constitution provides that the Ombudsman, unlike the President, is appointed by

After examining the sources of the incorporation of Human Rights norms, it is clear that these rights are far from being effectively and securely protected.

### **III. The effectiveness of human rights incorporation practices**

Obviously, in this area too there is great variety among Melanesian territories. The fact that a body of law and safeguards for human rights exist, although these rights are tenuous, does not necessarily guarantee that this protection is effective.

So in even the most contemporary history of these countries, some circumstances have played havoc with the internal code and ended up restricting Human Rights. Governmental instability and repeated coups have not allowed Human Rights to be effectively protected, not to mention, for some people, a difficult economic and social situation. For that matter, some fundamental state texts have no hesitation in viewing these circumstances as 'constitutionally' warranting the restriction of fundamental rights.

But beyond these 'exceptional' situations in which the proclaimed fundamental rights are disregarded or flouted, practice in those countries is characterized, in the matter of Human Rights, by the prevalence of customary practices and customary laws which often conflict with these international protective norms.

Indisputably, Fiji is the independent and sovereign territory in Melanesia which has set most mechanisms and proclamations to protect Human Rights; yet, it is a state where breaches of these rights are common and exposed on a regular basis.

This situation can be best illustrated by the apposite example of the effectiveness of the women's rights issue in these states. The International Convention on the Elimination of all Forms of Discrimination Against Women approved on 18 December 1979 has been accepted by all Melanesian states. Yet, their domestic laws have numerous provisions that run counter to the rights proclaimed in this convention.

That is the case in Solomon Islands. They ratified the convention on 6 May 2002, but ratification has not prompted the authorities to change the internal law provisions that conflict with those of the Convention. For example, the minimum age for legal marriage, although it is the same for both bride and bridegroom, is 15 while in the convention it is set at 18. Likewise, custom requires the father's explicit agreement. More generally, as of today, there is no legal or institutional mechanism to guarantee and ensure equality between men and women in the job market for example.

In this respect, the situation in Fiji is also typical. Fiji adhered to the Convention on 28 August 1995. Thereafter, it gradually brought constitutional and legislative changes in order to incorporate the convention's directions.

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the Constitutional Offices Commission in compliance with the provisions of the 1990 Constitution, and sets the Ombudsman's retirement age at 65.

The 1997 constitutional amendments allowed Fiji to sanction the principle of equality between men and women, of equality in the matter of elections, and the principle of non discrimination between the sexes.

At the legislative level, a law on women's night work was enacted in 1996 and a major family law was enacted in 2003 that allowed for a married person to go to court in order to request protection, notably through the emergency ruling procedure. Similarly, it includes many provisions which protect women in cases of divorce.

At the governmental or administrative level, a Minister for Women, Social Welfare and Poverty reduction was established, and a national consultative committee for women was created whose purpose is to promote equality between men and women and to implement an action plan in favour of women.

However, while this normative incorporation of the provisions of the international convention for women's rights is significant, so far it has been limited – no law protects women or prohibits discrimination in the case of pregnancy. Similarly, there is no protection allowing women to be able to raise their child while keeping a job. The sexual harassment law is incomplete. Whereas the international convention sets for marriage the principle of a legal minimum age of 18 both for men and women, Fiji law is still not egalitarian, as the legal age is 16 for girls and 18 for boys, and in case an under-age girl marries, the father's mandatory consent prevails over the mother's.

Most of all, the Fiji Constitution does not guarantee the primacy of the equality principle between men and women over customary law. The landownership system is still governed according to custom and does not provide for equality between men and women. In matters of rape and sexual violence, mitigating circumstances based on the 'bulu bulu' custom still apply. Similarly, the 1944 colonial law, which punishes prostitution only among women, is still in force.

The 1997 Constitution does not include a definition of discrimination against women. Procedural law has many provisions that are discriminatory against women, notably with regard to evidence. The restrictive divorce law leads women to desperation, and sometimes to suicide. Likewise, despite political initiatives taken by various governments to reduce violence against women, it is evident that there is still a high level of sexual or ethnic violence against women, especially in times of social unrest. Domestic violence and sexual abuse against girls and women is still a reality, as they are fostered by customary practices. It must be said that customary law grants husbands a right to punish their wives; the 'bulu bulu' custom socially legitimizes and legalizes violence against women.

Papua New Guinea ratified the Convention on Women's Rights on 12 January 1995. Internal law, however, in particular customary law, has been changed only lately in order to take the convention into account. Thus, the penal code was amended in 2002 in order to include misdemeanours and crimes of a sexual nature against children and women. Likewise, conjugal immunity, which had hitherto protected husbands from rape charges, has been abolished.

### **Conclusion**

The normative incorporation of fundamental freedoms can be successful only if each Melanesian state achieves it not only in its body of law, especially in its guiding principles, but also by setting up efficient instruments for control and punishment. Through the findings regarding the effectiveness of women's rights, we can see that the issue of the interaction between customary practices and Human Rights remains an essential one. But we should not forget that Melanesian states are young states and their situation is compounded by numerous specific features (such as the fact that they are island states, scattered territories, the presence of numerous communities, etc.) In this matter, time and constant international pressure can only be beneficial.

## 12. Discussion: is Melanesia homogeneous enough to contemplate a unity plan?

Jean-Yves Faberon, Laurent Chassot, Jacques Ziller, Christian Huetz de Lemps, Christophe Sand, Pierre-Yves Le Muer

### Jean-Yves FABERON

Does Melanesia have sufficiently homogeneous objective features to contemplate a Unity Plan? Is it possible to answer this query at the end of this session? I admit that all through the conference program we have used the words Melanesian unity while thinking of European unity. So if we hark back to pre-1954 Europe, when the first European community emerged, and if we see the present situation in Melanesia, if we look at geography, sociology, men and their cultures, here, they have practically the same religion, at any rate Christianity, which, after all, is conducive to unity, if we look at the economy, the environment (the road map provided by President Neaoutyine can only lead to total consensus), I believe that Unified Melanesia has objectively got off to a good start. But subsequently, about democracy, the situation is not exempt from criticism... There remains the custom issue developed by Laurent Chassot. If we understand you right, you have not made any distinction within Melanesia. But are there any differences in this respect? If a New Caledonia customary chief goes to Fiji or Vanuatu or Solomon Islands, will those seem to be familiar places to him? Is there already any unity with regards to custom?

### Laurent CHASSOT

That's an excellent question insofar as my personal experience as a young researcher is limited to the last four years in Vanuatu. There I studied customary law and the place custom occupies within the legal system of that country. Unfortunately, for lack of time and money, I did not have the opportunity to travel to Papua New Guinea or Fiji, for example. Therefore, my findings relate only specifically to Vanuatu. I spent many weeks at Tanna, Pentecost Island and Santo and of course several years on Efate. Given the variety of the countries that make up the region, claiming that such notions as coherence and uniformity exist could prompt suspicion. Yet, I feel that there is a very strong consistency across Melanesia. I got that feeling from reading numerous books and articles by authors who are mostly Australian, by New Zealanders or by Frenchmen, dealing with such complementary areas as law, ethnology or anthropology. Their analyses and their descriptions of chiefdoms tend to show that customs are drawing much closer to each other, and they show common customary major principles, focusing on dialogue, the quest for compromise, and the vision chiefs have of their role in their villages, although – as I said, and Dr Tesoka also took this question up on the issue of Human Rights – we can find considerable traditional diversity from village to village and from island to island. So it is a very heterogeneous and very complex group, but I believe

that some main directions stand out revealing many similarities. At any rate, this is the way I feel, but I am rather optimistic: setting up a Melanesian Case law, recording and creating Melanesian codes are achievable ambitions likely to foster a Melanesian dynamics. I was re-reading a letter Professor Vanderlinden had sent me early this year; in it he told me to what extent his vision as a jurist and an anthropologist had changed between the time of his first research in Africa 50 years ago and his present conception of customary law. Maybe I will be in a better position to answer the question a few years from now or maybe I'll have a totally different approach to it.

### **Jacques ZILLER**

Good question. I think we should extend it: Does Melanesia Have Sufficiently Homogeneous Objective Features to Contemplate a Unity Plan? Jean-Yves Faberon has in mind European integration; I might talk about it tomorrow but I think it is important to keep in mind other situations, and what comes to my mind right now is what is going on in Latin America. This will prompt two questions. The components for regional integration in Latin America are particularly interesting because they show characteristics we also find in the Pacific, that is, different levels of unity, at the level of the whole American continent and in regional areas. And this brings to mind, of course, the distinction between regional unity in the Pacific and in Melanesia. There are many types of regional unity experiences in Latin American. Some have been utter failures; some others were restarted after they had been stalled for a while. Some are said to be likely to be achieved, but none has so far. I think there are at least two major questions in this connection if we want to be able to compare experiences. The first one relates to communication and exchanges between the different nations, the difference being that in Latin America there are certain groups with existing exchanges, which came prior to attempts at integration, and other groups do not have those exchanges. And it is also possible to contend that exchanges between countries that are geographically more or less close are a prerequisite for regional integration; or we can upend the proposition, that is, precisely because there are no exchanges in a neighbouring geographical area, integration, with all the caveats that could be introduced, is useful because it develops exchanges which do not exist now and may not exist for historical or geographical reasons. In this respect, I have a question to ask of Professor Huetz de Lemps: What are the exchanges, or lack of exchanges, between these different groups that are significant for the relevance of a regional unity plan?

A second fact is also very interesting in Latin America, and that is imbalance – Brazil is a giant, and besides Brazil there are little smaller states, and others which are really small. And of course, in the Pacific, there are two types of imbalance, on the one hand at the level of the whole Pacific, between Australia/New Zealand and the others, and on the other hand, within Melanesia. My question is: Are the geographical and demographic differences between Papua New Guinea and the others at the root of a significant imbalance which could be either a hindrance to unity in Melanesia or, on the contrary, something that can give it a little more life?

### **Christian HUETZ DE LEMPS**

It all depends on what we mean by unity and the extent of economic unity. The issue is to know whether on the whole Melanesian countries have complementary resources. Now I think this is the case although at present Melanesian countries are metal and energy exporters, etc. Is that being economically complementary? This issue can be debated, and I think there are some possibilities. After all, European economies were said not to be complementary, and eventually the system worked and is still working in large part through exchanges within the European community.

### **Christophe SAND**

I think one aspect was not mentioned this morning, and that is the research achieved in archaeology, linguistics, and genetics in the area called Melanesia. I am not challenging the notion of Melanesia which has been taken up by the region's people today. Nor am I criticizing the work done by anthropologists and ethnologists over the last 150 years. This is not my purpose. We must, however, bear in mind some essential points. While New Guinea and the Solomons were populated forty thousand years ago, Vanuatu, New Caledonia, Fiji and Western Polynesia were peopled only about three thousand years ago. Genetic studies have shown that what could be defined as a 'Melanesian ethnic group' does not exist. A Kanak and a Wallisian are genetically closer to each other than a Kanak and a Papuan from the highlands of New Guinea, and for one very simple reason – the Papuan has been here for 40 thousand years whereas the others, who have Austronesian languages and origins, have been in the region only for a little over three millennia. Mind you, this in no way means that there is an Austronesian genetic 'unity'. In the oldest Lapita cemetery found in Vanuatu, which has been excavated for a few years in Efate, we can find men, women and children who show differences in phenotype (that is, in what remains of the skeletons, which enables us to reconstruct faces). This does not mean there is no difference between 'Melanesians' on the one hand and 'Polynesians' on the other hand. Polynesians are just one of the Austronesian entities that developed genetically in a peculiar way with a certain number of minor characters, in their area, at the eastern border of the Lapita area between 3,000 and 1,500 years ago, making up a specific whole. At the same time, in the south-western Pacific, in the region we now call Melanesia, people kept moving and diversifying, and what struck the first Europeans, such as the Spaniards, who came at the very end of the sixteenth century, is not that people are black in the south-western Pacific, but that people are different from island to island. That was the real situation of Melanesia at that time. That is why there are so many languages, so many traditions, customs and ways to organize. But what everybody seems to forget is that this region, like many others elsewhere, during the last centuries, lost between 80 and 95 per cent of its population because of the germ shock. Anatom, the southernmost island in Vanuatu, lost 96 per cent of its population. Out of an initial group of 100 people 400 years ago there remained only four at the end. This data showing a massive drop in population challenges the stereotype of Melanesians who no longer have any hierarchy on the one hand – small tribal groups roaming around in Big Man societies – and on the other hand the 'brilliant' Polynesians (let's be clear about it, I have nothing against Polynesians) who are organized in kingdoms, chiefdoms, etc. This is NOT historic reality. There were complex, complicated societal and political groups with hierarchies in Melanesia until the 19th century. But what with the loss of the overwhelming majority of the Melanesian



population, not to mention land spoliation, etc., Melanesians had to adjust to the new situation thereby experiencing political evolution.

**Pierre-Yves LE MEUR**

Thank you for giving me the floor. I'm Pierre-Yves Le Meur, an anthropologist at IRD. I wanted to respond, somewhat indirectly, to what Christophe Sand has just said. We can see clearly that in the same word Melanesia – because it seems to be the topic of this colloquium – the very definition of the word has evolved. I think that at the beginning – and this has been more or less stated in one of the papers – we were in an Orientalist and Western-centred world view, with a series of Western fantasies projected onto societies that Westerners had gradually encountered. But the word, in this meaning, operates only through the Melanesia-Polynesia divide. What is interesting is that this dichotomy between a Big-Man, segmental society in Melanesia, and a 'chiefdom'-based society in Polynesia was in some ways strengthened and hardened at the turn of the twentieth century through scientific studies, including anthropological studies, although it has been questioned since. Here we have an extremely tautological modus operandi of the Melanesia-Polynesia divide. To get out of this bind, two ways are available: The one that Christophe Sand suggested, namely practicing science in the most rigorous way possible. The various sciences can contribute to the undertaking – anthropology, which we must know how to question, archaeology, and genetics. The other way of getting out of this tautology or vicious circle is, I think, the one that the Melanesian political leaders have chosen. And here we can use the notion of Melanesia as being closely related to the 'Melanesian Way' and what is very interesting is that in this dispensation we no longer have a Melanesia-Polynesia dualism or opposition; we are in this 'Melanesian Way', with no reference to anything else. For that matter, using the phrase 'Pacific Way' in the same meaning was not done by chance, I think. If we get away from the dichotomy and the tautology, I believe that we move a little forward. Now in this Melanesian discourse, in the political sense of the word, we have the notion of custom, and in this connection I would like to respond to the paper about custom, which actually was not a paper on custom but on 'how law seizes upon custom': how law constructs custom as its obverse side, in an extremely dualistic and evolutionistic way, hoping all the while that custom is a sort of law in the making, an implicit, potential law. And eventually – and the paper was indeed extremely clear and had an undeviating purpose toward this end – we end up with the usual recommendations, namely codifying custom. This is exactly the recommendation that was prevalent in 1930s colonial policy: there is a colonial history of custom codification. The other very enlightening aspect, and maybe more so than the mere use of 'colonial' to describe the procedure, is that these policies have invariably been failures: in western Africa, where they have been attempted, and in southern Africa as well. We must also point out that there have been few attempts at codifying custom in the Pacific. I cannot account for that difference; it is only a question, but still the fact is that in order to discuss custom, we must not turn it into law, because by doing so we might totally miss the point. Rather, we should wonder how Melanesians seized upon the word – custom, kastom, *coutume*, etc. – to turn it into a political and identity argument, an argument for independence and sovereignty. Otherwise, we would revert to tautologies, contradictions or illogicalities, which in New Caledonia are related to the question that in itself is a very complex one, the issue of customary cadastre, a sort of uncertain oxymoron – how can we yoke together the

Discussion: is Melanesia homogeneous enough to contemplate a unity plan?

terms 'cadastre' and 'customary' in the same phrase and the same process? I think that much here is at stake, and if we are willing to try to think about the definition of a possible Melanesian space – this is one of the key objectives of this conference – we must start with the standpoint of Melanesian politicians, as these are the ones who are building it.



**New Caledonia,  
a Melanesian land**



# I. The Past

## 13. The works of Jean-Marie Tjibaou, a Kanak permanent reformulation

Hamid Mokaddem<sup>1</sup>

In my view, what is cultural is of major importance; it is what gives flavour to life. You can set up the most profitable economic systems in the world, but we are not robots with the ability to have a good life based on those systems. We have a human dimension, and as a result, even as we enjoy the most modern, the softest and the most satisfactory comfort, we are still an aggregate of needs and transcendence always seeking to grow better, if not bigger, and into something different; and this is inscribed in what is cultural.

Jean-Marie Tjibaou<sup>2</sup>

The gradual emergence of a plan which gives meaning to the changes Kanak society is undergoing is necessary in order to provide an alternative choice to the undefined social change produced by the dominant model, and it is necessary in order for the development imperative not to achieve in a few years what colonization could not do in more than a century – wipe Kanak society off the face of the earth.

Jean Freyss<sup>3</sup>

### **Tjibaou is the name of what?**

It is paradoxical to try to talk about Jean-Marie Tjibaou's political works amid a conference whose topic is the incorporation of New Caledonia into the Melanesian region. These words betray the meaning and the course followed by the Kanak politician who has permanently been at variance with the republican concept of incorporation by proclaiming that the name of the ultimate political sovereignty is neither New Caledonia nor Melanesia but Kanaky.<sup>4</sup>

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<sup>1</sup> Agrégé in philosophy, Noumea

<sup>2</sup> An excerpt from an interview with Jean-Marie Tjibaou by Wallès Kotra in 'Explication', a talk show on Radio-France Outre-Mer (RFO), 30 September 1988 (quoted in Alban Bensa and Eric Witterschein, eds, *La Présence kanak*, Paris: Odile Jacob, 1996, p 283)

<sup>3</sup> Jean Freyss, *Economie assistée et changement social en Nouvelle-Calédonie*, Paris: PUF, collection 'Tiers Monde, IEDES', 1995, p 442

<sup>4</sup> So formidable a politician as François Mitterrand had clearly noticed this in *La Lettre aux Français*, written in 1998, in order to win re-election as President: 'He [Tjibaou] fights for New Caledonia independence, and in his view, New Caledonia is first and foremost the Kanak people. I may be oversimplifying his thought. Mr Tjibaou and his party are not asking to kick out those of French origin and the others. They merely want, if I may say so, to make their own decision about it, for they alone are universal suffrage. I am familiar with this theory. I have been meeting him for the last 7 years, and Jean-Marie Tjibaou does not change.'

It is comical and paradoxical to claim that we are speaking not in Tjibaou's name but speaking to name what the signifier 'Tjibaou'<sup>5</sup> relates to.

It is *comical* because the purpose of the whole life and work bearing the name Tjibaou was for the autochthonous, indigenous, Melanesian people identified as the Kanak people, to be able to appropriate on its own the exogenous models originating in the Western cultural basis and carried to New Caledonia: schools, the Christian monotheist religion, politics, the capitalistic economy, industry as well as the system unifying the *parlêtres* – beings that are chained in the signifier's logic – namely the French language.<sup>6</sup>

It is *paradoxical* because despite the handshake with his erstwhile political enemy Jacques Lafleur, Tjibaou never betrayed the cause of the Kanak people, *its* sovereignty, or the name of *his* country, Kanaky, but there was a *new* Kanak exercise of power compelled to come to terms with *interdependence systems*.<sup>7</sup>

In June 1988, Jean-Marie Tjibaou used a metaphor to illustrate the necessity for entering the 'Rocard' political process and sign an agreement with the French State and the RPCR (the Gaullist party in New Caledonia: the Organization for New Caledonia in the French Republic): 'We are not going to get out of France through the main door and come back later begging through the window.'<sup>8</sup>

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<sup>5</sup> Kanak culture hardly ever designates individuals by their first or last names; instead, as a sign of respect, it uses their place name, their place of residence. In Hyeehen country (in the northeastern part of New Caledonia) Jean-Marie Tjibaou is called *Kamo pa Kaavac*, the master of Kaavac. The names of the households and of residences make up the entrances to the paths linking the two big houses, or the Huts, the chiefdoms, Goa and Bwarhat. Distribution and exchange networks move through these chiefdom entrances. The name plays the role of entrance doors and of capitalization of relations and paths. Besides, Kanaks in the other Kanak countries view Jean-Marie Tjibaou's contribution as very significant to the identity and the emancipation of the Kanak people. The name of Jean-Marie Tjibaou relates to this political contribution (compare with Elie Poigoune's discourse). Although we are familiar with these relations to the name, we have decided just the same to use the signifier 'Tjibaou' to name the peculiar and universal political work by Jean-Marie Tjibaou. The signifier refers to the historical contribution and to the Kanak emancipation movement. Readers will guess that the title of my paper refers to the famous pamphlet by the philosopher Alain Badiou, *De quoi Sarkozy est-il le nom (Sarkozy Is the Name of What?) Circonstances 4*, Paris: Lignes, 2007.

<sup>6</sup> On the specific question of the French language, allow me to refer the reader to my essay, *Littératures de Nouvelle-Calédonie. Autour d'une question: la littérature francophone d'Océanie est-elle française?* Marseille, Transit/ La Courte échelle, 2008.

<sup>7</sup> The signifier Tjibaou expresses the Kanak revolutionary movement whereas the signifier 'Lafleur' retraces the New Caledonian counter-political movement. Jacques Lafleur's narrative is explicit regarding this *status quo*, *L'Assié-gé, 25 an de vie politique, une histoire partagée avec la Nouvelle-Calédonie*, Paris: Plon, 2000. I print 'interdependence systems' in italics because these are concepts used by Tjibaou. Above, in the main text, I emphasize these uses and quote a series of concepts which are specific to Tjibaou's discourse: identification scheme, permanent reformulation, sovereignty as the specific power the Kanak people has to choose its partners, independence as the art of negotiating interdependences in an adequate way, etc. Alban Bensa and Eric Wittersheim have explained and analyzed the content of Jean-Marie Tjibaou's political thought in their article, 'Nationalisme et interdépendence: la pensée politique de Jean-Marie Tjibaou', *Revue Tiers Monde*, vol. 38, no. 149, January-March 1997.

<sup>8</sup> Jean Freyss quotes the motto thus: 'We do not want to get out through the main door and come back begging, begging through the window'. Jacques Violette, in an oral piece of news, told me that the exact phrasing was

In Kanak oral literature, the saying, the Hwanfalik (a proverb from Tjibaou's native region, Hyeehen) means that entering a country or a hut compels the guest to practice the ritual consisting of bending over to make oneself shorter to show one's face to the host. The Hut is the place name and the metonym of the Country to be built.<sup>9</sup>

But, however paradoxical and comical the situation may be, we must, like the politician's genius, come to terms with it.

We will talk here about an invention devised by a politician whose name is Tjibaou. 'Permanent reformulation' is a concept and a motto set up by Tjibaou but it belongs specifically to the Kanak historical movement. Today, we must alter the author's phrasing and change one word of the utterance. We will say a *Kanak permanent reformulation* instead of *the permanent reformulation*. Today, 20 years after the politician's death, we are justified in asserting that a Kanak reformulation remains permanent and is carried on into the 21st century with the new generations taking over.<sup>10</sup> As a result, through recurrence, we are now compelled to name and define Tjibaou's work as *one* Kanak permanent reformulation among others. The 21st-century Kanak generations in turn, in their own way, and facing new challenges, will reformulate the Kanak permanence.<sup>11</sup> The purpose of this article is to prove that Tjibaou was the first to name this Kanak popular groundswell. He coined this word to counter the traditional objections which created the Western-modernity-versus-traditional-Kanak-custom dilemma.

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'We do not want to get out of France through the main door and come back begging through the window'. The quotation by Jean Freyss appears in the conclusion 'Divert the diversion' to the first part, 'Le Développement, pour quoi faire?' in *Economie assistée et changement social en Nouvelle-Calédonie*, *op. cit.*, p 67.

<sup>9</sup> Gilbert Kaloombat Tein, Hwanfalik. *Dictons de la vallée de Hienghène*, Noumea: ADCK (1987), 1992. The Hut is the metonymy for the Kanak country. Eloi Machoro, in the midst of a revolution (1984), stated: 'Independence is like the Big Hut; only those who have contributed to building it will be allowed to get into it' (quoted in Marc Coulon, *L'Iruption kanak. De Calédonie à Kanaky*, Paris: Editions sociales, 1985).

<sup>10</sup> The concept of 'permanent reformulation' WAS devised by Jean-Marie Tjibaou. We come across the phrase in *Les Temps Modernes*, 'Entretien avec Jean-Marie Tjibaou', pp 1587-1601 in *Nouvelle-Calédonie : pour l'indépendance. Les Temps Modernes*, 41<sup>e</sup> année, no. 464, March 1985. I have analyzed and detailed the whole content of the political phrase in line 1 'La reformulation permanente kanak' on pp 29-47 of my book, *Ce souffle venu des ancêtres...L'oeuvre politique de Jean-Marie Tjibaou (1936-1989)*, Noumea-Koohné, Expressions-Province Nord de la Nouvelle-Calédonie, 2005. Alban Bensa and Eric Wittersheim published the interview on pages 173-190 in *La Présence kanak*, *op. cit.* Here is an excerpt from the interview (p. 185): 'The reversion to tradition is a myth; I strive to say it and repeat it. It is a myth. No people has ever experienced it. The search for identity, the model for me, is ahead of me, it is ahead of us, never behind us. It is a permanent reformulation.'

<sup>11</sup> That is what Raphael Pidjot did and said some time ago, in a concise, dense and compelling article, 'Une société en devenir', in *Chroniques du Pays kanak*, vol. 4, 'Mutation', Noumea: Planète Mémo, 1999, p. 11, and now Paul Néaoutyine, with a style which is all his own, *L'indépendance au présent. Identité kanak et destin commun*, Paris: Syllepse, 2006. Raphael Pidjot's article is hard to come by; here is an excerpt: 'In the early third millennium and at the outset of the globalization of exchanges, how do traditional societies, like the Kanak society, play their game well and secure social survival?' The author was not one to be content with words. He was a major economic and political player, notably in Kanaky's emancipation through building Kanky's economy. It is not possible to prove it here for lack of space.



### Anthropology in action

Tjibaou's path was determined by one decision; that of studying ethnology and sociology at age 32 in the midst of the May 1968 revolutionary situation.<sup>12</sup> Tjibaou acquired some ethnological and sociological knowledge and traveled to France to get *tools for analysis*<sup>13</sup> in order to make the complex colonial reality clear. Tjibaou did not use applied anthropology, a subject that was brought into academic prominence by Roger Bastide, but anthropology in action.<sup>14</sup> The purpose that this type of anthropology had set for itself was to provide an immediate reformulation of the Melanesian identity which had been confiscated and alienated by the European system.<sup>15</sup> One of the most elaborate texts that we are aware of was written in 1975 and published in 1976 in the form of an article entitled 'Recherche d'identité mélanésienne et société traditionnelle' by ethnologist Jean Guiart in the journal *Le Journal de la Société des Océaniens*. The titles of written or oral contributions are always inapposite, and they reformulate the Kanak ancestral lore into something contemporary. Among the available examples we will quote two contributions: in 1975, *Melanesia 2000*, and in 1981, 'Being a Melanesian Today'.<sup>16</sup>

Tjibaou wanted neither a reactionary return to an imaginary past (which is outmoded, even mythical) nor a blind projection into an uncertain future ('The West is like an out-of-control machine. They have to ride the brakes'<sup>17</sup>) but Kanak permanence updated into modernity.

Let us emphasize this first point: the shibboleth, the motto, the planned action are neither integration nor adjustment by Melanesians to the modern world. Tjibaou's quest, which is at the basis of his political career, was to understand how the Kanak people could, and therefore should, build their own way of life and social model.<sup>18</sup> It is not about integrating the people

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<sup>12</sup> The word 'path' is used in a sociological and not a historical sense, for in a historical sense we would have to retrace the path not to 1936, the year Tjibaou was born in the Central Range reservation, in the Hyendamit (Tiendanit) tribe, but to 1917, in Thoven, the name of the place where the 1917 insurrection, led by Dui Ma Nea, ended.

<sup>13</sup> This phrase was used in the interview mentioned above in *Les Temps Modernes*, in *La Présence kanak*, *op. cit.*, p. 185

<sup>14</sup> Roger Bastide, *Anthropologie appliquée*, Paris: Stock, (1971), 1998.

<sup>15</sup> Among the writings between 1969 and 1975, I thought it interesting to quote an excerpt from *Recherche d'identité mélanésienne et société traditionnelle*, which illustrates Tjibaou's mental process: 'I'm not seeking to know if Melanesians adjust or not to the industrial world, but if they assimilate the cultural models that are alien to them and what type of new society they show in their morals as they grope for a new coherence and a new dynamics.' *La Présence kanak*, *op. cit.*, p. 62

<sup>16</sup> With Philippe Missotte, 1976, *Kanaké, Mélanésien de Nouvelle-Calédonie*, Papeete: Editions du Pacifique, and 1981, 'Etre Mélanésien aujourd'hui', a lecture given at the University of Geneva and printed in the journal *Esprit*, no. 57, September, and in *La Présence kanak*, *op. cit.*, pp 101-116

<sup>17</sup> Interview with Jean Chesneaux, Poindimié, 28 May 1981, in *La présence kanak*, *op. cit.*, p 119

<sup>18</sup> Although this may deeply shock purists, there is really a Kantian flavor in Tjibaou's practice: 'You can, therefore you must!' In 1977, Tjibaou won the Hyeehen (Hienghène) city hall by setting up a Maxha list. Maxha, in the fwâi language means 'hold one's head high'. Tjibaou, in an interview devoted to Lionel Duroy who was working on his book *Hienghène ou le désespoir calédonien*, mentioned the revolution by the Kanak slave against the European master. Here we think of Marx's admiration for Spartacus. In 1977 there was a Kanak miniature revolution which was much more subversive and efficient than that of 1984. Kanaks could decide about their own fate and manage their town themselves. Non-Kanaks stayed until the 1984 revolutionary

into a whole or applying an outside model to Kanak society. It is about knowing how Melanesians can appropriate industrial models. Here we mention two authoritative sources:

1. Gilbert Blardone, a former professor of economics at the Institut catholique in Lyon, confirmed that the thesis written in 1968 by Tjibaou discussed 'Fitting the Indigenous Population into the Industrialization Process.' It would be a serious mistake not to pay attention to the word 'process', which evokes the dynamics of the situation in which the Kanak people are involved in spite of itself. This thesis was written in one year although the institution had granted Tjibaou a scholarship to write it in two years. He had the second-year scholarship granted to another student and left for Paris to attend ethnology classes at the Ecole des Hautes Etudes.<sup>19</sup>

2. Philippe Missotte, a close aide to Jean-Marie Tjibaou on the occasion of the first Melanesian Cultural Festival, *Melanesia 2000* – the first Pacific Arts festival dates back to 1972 and took place in Suva, but it is Tjibaou who organized the first *Melanesian* cultural festival – explained Tjibaou's sociological concern in this way: he wanted the indigenous population, endowed with endogenous cultural models, to appropriate the exogenous models by enhancing the indigenous practices and knowledge. It was about enhancing an image, which at the time was a negative one, in order for the indigenous people to be able at last to recognize and discover their own identity in their own productions and cultural models (see Elie Poigoune's contribution, *infra*). Tjibaou was actually achieving an *anthropology in action*. He was providing a new definition of cultural practice: culture is expressed in politics provided politics is grounded upon the ancestral cultural basis by reformulating it. This practice of permanent reformulation we call an *anthropology in action*.

This is not enough. Tjibaou's action directed the Kanak grassroots towards economic bases and foundations.

### **Economy and politics: Kanak governance**

We cannot provide a demonstration and expound with transparency – with documents to support it – Tjibaou's actual ability to manage and rule the institutions that he was in charge of:<sup>20</sup> the Hienghène City Hall from 1977 to 1989 (the year he was assassinated), the Government of New Caledonia from 1982 to 1984, and the Northern Region from 1985 to 1987. During the latter period, the possible political conjunction between Kanaky and New Caledonia had already been put to the test by economic, legal and social construction. That is what the Noumea Agreement later, starting in 1998, called '*Le destin commun* – Shared (or Common) destiny'.

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events. At that time most of them fled and took refuge on the west coast or in Noumea. The interview with Lionel Duroy appears on pp 257-264 in *La Présence kanak, op. cit.*

<sup>19</sup> On these biographical points, see, among other sources, the excellent interview with Jacques Violette, with Claude Wedro present, whose full text is printed in the Kanak separatist journal *Bwenaando*, 1989, 'Le message de Jean-Marie Tjibaou'.

<sup>20</sup> Besides my own essay mentioned above, see the study by Eric Waddell, *Jean-Marie Tjibaou: Kanak Witness to the World, An Intellectual Biography*, Hawaii: University of Hawaii Press, 2008.

The names ‘Kanak’ and ‘New Caledonia’, before they became common in linguistic usage and practices – that is, since the Matignon-Oudinot and Noumea (starting 1998) meetings – had been *already* used *officially* and in an *institutional* context by Tjibaou as early as 1985, after a civil war between supporters of Kanak independence and pro-French loyalists. Indeed, we can notice that the names ‘Kanak’ and ‘New Caledonia’ appear in the inaugural address for the chairmanship of the Northern Region.<sup>21</sup> Tjibaou practiced, *implemented* and gave impulse to governing bodies (whether Kanak or non Kanak) in order to work toward building a nation where every individual could find his or her place and have a good life. The analytical tools that Tjibaou developed thanks to the social sciences enabled him to provide a whole array of practical concepts. We provide a list but it is not possible to develop all their content here:

- The *interdependence relational system*, drawn from the hierarchical network models detailing the structures of Kanak societies and chiefdoms. Tjibaou’s work and practice *reformulate* these political models, and devise a new governance system adjusted to take account of global space, tribal space, national space.
- *The identificational scheme*: whereby Kanak identity develops and feels its way, trying to adjust the Pacific way governing relations of time and space to a capitalistic production model.
- Political *sovereignty* formulated as the power to decide and choose partners with whom to exchange and negotiate, and *independence* as the art of managing interdependences well in a small island nation.

All these concepts in Tjibaou’s discourse are devised to emphasize *a* political practice. On the whole, the practical interest was to ensure that traditional Melanesian society *and* the European social system could combine and live *together* through their relationships. It was less about building a new New Caledonian society than setting up a political space where people would feel good and live comfortably. So a political question about living well was raised, by following a Pacific way of living.<sup>22</sup> Thus *reformulating* the de-structured Kanak society was inescapable through coming to terms with modern technical, scientific and industrial advances.

Managing did not mean managing only financial flows but *most of all* managing interdependency systems which take into account human and social relations. A capitalist

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<sup>21</sup> All references are provided in the annex to my book. Some documents that were not filed were simply thrown into the fire. A part of the fuzzy memory vanishes without the New Caledonia institutions being concerned about it. Jean-Marie Tjibaou’s speech: ‘Séance inaugurale d’investiture, le vendredi 4 octobre 1985’, is an unfiled 8-page document.

<sup>22</sup> Jean-Marie Tjibaou’s answer to a question by newsman Wallès Kotra in the talk show ‘Explication’ on RFO on 30 September 1988, which has already been quoted, is explicit as regards the meaning of political service: ‘W.K.: When you examine the record of your political action, of your statements, of your achievements, of your plans, what is essential? In short, what makes you tick? J.-M.T: It’s mostly the hope that people in our country may enjoy a greater welfare, a better life, and I would add the power to be able to die in peace and amid joy. That is why we are fighting every day, that is why we keep on the move hoping that people some day will smile back at you because you have already helped them be in the best situation they could be in.’ *La Présence kanak*, *op. cit.*, p 284

economy is based upon the competition between individuals to make profits and the best return from hired labour. The real economy (it is worth reminding the reader that *oikos* in ancient Greek meant ‘the household’) is an economy that lasts, an economy that does not shut people out; it is an economy that secures the people’s welfare.

### The signifier Tjibaou

We must conclude and answer the question we asked at the beginning of this paper. For Tjibaou, when all is said and done, every decision is a political decision. The other drivers, such as economic, technical or financial decisions, only extend the power of decision through other avenues. This has a name: sovereignty, whether it is shared or not,<sup>23</sup> whose essence lies in the act of being, namely the power to choose trade relations with other countries, and also the power to balance the distribution of wealth, transportation, communication, and the media among Noumea, the hinterland and the islands. Tjibaou practiced this new form of governance.

Both in foreign and domestic relationships, the logical framework did not place permanent reformulation action within integration (a part in the Whole) into the Whole as in the *Tout-Monde* concept, a concept that we borrow from Patrick Chamoiseau and Edouard Glissant.<sup>24</sup> The meaning of Kanak permanent reformulation is this: Situate the sovereignty of the people in the political space from which it had been removed by the colonial order and reorder sovereignty by sharing it with the other communities living in New Caledonia, with or without France. On plate no. 26 of the ORSTOM Atlas (Office de la recherche scientifique et technique pour l’outre-mer), renamed IRD (Institut de Recherche pour le Développement), the authors called New Caledonia the ‘most complex cultural case in Oceania’.<sup>25</sup> In these complex interactions, Tjibaou’s task was to come to terms with the interdependency systems and to ensure that political liberty combines shared sovereignty and the people’s welfare. It is nothing less than a reformulation of the links and the sovereign space encompassing the Kanak people and the communities living in New Caledonia. The political way of action, lying between *marginalization* and the risk of *watering down* Kanak identity, took winding, steep and difficult routes.<sup>26</sup>

Now we can see his face better – a concept that Kanaks use during customary ceremonies – and say what the name Tjibaou is about. ‘Tjibaou’ is the name or signifier encompassing a real *cultural revolution*. Revolution, performed under the Tjibaou flag, is achieved virtually

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<sup>23</sup> Shared sovereignty is the core concept in the Noumea Agreement, and through it the whole evolution process in the matter of transfer of powers is implemented. The whole process will be judged by a referendum on the issue of the transfer of sovereignty rights. On this subject see Jean-Yves Faberon’s paper and François Garde’s book, *Les Institutions de la Nouvelle-Calédonie*, Paris: L’Harmattan, collection ‘Mondes océaniques’, 2001.

<sup>24</sup> A friend, Nicolas Kurtovitch, a New Caledonian writer and poet, drew my attention to this writing, co-signed by Patrick Chamoiseau and Edouard Glissant, *Quand les murs tombent. Contre une identité nationale mise en carte*, Paris, Institut du Tout-monde, 28 August 2007.

<sup>25</sup> Joël Bonnemaïson, with J. Fages and J.-C. Roux, ‘Planche 26: Migrations’, a 2-page sketch in *Atlas de Nouvelle-Calédonie*, Paris/Nouméa: ORSTOM, 1981

<sup>26</sup> In the general conclusion to *Economie assistée et changement social en Nouvelle-Calédonie*, Jean Freyss analyzes this political risk which is still a current risk: ‘Development, without prior or simultaneous decolonization, may lead to two types of change or to a combination of these: a “marginal integration” or an “institutionalized dualism”’, *Economie assistée, op. cit.*, p 432

without violence. The peculiar feature of this revolution is that it was a real permanent reformulation. I am positive Jean-Marie Tjibaou purposely reversed the meaning of the title of Trotsky's book, *Permanent Revolution*. *Permanent reformulation* brought the ancestral link into the present by providing it with material (economic), ontological (the identity of the Kanak being now recovered), and political substance (setting up of Melanesian indigenous groups within the Kanak people).

It is doubtful whether the uninitiated will ever reach any cognition and recognition of the magnitude and the scope of Tjibaou's political work. As a disciple of Hegel would put it, the good that is known because it is well-known is not known. The comical aspect mentioned in the introduction lies in the fact that this has been achieved. Today, the contemporary political space and the route the country is taking owe much to Tjibaou's work and action. From his ancestral fastness, he must see as through a looking-glass and most certainly burst out laughing ... for joy.

## II. The Present

### 14. Kanak identity in law

Jean-Yves Faberon<sup>1</sup>

#### Introduction

Eloi Machoro's axe is forever falling on Canala's ballot box. There is nothing more to say about this act, and among the things that have been said we can mention the fact that some people contended it was only a gesture, a publicity stunt, a dramatisation to put things in perspective, a mere contrivance, or at best, an aesthetically inappropriate act.

Others interpreted the action literally and were deeply shocked by a tale entitled 'The Ballot Box and the Axe', a new occurrence in the fight between good and evil, between democracy and violence, in a version wherein the savage's terrible axe smashed the civilized man's fragile ballot box. Thus people could only be scared of this hopeless scenario and lament the arrogance displayed in this dramatisation.

The latter interpretation simply meant that people were not aware that Eloi Machoro was by no means a savage, although the ballot box is indeed a symbol of civilization and of majority democracy. But even as Machoro was expressing himself in this way, it was a democracy wherein separatists were always the ones who played a losing game. Machoro wanted to cry out about the fact that his indigenous people had become a minority on their own land; he realized that the Enlightenment had not foreseen this dispensation and that this kind of democracy shut him out. Machoro's axe falling on that ballot box spells out the despair of a people that considers they were betrayed by majority rule, and these people were sickened by the fact that the legitimacy of the earliest occupants of the land was suppressed by the minority's defeat.

Whereas majorities and minorities in democracies accede to power by turns, and all are eventually in office, Machoro shouted out that his people were structurally shut out of power. In France there may be a rightist majority or a leftist majority, but for Eloi Machoro there could be no Kanak majority, let alone a separatist majority. In this system, power was off limits, which to him meant that his identity and even his dignity were denied.

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When he expressed himself in this way on 18 November 1984, Eloi Machoro had only 55 days to live.<sup>2</sup> He was not to get the answer to the question he had asked.

But the answer did come. Today, Kanak separatists are not losers, because law has been able to (I) devise processes conducive to Kanak franchise and (II) perfect the specifically Kanak institutions.

### **I. The Kanaks' enfranchisement**

Prior to the debate over the Kanaks' enfranchisement, the Kanak people must be legally recognized (1), and that leads to setting up a New Caledonia (and not only Kanak) citizenship (2).

#### **1. Legal recognition of the Kanak people**

a) First we must mention the Nainville-les-Roches statement of 12 July 1983<sup>3</sup> – that is, while Eloi Machoro was still alive; this was the first document resulting from dialogue and proclaiming 'the legitimacy of the Kanak people'; but in fact, negotiations failed and there was no total consensus on this document.

As for the 26 June 1988 Matignon Agreements, they mention 'the common recognition of the identity of each of the human groups present in the territory of New Caledonia'.

So separatists never stopped asking for the settlement of the 'colonial dispute'. What they mean by this phrase is that even if governmental bodies were going to allow them to express themselves at various levels, it was necessary and essential first to recognize the legitimacy of the Kanak people and the negative aspects of the colonial period.

True, colonial conquest had brought its share of violence, and the Indigenous Code was injustice turned into law.

The Indigenous Code (for New Caledonia it was based on an order dated 18 July 1887) was a regime of fundamentally discriminatory sanctions against the indigenous population; punishments were too many, too heavy and out of proportion with the acts that led to them. After the passing of the Third Republic and the French colonial empire, the 1946 Constitution meant the end of arbitrariness. But despite these legal provisions, New Caledonian breakaway Kanaks complained that de-colonization was going too slowly. Only with the 1998 Noumea Agreement, whose principles are equated with constitutional provisions,<sup>4</sup> did they really feel satisfied.

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<sup>2</sup> Regarding all chronological information in the contemporary history of New Caledonia, see the essential book by Frédéric Angleviel, *Brève histoire politique de la Nouvelle-Calédonie contemporaine (1945-2005)*, Noumea: Editions du GFHOC, 2006

<sup>3</sup> See the Nainville-les-Roches Declaration, the Matignon and Oudinot Agreements and the Noumea Agreement in the journal *Revue juridique, politique et économique de Nouvelle-Calédonie*, no. 10, 2007, pp 2-13

<sup>4</sup> On the Noumea Agreement and the status of New Caledonia stemming from it, see, among others, Jean-Yves Faberon and Guy Agniel (eds), *La Souveraineté partagée en Nouvelle-Calédonie et en droit comparé*, La Documentation française, 2000, p 463

The 'colonial dispute' was addressed and removed from the agenda insofar as the Noumea Agreement's preamble states: 'Colonization has undermined the dignity of the Kanak people since it deprived it of its identity... It is appropriate to recall those difficult times, to acknowledge the mistakes, to restore the Kanak people to its identity which had been confiscated.'

The fine phrase in this document is well known: 'Now it is time to acknowledge the shadowy aspects of the colonial period, even though it was not devoid of light.'

The Agreement's preamble mentions the Matignon Agreements in terms of 'a negotiated consensual settlement', and states that 'ten years later, it is appropriate to open up a new stage marked by the full recognition of Kanak identity.'

The document uses the term 'Kanak people' a third time, saying that today it is about enabling 'the Kanak people to set up with France new relationships fitting the reality of our times.'

This legal recognition of the Kanak people which restores them to their dignity was all the more significant in 1998, as at that date people were aware of the Constitutional Council's ruling on the status of Corsica proclaiming the oneness of the French people and invalidating the notion of Corsican people, even though they were presented as a 'component' of the French people.<sup>5</sup>

The notion of Kanak people is therefore particularly remarkable since it occurred after this decision, and thus introduced an exception.

b) This question, however, was raised again with the 2003 Constitutional Amendment relating to the decentralized organization of the Republic. This Amendment, which overhauls the constitutional organization of French overseas departments and territories (but does not change the provisions relating to New Caledonia, which are guaranteed under a separate heading (XIII)) creates a new article 72-3 worded thus: 'The Republic recognizes, within the French people, the overseas populations in a common ideal of liberty, equality and brotherhood.' So this time there is a reassertion, in the very body of the Constitution, of the oneness of the French people.

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<sup>5</sup> Constitutional Council ruling dated 9 May 1991 (290 DC). See L Favoreu and L Philip, *Les Grandes décisions du Conseil constitutionnel*, Dalloz, 1999, p 772 ff.: 'Whereas Article I in the law is phrased thus: 'The French Republic secures to the historic and culturally living community made up by the Corsican people, a component of the French people, the rights to preserve its cultural identity and defend its specific economic and social interests. These rights, which are linked to its island status, shall be exercised while showing respect for the nation's unity, within the framework of the Constitution, of the laws of the Republic and this status... Whereas France is, as Article 2 of the 1958 Constitution provides, an indivisible, secular, democratic and social Republic securing equal protection of the laws to all citizens regardless of their origin, the law's wording mentioning the 'Corsican people, a component of the French people,' is unconstitutional, as the Constitution acknowledges only the French people, made up of all French citizens regardless of origin, race or religion.'



Does that mean that the Kanak people no longer have a legal existence since in law there is only one French people? It is worth remembering that in law the most recent instrument is the valid one.

In this instance, the answer to the above question is no, not as regards New Caledonia's very special case as spelled out under separate heading XIII. Indeed, the constitutional status of New Caledonia is extremely dispensatory with regard to ordinary constitutional law, for example in areas that are fundamental such as the franchise or the definition of the law. In the same way, therefore, we will consider that Article 72-3 of the Constitution does not prevent the Constitution from referring to the notion of Kanak people. Incidentally, if this notion is equivalent to a constitutional principle, its importance retains mostly and in a fundamental way a political, cultural and sociological value: it is a sanction restoring the dignity of the Indigenous Code's victims.

For that matter, this does not have any absolute legal consequences, for Affirmative Action as implemented in New Caledonia, such as the disenfranchisement of a certain category of people, applies not to the Kanak people but to New Caledonian citizenship, which is not the same thing.

## **2. The advent of New Caledonian citizenship**

Australia had denied the existence of Aborigines to the point that it did not include them in censuses until 1987.

The legal denial of the Kanak identity translated during the colonial period into Kanaks being deprived of citizenship. In 1946, the new Constitution, substituting the French Union for the French colonial Empire, provides in its preamble (which is still valid today) that it 'rules out any colonization system based upon arbitrariness' and 'guarantees to all equal access to public office and the individual or collective exercise of the rights and freedoms' proclaimed by the 1789 Declaration of Human Rights and by this preamble of the 1946 Constitution.

Article 80 in the 1946 Constitution proclaimed: 'All overseas territories' nationals are French citizens', and this is continued in Article 82, which underscores 'the rights and freedoms that go with French citizenship'. But democratization, notably in the matter of overseas representation in Parliament, had to wait until the Fourth Republic enacted the 23 June 1956 framework law, also called the Defferre Act. In New Caledonia, the act was implemented through the 22 July 1957 enforcement order. From that date on, New Caledonia has been represented in the French Parliament by two representatives in the National Assembly and one Senator. It had a Kanak representative, Rock Pidjot, from 1967 to 1986 and its Senator is a Kanak (Dick Ukéiwé followed by Simon Loueckhote) since 1983.

When the Fifth Republic was instituted, the new Constitution was the subject of a referendum that was held in September 1958, and in the overseas territories it was regarded as a self-determination ballot – that is how one of the territories, Guinea, chose to be independent.

In New Caledonia it is worth pointing out that at that time Kanaks were in the majority, and 98 per cent of voters were in favour of the Constitution and of being part of France. That was

the time of the 1958 Constitutional Community; for its members, the former Black African territories, it proved a transition period toward independence, and New Caledonia, for its part, could look forward to increasing autonomy.

In fact, the 1960s were marked by two fundamental events: on the one hand, the State gradually recovered many powers and self-rule seemed to recede, and on the other hand a great shift in population happened: Kanaks became a minority in their own country as a result of what was dubbed the 'nickel boom', which brought an influx of people from mainland France. In other words, at the same time as the government's centralizing policy was a great concern for Kanaks, who were eager to retain their identity, those Kanaks were drawn into a situation in which they were going to be deprived of the essential means of expression in the democracy in which they were now included: their electoral strength has become too small to be in a position to make majority decisions. At that moment, the foundations of the New Caledonian issue were laid, and they led both to the conflicts and to the consensus that was sought. In New Caledonia, defining the present and determining the future is like squaring the circle.

New Caledonia was a settlement colony which prospered to the point where the indigenous population has become a minority. So how to make sense of the democratic institutions that the Republic had laid open to them? Did they mean the right to self-determination and citizenship based on electoral processes?

For about a century, Kanaks had not enjoyed equality within the republic, and when they eventually did, thanks to the 1946 Constitution, they soon lost its benefit because their numbers were lower than those of the other groups living in New Caledonia.

In debates on New Caledonia that emphasize colonial, neo-colonial, repressive policy and the policy that was detrimental to the indigenous population practiced by the Republic, it may seem beyond understanding that the island, unlike most French overseas possessions, did not gain independence through the normal self-determination channels... That is because people forget this peculiar feature of New Caledonia – the indigenous people have become a minority in their own land. Just think that in the other big French settlement colony, Algeria, there were one million Europeans in 1962, but also 10 million indigenous people! That being the case, the outcome was a foregone conclusion.

That is why, as early as the 1960s, the Kanaks' fight for their identity was based upon the suffrage issue, and they had to realize one terrible fact – the franchise that they had claimed for so long was no longer of any use to them, since their ballot was powerless on account of their having become a minority. This is the profound meaning of Eloi Machoro's ballot-box smashing.

Kanaks had suffered discrimination which disenfranchised them and kept them from being citizens, and yet they resolved to struggle so their votes would be decisive and to that end, this time around they would seek new discriminatory rules disenfranchising non Kanaks.

In the early stages of the struggle, Kanaks claimed they should be the only ones to have the right to vote in self-determination elections. Separatism started with the carefully stated phrase ‘Kanak independence’, as distinguished from New Caledonian independence.

In the face of the outcry generated by such a claim for discrimination which runs counter to Republican equality because it is based upon ethnicity and explicitly rejected by Article I of the French Constitution, Kanaks contended that only the people who were colonized must be allowed to vote on decolonization.

But for France it was unthinkable to discriminate against some of its citizens on the basis of race, and this would lead to charges of racism – not to mention that New Caledonia is a land with a mixed population.

That is how, through a change whose importance cannot be overstressed, Kanak separatists, in the untenable situation they were in, accepted the participation of non-Kanak New Caledonians in consultations on autonomy. They dubbed those people ‘victims of history’, and that is the 12 July 1983 Nainville-les-Roches Declaration.

Obviously, non-separatists, the RPCR party, had some reservations about this declaration; restricting the franchise, an essential civil right, was going to pose huge problems – the universal suffrage principle is a fundamental principle; obviously, the road was bound to be a long one, but the future was laid out. New Caledonia law will allow for a specific New Caledonian identity; it will not be strictly speaking the Kanak identity, but Kanak identity will be an essential component of the same. The price to pay was a Constitutional Amendment providing for an exception to the sacrosanct principle of universal suffrage, and the Amendment paved the way for the Noumea Agreement which sets up the concept of New Caledonian citizenship. But it is not a Kanak citizenship.

After the 1983 Nainville-les-Roches Declaration came the 1984 self-rule statute and Edgar Pisani made proposals for independence in free association. Disagreements still focused on who was to be allowed to vote – in spite of the presence of the French Government and a national majority favouring the independentists.

After the rightwing parties were returned to power, the 13 September self-rule referendum was boycotted by separatists (the election returns showed that 98 per cent of those who turned out voted for keeping New Caledonia in the French Republic and 40 per cent abstained from voting). People who could prove they had been residents for three years were allowed to vote. There was an appeal to the Constitutional Council, and the Constitutional Council did not find any reason to invalidate the procedure.

But when the Matignon Agreements provided for a new self-determination vote after ten years and decided that only those with a ten-year residence would be allowed to vote, there was a referendum on that issue; this referendum, however, was exempted from constitutional review (6 November 1988) notably because it was feared that the Constitutional Council, the guardian of constitutional principles, would reject such a franchise-restricting decision.

In French law Kanak suffrage cannot exist, but the requirement for ties to New Caledonia grew more and more stringent and as a result the residency requirement was stepped up to three years and then to ten years from the six months required in ordinary French law. In the consensus reached through the Noumea Agreement, the requirements are much stiffer, as the planned self-determination referendums starting in 2014 will allow only those who could vote in 1998 to take part, that is, those who in 1998 had been residents for ten years, and this means they would have to have 26 years' residence in 2014, and many more in following years (at the date when the enforcement of the agreement ends, which is theoretically at the end of the term of the assembly elected in 2014, or 2019...).

It must be specified that this significant restriction of the number of voters in the self-determination referendum is accepted by all the parties to the agreement and it has never been interpreted in divergent ways.

The situation is different regarding the fundamental concept of New Caledonian citizenship. There is a ten-year residency requirement to be allowed to take part in provincial elections for the New Caledonia Congress. There is a disagreement between the separatist and non-separatist signatory parties over the question of whether anybody can become a New Caledonian citizen as soon as they reach a ten-year residency, or if citizenship is restricted to those who had been residents for ten years or more in 2008. This issue (which, unfortunately was not settled in the consensual spirit which pervades the Noumea Agreement) was decided in the most restrictive way, just as separatists has requested, by a Constitutional Amendment in 2007.<sup>6</sup>

So this is where the issue of Kanak suffrage stands: Kanak suffrage as such does not exist; however, a new citizenship – that is, New Caledonian citizenship – has emerged. It is more inclusive than the notion of Kanak people, but significantly restricted as compared to French citizenship in a broad sense according to ordinary French law. The franchise will be very much restricted in self-determination referendums.

In Provincial elections, local elections which represent the political voice in New Caledonia, the voting rights already restricted. But we should not forget that it concerns a political development which alone is a response to Eloi Machoro's cry: dividing New Caledonia into provinces (which was in embryo when regions were created in 1985) enables the minority in New Caledonia to be in the majority in some provinces. Separatists are in the minority across New Caledonia as a whole and in the Southern Province, but they have a majority in the Northern Province and in the Islands Province; so long as they hold power in these two provinces, they can show what they are capable of...and achieve part of Eloi Machoro's dream.

Similarly, in a very original way, New Caledonia has a government whose members are selected by proportional representation of the representatives in Congress – members of Congress are selected by the various provincial assemblies on a proportional basis. That

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<sup>6</sup> Jean-Yves Faberon, 'La Révision constitutionnelle du 23 février 2007 sur le corps électoral de Nouvelle-Calédonie', *Revue française de droit administratif*, 2007, pp 665-68

means that even though separatists remain in the minority across New Caledonia as a whole, they are present in its government, which does not emanate only from the majority: it is a proportional representation of all political parties which have won seats. The government of New Caledonia which the Noumea Agreement wished for demonstrates consensual (and not majority) democracy, which is the very essence of the agreement. In it there is a place for everybody.

And since we are talking about Kanaks and not strictly separatists – not all Kanaks are separatists – let us emphasize the fact that the very diversity within the Kanak population is always illustrated by the pluralistic nature of the New Caledonian government.

Besides, legal imagination has devised institutions that are specific to Kanaks and help them develop their country.

## **II. Kanaks-only institutions**

Kanak identity in law, the quintessential question for Kanak men and women, is their specific status as Kanaks; it is also that there be a deliberative assembly reserved for the Kanak community; thirdly, Kanak identity is a recognition of the values of Kanak culture.

### **1. The Kanak customary status**

The 1958 French Constitution provides, in Article 75: ‘Citizens of the Republic who do not have civil status under ordinary law shall retain this status as long as they do not repudiate it.’

This Article shows that long before the Noumea Agreement, the Constitution at its inception included a major exception to the principle stated in Article I: ‘France ensures equal protection of the laws for all citizens regardless of origin, race or religion.’ At the time, this provision related mostly to the bulk of French Muslims in Algeria. Currently, it relates to the French Muslims in Mayotte, part of the population of Wallis and Futuna, and New Caledonia Kanaks.

The Constitutional Council, however, questioned some rules pertaining to personal status when it upheld, in its 17 July 2003 decision, the 21 July 2003 overseas outline law which repealed in Article 68 a certain number of major rules regarding the Mahorais personal status: polygamy, repudiation, and inheritance laws, the rules that are discriminatory against women...

For the Constitutional Council, ‘Citizens who retain their personal status enjoy the constitutional rights and freedoms that are part of French citizenship and they are subjected to the same duties... The Legislative... as long as it did not question the very existence of the civil status in local law, could pass provisions likely to change the rules of the local law with a view to making them compatible with the protected constitutional principles and rights.’<sup>7</sup>

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<sup>7</sup> See Régis Lafargue, ‘Les Contraintes posées par l’article 75 de la Constitution entre héritage colonial et volonté de modernisation de la société mahoraise’, in L Sermet and D Decoudray (eds), *Mayotte dans la République*, Montchrestien, 2004, pp 305-331

This constitutional stand could possibly apply to New Caledonia if some day the French legislature ventured into the area of the detail of New Caledonia's customary status. Therefore, there could be some constitutional limits that the French Republic could set to the Kanak customary status and consequently on Kanak identity, which is legally registered within the French Republic.

However, the status of New Caledonia in the Republic is an exception, and the Noumea Agreement, incorporated into the Constitution, departs from Article 75 of the Constitution when it states, with regard to New Caledonia, that 'any person who could have customary status and who repudiated it or who is deprived of it as a result of repudiation by his ancestors or through marriage or any other cause (as is the case of children on the records of Births Marriages and Deaths in mainland France) could recover that status.'

The Organic Law of 19 March 1999 adds, besides the ability to change the status, the possibility of reinstatement of customary status: Within five years after this law was enacted, any person who could prove that one of his or her ancestors enjoyed customary civil status was enabled to repudiate their ordinary law civil status and obtain customary status (art. 13 par. 2)

212 people took advantage of this possibility during the time allowed.<sup>8</sup>

As early as title I, the New Caledonia statute involves customary civil status and to customary landownership.<sup>9</sup>

Article 19 of the Organic Law provides that the Magistrates' Court has jurisdiction in litigation related to customary status or to lands held under customary landownership rules. In such instances, the bench is complemented by customary associate judges appointed within the court and within the Appeals Court by the 15 October 1982 governmental ordinance (82-877).

The people to whom the customary civil status applies enjoy a broad interpretation of this statute thanks to a Cour de Cassation decision (15 January 2007).<sup>10</sup> In this case, the question was whether assistance to education was part of the customary civil status or not insofar as custom in Melanesian society could be viewed as rejecting the notion of assistance to education, since education is part of the private sphere. The Cour de Cassation ruled that 'persons with a customary civil status are subject to their customs in anything contained in civil law.'

It is the common law judge who represents the judicial power of the French Republic, administering justice in the name of the French people, but when he makes decisions about

<sup>8</sup> Cf. L Wamytan and A Lenault, 'Changement de statut et statut civil coutumier: bilan et perspectives', *Revue juridique, politique et économique de la Nouvelle-Calédonie*, no. 4, 2004, p 39

<sup>9</sup> See R Lafargue, *La Coutume judiciaire en Nouvelle-Calédonie. Aux sources d'un droit commun coutumier*, Presses Universitaires d'Aix-Marseille, 2003, p 207

<sup>10</sup> See the commentary by Laurent Sermet in *Revue juridique politique et économique de Nouvelle-Calédonie*, no. 9, 2007, p 68

the Kanak people – or more exactly French citizens with Kanak customary status – he does not implement the same law. Customary justice, as compared to justice in common law, is part of an organic but not a substantive whole.

It is worth pointing out, however, that criminal law rules out the use of custom, and it can oppose it: law and order and the general principles of law prevail over custom.

With regard to land ownership, the Noumea Agreement states first that ‘the identity of each Kanak is defined first and foremost in reference to a piece of land’ (point 1.4). The status of Kanak governs property rights by stating that they are guaranteed by the Constitution and they apply in landownership cases in the matter of private property and public property, to which the property of customary lands is added (article 6 LO). Customary lands and the properties located thereupon and belonging to customary civil status people are governed by custom. Customary lands are the reservations; the lands granted to groups governed by a particular local law (legal entities representing traditional group ownership), and the lands that were granted or are granted by territorial communities or government land corporations to meet requests within the framework of the principle of one’s link to land (Rural and Land Development Agency). Customary lands are inalienable, non-transferable, and immune from take-over.

On the whole, Kanak customary law has significantly advanced with the enactment of the 15 January 2007 local law relating to customary acts.

This law now gives a legal definition to palaver as ‘a discussion conducted according to the practices of the Kanak custom and ending with a customary decision. The decision can be recorded within the framework of a customary act.’ (Article 1)

A customary act is defined as ‘a conventional legal act, characterized by a concurrence of interdependent wishes’ (Article 3). A customary act can involve an individual or a group, and it is legally binding both to persons under the customary civil status and persons who are subject to ordinary law.

This local law revokes the power that the gendarmerie had to take minutes of palaver meetings; it creates the customary public officers’ corps (for this purpose).

Differences over the interpretation of a customary act are settled by the appropriate customary council. When the council has reached the limits of its powers, the matter can be taken to regular courts.

## **2. The Kanak Customary Senate**

It is remarkable to find in multiethnic New Caledonia with its multiethnic citizenship and a government made up as a result of proportional representation and which is at the service of the ‘shared [or common] destiny’, a deliberative chamber devoted to just one community. Its purpose is to strengthen the Kanak identity in the process of setting up New Caledonian institutions.

In fact, the Customary Senate, the successor of the Customary Consultative Council provided for in the previous status, remains a consultative body, but the name Senate is, of course, not the result of chance, for it echoes the upper Chamber in the Republic. The French Senate historically speaking has been through some less satisfactory periods, and today it is still less powerful than the National Assembly, but the word Senate is synonymous with wisdom and respect; it is this image that is conveyed today by the Customary Senate and its members, called 'Senators'.

This Chamber is made up of 16 members appointed by the customary councils in the eight customary areas (two senators from each customary area), in compliance with practices recognized by custom. The government's president takes note of these appointments as per Article 137 of the statutory law. This law envisages the selection of Senators by election. But this change in the type of legitimacy, which is not provided for in the Noumea Agreement, would only strengthen the criticisms of those who find fault with the Customary Senate for being a French law construct affording only an imitation of the custom through non-authentic channels. True, an election process might put at the head of area councils and in the Senate customary officials whose rank is below that of big chiefs, and as a result, chiefs would be challenged. This is another instance of how the democratic thought process and the Kanak thought process – here the customary process – differ, and this difference must be taken into account. If we are really seeking Kanak identity we must be aware that customary paths can be highly unorthodox.

The customary senators' term is five years. The Senate can be dissolved if at least six customary councils request dissolution.

The Customary Senate appoints its Speaker for a one-year term. Thus all members in turn get to fill that position, and each customary area in turn has a nominee appointed as Speaker.

The Customary Senate has powers regarding plans and bills for local laws dealing with New Caledonian logos and badging, the customary civil status, the customary landownership system, the customary palaver system, customary area boundaries, and the way Customary Senators and customary council members are elected (Article 42).

The Customary Senate debates these topics within two months after the matters have been referred to it, and the outcome of the debate is submitted to the New Caledonia Congress.

Congress may pass the local bill either in the same terms as the Customary Senate's document or with amendments. The Congress's bill is submitted to the Customary Senate. At that juncture, the Customary Senate either accepts the bill as submitted by Congress or rejects it, and then Congress makes the final decision – of course, in its decision it can take into account remarks made by the Customary Senate.

It is worth pointing out that the Customary Senate does not have the power of referring any local laws that it has debated to the Constitutional Council.



Regarding congressional decisions, the Customary Senate must be consulted on plans and proposals relating to Kanak identity by the Government Chairman, by the Speaker of Congress or by the Speaker of a provincial assembly. On all other matters, consultation is optional, as is consultation by the French State's representative on matters for which the State has power.

The Customary Senate can, on its own, refer any proposal regarding Kanak identity to the Government, to Congress or to a provincial assembly.

If the Customary Senate considers that the matters referred to it relate to one or several customary areas, its Speaker in turn refers the matters to the customary councils involved.

There is a customary council in each customary area. New Caledonian statutory law provides that membership in such a council is determined on the basis of practices specific to each area.

Any customary council (besides the Customary Senate) can be consulted on any issue by the High Commissioner, by the government, the Speaker of a provincial assembly or a mayor. Any customary council can be consulted by any administrative or judicial authority on the interpretation of customary rules.

### **3. The sanctioning of Kanak culture**

As New Caledonia is not made up exclusively of Kanaks but also by people of other cultures,<sup>11</sup> the January 1988 statute (so-called Pons II) and its 22 April 1988 enforcement order provided for a New Caledonian Office for cultures extant in New Caledonia. Its board was made up of people representing the various cultures such as Melanesian, European, Wallisian and Vietnamese (these people were appointed by the High Commissioner after taking the opinion of the most representative associations of these cultures).

However, and for 20 years, the Kanak cultural identity of New Caledonia has been emphasized (just as was the case with the Kanak Cultural, Scientific and Technical Office created by the 15 October 1982 government ordinance no. 82-879).

The statute set up by the November 1988 Matignon Agreements created the Agence de développement de la culture canaque, eventually sanctioned as ADCK, which made 'Kanak' the official spelling. This is a State organization, now in the process of being transferred to New Caledonia.

The 27 July 1989 enforcement order assigns to ADCK the mission of developing and promoting Kanak culture. In particular, it is in charge of developing the Kanak archaeological, ethnological and linguistic heritage; fostering contemporary forms of Kanak culture, especially with regard to traditional carving, audio-visual techniques, and arts; promoting cultural exchanges, notably in the South Pacific region, and defining and operating research programs. Its board is made up of three representatives of the State appointed by the

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<sup>11</sup> See Paul De Deckker and Jean-Yves Faberon, eds, *L'Etat Pluriculturel et les droits aux différences*, Brussels: Bruylant, 2003 (and specifically the 2nd part, devoted to New Caledonia).

High Commissioner, three people appointed by the Customary Senate (initially they were appointed by the Customary Consultative Council of New Caledonia) and six representatives from the provincial assemblies, two from each province.

The Agency's Chairman is appointed by a joint decree by the Overseas Ministry and the Culture Ministry, after taking the opinion of the Board.

To implement its missions, the Agency, as early as 1990, was given the responsibility to build the Tjibaou Cultural Centre. The Tjibaou Cultural Centre is one of the major architectural projects achieved under François Mitterrand. It was dedicated on 5 May 1998, at the same time as the Noumea Agreement was being signed by the Prime Minister, Lionel Jospin, and the representatives of two New Caledonian political groups. The Centre was designed by Renzo Piano, and now its image can be said to be familiar worldwide.

The Centre is a tool and part and parcel of ADCK – and it is ADCK's headquarters. It is a place where Kanak identity is asserted and a place for cultural encounters and creation.

The Noumea Agreement itself provides that 'The State is committed to providing for the long term the technical assistance and the financial resources necessary for the Tjibaou Cultural Centre in order to enable the Centre to fully play its role as a gathering place for Kanak culture.'

Moreover, the 1999 Organic Law defining the status of New Caledonia (Article 215) provides that 'for the purpose of contributing to the development of New Caledonia, New Caledonia, after taking the opinion of the provinces, concludes a special compact with the State.' This cultural agreement was signed in Paris on 22 January 2002 by the Overseas Minister and the Chairman of the New Caledonian Government for a seven-year period starting on 1 January 2002.

On the whole, this agreement on the cultural development of New Caledonia is devoted in large part to the development of Kanak culture – Kanak cultural heritage, Kanak languages, ADCK, etc.

Finally, the Congress of New Caledonia set up a Kanak Languages Academy on 17 January 2007 in order to set the standards and the usage rules for the 28 vernacular languages and to contribute to their promotion and development as well. The Academy is made up of eight members, one from each customary area, appointed by the Customary Senate at the suggestion of the customary council involved, for a five-year renewable term.

## **Conclusion**

These are the foundations of the laws concerning Kanak identity in New Caledonia. The entitlements resulting from a restricted suffrage and from agencies specific to Kanaks are of major importance. But much remains to be done in this area, and this ongoing legal work must advance further, since it is programmed in the Noumea Agreement, a part of the Constitution. Among the other things that still need to be done are:

- Determining the role of customary authorities in social issues and mediation in criminal law;
- Reinstating Kanak place names and judicial protection of holy sites according to Kanak tradition through implementation of the rules relating to historical landmarks;
- Setting up a register for customary lands identifying customary rights on every plot of land and setting up legal instruments and financial resources for the development of customary lands;
- The emblems of the country: they are mentioned in a specific way in the Noumea Agreement. The Agreement provides that, regarding the 'name, flag, anthem, motto, the design of banknotes', these identifying signs 'must be the result of a collective effort in order to express Kanak identity and the future that we share'.

Nobody knows what has become of Eloi Machoro's axe. It is a symbolic axe. What is certain is that today the hatchet is buried in New Caledonian soil, a Kanak land, a land of welcome and a land shared by many diverse groups, so that the motto could be, 'This land is your land, this land is my land'.

# 15. Kanak identity in fact, or what it means to be a Kanak now

Elie Poigoune<sup>1</sup>

For a long time Kanak culture was ignored in New Caledonia. It was considered worthless, or a subculture. The fight for the assertion and recognition of Kanak identity has been waged by the separatists and FLNKS's political struggle. It started with the Red Scarves Movement and Nidoïsh Naisseline in the seventies and continued with the festival called Melanesia 2000 in 1975. Thanks to this struggle, Kanak identity has now a major place in the Noumea Agreement.

The Agreement provides for a specific civil status; it recognizes customary law and structures, Kanak cultural heritage, place names, cultural artefacts and Kanak languages. It also provides for the development of our culture, for the Tjibaou Cultural Centre (for its influence in the Pacific and across the world), for land as an essential component of this identity, and for emblems and logos of the country which must be fully reflected in them.

Kanak culture used to be a dominated, ignored and denied culture, but now it has grown into a developing culture; it is getting richer from contact with other cultures and it is in full bloom. Kanaks, since the Noumea Agreement was signed and their culture was acknowledged, have got a taste for life and they are raring to go; they want to build this country with the others and share the values that make up their identity.

Being a Kanak today is both keeping one's roots and values and being fully engaged in modernity.

## 1. Keeping one's roots

### **Blood, the symbol of life**

In Kanak culture, life is symbolized by blood. The blood circulating in my veins is my mother's, and therefore that of my maternal uncle. My maternal uncle is said to be the owner of my blood.

This blood moves across mountains and rivers, and even across the sea to irrigate, enrich and give life to other men and women, other families, other clans, other chiefdoms.

The paternal clan which has received this blood must work hard to rise to be worthy of these riches and take responsibility for them at the most important times in life – birth, marriage, death.

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<sup>1</sup> Chairman of the League of Human Rights, Noumea

In the cèmuhi language, during wedding ceremonies, the bride, before her brothers and her clan, is called 'pwaden', i.e. the road or the way. This road crosses the country to bring life to it.

A Kanak tribe, where people have been living for hundreds of years, is criss-crossed by a great number of roads running from north to south, from east to west, from mountain to sea, from the mainland to the islands. These blood roads make this tribe and this land a sacred space breathing life and gives forth energy springing from the depths. You can access this land only through a great deal of humility, respect and consideration.

### **The land, mother of life**

I, for example, am said to come from a place called Lnénu, a land located between the Dozip and Hanéu tribes in the Lösssi district in Lifou. This land is a sacred land for me because it has given me life.

So the land is the cradle of life; man has responsibilities and duties towards it; he must work hard to make this land sweet and light so the life on it can grow more beautiful and so it can enrich other countries and other men.

### **Yams as a symbol of man**

The land from which life springs must be worked with love and respect.

The best way to work it is to plant yams every year.

Yams symbolize the local man; they are handled with care and respect in the ceremonies marking life.

To put yams in the soil, it takes a lot of work and care, and you must get the sweet and light topsoil ready, and after a few weeks of slumber in this warm bed they will shoot up their first stems and roots.

During its growing period, the master of the land will watch over it carefully and cater to its needs.

During the day it is flooded with light and warmth from the sun; at night it gets some dew drops to cool and it is visited by the 'yam stone' which will give it the strength to grow and be more beautiful.

When life springs out of this soil to go to other countries, yams go along with it, as they represent man and the land from which they have sprung.

### **Being engaged in modernity**

Being a Kanak today is also to live in the community and fully take one's responsibilities as a citizen. With our secular system, the city enables us to live together in modern life and accept others who are different. To show respect for life amounts to showing respect for the blood that flows in each of us, but it also means respecting others because blood flows in each of them. The blood in others has taken a long trip to reach New Caledonia. Let's view these

ways and rivers which originated elsewhere as tributaries that will enlarge and enrich our own river.

The Noumea Agreement brings a huge challenge – that of building this country with our various riches, and in conclusion I'll quote this passage from the Preamble to the Noumea Agreement:

*The past was colonization time.*

*The present is the time for sharing and balancing things.*

*The future must be the time for identity within a shared destiny.*



# III. The Future

## Discussion: what is the future of New Caledonia's Melanesian identity?

**Jean-Yves Faberon, Louis-José Barbancon, Jean-Brice Herrens Schmidt, Raphaël Mapou**

### **Jean-Yves FABERON**

To the question of New Caledonia's Kanak identity a good answer is: Elie Poigoune. It is a reassuring answer. For that matter, be aware that if Elie Poigoune is not here today it is because he takes care of an organization New Caledonians are familiar with and that is the Juvénat. The Juvénat helps out youths who want to work and to succeed at school. Regarding the demographics question, can we have a notion of what the future holds?

### **Louis-José BARBANCON**

The gap between the demographics of Kanaks and the demographics of Whites is closing, and now the curves are quite close to each other. But this is a natural phenomenon which can be observed in most countries as soon as they experience economic development, well-being, a change for the better in health conditions, and an improvement in hygiene conditions.

When the Magenta clinic opened and the Magenta Hospital for women and children was created, Kanak, Wallisian and Futunian women could have their babies delivered in conditions as good as anything in private clinics up to that time, and of course, things changed. Obviously, by the same token, when the Poindimié Hospital, and later the Koumac Hospital and others were opened, conditions improved and things changed. Inevitably, in these areas, the Melanesian mindset is drawing closer to the European mindset and to that of other communities. And the birth rate, which up to that time was very high among Melanesians, is diminishing on account of the change in the standard of living.

It can be said that in New Caledonia, there are approximately – and real demographers would qualify this figure – 4,000 births and 1,000 deaths a year. Consequently, the natural increase in population is about 3,000 per year. Whenever the increase is greater than 3,000 it means immigrants have come in. These immigrants may stay or leave.

These figures are important if we are to comprehend what I will say about the Noumea Agreement. The agreement was signed in 1998, and if the referendum eventually takes place in 2018, that would mean 20 years will have gone by; as a result, 20,000 people who were



living when the agreement was signed would have died by 2018. Meantime there will have been 80,000 births. People who were not 18 in 1998 will be 18 or over and will be allowed to vote. In other words, the voting population in 2018 will include 100,000 individuals who could not vote in 1998. And there lies the Noumea Agreement challenge. It is a challenge to the country's youth, since in the end, who will vote in 2018 if not the youth of the present? They will make their decisions depending on what we will have been able to bequeath to them, to teach them or to give them. And that is essential. It is important for school curriculum and for wealth distribution; it is important for there to be a better distribution when companies' dividends are in. If we revert to the boom period when Kanaks saw trucks with loads worth millions go by, it won't work. Nothing could be as it used to be.

Of course, there were other options. For example, in Hong Kong in 1997 they said it's handover, and you just get ready for it. Here, in some ways, they trusted a future generation with the choice. And the whole responsibility shared by political leaders, intellectuals, other leaders, through organizations that are not only political organizations – such as Juvénat – lies in this query – What kind of country are we going to leave to the youth? Because in the end *they* will be the ones to decide.

### **Jean-Brice HERRENSCHMIDT**

Good morning, I'm Jean-Brice Herrenschmidt, from IRD. I would like to give the floor to the Customary Senate people who honor us by being present. I believe that in this debate we should listen to those who are in the best position to talk about the future of Kanak identity.

In order to be able to ask my question, I'll bring some quick testimony. I work alongside a small private organization called GIE Océanide which, among others, works on management plans as part of the UNESCO world heritage. It involves fieldwork all across New Caledonia working together with the provinces. We are trying to develop participative management of the coral reef marine environment on the basis of consensual democratic principles and not only representative democracy (to use the terms that have been using previously), but in fieldwork we face challenges that are, in my view, and in many areas, closely linked to the issue of identity today.

First of all, we have to face organizational problems regarding the structuring of chiefdoms or districts, and there are always very serious and hard-to-manage conflicts. In other words, we have to face challenges linked to clan identities, for in many places in New Caledonia many people and many clans are in a precarious position, which means that within the chiefdoms' organization they are viewed as outsiders. This strains relationships with regard to the way people can be represented in management committees. This is a first practical problem linked to identity that we have to face in fieldwork.

Secondly, there is another area where the identity issue is often raised, and that is the link between generations. The problem of the transmission of knowledge is very often raised by people with whom we work as part of management plans for world heritage. As a matter of fact, in compliance with the Noumea Agreement, we try to put forward the recognition of Kanak identity and to have organizations and contemporary law recognize a certain number of social organizations and environmental management organizations, notably in marine

environment and, as a result, take into account place names, relations clans have with place names, etc. The purpose is to have this recognized. Now the challenge we face is that traditional knowledge of species, of fishing, of ecological environments, etc., is often eroded. Similarly, knowledge regarding clans' legitimacy in talking about such and such a place is also very fuzzy depending on the place. There are big differences; I wouldn't generalize, but we often have to face this challenge.

And here is my question to the Customary Senate people: What is being done right now, in our customary institutions, the Customary Senate, the area councils, on the question of chiefly structures, on the issue of the transmission of knowledge within families, clans, tribes themselves? Could you tell us what the present situation is regarding work done by customary institutions? I think that to provide an answer to the future of identities, we, fieldworkers, really need answers; we need to work hand in hand and to know where you stand at the institutional level. Thank you.

### **Raphaël MAPOU**

Yes, this is a vast subject. Place names are just a beginning. Now it is necessary to work at the heart of the matter. If we want to go by the spirit of the Noumea Agreement all the way and if we really want to succeed in getting a synthesis, how are we going to combine citizenship, the status of people and property, custom and law? The Customary Senate is working on inheritance law, which refers to the customary civil code. Some chiefdoms, notably in the Islands, are revisiting the way they operate. These are ongoing things. You cannot talk about customary acts if you have not identified the basic customary structures, if you have not appointed the clan chiefs, redefined the way the 'clan council' operates – the clan council is the new name for 'Elders' Council' – and if chiefs are not instated. This is the work being done in an overhaul of chiefly structures.

The other part is the customary land register, and this leads to the history of the valleys and to the history of specific places. It is an unheard-of undertaking, and we see land problems in all conflicts today. ADRAF is being told to overhaul the whole *modus operandi* which consisted of seeking to attribute lands at any cost as part of land reform, allegedly as part of one's link to the land, while really promoting economic development. Now, out of all the lands that have already been distributed, 70 per cent are in litigation. Some land problems hark back to the history of the clans. Nowadays, what is at stake for us is writing the history of valleys so clans stop telling their stories separately and so we can, as a result, have a common history in all the valleys. And in litigation settlement, the first stage consists of enabling clans to exchange their views on their history, otherwise there could be no agreement on that history, there will never be a common history, and that would mean a never-ending string of conflicts. And at the institutional level, the process must be strengthened with new laws, etc. That's the work we have to do. We will need sociologists, anthropologists, etc. Are we able to achieve it, or are we, in some places, going to give up and say, we'll forget this and move on to another business? But today it is hard because we had to awaken the history of the indigenous struggle, the buried history of Kanak nationalism. Now people must express themselves in order to debate dispassionately about those issues and about the situation with regard to customary lands.

I need to emphasize this: we need a political will to conduct a program over several years on the topic of land law stabilization, and this effort will have to go on for more than ten years.

# **An integrated Melanesia without New Caledonia**



# I. The Past

## 17. External influences on Melanesia

Stewart Firth<sup>1</sup>

### **Colonial history and Melanesia**

The political and economic situation in all four independent Melanesian countries has roots in colonial history as well as in contemporary politics. The colonizers, who were external influences by definition, have left a mixed legacy in Melanesia – three states that are defined by territory rather than by national identity, and usually characterized by ineffective government rather than rapid development of the kind found in parts of South East Asia. These are Papua New Guinea (PNG), Solomon Islands and Vanuatu. In the other state, Fiji, the colonizers bequeathed the region's most successful and diversified economy, together with its most efficient bureaucracy and effective state, but a succession of coups over the past 20 years has seriously undermined that legacy.

While the situation in Melanesia has roots in colonial history, it far from being entirely the consequence of that history. Pacific Islanders have been responsible for government in PNG, Solomon Islands, Vanuatu and Fiji since independence, and their mark on events is now far deeper than the one left by the colonizers.

The independent Melanesian states had no pre-colonial existence except as parts of the broader Melanesian culture area. Where their borders should be drawn in order to create colonial territories was not obvious, except in the case of Fiji, and in the case of the Solomon Islands the original borders were changed, with Isabel, Choiseul and the Shortland Islands first of all falling to German New Guinea and only later incorporated into the British Solomon Islands Protectorate. Having defined their territories, Europeans then proceeded to administer them, and the most important outcome of their administration was to create nation-states that could become part of the international community of nation-states. PNG emerged as a nation-state in 1975, for example, after a colonial period that began when the Germans and British partitioned eastern New Guinea in 1884, and that included Australian administration of Papua from 1906 onwards and of former German New Guinea from the outbreak of World War I in 1914.

Colonial rule transformed some parts of the newly independent world. By the time independence came to Singapore and Malaysia, for example, the colonizers had created new

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<sup>1</sup> Australian National University

societies that owed their demographic mix, system of government and form of economy largely to the British. Such was not the case in Melanesia, except in Fiji, and even there the transformation was partial.

‘Colonial rule’ is what the Germans and the Australians are said to have established in eastern New Guinea in those early years, but the phrase hardly captures the reality. The Germans probably reached no more than a tenth of the population of their New Guinea colony in thirty years of administration, confining themselves largely to the islands of the Bismarck Archipelago and a narrow coastal strip of what they called ‘Kaiser Wilhelm’s Land’.<sup>2</sup> The Australians pushed further inland, but even they were unaware until the 1930s that the intermontane valleys of the New Guinea Highlands were home to perhaps a million people, and the Highlands populations did not come fully under Australian administration until the 1950s. Many Melanesians who found themselves in a country called Papua New Guinea in 1975 experienced ‘colonial rule’ as a transitory phenomenon that lasted no more than 20 or 25 years. Australia accelerated the pace of change in PNG in the last twenty years of its administration, but the fundamental characteristics of PNG society remained remarkably undisturbed. At independence in 1975, 97 per cent of the country’s land was in communal Melanesian ownership, 85 per cent of the population lived in their ancestral villages, the basis of the economy remained subsistence agriculture, and class in the Western sense hardly existed. Too late, Australia rushed to educate a tiny elite of Papua New Guineans in the last decade or so of colonial administration, leaving PNG to join the international community radically unprepared and ill-equipped for the responsibilities and challenges of modern statehood.

Much the same applies to Solomon Islands, which mattered so little to Britain that it remained a protectorate rather becoming a colony throughout the colonial period. The British, having resolved to withdraw from east of Suez in the 1960s, made haste to leave their neglected possession in the 1970s. They set up the country’s first parliamentary institution, the Legislative Assembly, in 1974 (as a protectorate, Solomons never had a Legislative Council) and rapidly recruited Solomon Islanders into a governmental and bureaucratic system from which they had been excluded for the previous 80 years. Like PNG, but with fewer resources, Solomon Islands entered the international community in 1978 with minimal qualifications for becoming a successful state.<sup>3</sup>

The ni-Vanuatu experienced the colonial administration of both France and Britain. Foreigners obtained more land here than in PNG or Solomons – about 20 per cent in all – and the French planter community became an important element in the politics of the colony. Independence in 1980 was soon followed by a hasty reoccupation of alienated land by the ni-Vanuatu, and the country’s economy continues to rest on subsistence agriculture undertaken by 80 per cent of the population in rural villages. Tourism is more successful than in PNG or Solomons, but the population is growing fast and economic growth is not keeping pace.

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<sup>2</sup> Stewart Firth, *New Guinea under the Germans*, Melbourne University Press, 1982

<sup>3</sup> Judith A Bennett, *Wealth of the Solomons: a history of a Pacific archipelago 1800-1978*, University of Hawai’i Press, Honolulu, 1987

Fiji is different. Here the British have left a deep and enduring mark, above all by changing the ethnic composition of the population. Fiji's continuing political instability, characterized by a succession of democratic governments being overthrown in coups, has its origins in British decisions made in the first decades after Cession in 1874, above all to import Indian labourers and allow them to settle, but also to keep Fijians in their villages under the authority of chiefs. Roughly a quarter of the 60,000 Indians who came to Fiji between 1879 and 1916 to work on the sugar plantations of the Colonial Sugar Refining Company of Australia returned to India after five or ten years in the colony. The other three-quarters, however, stayed to become traders, artisans and, above all, farmers growing sugar on smallholdings, and their descendants now form the second great community of Fiji (the contrast is Vanuatu, where most of the 22,000 Vietnamese who arrived between the world wars returned home).<sup>4</sup> Today Fiji citizens of Indian descent account for about 37 per cent of the population.

Independent Fiji has struggled since the 1970s to devise a system of government and agree on a set of constitutional rules that will meet the demands and satisfy the aspirations of the two culturally different communities – indigenous and Indian – that constitute most of the country's population. Fiji's most recent coup – in 2006 – has damaged the country's economy and economic prospects. The Reserve Bank of Fiji now estimates that gross domestic product declined by 6.6 per cent in 2007, about three times as much as the decline recorded after the 2000 coup.<sup>5</sup>

The transition to independence brought a new kind of external influence, exercised by aid donors, international financial institutions, investors (especially resource investors) and regional organizations.

### **Australia and Melanesia: increasing engagement**

Measured by aid flows, investments, commercial links and diplomatic presence, the most important single external influence in Melanesia since independence has been Australia. The official view in Canberra is that aid to Melanesia underpins the security of Australia, but the form and content of that aid has changed over time.

During the Cold War Australia was content to send aid without imposing many conditions, but the limitations of this approach were becoming clear by the early 1990s. From 1994 onwards Canberra began to fear that unless Islands governments changed course their people faced a nightmare of rising populations, falling living standards, decaying schools, urban squalor and unemployment. From then on Australia, like other aid donors, argued that Pacific Island countries should reduce their public sectors, cut tariffs, encourage private enterprise and allow maximum freedom to foreign investors so as to become more competitive in a globalising economy. Australia began using its aid as a carrot and stick to make Melanesian governments conform to the new orthodoxy.

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<sup>4</sup> Brij V Lal, *Broken Waves: A History of the Fiji Islands in the Twentieth Century*, University of Hawai'i Press, Honolulu, 1992

<sup>5</sup> Reserve Bank of Fiji, *Economic Review*, July 2008



Allowing ‘maximum freedom to foreign investors’, however, was a policy that depended for its success on who the investors were and how they operated. In Solomon Islands they were logging companies from East Asia, and they flooded the country, buying off local leaders, national politicians and in the end – under the prime ministership of Solomon Mamaloni – whole governments. As companies extracted more and more concessions on taxation, government income fell and Solomon Islands faced insolvency, accepting a structural reform program from the International Monetary Fund, the World Bank and the Asian Development Bank in 1997. The government did little for the villagers, who therefore dealt directly with the logging companies, earning more even from unfavourable agreements than they ever received from government. As government grew weaker, the ambitions of individual politicians grew stronger, and the Solomon Islands state effectively collapsed in 2000 when militia forces drawn mostly from the island of Malaita overthrew the democratically elected prime minister and replaced him with one of their own. Honiara became a wasteland ruled by young men with guns, and order broke down across much of the main island of Guadalcanal. A peace agreement brokered by Australia in 2000 failed to resolve the crisis. The economy contracted sharply. GDP fell 14 per cent in 2000 and a further 25 per cent in 2001. Major plantation and mining companies ceased production. And the Solomon Islands government, such as it was, survived on monthly infusions of cash from Taiwan, given in return for recognition of Taiwan as the true China. Powerless within its own borders, the government continued to exist for the purposes of international diplomacy and in the form of a largely corrupt elite.<sup>6</sup>

Australia long claimed that Solomon Islanders should solve their own problems, but changed policy in 2003, fearing its Melanesian neighbour was becoming a failed state that could one day endanger Australian security. Australia’s change of policy applied not just to Solomon Islands, but to the Pacific Islands in general, especially Melanesia.<sup>7</sup> Australia’s sharpened focus on the Pacific, according to the government, arose from a ‘strengthened realisation that a porous, underdeveloped and insecure region can increasingly feed instability, inhibit development and pose a threat to Australia’s national security.’<sup>8</sup> As a result, Australian aid to PNG increased by a third in 2004-2005, and aid to the South Pacific more than doubled.

In Solomon Islands the Pacific Islands Forum organised a Regional Assistance Mission, led by Australia, with hundreds of police backed by 1,700 military personnel. The mission arrived in July 2003 and enjoyed remarkable success in arresting and charging militants, purging the police force of criminals, and destroying thousands of weapons. The Regional Assistance Mission then moved to the more challenging task of constructing a workable state apparatus in Solomon Islands. Australians and mission personnel from elsewhere in the South Pacific now work in key ministries and government departments in Honiara with the aim of restoring good governance and efficient public administration. The crisis that gripped

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<sup>6</sup> Clive Moore, *Happy Isles in Crisis: The historical causes for a failing state in Solomon Islands, 1998-2004*, Asia Pacific Press, Canberra, 2004; Jon Fraenkel *The Manipulation of Custom: From Uprising to Intervention in the Solomon Islands*, Victoria University Press, Wellington, 2004

<sup>7</sup> Greg Fry and Tarcisius Kabutaulaka, eds, *Intervention and State-Building in the Pacific: The Legitimacy of ‘Co-operative Intervention’*, Manchester University Press, 2008

<sup>8</sup> *Australia’s International Development Cooperation 2004-05*, Canberra, 2004, p 21

Solomon Islands in April 2006 showed that local political forces remain potent despite the intervention and have the potential to derail it. Trouble started when newly elected parliamentarians chose Snyder Rini as Prime Minister-elect. People expressed outrage, peacefully at first but then in a riot that destroyed Chinese-owned stores in the capital. Australia sent 400 troops to stabilise the situation, and 140 remained in mid-2008, testimony to the continuing fragility of order in the capital. Much depends on who happens to be in high office in Solomons: the previous Prime Minister, Manasseh Sogavare, quarrelled with Australia and expelled the Australian high commissioner, whereas Derek Sikua, prime minister since December 2007, has restored good relations with Australia and called for the regional assistance mission to stay for a decade.<sup>9</sup>

Australia's relations with the biggest and most important Melanesian country, Papua New Guinea, grew more strained in the last years of the Howard government, which lost office at the 2007 elections. The first of the 230 or so federal police to go to PNG under the Australia and Papua New Guinea Police Assistance Package arrived there in 2004. But Australia's demand that its police in PNG be granted legal immunity provoked a nationalist backlash in certain quarters, and the PNG High Court declared such immunity unconstitutional, forcing the police to withdraw within months. The 'shoe incident' further strained relations. In March 2005 the PNG Prime Minister Sir Michael Somare objected when he was required to remove his shoes as part of a routine security check at Brisbane airport. Demonstrations in PNG followed, with hundreds marching on the Australian High Commission in Port Moresby demanding an apology that was not forthcoming. And the Julian Moti affair made things worse. Canberra considered Julian Moti, Solomon Islands Attorney-General, to be a fugitive from Australian justice, but in October 2006 the PNG Defence Force flew him to Solomons beyond the reach of Australian courts. Australia retaliated by cancelling planned visits by Sir Michael Somare and the then Defence Minister Martin Aini, and calling off the 2007 PNG/Australia Ministerial Forum.

The new government in Australia, elected in November 2007, has fashioned a new relationship with PNG. The Prime Minister, Kevin Rudd, understands the importance of personal links with Pacific leaders, and has established a degree of rapport with Sir Michael Somare. Rudd chose PNG as the location to announce his new Pacific policy, enshrined in the Port Moresby Declaration of March 2000. Australia will now negotiate bilateral Pacific Partnership for Development agreements with Pacific countries, and the first to be signed – in August 2008 – was with PNG.<sup>10</sup> At the same time there is a new confidence in PNG. The global commodities boom has stimulated the PNG economy, which grew by 6.2 per cent in 2007 and continues to grow. Mining and agricultural exports such as palm oil are gaining record prices, and new gold and nickel-cobalt mines are coming into production. If the proposed liquid natural gas project in Southern Highlands Province proceeds, PNG's national income will treble within a few years.

<sup>9</sup> Sinclair Dinnen and Stewart Firth, eds, *Politics and State-Building in Solomon Islands*, Asia Pacific Press and ANU E Press, 2008, [http://epress.anu.edu.au/solomon\\_islands\\_citation.html](http://epress.anu.edu.au/solomon_islands_citation.html)

<sup>10</sup> *Partnership for Development between the Government of Australia and the Government of Papua New Guinea*, Canberra, 2008, [http://www.ausaid.gov.au/publications/pdf/png\\_partnership\\_200808.pdf](http://www.ausaid.gov.au/publications/pdf/png_partnership_200808.pdf)

Successive coups in Fiji have presented Australia with a perplexing foreign policy challenge, and the most recent coup is no different. Fiji matters to Australia not only for itself, but because of its regional importance. Fiji is the location of numerous regional organizations that serve the South Pacific as a whole – such as the Pacific Islands Forum Secretariat and the University of the South Pacific – and forms a natural hub for smaller Pacific countries. What happens in Fiji influences the entire region. Unlike previous coups in Fiji – in 1987 and 2000 – the 2006 coup was not undertaken in the name of indigenous rights, or of ensuring the political predominance of one ethnic group over another. Like New Zealand, the EU, the USA and the Commonwealth, Australia has not accepted Bainimarama's argument that this coup is justified by the nobility and far-sightedness of its alleged objectives. Australia's response to the coup has been the same as in the case of Fiji's earlier coups, and consists of condemnation, smart sanctions and diplomacy aimed at restoring the democratic system in Fiji as soon as possible. Australia has placed travel restrictions on Bainimarama, his supporters and their families, as well as members of the interim government and their families. Australia has also suspended defence cooperation and withdrawn aid from particular sectors, especially police and prisons.

Bainimarama has responded defiantly. He expelled two Australian newspaper owners, Russell Hunter of the *Fiji Sun* and Evan Hannah of the *Fiji Times*. He refused to permit Australia to provide more security for the Australian high commissioner in Suva, James Batley, following a series of death threats. He broke the promise given to the Pacific Islands Forum and the EU that Fiji would hold elections in 2009, saying that elections could not take place until 12 to 15 months after a new electoral system had been agreed upon, in effect, sometime in 2010. And when he was barred from joining bilateral meetings with Forum Dialogue Partners in New Zealand, Bainimarama withdrew from the Niue Forum leaders' meeting at which developments in Fiji were to be the principal item of discussion, saying 'most, if not all, Pacific Island leaders are against Fiji being further victimised by Australia and New Zealand, even if they may not say so openly in Niue.'<sup>11</sup>

Bainimarama's appeals to Pacific solidarity against Australia are unlikely to convince Island leaders, especially as Kevin Rudd has given them what they most want from Australia and have requested for years – access to the Australian labour market. Australia's Pacific Seasonal Worker Pilot Scheme will be trialled over the next three years, recruiting from three countries that already participate in New Zealand's Recognised Seasonal Employer Scheme – Kiribati, Tonga and Vanuatu – and one with close historic links to Australia, PNG. Somare is particularly pleased by the inclusion of PNG. Pointedly, the Australian government has excluded Fiji and will presumably continue to do so until satisfied that democracy has been restored there.

Elections will eventually take place in Fiji. But Australia needs to recognise that the vote is limited as a means to re-establish democracy in a country where the military seems certain to remain highly influential even after it has returned to barracks. The 2006 coup has been a rich source of military patronage. Bainimarama has sacked numerous public servants and heads of public organisations and replaced them with military appointees who owe him their jobs.

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<sup>11</sup> 'Fiji pulls out of Pacific leaders meeting', *fijilive*, 18 August 2008

Fiji's government has undergone thoroughgoing militarisation. Australia may have to accept that Fiji will be a democracy rather like Thailand, where coups and elections alternate.

### **New Zealand and Melanesia: a new focus of Pacific policy**

New Zealand's Pacific diplomacy has traditionally centred on its freely associated states and territories – Cook Islands, Niue and Tokelau – none of which is in Melanesia, on its former dependency Samoa and on its closest Melanesian country, Fiji. In recent years, though, that Pacific interest has extended to the rest of Melanesia, where New Zealand is an increasingly engaged partner in aid and security.

Half of New Zealand's aid goes to the Pacific Islands, and that half is growing. New Zealand's aid spending increased by 21 per cent in 2007 and will continue to increase over the next four years, taking Official Development Assistance to more than NZ\$600 million by 2010/11. A particular focus is PNG, Solomon Islands and Vanuatu. New Zealand has participated in the Regional Assistance Mission to Solomon Islands since 2003. A 43-strong platoon made up primarily of territorial soldiers from the 5th Wellington West Coast Taranaki and 7th Wellington Hawke's Bay battalions provides New Zealand's current contribution. And New Zealand has pioneered the recruiting of seasonal labour in Melanesia outside Fiji by including Vanuatu in its Recognised Seasonal Employer scheme.

### **The European Union and Melanesia: aid with conditions**

The European Union (EU) matters in Pacific regional affairs and matters most in PNG and Fiji. All 14 Forum Island states are members of the Africa, Caribbean and Pacific (ACP) group of countries, and their trade and aid relations with the EU are therefore governed by the Cotonou Convention of 2000. Cotonou aid comes with good governance strings attached, and Cotonou trade is being made compatible with the requirements of the World Trade Organization. Free trade is replacing replace the special arrangements and subsidised commodity prices that have helped to sustain agricultural exports from the Pacific. PNG and Fiji both signed interim economic partnership agreements with the EU in 2007, pending the conclusion of a comprehensive region-wide agreement that will, in effect, make aid available in return for free trade.

As a sugar producer, Fiji is particularly influenced by the EU. Fiji sugar has been exported to the EU for more than thirty years at higher than the world price. But, with the Sugar Protocol due to end in 2009, Fiji sugar producers are surviving on an EU price that falls year by year, with a reduction of 9.2 per cent due in October 2008 and a further reduction of 21.7 per cent coming into effect a year later.<sup>12</sup> Compounding the problem for Fiji has been the response to the 2006 coup by the EU, which has repeatedly called for early elections. In an attempt to pressure the Fiji to restore democracy, the EU has delayed paying hundreds of millions of dollars designed to assist the country move towards a more efficient sugar industry.

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<sup>12</sup> 'Fiji seeks help from EU for ailing sugar industry: Farmers expect very bad year in 2009', *fijilive*, 10 June 2008; 'EU mulls ultimatum over Fiji election deadline: Suspended aid money at stake', *Pacific Islands Report*, 21 July 2008

### **France and Melanesia: the drive to integrate**

France is both an external and internal power in Melanesia. Each year France gives about US\$2 billion to New Caledonia (population 238,000). If this assistance is viewed as official development assistance by an external power, it vastly exceeds the aid given by any other donor, especially if it is calculated on a per capita basis. Even the \$US200 million spent annually by Australia in Solomon Islands is small by comparison.

France wants to integrate its Pacific countries and dependencies more effectively in their region, and has intensified its integration diplomacy in recent years, especially since the 2006 France-Oceania summit when President Jacques Chirac hosted a meeting of all 16 Forum states including Australia and New Zealand. Chirac called Australia and New Zealand the two 'essential powers of the region' and argued that nothing effective could be done in the Pacific without France's close cooperation with those two countries. In a keynote address at the summit, PNG Prime Minister Somare applauded France's 'helpful efforts in integrating its Pacific territories with the other countries of the region'.<sup>13</sup> Later in 2006 the Forum admitted New Caledonia and French Polynesia as associate members. The two French Pacific countries were represented at the 2008 Forum leaders' meeting in Niue by Harold Martin and Gaston Tong Sang, while the French government sent a high-powered delegation that included the Assistant minister for Overseas, Yves Jégo, and Ambassador to the Pacific, Patrick Roussel. With another France-Oceania summit planned for 2009, France seems determined to deepen the integration process still further.

### **China, Taiwan and Melanesia: the quest for resources**

Taiwan and China compete with aid and investment for diplomatic recognition in the Pacific, and competition has intensified since the unrest in Solomons in 2006.<sup>14</sup> Taiwan's standing has suffered from the corruption in Solomons, widely attributed to its indiscriminate aid policies, and Pacific countries that recognise the one-China policy can now expect tangible returns from Beijing. China is seizing the opportunity to enhance its influence. China's drive into the Pacific, mirrored in its policy in Africa and the Caribbean, is driven less by competition with Taiwan than by the search for reliable supplies of the primary resources that will be needed to power the mighty Chinese economy in the years ahead.

On his 2006 visit to the Pacific the Chinese premier Wen Jiabao announced a raft of aid initiatives, loans and investments at the first China-Pacific Island Countries Economic Development and Cooperation Forum in Fiji, including a soft loan facility of \$US600 m. for the region. China's aid to Fiji is growing fast, with grants and loans worth \$US111 m. in 2007, far more than it has ever given before. China is reconstructing the central business district of Nuku'alofa, Tonga's capital, following the 2006 riots, and has built a secretariat building in Vanuatu for the Melanesian Spearhead Group, a sub-regional organisation comprising PNG, Solomon Islands, Vanuatu and Fiji. Unlike EU or Australian development assistance, China's aid comes with no strings attached.

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<sup>13</sup> 'France woos Pacific at Paris summit', *Pacific Islands Report*, 27 June 2006

<sup>14</sup> Graeme Dobell, *China and Taiwan in the South Pacific*, Lowy Institute, 2007, <http://www.lowyinstitute.org/Publication.asp?pid=533>

China's investment is welcomed by PNG, Solomon Islands and Fiji. PNG leaders, for example, have welcomed the Ramu nickel mine, which is owned by China Metallurgical Construction Company, as a contribution to national development. But the complications of Chinese investment are illustrated by recent events. In 2008 people living on the Rai Coast of PNG complained that Chinese workers for the mine were being smuggled into the country illegally – in containers. Eventually the nickel mine was forced to close after local workers walked off the job complaining of poor working conditions. At the same time armed landowners attacked a number of Chinese employees, forcing the company to evacuate its Chinese workforce.<sup>15</sup> These difficulties point not only to the disruptive power of PNG landowners at mine sites, but also to the fact that Melanesia is experiencing an influx of Chinese, who are coming legally and illegally in search of new opportunities. As the 2006 riots in Solomons and Tonga showed, the resentment of unemployed young men in the Pacific can easily be turned against the new Chinese. Rioters targeted Chinese businesses on both occasions, forcing hundreds of Chinese nationals out of their country.

Some observers see Asia, and China in particular, replacing the West as the most significant external influence in the Pacific over the coming decades.<sup>16</sup> Whether that happens or not, there is no doubt that China's influence in Melanesia will grow and that its aid and opportunities will be seen by Melanesians as valued alternatives to those offered by Australia and New Zealand. An example is Melanesian integration. China has breathed new life into Melanesian (as distinct from Pacific) regionalism by funding the salary of the Melanesian Spearhead Group's first Director-General, Rimo Ravusiro, and in time may do more. Papua New Guinea's former High Commissioner to New Zealand, Bernard Narakobi, has envisaged a wider role for the Melanesian Spearhead Group in the future, and even talked of a 'Federated States of Melanesia'. Australia and New Zealand are likely to oppose such developments because they would weaken Pacific-wide regionalism and their own domination of it.

## Conclusion

Westerners originated the idea of Melanesia as a culture area; the idea of nation-state, which now forms the basis of political organization in Melanesia; the Melanesian nation-states themselves, which are the product of the colonial period; and the project of Pacific regionalism. But Melanesians are determining the fate and meaning of these ideas in their own, radically different cultural context, and in an era when Asian influences are becoming decisive. The financial crisis of 2008 will accelerate this process by strengthening China's relative economic position globally, and will enhance China's future influence in the Pacific Islands.

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<sup>15</sup> 'PNG landowners attack Chinese mine workers. Three hospitalized after attack at Ramu nickel mine', *Radio New Zealand International*, 27 August 2008; 'Ramu nickel mine shut following attack: Workers walk off jobs, demand pay increase', *The National*, 28 August 2008

<sup>16</sup> Ron Crocombe, *Asia in the Pacific Islands: Replacing the West*, IPS, Suva, 2007; Paul D'Arcy and Hank Nelson, *The Rise of China in the Pacific*, SSGM Briefing Note, 2/2007, [http://rspas.anu.edu.au/melanesia/BriefingNotes/PolicyBriefingNote\\_ChinaInPacific\\_29Augb.pdf](http://rspas.anu.edu.au/melanesia/BriefingNotes/PolicyBriefingNote_ChinaInPacific_29Augb.pdf); Fergus Hanson, *The dragon in the Pacific: more opportunity than threat* Lowy Institute Policy Brief, 2008, <http://www.lowyinstitute.org/>



# 18. Asserting internal dynamics: the Melanesian Spearhead Group<sup>1</sup>

Nathalie Mrgudovic<sup>2</sup>

## **Introduction: the Melanesian Spearhead Group – the upshot of a double frustration**

The Melanesian Spearhead Group (MSG) can be said to be the result of a double frustration. It is worth remembering that the Forum was created in 1971 because the Pacific Island states, and especially those which had just gained independence or were about to gain it, no longer accepted the fact that political questions, whatever they were, were, on principle, excluded from meetings at the South Pacific Commission (SPC).<sup>3</sup> Moreover, they wanted to show a common front to African and Caribbean independent nations to get the best deal they could as a group from the Yaounde Agreements. The Fijian Prime Minister, Ratu Sir Kamisese Mara is probably the politician who worked the hardest towards creating the Forum. Then the same pattern occurred within the Forum. The Melanesian states (Papua New Guinea (PNG), Solomon Islands and first of all Vanuatu) realized they were unable to get the Forum to be more committed to certain issues such as support for New Caledonia's independence. That prompted the most recently independent Oceanian states to set up a structure or a group specifically focused on the recognition and promotion of Melanesian identity.<sup>4</sup>

## **I. Setting up the Melanesian Spearhead Group – asserting a claim for identity**

It could be contended, somewhat provocatively, that the MSG was born in 2007. As a matter of fact, in March 2007 a Charter was signed, and as a result, this sub-regional organization became a legal entity. 2007 also saw – on 7 November – the dedication of a General Secretariat in Port Vila. Actually, however, the MSG was officially created in 1988,<sup>5</sup> although it had started to exist and act officially as a group as early as 1986, and its inception can be traced back to 1979, even 1976, for the will to promote Melanesian identity and emancipation had been stated as early as 1976 in PNG by its Prime Minister, Sir Michael Somare, and his Deputy Prime Minister Ebia Olewale; and as early as 1979, this idea started to produce concrete actions.

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<sup>1</sup> This article uses contents dealt with or developed in the present author's book, *La France dans le Pacifique Sud. Les enjeux de la puissance*, foreword by Michel Rocard, Paris: L'Harmattan, 2008

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<sup>3</sup> Renamed Secretariat of the Pacific Community

<sup>4</sup> Fiji gained independence in 1970, PNG in 1975, Solomon in 1978, and Vanuatu in 1980. Samoa was the first Oceanian island nation to gain independence, in 1962.

<sup>5</sup> The year when the 'Principles of Cooperation' were signed



Although France and its territories were not admitted to the Forum,<sup>6</sup> Kanak separatists from the Front Indépendantiste (FI), François Atonari, Yann Céléne Urégei, Nidoishe Naisseline and Jean-Marie Tjibaou were officially welcomed to the Forum leaders' conference at Honiara, Solomons, in 1979. For that purpose they were supported by some member states or entities with observer status, which were all Melanesian: PNG, Solomons, and New Hebrides (at the time the New Hebrides was an observer on its way to becoming independent Vanuatu the following year).<sup>7</sup> The Kanak leaders were able to meet some of the regional organization's member states and hand them a petition requesting the Forum – through its members present at the United Nations<sup>8</sup> – to file a resolution with the General Assembly for the purpose of reinstating New Caledonia on the UN list of non-self-governing territories. They invoked the United Nations General Assembly 14 December 1946 resolution (66(1)), contending that New Caledonia was on that UN list in 1946, along with 73 other non-self-governing territories,<sup>9</sup> and contended that France unilaterally decided to remove it from the list the next year. The reason put forward by France was that 'the Overseas Territories had a status that was very similar to that of French departments with regard to the legal status of their population and their political representation system.'<sup>10</sup>

Thus, the representatives of the breakaway party, although they were not admitted as members or even as observers, managed after all to go to the Forum and submit their request directly, albeit only informally. PNG, the driving force behind support for Melanesian self-determination, had insisted, at another level, through its Deputy Prime Minister Ebia Olewale, on mentioning New Caledonian Kanaks – and also French Polynesia – in the Forum's final communiqué. It was also insistent about France being called on to grant her South Pacific possessions the right to self-determination.<sup>11</sup> The final resolution was toned down by Australia and New Zealand and eventually it did not include a direct mention of New Caledonia or French Polynesia. The Melanesian states, however, did manage to have 'the issue of the French territories in the South Pacific' still dealt with specifically, and the specific point noted that the people of the Pacific, 'including those in the French territories', wish 'to determine their own future'.<sup>12</sup>

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<sup>6</sup> This situation has undergone some change now New Caledonia and French Polynesia are associate members of the Forum, Wallis and Futuna is an observer, and France is now a partner in the post-Forum dialogues.

<sup>7</sup> It is worth noting that the FI representatives had probably had the opportunity in 1978 to meet informally some of those heads of State as they were taking part in the South Pacific Commission's annual meeting in Noumea, and notably the official Papuan representatives.

<sup>8</sup> At the time only Australia, New Zealand, Fiji, PNG and the Solomons were UN members. Besides, it is worth pointing out that Francis Bugotu, as soon as his term as SPC General Secretary ended in November 1986, travelled to the UN to ask for New Caledonia to be put on the list of territories to be decolonized by the UN.

<sup>9</sup> *Pacific Islands Monthly* (PIM), September 1979, p 11. This list is also known as the list of the 'territories to decolonize.'

<sup>10</sup> *Ibid.*, p 13. This amounted to saying that at the time France tended to regard her overseas territories as *assimilated* (an administrative notion applied to overseas departments) and not *integrated* (a notion which implied a greater recognition of an administrative and political self-rule and which was supposed to apply to overseas territories).

<sup>11</sup> *Ibid.*, p 12

<sup>12</sup> 10th Forum communiqué, Honiara, Solomons, 9-10 July 1979

Events of 1986 show still more clearly how far-reaching Melanesian action was, for that year the Melanesian states, PNG, Solomons and Vanuatu, led by Walter Lini, decided to create the Melanesian Spearhead Group. One of the objectives of the Group was to provide support to the Front de Libération Nationale Kanak et Socialiste (FLNKS) as it fought for New Caledonia's independence.

The Melanesian Spearhead Group kept pressuring the other Forum member states until, in 1986, the regional organization accepted to act in favour of FLNKS. As a result, on 2 December 1986 New Caledonia was reinstated on the UN list of non-self-governing territories, a real political victory for the MSG (and for FLNKS).<sup>13</sup>

Despite a fairly informal organization, the initial members of the Melanesian group<sup>14</sup> had set up some operating rules to promote what they called the 'Principles of Cooperation', defined and adopted in 1988. These principles were neither a constitution nor a charter; they did not even require compulsory commitment to supra-national cooperation. Their purpose was to promote three main objectives: national independence, territorial integration (notably through the development of a Free-Trade zone) and non-interference.

MSG decisions, as within the Forum, are reached through dialogue and consensus. Biennial summits are held a few weeks before the (yearly) Forum member states' summit in order to determine common strategies to influence the Forum's decisions directly involving one or more of the Melanesian states (or territories). Support for Kanak independence and keeping New Caledonia on the list of non-self-governing territories were for a long time an essential priority in those strategies.

### **1. The issue of whether the creation of the MSG showed up any rivalries**

Among the three initial MSG members, Solomons, unlike PNG and Vanuatu, is certainly the nation that never showed any ambitions for regional leadership.

Solomon Islands is the third-highest populated island state in the South Pacific, next to PNG and Fiji, and they are the second biggest, after PNG. The country has a great variety of natural resources and a certain potential for economic development. The infrastructure, the service sector, and the standard of living, however, have always been rather poor. As a result, the Solomons have generally shown a more cautious and more measured approach than their Melanesian neighbours. Thus, even though in 1984 the former Prime Minister Solomon Mamaloni had called for the creation of a specific Melanesian group within the Forum, the Solomon Islands have never sought leadership in the region. A foreign policy statement in 1985 proclaimed that as a small state dependent on and vulnerable to changes in the global economy and devoid of military power, the country had chosen to adopt '... a

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<sup>13</sup> After the creation of the Melanesian Spearhead Group and the reinstatement of New Caledonia on the list of non self-ruling territories in 1986, FLNKS, now recognized as a *national liberation movement*, was allowed to submit in 1987 to the UN a blueprint for a Constitution set up by the Kanaky provisional government. The blueprint had been reported as early as 1984.

<sup>14</sup> PNG, Solomons, Vanuatu. Fiji did not join MSG until 1998. See below.

multidimensional approach at the bilateral, regional and multilateral level.<sup>15</sup> Despite this realistic and humble attitude, however, the Solomon Islands have always had a firm stand against nuclear testing and the stockpiling of nuclear and toxic waste in the region, and they have always opposed 'all forms of colonialism', although not without some caution, as we can see from this statement, in which the Solomon Islands government was committed to doing 'anything possible and reasonable to help South Pacific colonized people gain independence'.<sup>16</sup>

Unlike the Solomon Islands, PNG has, since it gained independence in 1975, shown its conviction that it should have leadership in regional affairs. The Papuan leaders, and especially Sir Michael Somare, considered that this role fell naturally to PNG because its physical features (area, population, mineral resources) are longer than those of the other South Pacific island nations.<sup>17</sup>

Besides these arguments, PNG's aspirations to be the Pacific Islands leader was partly linked to its will to assert independence and differentiate itself from its former colonial power, Australia. On account of British colonization, and later Australian administration, PNG considered it had been dispossessed of its role as a regional leader, contending it rightfully deserved the title. As a result, PNG adopted a 'universalist' policy, meaning that the nation wanted to establish relations on an equal footing with any country with which it had mutual interests and benefits.

Beyond PNG's relationship with Australia, the Papuan military intervention in Vanuatu in 1980 further illustrates the role PNG meant to play in the region, even though that intervention was actually outfitted and orchestrated by Australia.<sup>18</sup>

PNG expressed its will to break with the past and lead the island states towards a firmer stand in asserting regional politics; so PNG criticized the South Pacific Commission (SPC), which it perceived as an outmoded colonial institution. The criticism was strengthened by the fact that the organization's headquarters were located in Noumea, which, according to PNG, illustrated a French 'illegitimate'<sup>19</sup> influence. PNG argued for a 'Single Regional Organization', to replace the SPC, which would have combined the functions of the Commission, the Forum and the other regional organizations. The new body would have been

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<sup>15</sup> Stephen Henningham, *France and the South Pacific, A Contemporary History*, Honolulu, University of Hawaii Press, 1992, pp 204-205. At that date, Mamaloni was no longer Prime Minister, having been overthrown by Sir Peter Kenilorea in November 1984.

<sup>16</sup> A document by the Solomon Foreign Affairs Ministry, Foreign Policy of Solomon Islands Government, Honiara, 1985, pp 1-6, (quoted in Henningham, *France and the South Pacific*, p 205)

<sup>17</sup> PNG alone covers 4/5 of the total land area in Oceania, and 84 per cent of its population. Solomons is the second biggest in area and third biggest in population, after Fiji. See Paul De Deckker, 'Le Pacifique: à la recherche du développement dans un espace émiétté', in 'Les outre-mers face à l'intégration européenne et à la mondialisation', *Revue française d'administration publique* (ENA), no 101, 2002/1, pp 157-158

<sup>18</sup> This emphasizes the fact that Papuan dependence on Australia was still quite real at the time. But this could also emphasize Australia's double aspiration to guarantee regional stability while deferring to the sovereignty of Oceanian island states.

<sup>19</sup> Henningham, *France and the South Pacific*, p 197

made up only of island states, even if funding was supposed to be provided by the current and former administrative powers, and also by other donor countries. This proposal fell through.<sup>20</sup>

One aspect of PNG's regional ambition was its rivalry with Fiji. While both countries emerged and gained independence at almost the same time, PNG's aspirations have always seemed a little out of step with Fiji's, and PNG has even seemed to be overshadowed by Fiji, which enjoyed a major regional and international influence.<sup>21</sup> This rivalry lasted until the first coup in Fiji in 1987.

As PNG considers itself a bridge between Southeast Asia and the Southern Pacific, it has geared a significant part of its foreign policy to developing good relations with its closest neighbour, Indonesia. PNG realized Indonesia's territorial ambitions with the transfer to Indonesia of West Papua ordered in 1963 by the UN. As a result, PNG's commitment to the creation of the MSG could be accounted for by the fact that by advocating a very firm stand in the face of France on the issue of Kanak independence, PNG could conceal its powerlessness on the issue of West Papua. PNG's commitment could also enable it to divert its Melanesian neighbours' attention from its lack of support for the separatist movement Organisasi Papua Merdeka (OPM).<sup>22</sup>

Like PNG, Vanuatu (and Walter Lini) aspired to a leadership role in the South Pacific, although this role was based upon ideological and moral foundations rather than geographical and physical foundations. As early as Vanuatu independence in 1980, Walter Lini had decided to make support for the FLNKS one his key foreign policies. This attitude can be accounted for by the fact that the New Hebrides Condominium had trouble with the French administration in gaining independence (whereas the British had not opposed independence; they had even wished for it). To support the separatist Kanak movement, Walter Lini talked PNG and the Solomons (but not Fiji) into creating the MSG, which could appear as one of the key instruments in Lini's foreign policy. Lini also developed the concept of 'Melanesian socialism', a 'post-colonial ideology' supposed to allow a 'Melanesian renaissance' and give an identity to the new state, Vanuatu, by making custom ('kastom') the foundation of a progressive evolution of society. 'Melanesian socialism' was also to allow the promotion of

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<sup>20</sup> Since 1987, however, the PFS has partly responded to PNG's concern by extending the role of the PFS's Secretariat and restructuring a former coordination committee. The SPOCC, South Pacific Organization, created in Suva in February 1989, and turned in 1999 into CROP (the Council for the Regional Organizations in the Pacific) secures the link between the two big regional organizations, for the Council for Regional Organizations in the Pacific includes the SPC, the Forum and eight regional organizations that are related to it, including, for example, the Forum Fisheries Agency (FFA), SOPAC, and the University of the South Pacific (USP).

<sup>21</sup> See *infra*.

<sup>22</sup> Nor did the UN heed calls from the separatist guerrilla movement Organisasi Papua Merdeka (OPM) for a reopening of the free-choice act, sanctioned by the UN. The UN had allowed the transfer of the former Dutch territory, West Papua, to Indonesia. Part of the Papuan population across the border had therefore developed support networks for the neighbouring separatists, and this could jeopardize the already delicate relationships between PNG and Indonesia. PNG was thus caught between the aspiration for reunification and the necessity to safeguard peaceful relations with Jakarta; moreover, PNG was under pressure from Vanuatu, which proclaimed its diplomatic support for OPM in the name of the defence of the Melanesian people's interests. See Stephen Henningham and D Ball, 'South Pacific Security. Issues and Perspective', *Canberra Papers on Strategy and Defence*, No 72, ANU, Canberra, 1991, p 71.

cooperation between Melanesian states, notably by setting up a 'common foreign policy among the states of Melanesia'. This notion was directly linked to that of the 'Melanesian Way', which is close to 'Melanesian solidarity' and to the notion of exchange, another MSG basic principle. The 'Melanesian Way' was also seen as a counter to Ratu Mara's 'Pacific Way, which was perceived as a kind of 'Polynesian Way', too timid on regional and extra-regional issues, notably with regard to Kanak independence.

## 2. Does the MSG foster regional division?

At that juncture the question was whether the Melanesian group was to be viewed as a threat to cohesion within the South Pacific. That was not the way the Forum felt; the Forum houses other groups, such as The Smaller Island States Group.<sup>23</sup> Further, through the impetus given by Gaston Flosse, a Polynesian response *has been* attempted. But the plan to found the 'Polynesian Peoples Community' based upon the famous 'Polynesian Triangle' (Hawaii, New Zealand, Easter Island) never got off the ground. Flosse invited Polynesian authorities to discuss it in his offices in Paris, then in Tonga, in Samoa, and in the Cook Islands, where the headquarters of the community were planned to be located.<sup>24</sup> Bylaws were drafted and headquarters were supposed to be installed in the Cook Islands. It was to be an economic tool setting up a common international bidding system in purchasing basic foods.<sup>25</sup> The cultural aspect of the plan aspired to bring new life to the culture and shared identity of Polynesian peoples. But, purportedly, the political part of the plan 'met with pretty strong reluctance, especially on the part of New Zealand. New Zealand saw in it a potential destabilizing factor in its socio-ethnic mix between Pakeha and Maori' as well as in relations between New Zealand and its former colonies (Samoa, Niue, Cook Islands).<sup>26</sup> The political aspect was based on the idea that the planned community should be used as a tool to counterbalance the development of the Melanesian Spearhead Group and its weight in the region.

## 3. Fiji's ambiguous situation

While Fiji belongs to the group of Melanesian states, the Lau Islands, to the east of the archipelago, were long part of Tonga before they were annexed by the Fijians in the 19th century. These culturally Polynesian islands are in some ways the breeding ground for Fijian rulers.<sup>27</sup> Fiji's location as a crossroads in the heart of the South Pacific both at the geographic and ethnic level is one of the factors that made it easier for Fiji to develop its role within the region as well as with international organizations.

Fiji's status, not as a leader but rather as an Oceanian spokesman,<sup>28</sup> is partly due to its large population,<sup>29</sup> to its relatively significant economy,<sup>30</sup> and to its central geographical location in

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<sup>23</sup> Interview with Iosefa Maiava, Deputy Secretary of the Pacific Islands Forum, Suva, Fiji, 7 July 2003. The Smaller Island States Group includes the Cook Islands, Kiribati, Nauru, Niue, the Marshall Islands and Tuvalu.

<sup>24</sup> Paul De Deckker, 'Le Secrétariat d'Etat au Pacifique Sud. Pour une politique du développement ou un développement du politique?', in Jean-Marc Regnault, ed., *François Mitterrand et les territoires français du Pacifique, 1981-1988*, Paris: Les Indes savantes, 2002, p 504

<sup>25</sup> A system that Gaston Flosse had successfully practiced in French Polynesia.

<sup>26</sup> De Deckker, p 505

<sup>27</sup> Ratu Mara, Timoci Bavadra, Sitivenu Rabuka, and Laisena Qarase are (or were) all from these Polynesian islands and are (or were) generally heirs to a local chiefdom.

<sup>28</sup> Fijian rulers have always denied that they want their country to play such a role.

the region. But it is also due in large part to the fact that Fiji emerged from colonization with a clearly-drawn political identity that it had acquired before independence. From 1970, Fiji's leadership role was also largely a result of the personality of its 'chief', Ratu Sir Kamisese Mara,<sup>31</sup> and to the positions he defended both on the regional and international scene. Ratu Mara's commitment was sometimes perceived as a will to gain regional leadership. Indeed, Fiji seemed to be a central player in regional institutions, not only by reason of its political stature but also because throughout their creation process, the regional organizations (except for the SPC) located their headquarters in Suva. Gradually, the international organizations likewise located their regional agencies there, thereby reinforcing Fiji's centrality in the South Pacific.

Yet, notably within the Forum, Fiji's position was 'conservative' in that it sided, together with the Polynesian states, with Australia and New Zealand to support the creation of a nuclear-free zone. It also took a more moderate stand on its support for the FLNKS than did the other Melanesian states.

Fiji's conception of regional politics, as it was advocated by Ratu Mara in particular, has always had a global dimension, and this attitude is viewed as one of the ways of being listened to and winning the support of the international community for the benefit of the region. That is why Fiji proved the most antagonistic to France (Fiji took a stand against French nuclear activities). In some ways, this attitude allowed it to have the ear of and a wider support from the international community for the region's cause. It also secured a fairly significant prestige for this small state, which nonetheless sought to retain the possibility to develop bilateral relationships with France and protect its immediate interests. Initially, Fiji's commitment to decolonization was not about the New Caledonia issue, but it further illustrated its commitment to defending Pacific Islands' interests. Indeed, Fiji initially submitted requests or resolution plans at the United Nations General Assembly for the benefit of Oceanian entities still under Australian, New Zealand or American administrative rule.<sup>32</sup>

Regarding New Caledonia, Fiji's dual stand was expressed in different ways depending on whether Fiji was speaking within the Forum or on the international scene. Fiji was charged with being 'conservative' by the Melanesian states and had actually always gone along with the moderate stand of the rest of the Forum on the issue of Kanak independence. Until 1986, Fiji also refused to contemplate the request to put New Caledonia again on the Committee of 24's list.<sup>33</sup> Fiji's belonging to this committee, however, was important in that, from 1986 on,

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<sup>29</sup> Fiji's population, 800,000, is the second largest after PNG

<sup>30</sup> With a GDP in the range of five billion US dollars (2004), Fiji is second behind PNG (11.9 billion in 2004).

<sup>31</sup> Actually, Ratu Rama was the Lau Islands' 'Supreme Chief' ('Ratu').

<sup>32</sup> Fiji introduced two resolution plans at the General Assembly in 1973 to encourage Australia and New Zealand to remain committed to the decolonization process. Fiji also supported a third resolution calling for self-determination in American Samoa, in the Gilbert and Ellice Islands, in the Solomons, Pitcairn, Guam and New Hebrides. A few years later, the Fiji UN representative was even at the head of a UN delegation in the New Hebrides as part of the decolonization of the Condominium. Fiji, and the Forum as a whole, however, during the 1979 summit, advocated only self-determination rather than independence of the New Hebrides, and that, given the troubled context in which independence might take place, was a serious concern for Walter Lini.

<sup>33</sup> Or UN Committee for Decolonization. Fiji was and still is a member of the committee.

it further allowed the region to be heard on the international scene and at the same time it made Fiji a major player in promoting the interests of the whole region and not only Melanesian interests.<sup>34</sup>

Initially, Fiji, although it is a Melanesian country, had decided to privilege its relationships with Australia and the Polynesian states, or even its regional neutrality. That is why Fiji declined the invitation to join the Spearhead Group when it was created in 1986. During the year that followed the 1987 coup, however, among the Forum members, only those that were members of the Spearhead Group, and specifically Michael Somare's PNG, had shown solidarity towards their 'Melanesian brother' and, in the name of the non-intervention principle, they were against the Forum taking a stand on the situation in Fiji.<sup>35</sup> Indeed, the 1987 and 1988 Forum communiqués do not refer at all to the coup or even to Fiji. Yet, Fiji continued to fudge on the Melanesian offer to join the Spearhead Group until 1996, when it was invited one more time and eventually accepted the offer to join the MSG Trade Agreement. This initiative was approved in 1997 during the MSG leaders' summit, and Fiji became an MSG member in April 1998.

## **II. Refocusing the MSG: from idealism to pragmatism**

After the MSG's political 'victory' with New Caledonia being back on the UN Decolonisation Committee list in 1986, the Matignon-Oudinot Agreement and the Noumea Agreement in some ways removed one part of the MSG's *raison d'être*, namely support for New Caledonia's independence. The MSG's support of FLNKS was not discontinued, however, since the separatist group was accepted with an observer status in 1991 and as a full member in 1999. Besides, to assert that the FLNKS legitimately belonged to the Melanesian group, Rock Wamytan, the FLNKS Chairman, was appointed MSG chairman from 2001 to 2003. However, as the breakaway party was now recognized by France and joined New Caledonian government authorities, and as the self-rule referendum is planned for in the Constitution, support for the separatist cause by the MSG no longer seemed so compelling.

### **1. Mandatory refocusing**

This development, and the fact that Melanesian states were going through growing economic hardships, led the Spearhead Group to focus anew on its initial principle, i.e., Melanesian unity through a free-trade agreement reached in 1993 and turned into a free-trade zone in 2006. This necessary refocusing on economic issues had also been emphasized by Fiji's long-standing refusal to join the MSG, as Fiji did not agree with the Melanesian group's political ambitions.

According to Maxime Carlot, Vanuatu Prime Minister from 1991 to 1997, Fiji's refusal to join was due to its reluctance to associate with a less developed group of countries that seemed bent on decentralizing Fiji and the University of the South Pacific.<sup>36</sup> Refusing to join the group, then, seemed like the best way for Fiji to avoid being confronted with the

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<sup>34</sup> Today, PNG is also a member of the committee.

<sup>35</sup> N Macqueen, 'The South Pacific: Regional Subsystem or Geographical Expression?', *Working paper*, no. 214, Strategic and Defence Studies Centre, ANU, Canberra, 1990, p 6

<sup>36</sup> Maxime Carlot. Interviews, Port Vila, Vanuatu, 2 July 2003

aspirations of its Melanesian ‘brethren’. Nonetheless, there can be other ways of accounting for this reluctance. When it first gained independence, Vanuatu (or more exactly Walter Lini) had harshly criticized Fiji’s pro-American stand.<sup>37</sup> This approach, which aimed to strengthen the rationale for the notion of ‘Melanesian socialism’, castigated Fiji because Vanuatu deemed it a selfish state which rejected the solidarity ‘kastom’. Rather than attracting Fiji, this censure prompted it to further legitimize its refusal to join the group. Another account for the refusal can be based on Fiji’s geostrategic interests. Owing to the major position of France within the European Union,<sup>38</sup> but also to France’s support after the 1987 coup, the French government had to be treated with deference, and that was not the Melanesian group’s objective. Lastly, at the national level, the Indo-Fijian issue, which still destabilized the political, economic and social life of the country, had probably prompted Fiji to show some restraint on the New Caledonia issue.<sup>39</sup>

By accepting to join the MSG and its free-trade agreement in 1996<sup>40</sup> – and then actually joining in 1998 – Fiji, because of its much greater economic weight than that of the other members, quickly wrecked – involuntarily – the fragile trade balance, especially with Vanuatu. At that juncture, some ni-Vanuatu political officials accused Australia of using Fiji to conduct a policy of dumping within the Melanesian group.<sup>41</sup> As a matter of fact, the modest and faltering economies of the group members can by themselves account for the fact that this economic project is still not successful, just as they can also account for Fiji’s long reluctance to join the Spearhead Group.

## 2. Economic centrality

This refocusing on economic issues is emphasized in the MSG’s 2007 Charter which states in Article 2 that the prime objective of the Melanesian group is trade.<sup>42</sup> This is an illustration of the extent to which in the South Pacific, ‘Foreign Affairs is Trade’. This economic relationship, illustrated particularly by the magnitude of trade with the European Union (Yaounde, Lomé, and Cotonou Agreements in chronological order), is the same vis-à-vis the People’s Republic of China. China, in recent years, has increased the number of its trade contracts in the region. It has also secured funding for numerous infrastructure projects, especially within the Melanesian states, and notably the MSG’s headquarters in Port Vila. The emergence of China on the regional scene could be accounted for by China’s need to increase its supplies of raw materials (as it has done in Africa). It could also be the result of its single China policy through which the PRC attempts to prevent or reverse the process of

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<sup>37</sup> S Vérines, ‘La Politique des micro-Etats du Pacifique Sud’, *Politique étrangère*, 1/1987, p 104

<sup>38</sup> Fiji has always been largely dependent on the European Union’s sugar policy.

<sup>39</sup> Gérald Cortot, interviews, Noumea, New Caledonia, 19 June 2003

<sup>40</sup> At the time, Fiji and PNG were committed to cutting their customs duties on a number of products between 2003 and 2010, and Solomon and Vanuatu had done the same over the 2005-2012 period.

<sup>41</sup> Vincent Boulékone, interviews, Port Vila, Vanuatu, 26 June 2003

<sup>42</sup> Article 3: Objective: The purpose of the MSG is to ‘promote and strengthen between its members trade, the exchange of Melanesian cultures, traditions, values, sovereign equality, economic and technical cooperation and the adjustment of policies to serve the objectives shared by MSG members regarding economic growth, sustainable development, good governance and security.’



diplomatic recognition of Taiwan.<sup>43</sup> The organization of the China-Oceania summits in Suva in 2006 and in Beijing in 2008 is another example of the Chinese policy of global economic presence.

Besides, Melanesian statements generally critical of Australian and New Zealand interventionism cannot make us forget that Australia and New Zealand, the two regional powers, still remain the major economic partners of the Melanesian states, and in particular of PNG, which, moreover, is the major recipient of Australian aid to Oceanian states.<sup>44</sup>

And despite repeated covert appeals made to New Caledonia, New Caledonia has still not accepted to join the MSG free-trade zone. During its 15th Summit in 2003, the Melanesian group had even asked the FLNKS delegation to try to talk New Caledonia into joining the zone. Does that mean they are using the FLNKS as a lever to promote the MSG's economic interests or a gradual reverting to politics by the MSG?

## II. The ambiguous politicisation of the MSG

### 1. The MSG confronting the 'Melanesian Arc'

The 'Melanesian Arc of instability' is symbolized by the 1987, 2000, and 2006<sup>45</sup> coups in Fiji, the climax of the secession crisis in Bougainville in 1997, the civil war in the Solomons in 1998 and continuous governmental weakness in Vanatu. This instability, however, seems paradoxically to have strengthened Melanesian solidarity. The contention can be borne out by the contents of the Forum's annual communiqués wherein the Melanesian states always see to it that the non-interference principle in the member states' domestic affairs be respected.

Criticism and the increasingly firm stand taken by Australia and New Zealand, particularly with regard to Fiji, have in some ways strengthened Melanesian solidarity, as symbolized by the welcome extended to a Fijian interim representative when the MSG's incorporating document was signed in March 2007.<sup>46</sup> This, however, did not mean that the Melanesian group backed or condoned the situation in Fiji. The idea was to avoid isolating Fiji, a Melanesian State. Yet, given the 'coup culture' in Fiji (a phrase used by the interim Prime Minister Bainimarama), that parliamentary elections are continuously put off, and that Fiji declined to attend the latest Forum Summit in 2008, we might see MSG's support of Fiji taper somewhat. However, given the Summit's communiqué of August 2008, it might seem that this is not the case as PNG offered to host a special Forum meeting by the end of 2008 to further discuss the Fijian issue and in order to help that country quickly restore democracy.

### 2. The MSG and the 'New Melanesians'

Some small states or territories located in the northwest extension of the Melanesian Arc seem to have realized the political, even geostrategic interest of claiming a Melanesian identity. That is notably the case for Timor, which gained independence in 2002 and still

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<sup>43</sup> It is worth noting that six Oceanian nations, including a Melanesian one, recognize Taiwan. They are Kiribati, the Marshall Islands, Nauru, Palau, the Solomons and Tuvalu.

<sup>44</sup> For the 2008-2009 period PNG will get about 390 million Australian dollars and the other Pacific islands will get 182 million, [www.ausaid.gov.au](http://www.ausaid.gov.au)

<sup>45</sup> Cf. *supra*, Richard Herr's paper

<sup>46</sup> *Flash d'Océanie*, 27 March 2007

considers being a neighbour of Indonesia – the former ruling power – a direct threat to its security. By claiming to be Melanesian, Timor wishes to be integrated into the Melanesian, and therefore to the Oceanic zone.

The West Papua issue is a still greater concern for Papuan separatists, but also for the MSG's credibility. In 2001, a special self-rule law had been enacted by Indonesia for its Papua Province in order to try to put a stop to the violence which had been going on since 1963. Yet, in 2003, in total violation of this law, the Indonesian Papua Province was split into the two provinces of Papua and West Papua, because, among other reasons, Indonesia sought to eliminate rebel and separatist movements.

Now it appears that for some years PNG has been blocking the proposal from Vanuatu and later endorsed by Fiji, the Solomons, and the FLNKS, to grant West Papua MSG observer status.<sup>47</sup> We wonder whether this does not mean the resurgence of a leadership rivalry between Vanuatu and PNG. Maybe not, but it is worth remembering that the MSG's *raison d'être* was, among other things, to support all Melanesian peoples fighting for independence, and just the Kanaks.<sup>48</sup> So there is consistency in Vanuatu's position. The 'Melanesian Way', however, seems to prevail, as the MSG's official stance after the 2008 summit was to defer to PNG's decision to ignore the West Papua issue. PNG justifies this position by stressing the importance of building with Indonesia a relationship based on trust. PNG's Foreign Affairs Minister has emphasized that the West Papua issue is a domestic issue which should not be raised within the MSG. Thus PNG invokes another MSG founding principle, non-interference in the domestic affairs of another nation. This policy can be traced in the Forum's communiqués. The Forum touches lightly on the West Papua issue.<sup>49</sup> During the 2007 Forum summit, PNG offered to report the Forum's debates to the Indonesian President, thus showing its desire to retain control on this issue. It is worth noting that PNG is the only nation to face a difficult geostrategic context; most of the other Pacific states or territories are 'protected' by their strictly Oceanic environment.<sup>50</sup>

### 3. The MSG and New Caledonia

It is interesting to consider the FLNKS's relevance within the MSG, for the question of whether the FLNKS is a full member of the MSG is debatable.

On the one hand, the answer is clearly in the affirmative. Article 2, paragraph 1 of the 2007 Charter states clearly that the MSG includes the Republic of Fiji, PNG, the Solomon Islands, the Republic of Vanuatu and New Caledonia's FLNKS, and in Rock Wamytan, then chairman of FLNKS, chaired the MSG from 2001 to 2003.

<sup>47</sup> *Post Courier* (PNG), 9 October 2006; *Islands Business* (Fiji), 28 May 2008; *Vanuatu Daily Post*, 7 June 2008

<sup>48</sup> It is good to remember that West Papua (and Papua) have a population of about 3 million, as compared to New Caledonia, whose population is under 250,000.

<sup>49</sup> The 2001 Forum communiqué commended Indonesia for the self-rule special law; that of 2006 commended it for implementing the law, whereas the 2007 communiqué briefly emphasized the Forum's concern in view of the continuing violence in Papua and West Papua.

<sup>50</sup> In the summer of 2008, PNG suffered very serious border violation problems on the part of Indonesian forces. *Flash d'Océanie*, 17 July 2008.

However, can the FLNKS really be considered a full member since it is not a party to all the agreements or decisions between or by ‘member states’? The Charter’s last paragraph, where signatures are affixed, states that invoking Article 19-5 (on the possibility for non-independent organizations or territories to express reservations), the FLNKS has reservations about Articles 10, 11 and 12 in the Charter. These articles deal with meetings by Foreign Affairs Ministers (who, among other things, determine the MSG’s general policy), meetings between high-ranking officials, and meetings between trade and economic officials. Thus the FLNKS does not take part in core MSG decisions, and as a result, its role is diminished and may seem a merely nominal one. Moreover, some formal speeches by representatives of MSG member states ‘forget’ the FLNKS when it comes to listing MSG ‘member states’.

Besides, can a group such as the FLNKS legitimately represent the territory of New Caledonia within the MSG? Moreover, the New Caledonian government appears to be supplanting the FLNKS within the MSG. Since 2002 the New Caledonian government has been arousing genuine interest on the part of the other MSG members. In 2002, the New Caledonian government, after challenging the FLNKS’s right to host an international meeting using New Caledonia taxpayers’ money, became the official host of the MSG’s annual meeting. By accepting this invitation, the Melanesian group recognized the legitimacy of the ruling government group,<sup>51</sup> and therefore, more broadly, France’s presence in the region.

A new stage in the rapprochement between the MSG, and in particular Vanuatu, and France, was reached during the ni-Vanuatu Prime Minister’s visit to Noumea in May 2003. Mr Natapei did not hesitate to assert that he would support New Caledonia’s application for MSG membership. Contemplating New Caledonia’s presence within the organization underscores the MSG’s shift in outlook. New Caledonia’s stability, wealth, and its special relationship with the European Union<sup>52</sup> foreshadowed positive consequences for the four Melanesian states, notably regarding the Melanesian free-trade zone. The first SPC deputy chairman confirmed this assumption, stating that ‘real MSG interest is now in New Caledonia’s economic potential’.<sup>53</sup> This was one of the reasons behind the MSG meeting in New Caledonia in 2002: The members of the Melanesian delegation were very much interested in nickel and in New Caledonian knowledge in this field.<sup>54</sup>

The other MSG members are very interested in New Caledonia on account of its political stability, its financial and technical abilities (notably in mining development) and in the development of its aid and cooperation policy with regard to the region, and in particular the Melanesian states. So the question is: Is New Caledonia as a whole more interesting as a member than the FLNKS? Will the MSG have to choose between Melanesian solidarity and pragmatism? At any rate, the MSG asked the FLNKS in 2003 to talk New Caledonia into joining the free-trade zone, and Article 1 paragraph 3 of the 2007 Charter allows for the MSG to invite observers, associate members, or special guests to join. New Caledonia, which is

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<sup>51</sup> It is true that it is a collegial power, since FLNKS is a component of the New Caledonian government.

<sup>52</sup> New Caledonia is in the category of Overseas Countries and Territories, and as a result enjoys privileged links and more benefits than the ACP countries, which include MSG member states.

<sup>53</sup> Yves Corbel, interviews, SPC, Noumea, 6 June 2003

<sup>54</sup> Especially the Papuan representatives

already an associate member of the Forum, could therefore become an associate member of the MSG. But that might mean the MSG withdrawing its support for the FLNKS's cause.

### **Conclusion: the challenges facing the MSG**

Can or should MSG members retain a 'Melanesian Way', a way to manage their relationships and promote their interests within the Oceanian region? Since 2005, the Melanesian states have been having serious commercial disputes (over the trade in cabin biscuits and kava between Vanuatu and Fiji and the corned beef trade between Fiji and PNG). It is also possible to see a potential lack of solidarity, or at least some Melanesian fatigue, regarding Fiji which has been eschewing parliamentary elections and the principles of good governance since 2006.

Similarly, we can observe the very slow emergence of a Melanesian cultural movement. Do the Melanesian Arts and Cultures festivals held every four years since 1998, generate that cultural dynamism wished for since the late 1970s (with the 1978 Melanesia 2000 festival in Noumea, organized by Jean-Marie Tjibaou and others)? While the third festival, held in Fiji in 2006, generated some publicity, the 2002 festival in Vanuatu was disappointing because the other MSG members showed little interest in it. Is it a latent lack of interest on the part of the Melanesian states in these activities or a harsh lack of funds to ensure genuine cultural development?

In May 2008 the MSG confirmed the appointment of its first Director General, PNG's economic counsellor, Rima Ravusiro. The brand new Secretariat buildings were funded by China. China also subsidized other infrastructure projects in Melanesian countries and signed numerous trade agreements. As a result, one wonders whether the group will be able to preserve its independence in the face of an increasingly active power in the region.

All these questions underscore how fragile the MSG is. Now the South Pacific (or, more precisely, Oceania) needs a strong Melanesia to be able to achieve the four main objectives of its Pacific Plan set up in 2005: good governance, economic growth, sustainable development and security. It is probably in this context that PNG, among others, revived the debate in 2008 about a possible Regional Union, a South-South type of cooperation. This concept, born some twenty years ago, is in some ways the extension of the Melanesian free-trade zone to the whole Pacific Island region (excluding Australia and New Zealand). In this plan it is also possible to detect the Melanesian ambition to establish their supremacy in the region.

The MSG should have a clear position with regard to New Caledonia. As New Caledonia has for many years been invited to join the free-trade zone, will it be a more appropriate member than the FLNKS? Will the MSG have to choose between Melanesian identity and pragmatism? It is interesting to point out the irony of the situation. Initially New Caledonia's inclusion was challenged, due to its status as part of France. It appeared at that time as a factor in Melanesian cohesion *for* FLNKS's benefit and *against* the New Caledonian government. Now the MSG's message seems to be that Melanesian unity can only be achieved *with* the New Caledonian government.



## II. The Present: the emergence and development of regional organizations in Melanesia

### 19. The diversity of regional organizations: a general overview

†Paul De Deckker<sup>1</sup>

#### Introduction

Producing an exhaustive analysis of regional organizations in the Pacific is an impossible task, as the area has an impressive number of multilateral formal and informal organizations and associations linking Pacific states in many fields. They range from sports organizations to religious, education, cultural, and trade organizations to organizations concerned with regional telecommunications and stamp collecting. The main purpose of all these organizations is to foster cooperation in the proper sense, and therefore to pool ideas as well as possibilities for action and the financial resources necessary for their proper operation.<sup>2</sup> They are also a communication tool, a tool for encounters between their members who live on archipelagos scattered on the surface of the Great Ocean. These organizations have made people aware that they belong to the same region, and even that they share a common identity.

The geographical makeup of the Pacific Islands acts like a protective shield. At the military level there is no need for internal alliances insofar as archipelagos are too distant from each other and thus are not a threat to their neighbours. Moreover, the alliances made with Western countries since the end of World War Two have been protecting them from any real danger of outside intrusion, and the United States, France, Australia and New Zealand entertain close military relationships. While some occasional problems have arisen (and we will review them here), they have never really jeopardized the region's stability. The Pacific island states are all fundamentally Christian, as many of their Constitutions show – they ask for Almighty God's protection. That did not keep some of those states from entertaining

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<sup>1</sup> University of New Caledonia

<sup>2</sup> For example: the South Pacific Forum Line for shipping, Air Pacific for air transportation, SOPAC for mineral prospection.

occasional relationships with the Soviet Union or China, but the motives for those relationships were mostly financial. From an ideological standpoint, the Pacific island nations belong to the Western camp, although they retain their own operating principles, focused on custom and tradition as well as Christianity, conjoined in a peculiar mix.

For about 30 years this peculiar way of doing things in the region has been known as the 'Pacific Way'. Its two underlying requirements are tolerance and consensus. Because the common good or the common interest must prevail, they end up in agreement. All opinions are expressed and debates are supposed to end in general approval. Votes are seldom, if ever, used, except when there is no other way, for indeed, a vote allows a majority to emerge, but as a result, some people, groups or parties are shut out of the process. Whenever possible, a general approval is sought in order to reach a consensus.<sup>3</sup>

This system by no means implies that there are no differences or disagreements. Actually, there are many.

Fiji has often been criticized for seeking leadership within the region. True, Suva, the nation's capital, hosts the foreign diplomatic posts with jurisdiction over the other island states; Suva houses the branches of the main international organizations such as the European Commission's delegation for the Pacific, the World Health Organization and the United Nations Development Program's regional bureaus, etc., and the headquarters of intra-regional organizations such as the University of the South Pacific and the South Pacific Forum Secretariat. Fiji's former President Ratu Sir Kamisese Mara's personality contributed much to this situation, as he was Prime Minister for 17 years.<sup>4</sup> His charisma, his *mana*, as they say in the Pacific, was such that in some cases he could seem in the view of his foreign partners to be the natural spokesman for the region.<sup>5</sup>

Consensus does not always show up in the latent opposition between the Melanesian Arc nations and those of the Polynesian Triangle. Enmities are first and foremost the result of geology; the Melanesian archipelagos are better endowed with natural resources, and consequently, they feel superior because they need less foreign subsidies for their development. They have something to sell and develop, so they can have a more favourable position with some serious advantages in regional organizations. This is not the case for Polynesian states or territories. They have only a few agricultural and fishing resources, and as a result, they are necessarily much more dependent on foreign aid with little to give in

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<sup>3</sup> This means that the system is not based on majoritarianism.

<sup>4</sup> This aristocrat (1920-2004), who was born to a paramount chieftom in Fiji (Lau), headed negotiations with London leading to independence in 1970. He became Prime Minister, and he was continuously re-elected until the 1987 election. A very skilled politician, a Pacific regional development theorist, Ratu Mara was constantly supported by Australia, New Zealand, the United States and Europe in most of his actions. The two 1987 coups detracted somewhat from his prestige in power circles. A short time after the 1987 coup, he became Prime Minister again until 1992. He succeeded his friend Ratu Sir Ganilau as Fiji President in 1994 and retired from politics shortly after the third coup in May 2000.

<sup>5</sup> Criticism of Fiji regarding this pre-eminence within the region came mainly, and still comes from Papua New Guinea. Each of the Prime Ministers of Papua New Guinea since 1975 has contended that as his country is the major state in the region in terms of area and population, Papua New Guinea should house more regional and international agencies represented in the Pacific.

return. Further, just like Micronesia, Polynesian archipelagos have political and customary systems with a strict hierarchical organization which makes them seem more conservative than the Melanesian states. The Melanesian states exhibit anti-colonialist feelings and support for the Third World. This posture has been dubbed by some people Melanesian Socialism.<sup>6</sup>

In Melanesia, several linguistic separations or distinctions must be taken into account. The first group is made up of three countries with pidgin as one of their official languages: Papua New Guinea, the Solomon Islands and Vanuatu. In those countries some 1,000 languages have been found. Managing communications between the various communities required a *lingua franca*. That is how pidgin came about: pidgin, or tok pisin, or bislama, emerged on the plantations; it features a mainly Oceanic syntax combined with mostly English vocabulary. In Fiji pidgin is not spoken, as the official language is English. Alongside English we can find the Bau Fijian dialect, a language into which the Bible was translated, and Hindustani which is spoken by Indo-Fijians. In New Caledonia, French is widely spoken and the local villagers have retained the wealth of their vernacular languages.

The Pacific can also be divided up on the basis of its contemporary colonial history. The United Kingdom and its satellites have imprinted on the peoples' consciousness a worldview that is somewhat different to that conveyed by France and by the United States in their respective territories.

An additional division, related to status, can be found between the independent countries and those that are still in association with or under the rule of the mother country. For reasons that we will analyse, the first countries to gain independence set up a regional organization in 1971 – the South Pacific Forum. Membership is open only to independent countries or countries that have self-government in free association with the mother country.

At first we will provide a reminder of the role of the two main regional organizations. First we will just mention in passing the Pacific Community (Dr Jimmie Rogers will talk about it as he has been very familiar with it for many years); thereafter, we will deal with the South Pacific Forum by providing a quick sketch of the idea underlying its foundation by Ratu Mara.

## **I. Two major organizations**

### **The South Pacific Commission<sup>7</sup>**

While I would not like to encroach upon what Jimmy will say later, nonetheless I would like to mention that the South Pacific Commission, when it was founded in 1947, made it a rule never to deal with political issues. When Pacific island states gained independence, this position became untenable. For France and the United States the word 'politics' meant managing their territories, whereas for the leaders of the newly independent nations it meant determining priorities, for example with regard to development.

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<sup>6</sup> This ideology is clearly stated in Walter Lini's Vanuaaku Pati founding documents. Lini is a former Prime Minister of Vanuatu. Both Papua New Guinea and the Solomons have been sympathetic to this idea, and the ideological foundations of the Melanesian Spearhead show it very clearly.

<sup>7</sup> Since 1997 it has been officially called the 'Secretariat of the South Pacific Commission'



### The South Pacific Forum<sup>8</sup>

Ratu Mara, the then Prime Minister of Fiji – which had gained independence from the United Kingdom in 1970 – decided to found this Forum. Ratu Mara was eager to unite the young independent Pacific microstates to counterbalance the African and Caribbean countries in negotiations in Brussels as part of the Lomé Agreements. Acting on the principle of strength through unity, he was aware that independence processes were well and truly launched, which meant an increasing number of members for the Pacific Forum. Ratu Mara did not want Australia and New Zealand to be members of the Forum, but he had to accept them for economic reasons,<sup>9</sup> as Australia and New Zealand each fund one third of the organization's budget,<sup>10</sup> which is far from being an insignificant contribution. At the same time, there was something in it for the two Western powers because the microstates had to rely on Australia and New Zealand for the necessary services and expertise to prepare the files submitted to the European Union in Brussels. Australia and New Zealand had been shut out of the European Union as soon as the Common Market was created, and now they could access it through the Pacific microstates. This was far from being insignificant, and thus as Australia and New Zealand could find out about the content of negotiations in Brussels regarding priorities for development. They had a constant hope that one or two of their companies as enterprises could benefit from European funding.

As the 1980s drew near, the Forum shifted into a much more political dimension, meaning more specifically partisan politics or confrontational politics, as France was uncompromising about both its nuclear testing in Polynesia and the issue of Kanak independence, which it meant to suppress. The New Hebrides Condominium gained independence in late July 1980, and its Prime Minister, Walter Lini, led an unrelenting fight against France by deciding to join the non-aligned movement. He did his utmost to help the 'Kanak brethren' gain independence. That is how, under Lini's impetus, the Melanesian Spearhead Group was created; it was aimed at New Caledonia and nuclear testing in Polynesia, in that order.

At the end of each of the Forum's annual meetings, which usually bring together the heads of member states, a communiqué is issued. During the 1980s, half of the points raised in the various communiqués were about France in the Pacific. The Forum had become France's pet aversion. The climax was reached in 1985 with the *Rainbow Warrior* failed attempt at intimidation. The sinking of the Greenpeace flagship in Auckland Harbour by the French special services was viewed by the Pacific region as an act of state terrorism. The Forum was winning the battle, and it was there that the decision was made to put New Caledonia back on the UN list of countries to decolonize. A few months later, Francis Bugotu, three months after his term as Secretary General of the South Pacific Commission had ended in September 1986, took the Kanak's request to New York. Bugotu was from the Solomon Islands, and in Noumea he often met with Kanak leaders such as Tjibaou, Uregei, or Yeiwene, all dead now.

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<sup>8</sup> Officially the Secretariat for the Pacific Islands Forum

<sup>9</sup> A statement by Ratu Mara at the Pacific Leaders Conference of the Pacific Islands Development Program in March 1988 at the East-West Center, Honolulu. The content of the statement was slanted by Australia and New Zealand's adverse posture after the two coups in Fiji.

<sup>10</sup> The financial contribution of each of the other 14 members stands at about 2.5 per cent of the total. It is easy to bear for Papua or Fiji, but much less for Tuvalu or Kiribati.

With the Matignon Agreements in 1988, and ten years later the Noumea Agreement which fully included Kanaks in determining the future of New Caledonia, and with the end of nuclear testing, relationships were quiet and dispassionate again, and everybody publicly wished to let bygones be bygones. Besides, priorities have changed as has the spirit that prevailed at the time that the Forum was created.

Now the Secretariat operates by means of an Officials' Committee which makes up the organization's directorate. It operates with about forty officials assigned to the Forum by the member governments or hired by the Forum on contract. The Secretariat has about ten divisions ranging from the ACP-EU programs to oil resources, telecommunications, trade and investments and the Secretariat's own administrative management. It channels foreign funds for specific programs. Therefore, its main objective lies in its ability to provide cooperation between the Pacific Island state governments. The Forum also means to be a link or an agency through which bilateral and multilateral cooperation with other countries and international organizations for development must go.

The Forum was the driving force in the drafting of the free-trade treaty signed in 1980 by Australia and New Zealand on the one hand and the independent island states on the other. This organization now watches over and monitors some 200 development projects. Some of these, such as the Forum's sea line and the Forum's Fisheries Agency have become fully-fledged organizations, separated institutionally from the Forum as they became more and more important.

One question continually arose, and that was whether it was necessary to put a stop to agency duplication – to cut heavy operating budgets and merge the two main regional organizations for better coordination of their respective actions with regard to development. France and the United States were not really in favour of this merger insofar as the Pacific Community was – and still is – the only organization in the region to enjoy a universal scope. Besides, it was not conceivable to run the risk of non-egalitarian development through a single regional organization on the basis of status or political motives.

### **The Pacific Plan**

In Auckland and during the previous Forum meeting in Papua New Guinea in 2005, the Pacific Islands Heads of State and Government approved the Pacific Plan, which was developed and drafted by high-ranking New Zealand and Australian officials. The focus was the strengthening of priorities in the areas of good governance, sustainable development, regional security and economic and trade growth, so as to foster stability in the region.

Experts on development economics are very pessimistic about the ability of Pacific Island states to foster their growth, except for population growth... The funds granted to the tune of millions of dollars or euros have not jumpstarted the economic growth machine. Therefore, it is appropriate to start all over again and decide on the measures to be implemented to achieve the objectives stemming from the plan.

To state things more clearly still, in the view of the regional Western powers, it is necessary to meet the challenges of globalization. Custom and tradition have led to a dead end, even to

failure with regard to economic development and progress. One striking example is public health – cardiovascular diseases and diabetes, despite the amounts that have been spent, continue to wreak havoc. So it was decided to take the appropriate measures! A competent Australian official, Greg Urwin,<sup>11</sup> was appointed as Forum Chairman to see that the structural measures suggested by the two Australasian powers are implemented.

The latest Forum summits (Auckland, Port Moresby, Tonga and Niue) revealed the present concerns of the organization's sixteen member states. Of course it is necessary to read between the lines, as diplomatic practices often mask litigious topics ... It is also interesting to see that more and more partners from outside the region are anxious to take part in the Forum's meetings. This shows that the Pacific is recovering its position as an important region on the world stage, contrary to the assertions of those people who dismiss it as an uninteresting languid space.

Indeed, and as an example, 'the liquid continent' is an extraordinarily rich but overexploited fishing area. Experts have sounded the alarm so that the amount of fish caught by ships often coming from faraway ports (from Europe, America and Asia) can be regulated. Yellow-fin and big-eye tuna are now in danger of extinction. Therefore it is essential to determine and set fishing quotas and see that unauthorized ships are stopped, examined and subjected to penalties. The Pacific island states must be able to earn revenue from fish caught in their exclusive economic zones, and it is imperative that bilateral and multilateral agreements be signed. Moreover, it is necessary to set up air and space surveillance operations for the benefit of the islands. In this respect, Australia, New Zealand and France have decided to pool their resources. That is an example of regional cooperation making it possible to reach a reasonably high degree of efficiency for the benefit of all partners. Greenpeace attended the Forum meeting in October 2007 in Nuku'alofa, the Tongan capital, and stated that in order to avert the extinction of yellow-fin and big-eye tuna, it was necessary to cut authorized fishing quotas in the Pacific by 50 per cent.

The European Union, through its commissioner Louis Michel and its General Director for Development, was present in Tonga. It had to make its new credo heard, a geo-political credo which Brussels had established.

Since the Lomé Agreements and the later Cotonou Agreements, Europe has been subsidizing exports, essentially agricultural exports, from African, Caribbean and Pacific countries (ACP). However, because of new rules imposed by the World Trade Organization (WTO), those practices are no longer authorized. Subsidized purchases should be supplanted by new economic partnership agreements (EPA). The European Union had planned to complete negotiations by 31 December 2007 in order to implement EPAs as early as the following year. Because Pacific countries were very reluctant and because they emphasised that their economies were peculiar and fragile in the face of trade globalization, The EU decided to agree on a provisional intermediate solution pending a general agreement with ACP countries. Louis Michel travelled to Tonga to formally sign the tentative program mobilizing the European Development Fund (EDF) over the 2008-2013 period for Oceanian countries.

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<sup>11</sup> It was specified that he was partly Oceanian, since his wife was from Samoa.

The EU views itself as a partner in the Pacific Plan and predicates its aid on the Plan's implementation. The Pacific Plan, as noted above, consists of structural reforms and it is meant to lead to the strengthening of the four pillars made up of good governance, sustainable development, economic growth and regional security. The EU will contribute to its implementation along with its Western partners in the region, as it is convinced that regional unity is the major key for ensuring a better future for Pacific nations. Louis Michel has clearly stated that the intermediate solution of financially endowing the Pacific nations to assist their development by no means endangers the EPA, which will eventually have to be concluded. The amount of money allotted is 267 million euros.

It is worth noting that the New Caledonian government President, Harold Martin, declared in Nuku'alofa in October 2007 that New Caledonia was eager to become a full member of the Forum in order to better contribute to regional development. For his part, the French Polynesia President, Oscar Temaru, requested support to put his country on the UN decolonisation committee list.

What were the prospects after this major meeting in Tonga? Some issues that were brought to the fore are not clearly mentioned in the final communiqué. There is general agreement on how extremely important sea resources are for the future of Pacific island nations. The Forum's Fisheries Agency was created in 1979 with its headquarters in Honiara. The Agency has been able to negotiate compensatory agreements with nations or companies that do not belong to the region. The Western and Central Pacific Fisheries Commission has taken over to prevent overexploitation of resources, especially by geographically distant countries. Protecting sea resources and seeing that catches do not exceed the standards that have been set is essential. This process requires common operations and a concerted regional cooperation on the part of the islands and the mother countries. In this respect, the Forum will always be important. At the Nuku'alofa meeting it immediately granted an observer status to the Western and Central Pacific Fisheries Commission.

The new Australian Parliamentary Secretary for the Pacific, Duncan Kerr, talked about Melanesia using the symbolism suggested by the words 'arc of responsibility', a short time after taking office in December 2007. Mr Kerr's statement is a dramatic departure from the previous Australian Government's attitude. The previous Government talked about an 'arc of instability'.

There was much talk about organizational structure in the Pacific, a phrase meaning the necessary reorganization one way or another of the two main regional organizations operating under the Pacific Plan. Is there eventually a trend toward a single regional organization set up by redeploying some of the components of the two previous ones toward other structures so that they are more efficient? This is, of course, one of the recurring topics of discussion brought up by the different audits and objections. The small island states are usually reluctant to see this change happen, for they consider that a single organization will not cater for the interests of all members as before. Some see an advantage in such a change: things will be clear again if there are three main components, a political component, a

technical component, and a third component to take care of training by pooling the available resources.

There is a clear danger in the possible emergence in the Pacific region of sub-groups with diverging or conflicting interests. Such a situation would break up regional coherence and cohesion, and as a consequence, the region will be less well treated in view of the block geopolitics the European Union is currently contemplating.<sup>12</sup>

## **II. Some other regional agencies**

We will only briefly introduce some of the organizations that are offshoots of the two main regional organizations.

### **The Forum's Fisheries Agency**

Following the commencement of the United Nations Conference on the Law of the Sea (beginning in 1973 and culminating in the signing of the United Nations Convention on the Law of the Sea at Montego Bay in 1982),<sup>13</sup> the Forum's 1976 annual meeting in Nauru revealed the necessity of undertaking 'a common action and have regional cooperation regarding the monitoring and management of sea resources' in the Forum member states' territorial waters. Thereafter, debates focused around whether or not to incorporate into the intergovernmental agency about to be created, those countries that do not belong to the South Pacific but whose fishing fleets operated in the area. The Polynesian states were in favour of including the United States. Australia and New Zealand, as allies of the United States, did not want to argue openly against the Polynesian standpoint, but instead let the Melanesian countries oppose the inclusion of the US on the grounds that incorporating countries from outside the zone into the Agency would both weaken regional unity and restrict its room to manoeuvre in negotiations on the ownership of migratory fish caught within their exclusive economic zones. Actually, the Melanesian states meant to exploit their sea resources on their own, whereas the Polynesian microstates hoped to get royalties from the foreign countries that had fishing fleets operating in their territorial waters. The Melanesian countries argued for the assertion of regional control over regional resources, and they all adhered to this argument on the basis of the potential revenue that could be obtained. In 1979 the Forum established the Fisheries Agency, now headquartered in Honiara, and the Agency conducted negotiations in the late 1980s, the outcome of which was the regional treaty on fishing between the United States and the South Pacific Forum countries.<sup>14</sup> The Agency was particularly active in disseminating information regarding the delimitation of the exclusive economic zones of its member states; in gathering information on other countries' laws on fishing; and in the draft agreement for the 1989 convention prohibiting the use of driftnets.

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<sup>12</sup> The EU has nonetheless got Papua New Guinea and Fiji to approve the EPA. By advocating bloc politics, the EU does not abide by its strategy-based policy, and thus it sows the seeds of discord... In fact, by signing the EPA, Papua New Guinea finds itself in a win-win position, and Fiji relaxes the blockade hampering its sugar exports, but the group's solidarity is shattered. The poorer countries will suffer the consequences.

<sup>13</sup> During that conference the concept of exclusive economic zones (EEZ) extending 200 miles off shore was implemented.

<sup>14</sup> The Fisheries Agency got US\$4 million annually as part of assistance to its development as well as \$7 million to be distributed among the member states in whose territorial waters the American tuna fishing boats caught the fish.

The Agency, invoking the UN Declaration and supported by the Forum, struggled to have this practice discontinued in the South by Japan, Taiwan and South Korea Pacific from as early as 1992. The Agency, in concert with the Pacific Community, or SPC, which has an observer status in the Agency, provides to member nations data on both bilateral and multilateral conventions or treaties and on the catches by the various fishing fleets. To this end, the Agency gets help from the Australian and New Zealand navies and air forces, which watch the zone. The Agency is headed by a director who is assisted by some 40 experts and administrative staff. The director works in close concert with the Forum Officials Committee and submits an annual activities report for approval by the Forum. The funding of the Agency comes from the member states on the basis of their contribution to the Forum, and also from Canada, Japan, the Commonwealth, the EDF, WHO and the UNDP.<sup>15</sup>

### **The Pacific Forum Line**

The Pacific islands are scattered over huge areas, and consequently the distances between them are extremely large; freight volume is low and costs are ever increasing. These are the main factors that led to the decline or closing down of most commercial sea lines in the 1960s and 1970s. The Pacific island states which depended heavily on the frequency of these sea links for importing food and raw materials and for their exports brought up this serious issue at the Forum's inaugural meeting in Wellington in 1971. Tonga and Nauru did initiate some actions to overcome this problem, but they were not really successful; so in 1997 New Zealand and nine independent countries established the Pacific Forum Line.<sup>16</sup> Its objectives are to:

- Operate a regular, rational and viable shipping line
- Keep freight cost as low as possible
- Meet the essential needs of the islands that are located off the trade routes
- Promote the region's exports and foster its development.

During the first years of operation the Pacific Forum Line was a financial disaster; but thanks to an increase in New Zealand capital and a loan from the European Investment Bank, its profitability improved. Now seven ships regularly ply the profitable trade routes, while an eighth ship deliberately operates at a loss so as to service the most remote islands. The Line has its headquarters in Apia, Western Samoa, and it operates through a share-holder system.<sup>17</sup> While emphasizing how important this line is, we must bear in mind that it serves mostly New Zealand and Australian interests insofar as the consumer products that are dumped in the islands come from those two countries. Inter-island exchanges are much less significant.

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<sup>15</sup> The overall budget of the Agency was a little over 2 million US dollars in 1990. Its Director in 1995, Victorio Uherbelau, told this writer at the time that the budget was constantly increasing (personal talk, Noumea, October 1995). At that date, the Agency had three boats.

<sup>16</sup> New Zealand, Cook Islands, Fiji, Kiribati, Nauru, Papua New Guinea, Solomons, Western Samoa, Tonga and Tuvalu.

<sup>17</sup> The total equity of the company is more than 20 million Samoan talas (dollars), and the main stockholders are, in decreasing order, Papua New Guinea, Fiji, New Zealand, followed by Tuvalu, Tonga, Western Samoa with approximately the same share, followed by Kiribati, and, with a small share, the Cook Islands and the Solomons. Nauru's contribution is not known.

### **The University of the South Pacific**

This higher education institution was founded in 1970 in Suva, where there was already a medical school funded by American donors. As set out in its bylaws, the University of the South Pacific was established to serve the region and it has campuses in several Forum countries. Some of those campuses offer specialized programs such as agriculture in the Cook Islands and law in Vanuatu. Thanks to satellite technology, the peripheral campuses can use remote teaching through telecommunications.

The University of the South Pacific offers the main teaching subjects and meets the region's needs. The degrees are not automatically equivalent to those awarded in Australian and New Zealand universities for reasons that are clearly spelled out: keeping the degree holders in the islands, and offering degrees that meet the region's needs. The quality of teaching was excellent until 1988 when many USP professors found that their contracts had not been renewed for political reasons.<sup>18</sup> The USP council is made up of academics and administrators, and the Senate is made up of representatives of the Forum countries and business leaders. The vice-chancellor is usually an administrator appointed by the Senate, whereas the Chancellor is a key political figure from the region.<sup>19</sup>

The student body is made up of young people from across the Pacific. They are awarded government scholarships and they live on campus. Relations between students have been somewhat strained since the coups, and some member states did not hesitate to recall their students during the coups or when ethnic unrest broke out in recent years. Papua New Guinea is not a party to the USP; it has created its own universities, with traditional subjects taught at Port Moresby and technical teaching at Lae, in the north.<sup>20</sup> For a few years, these two campuses have been experiencing unrest and occasionally high levels of crime. It is impossible to know if and when these institutions will recover stability. They are essential to training the region's elites.

### **The South Pacific Applied Geosciences Commission (SOPAC)**

The Pacific Islands have Fiji to thank for the establishment, in 1970, of a Committee for Coordination of Joint Prospecting for Mineral Resources in South Pacific Offshore Areas, a committee created along the lines of one created four years before for the Asia region. The underlying idea was initially to assess the economic potential of the region with regard to mineral resources. Most Forum countries are either full members or observers. The agency is mainly a technical assistance agency. It is assisted through international cooperation in two ways: funding and foreign volunteers who work on a contract basis at the centre in Suva. Since 1984, this committee has been an autonomous regional organization in its own right. In 1989 it was officially renamed the South Pacific Applied Geosciences Commission, but the acronym SOPAC has been retained. This commission has produced remarkable results in the

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<sup>18</sup> A number of Australian and New Zealand academics had helped in the creation of the Fiji Labour Party which won the 1987 election in Fiji. Following the second coup, most of them were deemed *persona non grata* in view of the criticism they had levelled against the new régime. Many academics of Indo-Fijian descent have since moved to Australian, New Zealand or Canadian institutions, and as a result some USP departments lack teachers and filling the void is not easy.

<sup>19</sup> Such as the King of Tonga for some time, or the Cook Islands' Prime Minister, etc.

<sup>20</sup> Papua New Guinea has denominational and private universities as well

fields of undersea charting, seabed geology, mineral resource management, and submarine/underwater environmental management. The Suva centre also has an educational function, training high-level technicians in many areas. Its operating budget is funded by member states and its research projects are funded by the United States, the UNDP, the EU and Canada. SOPAC's staff comprises some 50 researchers, technicians and administrators, and SOPAC is now the most endangered organization in the debates about possible reorganization of agencies in the Pacific islands. While SOPAC has a good record, member countries are approaching a consensus regarding its incorporation into the SPC and the Oceania Regional Environmental Program.

### **The Oceania Regional Environmental Program**

The Pacific islands' environment is both valuable and fragile. In 1973 the South Pacific Conference hired an environmental expert to work on the issues relating to environmental management. Five years later, the Commission and the Forum agreed that it was necessary to pool their efforts to establish a Global Environmental Management Program. In 1980, with financial support from CESAP and UNEP, the SPC and the Forum created the Oceania Regional Environmental Program. The secretariat funding was provided by SPC. OREP proved instrumental in the adoption, in 1986, of the Convention for Natural Resource and Environmental Protection in the South Pacific Area, prohibiting nuclear testing and the dumping of radioactive waste. OREP developed its research activity on climate change (the greenhouse effect), pesticides, water quality, etc. – in short, it worked on ways to control various forms of marine pollution. For a while, the Forum and SPC got along well, but the SPC was accused of interfering in the definition of OREP's priorities. As a result, relations between the SPC and the Forum became somewhat strained, and the program's committee was overhauled. From then on, a representative of each of the cultural areas, another from Australia or New Zealand, and yet another from Great Britain, from the United States or from France were supposed to make OREP more efficient. Eventually, as recommended by the Forum, OREP became a self-ruling organization in 1992, with headquarters in Apia. Its activities are still coordinated by the two major regional organizations.<sup>21</sup> However, despite strong political and financial support from the region's countries, there are more and more doubts as to whether it is really efficient. Moreover, for some people, the worldwide interest shown in environmental issues and the international financial efforts being made to safeguard the environment make the claims of OREP somewhat ludicrous.

There are many other regional organizations such as – for example – the Pacific Islands Development Program (PIDP), located since 1980 (at the urging of Ratu Mara) at the East-West Center, at the University of Hawaii at Manoa. The main objective of the Program is to conduct research on areas deemed priorities by the Conference of Heads of Government of South Pacific Countries and Territories which meets every five years. The research and results of the Program are expected to inform the member country leaders' proposals regarding development, training, cruise tourism, etc. The research is supervised by a committee made up of high-ranking officials from the region's countries. The Program is funded by international organizations and mother countries. Its budget of about one million

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<sup>21</sup> The OREP's annual budget is about one million US dollars.



US dollars was drastically cut over the last few years, and the Program risks becoming somewhat dormant for a period.

**Conclusion**

All these regional organizations are very important, first in order to encourage any possible external financial assistance to foster internal regional development, and secondly to link the islands to the outside world through their governments while at the same time strengthening regional solidarity and identities. Let us bet that New Caledonia, committed to Melanesia, will continue to play a greater and greater role in the region both in terms of its institutions and its leaders' and peoples' aspirations for development.

## 20. Statement by the Director-General, Secretariat of the Pacific Community

**Dr Jimmie Rodgers**

Mr Chairperson, distinguished delegates to 'A house blong Melanesia Conference', ladies and gentlemen, please allow me first of all to thank the organizers of the conference for the opportunity to participate at this historic gathering this morning.

I have been asked to speak about the Secretariat of the Pacific Community in the context of the 'Emergence and Development of the Regional Organisations in Melanesia'.

In the next few minutes I will try to talk about the SPC, its origins, its mission and to some extent its journey from its birth to the present. To help relieve boredom and if time permits I would like to play a 7 minute DVD containing a short documentary about the SPC.

From the ashes of World War 2, the SPC was born on 6 February 1947 founded under a Treaty called the 'Canberra Agreement' by the six metropolitan powers who had colonies in the Pacific at the time: Australia, France, Netherlands, New Zealand, United Kingdom and the United States of America.

The founding of the SPC was the very first example of regional cooperation in the Pacific, and one of very few at that time.

Article IV of the Founding Agreement prescribed the main role of the SPC as 'a consultative and advisory body' to the participating governments in matters affecting the economic and social development of the territories within the scope of the Commission and the welfare and advancement of their peoples. To this end, the Article vested the following mandate to the Commission:

- (a) to study, formulate and recommend measures for the development of, and where necessary the co-ordination of services affecting, the economic and social rights and welfare of the inhabitants of the territories within the scope of the Commission, particularly in respect of agriculture (including animal husbandry), communications, transport, fisheries, forestry, industry, labour, marketing, production, trade and finance, public works, education, health, housing and social welfare;
- (b) to provide for and facilitate research in technical, scientific, economic and social fields in the territories within the scope of the Commission and to ensure the maximum co-operation and co-ordination of the activities of research bodies;

- (c) to make recommendations for the co-ordination of local projects in any of the fields mentioned in the previous sub-paragraphs which have regional significance and for the provision of technological assistance from a wider field not otherwise available to a territorial administration.
- (d) to provide technical assistance, advice and information (including statistical and other material) for the participating governments;
- (e) to promote co-operation with non-participating governments and with non-governmental organisations of a public or quasi-public character having common interests in the area, in matters within the competence of the Commission.
- (f) to address inquiries to the participating governments on matters within its competence;
- (g) to make recommendations with regard to the establishment and activities of auxiliary and subsidiary bodies.

These functions embody the concepts of assisting, protecting, promoting and advancing the welfare of Pacific Islands peoples. They embody the concept of ‘guardianship’ which is built around Pacific Islands peoples. They helped shape the development of SPC programmes over the past 61 years; with one clear objective: *‘to promote and enhance the social and economic development and wellbeing of Pacific Islands peoples.* However it hadn’t been an easy role to fulfil.

The SPC was located in Canberra for the first two years of its existence. In 1949 the SPC relocated to New Caledonia. The US Army Pacific Command centre, nicknamed the Pacific ‘Pentagon’, became the SPC’s home for 47 of its 59 and a half years in New Caledonia.

There began the relationship between New Caledonia and the SPC, the only organisation in the Pacific whose headquarters is located in a territory. New Caledonia has been our guardian and a wonderful host for the oldest bilingual technical regional organisation in the Pacific.

On 6 February last year, we celebrated the organisation’s 60 years of service to the region – a very rare milestone and an outstanding achievement by an organisation. I would like to share some highlights with you – about the SPC setting some records:

- Firstly, SPC is the oldest bilingual technical regional organisation in the Pacific, about as old as the United Nations.
- Secondly, the SPC is the only regional organisation that has its headquarters in a territory.
- Thirdly, the SPC was the first regional organisation to accord equal membership status to all its members, regardless of their political independence.
- Fourthly, the SPC is the only technical regional organisation that has a multi-country presence. We currently have three official offices – in New Caledonia (the southern office), Fiji (the central office); Federated States of Micronesia (the northern Pacific office); and soon Papua New Guinea (the Western Pacific office); and to complete the

picture, an eastern Pacific office will be established in the near future. In addition a national SPC office will be opened in Solomon Islands later this year and one possibly in Vanuatu sometime next year. In addition, the SPC has a physical presence in 14 other island countries and territories including French Polynesia and Wallis and Futuna.

- Fifthly, the SPC was involved in the creation of other regional bodies and organisations such as the South Pacific Games – a product of the South Pacific Conference in 1963; the South Pacific Board for Education Assessment (SPBEA) and the Secretariat of the Pacific Regional Environment Programme (SPREP) to name a few.

One of the most significant events in the SPC's history occurred in Saipan in 1983 when the 23rd Conference admitted all participating countries and territories as full and equal members of the organisation.

New Caledonia has a special place in the history of the SPC. New Caledonia was host to the SPC for almost 34 years before itself attaining full and equal membership status in 1983. New Caledonia's support and commitment to the SPC have never wavered over the past six decades. The special relationship between the SPC and New Caledonia started in 1949 when the SPC accepted the offer to establish its headquarters in Noumea, at Anse Vata, in the former American military headquarters then nicknamed the 'Pentagon'. In 1993 New Caledonia reaffirmed its commitment to the SPC by contributing quite significantly, together with France and Australia, to rebuilding the headquarters of the SPC which was opened in 1995.

Now what about the SPC's role and contribution to Melanesia? The five countries of Melanesia – Papua New Guinea, Solomon Islands, Vanuatu, New Caledonia and Fiji – between them account for 97.9 per cent of the total land area in the Pacific (540,239 km sq.) and 87 per cent of the total population.

New Caledonia and Fiji, by virtue of their hosting the organisation's headquarters and largest regional office respectively have benefited immensely from the SPC's presence both in terms of employment of nationals as well as the economic spin-off resulting from SPC expenditure flowing into the respective national economies. The SPC has also benefited from these two countries.

Looking into the future, the SPC will have an office operating from each of the five Melanesian countries, three of them with regional scope and coverage (New Caledonia, Fiji and PNG) and two being national offices (Solomon Islands and Vanuatu) – due to the SPC having a relatively large programme of assistance to them requiring on ground representation and coordination.

In relation to influence in the governance of the SPC, many high-profile personalities from Melanesian countries have either held senior positions in or have participated in the organisation's governing body or technical and scientific meetings over the years. Four out of

20 of the organisation's Secretary Generals/Director Generals hail from Melanesia, with a fifth one unfortunately passing away just before taking up the position.

Let me now for the last few minutes digress a little and focus on the wider region and the SPC's place in it.

The Pacific region is at a time of immense change, economically, socially, culturally and politically. Some of these changes are driven from outside the region by way of international agreements that we have no choice but to comply with. Others originate from within the region, such as the Pacific Plan and the current exercise of exploring a more effective regional institutional arrangement for the ten regional organisations in the Pacific. Yet some of the changes are driven by national agendas.

Progressive changes in the current geo-political dynamics in the region have opened up new opportunities for many Pacific Island countries and territories to interact more effectively with each other. The change in the membership criteria of the Pacific Islands Forum Secretariat, for instance, has enabled New Caledonia and French Polynesia to take their place in the regional political dialogue process.

The changing architecture of the region has tremendous implications for the work of the SPC and how it conducts its business. We must ensure the continued relevance of our work, yet stay on the cutting edge to achieve the greatest impact and best possible outcomes for Pacific Island people.

Over the next six years, the work of SPC will focus on three pillars.

- **An increased focus on member priorities** – this is the operational part of our work, our core business. It is for this reason we exist, to work for and assist the development of our members.
- **Strategic engagement at the international, regional and national level** – this is the enabling part of our work. Not all members have enough resources and expertise to engage with international and regional bodies that impact their livelihood. The SPC will act as the eyes, the ears, and the analytical framework working on behalf of our members to engage, analyse, and provide options to decision-makers at national level, to help them position themselves to respond effectively to challenges.
- **Strategic positioning of the organisation** – to ensure it can deliver top quality services to its members effectively and efficiently. This is the key to our success. To meet the first two aims, the SPC needs to have the resources, the processes and most importantly the commitment and passion to achieve excellence of service. I am very happy to inform you that the commitment and passion is unquestionable, the processes are in place, and the resources? We continue to live in hope.

The SPC continues to be a highly professional and dynamic bilingual organisation that remains closely attuned to the needs, aspirations and priorities of its members.

It is a credit to the members, the staff and the development partners who provide the resources that the region's oldest and largest technical organisation has not lost sight of the purpose for which it was established sixty years ago, and that it still remains highly relevant in today's Pacific, and no doubt in the Pacific of the future.

Let me assure you that we continue to be guided by our vision of a region that is secure and prosperous, and whose people are educated, healthy and empowered to manage their resources in an economically, environmentally and socially sustainable way. We are fully committed to our mission – to help Pacific Island people make informed choices and decisions about their future and more importantly the future they wish to leave behind for future generations – our children and grandchildren.

To commemorate the organisation's 60 years of service to the region last year, we launched a book about the SPC, researched and written by a team of our own staff, called *Meeting house in the Pacific – the story of SPC 1947-2007*. This is the only book that is written about the organisation and, as we wrote in the book, the development of the SPC in New Caledonia is very much about the development of New Caledonia. I have a few copies of the book here today.

I thank the Government and people of New Caledonia, the three provinces and the city of Noumea for the commitment and unwavering support in hosting the SPC over the past 59 and a half years and I look forward to this relationship being continued in years to come.

In closing, the SPC is a pan-Pacific regional organisation, however the main staging post for our regional service are our two largest offices in Melanesia – Fiji and New Caledonia.



### III. The Future

## 21. Discussion: the strengths and weaknesses in being part of the Melanesian community

**Jean-Yves Faberon, Charles Wea, Charles Washetine, Jacques Ziller, Paul De Deckker**

#### **Jean-Yves FABERON**

Our colloquium is entitled ‘New Caledonia and Melanesian Unity’, and the current session is entitled ‘Melanesian Unity without New Caledonia’. We have been told that this phrasing is somewhat provocative. We heard testimony from a New Caledonian, Charles Wéa, a member of the Spearhead Group, representing the FLNKS. New Caledonia is not a member of the Spearhead Group; however, New Caledonia is not only located in Melanesia, but it is very active in the area, as we will see this afternoon. So the question I’m putting, notably to Charles Wéa is: ‘What are the relationships between the Spearhead Group and New Caledonia? Is it relevant to picture New Caledonia as a member, just as it is already a member of other organizations in Oceania?’

#### **Charles WEA**

The Spearhead Group has relationships with the New Caledonian government. The New Caledonian government goes along with some Spearhead Group decisions. I mentioned the Melanesian Arts Festival, one of the major decisions by the Spearhead Group; the New Caledonian government organizes programs and funds the festival. True, the FLNKS is part of the Spearhead Group, but as early as the time when Pierre Frogier was Chairman of the New Caledonian government, Pierre Frogier was willing to join the Group. Even before the formal incorporation of the FLNKS into the group, New Caledonia took part in the organization of the ‘Melanesia Cup’. Let me mention the Spearhead Group mission to New Caledonia by the end of 2008. This mission will have talks with New Caledonia not so much on a political level, since political talks are ongoing, but mostly to determine how New Caledonia can incorporate the decisions relating to trade. The philosophy behind the creation of the Spearhead Group consists of defending and preserving solidarity between Melanesia’s peoples; New Caledonia can bring economic experience to Melanesian countries. Even though New Caledonia is not part of the Spearhead Group, its current Government already has some influence on some of the Group’s actions. So now things are moving forward, and we have ongoing discussions with the New Caledonian government. It’s mostly a question of political will on the part of political parties in New Caledonia.



**Charles WASHETINE**

I'll say a few words to complement what Charles has just said. Nathalie Mrgudovic was wondering whether New Caledonia was not elbowing the FLNKS out of the Spearhead Group. The FLNKS is first and foremost a political tool for the emancipation of all of New Caledonia as a country and as an entity. And true, solidarity materialized in the 1970s. This was restated this morning and yesterday. It is solidarity in the name of a certain identity, since the identity question was the central question. How can these Melanesian countries with a common identity come together in more political struggles? That is how the Spearhead Group was born, and the FLNKS is part of it, and the FLNKS is a group of political parties with various standpoints, but they are driven by a single objective, independence. Hamid Mokaddem restated this through quotations from Jean-Marie Tjibaou on independence. New Caledonia is involved in various organizations in the region. The FLNKS is first of all made up of indigenes of the country, and in many different places they use tools to see how, at a given moment, they can raise the region's awareness of problems they encounter here in relation to social and economic data, such as the issue of marginalization. All these issues are the FLNKS's driving force in its relationships with the region's nations. But I don't think we should set the FLNKS against New Caledonia. The FLNKS's actions are not at variance with New Caledonia's actions. And we can see clearly that since 2003 New Caledonia and not the FLNKS has become a member of the Pacific Forum, thanks to the solidarity shown by the Spearhead Group nations. And now, the issue at the close of the last meeting of the Spearhead Group in Port Vila is to see how to achieve a better incorporation of New Caledonia into an organization such as the Spearhead Group. I don't think we should see any opposition here. The FLNKS has first fought its own battle, the political struggle for the recognition of the rights of the Kanak people, and in that struggle it has been supported by the Spearhead Group nations. Thereafter, things changed. Work is being done in order for New Caledonia to be eventually incorporated into the region. And a major event has also brought a change in the FLNKS's policy, the Noumea Agreement. Since the Noumea Agreement, which allows New Caledonia to be more present in the region, the FLNKS, a party to the Agreement, has been thinking about how to better incorporate the country into the region. So there is no incompatibility between the FLNKS's actions and New Caledonia's actions. The FLNKS must continue to exist as long as the country has not reached full sovereignty, since that is its initial and major struggle. Now, the Noumea Agreement process must in some ways bring the country to full sovereignty. It was initiated by the FLNKS alongside the State and the other partner, who is opposed to independence. But this is a process, a challenge that is being met by all the country's components. There is a time frame: in 2014 voters will be asked whether the State should hand over its remaining powers to New Caledonia, and that is the peculiar feature in the Agreement: power transfers are irreversible. In 2014, the country, the citizens of this country, will determine their future and, obviously, this future cannot be built outside the region. That is why New Caledonia is more and more present in the region. So there is no opposition between the FLNKS and New Caledonia with regard to their active presence in Melanesia.

**Jacques ZILLER**

I have two fairly technical questions. First I'd like to know if within the Pacific regional organizations there is a specific Melanesian coordination apart from the Spearhead Group; in

other words, are there any internal mechanisms among the Melanesian countries to reach common attitudes? The second question is about outside contributors: Paul De Deckker mentioned the European Commissioner on development, but my question is broader than that: When in the region people perceive the European Union, what do they see? Do they see the EU as an entity with its Commissioner for Development? Or do they see the EU as a group of states, including France and the United Kingdom but also other states? Do people feel other EU member states have some influence on European policy regarding the Pacific or not?

### **Paul DE DECKKER**

We should organize a conference devoted to this question. As I see it, we must identify two things; on the one hand the way European officials introduce themselves in the EU bureaus in the Pacific Islands – in Suva, Port Moresby, Noumea, among others. Sometimes we see that some European officials put their own country forward. I think Germans and Italians, in particular, tend to act in this way. Regarding French European officials, things are different – Europe first, and only Europe. This attitude is probably linked to past events when France was having difficult relationships with the countries in the region and in Europe. This state of things may not be as clear-cut as I'm suggesting, but concerning Germans and also Greeks, my assertion is very close to reality. So the situation is pretty fuzzy in this connection.

Regarding the perception of Europe here in the Pacific, I don't think that in Kiribati or in Tuvalu people say, 'Oh, will they integrate Croatia or not into Europe?' They are not aware of all this and they don't care about it at all. On the whole, here in New Caledonia, nobody can identify the roads or other infrastructure projects funded by the European Union pursuant to the privileged partnership the overseas countries and territories enjoy as part of the European Union decision-making process.

But there is a new deal: The EU seems to outrageously favour the island states that have natural resources, such as Papua New Guinea and Fiji. It would seem that for the other nations the EU sets up global financial packages which are merely window-dressing. Such an attitude illustrates a real lack of interest, certainly the result of the new reality of globalization and of the emergence of new situations like the Chinese trade presence which is spreading by leaps and bounds in the islands.

Regarding the second part of the question, Melanesian countries do their utmost to join forces to negotiate with the European Union and make a united stand. One example is provided by what happened when Sir Michael Somare came to Noumea to be awarded a Doctor Honoris Causa degree from the University of New Caledonia in 2005. He rejected France's Foreign Ministry's offer to take a jet liner and he flew over with his aides on a small plane. Thus, from Port Moresby, he could do some 'island hopping' and meet his counterparts in Honiara, Port Vila and, if memory serves, Suva. So he was able to prepare both the Spearhead Group meeting and the meeting between Melanesians within the Forum. I think that this *modus operandi* is very common and it illustrates the strong solidarity between those countries.



# **New Caledonia and Melanesian unity**



# I. The Past: New Caledonia and non-French Melanesians

## 22. New Caledonia and non-French Melanesians: the Melanesian standpoint

Jean-Pierre Nirua<sup>1</sup>

Since yesterday we have been discussing New Caledonia, or rather Kanaky, and how it can be incorporated into Melanesia. Discussions took us to France, England, Australia, and other places, and then we returned to New Caledonia. From a customary standpoint, it behoves us to come back here through Melanesia, and more specifically through neighbouring Vanuatu.

The topic I was asked to deal with is about a non-French Melanesian point of view on New Caledonia, and I would like to illustrate the topic in the most Melanesian way possible. Here are three anecdotes.

The first is about the customary 'gesture', the Melanesian symbol of humility and respect, but also a way of asking permission to access, use or talk on ground that is not one's own. If I chose to show a little gesture before taking the floor, it is because from a customary standpoint I was compelled to deal with a taboo subject regarding the Melanesian New Caledonia issue from a Melanesian viewpoint – and I am a representative of that viewpoint. This topic compels me to question the Melanesian status, the status of those hailing from Kanak land in New Caledonia, and that is something strictly taboo in Melanesian custom and consciousness. In Melanesia, Melanesians do not compare with each other, for they are and they remain Melanesian with all the riches and cultural diversity involved! We do not compare because we are born and we remain Melanesian!

The second anecdote I would like to test with the audience is about the Melanesian language: Are there among you any persons (French Melanesians) who understand or use Bislama? Of course there are – thank you for confirming this, because according to the Melanesian manner, I should speak Bislama (pidgin), but as most of the audience is French, or rather international, I'll speak in French.

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<sup>1</sup> Director, Emalus Campus, University of the South Pacific, Port Vila

Third anecdote: are there among you any persons who have heard about kava, or who even had to share a cup of this Melanesian wisdom drink originating in Vanuatu and renowned in Oceania and in most of the world? Of course there are, and once again, thank you for confirming this.

Dear friends, if I allowed myself to parenthetically use these anecdotes, it is to demonstrate that from a cultural and customary standpoint, New Caledonia's incorporation into Melanesia is a real and present fact; it is simply a reality that people experience in their own lives! In Melanesians' eyes it is neither a myth nor a plan. And I do not intend to dwell on the historical and age-old links that had been established with our Melanesian ancestors from New Caledonia or elsewhere to prove this reality. Some of my colleagues have mentioned numerous exchanges in the past, and these are getting more significant now, especially during the last two or three decades.

If I agreed to take the floor as a non-French Melanesian, a Melanesian neighbour from Vanuatu, it is to be able to reassert that it is a real fact and it is true that New Caledonia, a Kanak land, is Melanesian, and that is quite clear and unambiguous.

### **The Chiefs' role**

In Melanesian society, the chiefs are the wardens of custom, of speech, of space and of land property. Some contributors have challenged the role of chiefs; more specifically, they asked the question of whether a Kanak chief, when he is travelling on Melanesian land, would be acknowledged in this capacity? My answer is simply 'Of course, he would!' The appropriate privileges would be granted to the Melanesian chief as he travels across another Melanesian space, and this reflects the recognition of his customary status. When a country is informed that a chief or a delegation of chiefs is coming over, the chiefs are welcomed in this capacity.

### **Non-French Melanesia as seen by its neighbours**

Melanesia's neighbours have perceived Melanesia as a troubled place and an overpopulated and poor region, afflicted with a host of social, economic and political problems and where bribery is rampant. For Melanesians, this statement only illustrates a domestic weakness, and its purpose is to justify military and 'humanitarian' intervention by Australia in Papua New Guinea and in the Solomon Islands (RAMSI), just as it had been attempted to do in Vanuatu and Fiji. Melanesians call this interventionist policy the 'employment schemes', whose aim is to remedy Australian unemployment.

If Melanesia had been really poor, how would we define the wealth that we see elsewhere and what would the criteria be? What is wealth if it is dissociated from human dignity? Despite the constraints with which Vanuatu, the Solomon Islands, Papua New Guinea or Fiji are burdened, Melanesians live and take pride in their identity, in their resources, in their huge cultural heritage, and most of all in their hitherto unexploited potential! Non-French Melanesians live and die like anybody else; thousands among them live in a more wholesome way amid their natural environment than many in an industrial and so-called 'rich' environment. My answer to those who criticize Melanesian countries is, 'We must let time do its work'. In other words, we must allow the young Melanesian countries some time to adjust to foreign standards in governance, in the economy and in international trade in order to

develop. The biggest and most powerful civilizations (including those of Europe) evolved over several hundreds, or even thousands of years before they reached the economic and social prosperity they enjoy nowadays. So why blame our young Melanesian nations if not for unjustified selfish ends and political interests?

New Caledonia is after all a French Melanesian community which is privileged, thanks to its mineral wealth, its powerful economy and its better living conditions, and non-French Melanesians acknowledge this with some pride, for New Caledonia represents for all of Melanesia a model society.

For Melanesian heads of State and Government, Melanesia (or the Spearhead Group (MSG)) is incomplete as a structure without New Caledonia (Kanaky). Melanesia is the richest area in Oceania, and within the MSG there is a strong will and a hard-to-break common strength to reach political, economic and cultural solidarity. New Caledonia (Kanaky) can only be happy to enjoy the advantages it can enjoy as a result of a more systematic incorporation into this very influential regional group. Non-French Melanesian countries are anxious to get the opportunity to welcome New Caledonia with open arms into its Spearhead family, and in their Melanesian wisdom, they are positive this is only a question of time.

#### **Melanesian governance, ceaseless criticism and the welfare syndrome**

Non-French Melanesians are well aware of the welfare syndrome that their 'rich' neighbours are willing to inflict on them when the time is right for them. Vanuatu, for instance, has a regular cooperation program with New Caledonia, Australia, New Zealand, China, the European Union and other powers. The nation humbly appreciates the assistance that is extended as bilateral, regional or provincial cooperation.

By contrast, non-French Melanesians are well aware of the humiliation and discrimination shown openly by some agencies in their 'rich' neighbours. Vanuatu, for example, has often been cited as an example of a failed independent state during election campaigns by groups in New Caledonia who are opposed to New Caledonia independence. Vanuatu nationals are deeply aware of the unceasing humiliation campaign on the part of French interests in the Pacific region regarding its system of governance, its social and economic conditions, its 'poverty' level and any other argument that can be put forward to suit the circumstances. The non-French Melanesian people are neither bothered nor impressed by these awkward advances because they are driven by the traditional values of humility and toleration which they use as a shield. Just as you cannot mix apples and oranges, it is impossible to compare adjustment to a so-called 'modern' imported governance system used in independent Melanesian countries (and others) and a governance system that is specific to us.

When Vanuatu gained independence, on 30 July 1980, the number of its academics could be counted on the fingers of one hand, which is a sad and shaming reflection on 74 years of French-British colonization! Yes, it was just a handful, made up of four English-speaking and one French-speaking individual. How could a nation be built on such little intellectual ability and in so short a time? Vanuatu has just celebrated the 28th anniversary of its independence, and it can be compared to a 28-year-old young person. It is quite awkward to



compare the skills, experiences or qualities of a 28-year-old person or a 28-year old state to those of a person, institution or civilization that has been around for a few centuries.

The ni-Vanuatu people say that they are grateful for the assistance provided by foreign countries and institutions, including the New Caledonian government and New Caledonia provinces, and more specifically the Southern Province and the Islands Province. In some instances there is irony in this notion of 'international cooperation', for non-French Melanesians are quite aware of the misleading 'aid' strategy used most often by the countries that provide money in order to get profit. Aid is often used to give life to and justify the notion of poverty in a country rather than contribute to stopping it. The evidence for this is that a major part of this international cooperation goes back to the countries it came from. That is the sad reality of the 'boomerang' aid. When you throw it it'll come back to you.

Melanesian countries and their rulers are often criticized, called incompetent and unable to practice good governance and manage the affairs of their states. Let those who preach this show better governance amid conditions such as those non-French Melanesian countries have to face. Let those people prove that they can perform better in the same circumstances.

### **The conference and Melanesian unity**

As a Melanesian, I hail the initiative taken through this colloquium to foster totally open exchanges with the purpose of studying the issue of a more complete Melanesian unity. I hail it the more as the initiative has originated within New Caledonia. This display of ideas and thoughts would have prompted a different response if it had been initiated from outside or by organizations such as the Spearhead Group, the Pacific Forum, or even by Pacific neighbours. This conference illustrates the will, within New Caledonia, and specific to New Caledonia, to be open to Melanesia.

For non-French Melanesians, New Caledonia (a Kanak land) remained inward-looking for too long, and for reasons it deemed legitimate and specific. Non-French Melanesian countries open up to Kanaky but they realize New Caledonia so far has not been willing to welcome them in return. One actual finding is that it is not easy for a non-French Melanesian to enter New Caledonia without a visa, and visa requirements are very strict! Irony of fate: a New Caledonian, a Frenchman (an Australian or New Zealander) arriving in Port Vila, Nadi, Port Moresby or Honiara finds that he can get a visa right away as long as he has a valid passport and a return ticket.

Melanesians need their New Caledonian brethren, whether they be Kanaks or otherwise, living on New Caledonia soil. Melanesia will never be complete without New Caledonia's full incorporation. Let this be a political statement, but one made in all Melanesian candour. As Professor Paul De Deckker said, 'Melanesians spell out what they think'. Understanding each other and learning from one another is a praiseworthy proposition, and Melanesian countries have a lot to learn from the New Caledonia example, just as New Caledonia must better understand and incorporate Melanesia's rich values and resources.

**Dialogue and sharing**

Melanesians must know how to conduct a dialogue and exchange more freely around the same table! I hail the richness, the good will, the sincerity and the success of this colloquium, and I'll report the proceedings to the Vanuatu authorities and to the University of the South Pacific, which I represent.

New Caledonia and Vanuatu have much to share in an Oceanian multilingual context. The two 'countries' must cooperate more actively to conduct a policy based on regional bilingualism, for the existence of French and English is a reality in our region and a plus we must take advantage of.

New Caledonia, who now wants to be a full partner of neighbouring countries in Oceania, needs to be more open and expand the teaching of English (and Bislama) on its soil. New Caledonia can use Vanuatu as a reference, and the bilingualism or multilingualism project in Oceania affords unlimited opportunities of which French-speaking people can take advantage if they develop it with conviction.

Thank you for having given me the opportunity to be heard.



## II. The Present: New Caledonia applying to be part of a united Melanesia

### 23. New Caledonia's regional cooperation: what is at stake and what are the prospects?

Laurent Sémavoine<sup>1</sup>

#### I. The geopolitics of the South Pacific in the era of regionalism

A characteristic of the South Pacific is its vast expanses of ocean and a myriad of archipelagos showing very great geographic, ecological, sociological and economic diversity. This region extends over half the circumference of the globe and covers 37 per cent of the earth's surface. Besides, it constitutes a link between the world's two most dynamic regions, America and Eastern Asia. The South Pacific is made up of two superimposed areas:

- Oceania (the fifth continent), including the Pacific Islands and the two Southern Hemisphere developed countries, Australia and New Zealand.
- The South Pacific states, a composite group consisting of several thousand islands traditionally divided into three subgroups, which are actually three large geographical areas: the Polynesian Triangle (numerous islands), the Melanesian Arc (black islands), the Micronesian constellation (small islands making up the northern part of the Pacific).

Thus, Melanesia includes New Caledonia, Papua New Guinea, the Solomon Islands, Vanuatu, and Fiji, which together make up 90 per cent of the land area and 85 per cent of the island countries' population in the region.

The island Pacific is subject to many constraints, and it is quite diverse.

After a belated decolonization, the region is characterized by modest human, economic and financial resources, and it is strongly dependent on aid donors. It is subject to the consequences of globalization, threatened by crises and it has to face the consequences of global warming.

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In this context, we can find permanent features that cannot be obliterated, such as distance and the poor condition of communication and transport networks; the consequences of global warming and the fact that those countries are vulnerable to natural disasters such as cyclones, tsunamis, etc.; the dwindling ocean resources and the poor energy sources (except for Australia and PNG, Pacific states are lacking in sources of energy).

The major challenges are the environment (safeguarding the coral reefs, waste management, etc.), public health (the fight against HIV-AIDS, in particular, endemic diseases), political and economic fragility in the small island states, and the lack of good governance.

Moreover, one of the features of this vast regional group is the great diversity of political systems:

- Independent states;
- States that are independent in free association with another country (the Cook Islands and Niue);
- Territories with more or less extended self-rule but placed under the sovereignty of another state (for example, the French communities; Tokelau, a non self-governing territory of New Zealand; Guam, the Northern Marianas and American Samoa, both United States territories,)
- Possessions and dependencies (the last vestiges of colonial presence: Pitcairn, a British dependency; Norfolk, an Australian dependency; Wake and Johnston Islands, unincorporated territories of the United States).
- Some territories are more or less self-ruling, and they are active partners recognized at the regional level, such as New Caledonia and French Polynesia.

The independent states struggle against such great economic and political difficulties that the large neighbouring states had to deploy regional missions to restore the rule of law (Solomons in 2004), or to bail them out economically (Nauru in 2005). (c.f. the Bitekawa Declaration, 2000, which sanctioned the Pacific Islands Forum as being allowed to intervene in the affairs of a member state, while respecting its sovereignty, to restore law and order.)

While various institutional systems exist, with cultural, economic or historic links that place most of these states or territories in various networks or connect them through dependence or interdependence which sometimes unite them with metropolitan countries in the Pacific or outside the region, the word independence no longer seems to be relevant in pinpointing differences. In such a context, it can be said that 'Independence consists of the ability to choose one's interdependences.'

From a general standpoint, we can see that Oceania is a region where Australia and New Zealand play a dominating role, and this region is subject to the influence and strategies of the surrounding countries. It is marked by political issues dating back to the Cold War (Taiwan) and to World War II.

Now China's rise in power is being felt. China is strengthening its position in the island Pacific.

### **Regional organizations**

The South Pacific has a teeming regional life.

The different nations realized that development in the zone was not conceivable unless resources are shared, which implies bringing the countries together in regional organizations.

All countries in the region are members of the South Pacific Commission (SPC), a 25-member apolitical organization headquartered in Noumea with a branch in Suva. SPC is a real tool for Pacific development, and it is funded mainly by the four major powers in the area – Australia, France, the U.S. and New Zealand. Territories and independent states are on the same footing, and the official languages are English and French. SPC is a representative of the region and a meeting place, where all Pacific communities can voice their opinions. SPC's action focuses on cooperation and ranges from health to culture, from sustainable development of marine and land resources to social questions.

The Pacific Islands Forum, headquartered in Suva, is the second major organization in the Pacific. Its emergence is related to the fact that many countries in the Southern area gained independence in the early 70s, but also to SPC's decision to exclude any political debate. The Forum includes 16 Pacific Island states; it is the region's major political organization, and it includes only independent nations (14 island countries along with Australia and New Zealand).

The Forum recently created an observer status and an associate member status; these are meant to include non self-governing territories, as the Forum considers that this membership does not challenge sovereignty. This is the case of France with New Caledonia and French Polynesia, which are associate members, and Wallis and Futuna, which is an observer. France is a post-Forum partner, as are 12 other countries or entities.

Interdependence and the advance of regionalism lead to pooling certain risks and to a regionalization of the resources available. That is the idea behind the Pacific Plan, which was adopted in 2005 by the Pacific Islands Forum Secretariat (PIFS); its aim is to strengthen regional cooperation and solidarity.

The Pacific Plan's priorities are trade and economic exchange, sustainable development, good governance, and security.

The determining factors to consider can be found at several levels, for a vision that is more focused on interdependence and regionalization is gradually emerging, and at the same time a genuine collective effort is being made to pool initiatives through regional policies and programs – design and implementation of solutions developed jointly to remedy the problems that cannot be solved at the level of microstates alone.

A new regional organizational structure is emerging in order to enhance the process of regrouping and connecting regional organizations with a view to reaching a greater efficiency and good governance.

There is a greater awareness of new rivalries between China and the United States in the region whereas cooperation for inclusive regional stability is being implemented (between Australia, New Zealand, New Caledonia and Melanesian countries.)

As of now, one constant concern and priority is awareness of environmental problems and global warming. We find that France is the only European Union member to be present in the heart of the Pacific, at a time when island countries are anxious to find alternatives or to counterbalance the influence of English-speaking regional powers.

It is worth noting that eyes are now increasingly turning to Papua New Guinea (PNG) – with its important mineral resources and whose population is more than half of the population of the island Pacific – and to New Caledonia, the third biggest nickel producer in the world. New Caledonia has 40 per cent of world reserves, which allow it to hope for self-sufficiency, beyond the ongoing readjustment between the country's three provinces.

The other countries have hardly any prospects of ensuring their own development, except for some varying revenue from fishing or tourism.

## **II. Regional cooperation in New Caledonia**

In external relations, New Caledonia enjoys important powers. The March 1999 Organic Law is a major step in decentralizing a power which had hitherto been strictly reserved to the State.

New Caledonia has the legal tools allowing it to establish its own external relations, although it has to abide by France's international obligations. It can strengthen its ties to the European Union and to the other states and territories in the Pacific (in a broad sense) and develop its regional cooperation and regional incorporation.

While respecting France's international commitments, New Caledonia is empowered to conduct direct negotiations with one or more states, territories or regional organizations in the Pacific and with regional organizations which are part of specialized UN organizations (this is a sanctioning of the right to autonomous initiatives in external relations).

These provisions allow New Caledonia to be a member or an associate member of, or an observer in international organizations (in that case New Caledonia is represented by the President of the Government or his representative). The provisions also allow New Caledonia to be represented in the European Union and in the Pacific states or territories, and to establish decentralized cooperation relations with the other French Pacific territories or any other French overseas country or territory.

This peculiar situation in French polity is the result of a dual political will:

First, it is the result of the State's will. The State wants the French Pacific communities to 'be better and more integrated into their Pacific environment,' in compliance with the French President's proposal to the Pacific States' leaders. During the first France-Oceania summit, the President called on them 'to henceforth have a privileged relationship with the executive powers of the French Pacific communities.'

Secondly, this situation is the result of New Caledonia's wish to be integrated into the region as a result of the Noumea Agreement, in order to better understand the Pacific region's economic and social challenges and produce the right conditions for new cooperation.

The idea is to produce a context fostering the negotiation of agreements and concluding them with the neighbouring countries and with the region with a view to taking part in the region's development and contributing to strengthening relations between the Pacific Island countries and the European Union.

To that end, it is appropriate to secure close cooperation with state external relations services and develop bilateral cooperation relations (with regional countries) and multilateral cooperation (with regional organizations, the Forum, etc.)

Regular and privileged relations with the directorates of the European Commission and the Overseas Countries and Territories Association (OCTA) exist, supported by the @ction Europe consulting office (Brussels) and Adecap (in Noumea). Besides, there is a permanent link with the French diplomatic offices in the Pacific and the foreign diplomatic offices in New Caledonia.

Cooperation initiatives and programs are determined on the basis of New Caledonia's priorities for regional incorporation; of France's priority for cooperation in the Pacific; of the Pacific Plan's guidelines, and of EU's objectives (the millennium objectives, EDF, the Green Book on EU-OTC relations.)

At the regional level, relations between New Caledonia and 13 regional and international organizations of which New Caledonia is a member, an associate member or an observer, have been developed and enhanced in the fields of regional cooperation, the environment, science, fishing, health, economic and social development, customs, sport, etc.

Under the direct authority of the President of the New Caledonian Government, the regional cooperation office is charged with coordinating and monitoring New Caledonia's relations with regional, European or international organizations, of coordinating and enhancing bilateral and multilateral cooperation that New Caledonia is to develop alongside France in the Pacific region.

New Caledonia has an advisory role with institutions, and it is in charge of analysing all issues regarding relations with the EU and of cultural, technical, scientific and sports cooperation.



The general issues to be dealt with relate to negotiation and taking part in the Forum as an associate member since 2006; participation in the Fonds Pacifique's executive committee, with the Permanent Secretariat for the Pacific; the management of 'micro-projects' for funding cooperation initiatives with all the Pacific states and territories, the implementation and monitoring, along with the State's services and Adecap, of the bilateral cooperation agreement between New Caledonia and Vanuatu.

This bilateral cooperation agreement is unique for several reasons. First, the special links between New Caledonia and Vanuatu on account of history, geography and culture have led both parties to set up cooperation projects and a mutually beneficial partnership. Secondly, the Economic, Social and Cultural Cooperation Fund for the Pacific (usually called Fonds Pacifique,) a cooperation tool for France, was set up, among other things, to help to integrate the French communities into the Pacific. The Fonds Pacifique is the basis of this cooperation system, and it is complemented by funds specifically appropriated by New Caledonia.

A cooperation agreement determines the scope of this program and the way it is to be implemented. A joint committee is in charge of approving the annual programs and seeing that they are carried out.

The 2008 program budget is around 59 million Pacific francs; it deals with the following areas: economic development; health; education; job training and jobs for youths; youth; culture and sports; research and technology transfer; good governance.

It is necessary to note that as part of this system a decentralized major cooperation program with the Southern Province is also being carried out; two projects in connection with the agreement are also being implemented by New Caledonia for Vanuatu's benefit. One is in the amount of 6 million Pacific francs for the purchase of TV relays to broadcast CFI programs to Efate and Santo islands, and the other is a 20 million-franc project for the renewal of the Vanuatu Parliament's sound system and the simultaneous translation system.

### **Domains and issues**

Regional cooperation by New Caledonia covers mostly four major domains and deals with three major issues.

#### *The scientific domain*

Developing scientific partnerships with neighbouring countries is a priority, because the countries or territories are geographically close and because the environmental problems are similar. In New Caledonia there are six research institutions and a university, and these are funded on a regular basis; at the regional level, New Caledonia is a real partner of the European Union and the Pacific zone states in environmental matters and in biodiversity. Regional cooperation initiatives are implemented to fit the French Pacific community into its bio-geographical context (invasive species, coral reefs (IFRECOR, CRISP, ZoNeCo,) sustainable nickel extraction, etc.)

On a European scale, the EU strategy in the Pacific encourages the achievement of the objectives of the Millennium for Development in order to contribute to the development of

the Pacific region. The final statement after the 2006 France-Oceania summit mentions three priorities – environmental protection; taking into account climate change (its effects on natural risks), and the protection and development of biodiversity, notably coral diversity. In this connection, it is necessary to mention that the New Caledonia lagoons were listed as a UNESCO World Heritage Site in July 2008.

One of the major challenges of this domain is also the monitoring of scientific and technical relations between regional environmental organizations of which New Caledonia is a member, namely SPC, OREP and SOPAC, and the merger plan as part of the regional organizational structure reforms.

As regards maritime borders, the file relating to 'the extension of the continental shelf off New Caledonia' was submitted under the aegis of France in May 2007. The UN ad hoc commission has recently approved Australia and New Zealand's applications.

In the matter of marine resources and illegal fishing, authorities are actively watchful (there is a close cooperation with the merchant marine and marine fisheries services, the French Permanent Secretariat for the Pacific and SPC.) The SPIN underwater cable is a major economic and social project for Oceania (to reduce the digital divide.) The idea is to open up the region and make it less isolated thanks to an unlimited bandwidth broadband connection (a regional cooperation project supported by the French State, the EU, and SPC.)

#### *The cultural domain*

This domain is based upon developing partnerships in the arts and culture. It is about promoting the cultural and artistic expression of New Caledonian artists abroad and fostering cultural and artistic exchanges between New Caledonia and the Pacific region.

In this area, New Caledonia has the services and resources to conduct a cultural action policy with the provinces, the State, City Halls and cultural institutions.

The objectives are to act as a link, to provide advice and to monitor cultural action by partner institutions in New Caledonia, by State institutions and by regional institutions. In this way, initiated actions can be harmonized at the local or at the regional level. This requires continuous exchange of information and concerted action between partners. Partnership objectives are determined to assist cultural or artistic projects financially or technically. Regional cooperation is meant to act as an initiator in implementing cultural projects such as 'The New Caledonia Season in New Zealand 2007'.

Action can be initiated at three levels: building enduring exchange networks between artists and cultural officials, notably Melanesian ones; fostering the implementation of training programs, training periods, residences, and organizing encounters in all cultural areas; fostering and supporting New Caledonian cultural, artistic and musical expression and disseminating their cultural productions in neighbouring countries.

To that end, New Caledonia relies on the French Embassies' network, on French cultural institutions, on the Alliance Française, present in the Pacific, and on the cultural networks of

regional countries and organisations. The common objective in establishing privileged relations is to promote Pacific Islander artists' works.

Among cultural and artistic events, we can mention the Pacific Arts Festival and the Melanesian Arts Festival, which take place alternatively every other year. They are major cultural and artistic events allowing New Caledonian and Pacific Islands artists to express themselves, to share, to exchange, and to establish enduring friendships.

New Zealand and Australia also provide spaces and stages for quality cultural expression which New Caledonia artists can use.

The first edition of 'The New Caledonia Season in New Zealand in 2007' is viewed as a success and it must be used as a point of reference for other cultural New Caledonia seasons in the region.

The 'micro-project' funds and the 'cultural' funds are meant for economic, social, cultural and sports cooperation programs in the neighbouring countries such as Fiji, Vanuatu, Papua New Guinea, New Zealand, Australia, and also – in sports – Fiji, Samoa, Cook Islands, Guam, Vanuatu, Papua New Guinea, Wallis and Futuna, and French Polynesia.

#### *The youth and sports domain*

Here the objective is to integrate New Caledonia into its region through sports.

The idea is to make New Caledonia known as a *French-speaking sports resource place* in the region and to set up structures to go along with New Caledonia's cooperation policy.

The development of a sports policy in the Pacific confirms New Caledonia as a permanent partner in a position to support Pacific programs while asserting its place and that of the French language in the region. That is the outlook for the 2011 Pacific Games; their objective is to

- Upgrade sports facilities
- Set up a sports campus and – as part of the equalizing scheme – relocate some events so they take place in the North and in the Loyalty Islands
- Smoothly incorporate New Caledonia into its region
- Establish a relationship of trust between the 22 countries that make up the Pacific Games council as well as with French and international Olympic committees, and organize high-level sports events in New Caledonia as part of those games.

#### **European Affairs**

The European Affairs service is in charge of coordinating and following up on the implementation of the projects funded by the 7th, 8th, 9th, and 10th European Development Funds (EDF), in close collaboration with the Government members and the technical services involved.

The service, in collaboration with the Overseas Ministry, carries out negotiations with the European Commission about changes to the decision regarding overseas association; it is also in charge of monitoring negotiations between the EU and the Pacific ACP countries in order to reach an Economic Partnership Agreement (EPA).

The ongoing issues: the *Green Book* on EU-OCT relations: this is a study on the relations between New Caledonia and the EU. It is complemented by an analytical study on a possible granting of Ultra-Peripheral Regions (UPR) status to New Caledonia and its impact; another issue is taking part in seminars and OCTA studies: these are, among other things, reporting seminars in Brussels on 'Water and Waste Management' and 'Energy' Studies.

Three major issues represent regional cooperation in action:

*The 3rd France-Oceania Summit, Noumea, 2009*

The French President stated that 'The Pacific region is meant to be a peaceful and prosperous region, based on democratic values, on respect for and promotion of Human Rights and on good governance.'

This summit is the keystone for the direction given to relations between France and the Pacific. It is the symbol of the revival of the policy based on developing relations with all the region's countries (regional unity, EU-OCT relations) by determining the strategic directions given to French cooperation in the Pacific. The summit's objective is also to pinpoint the future areas of collaboration and cooperation and to assess in 2009 ten years of regional cooperation (since the March 1999 Organic Law took effect) and to allow New Caledonia to share the State's powers in external relations.

Actually, the objective of the summit is to support the Pacific Plan's objectives and also the Millennium for Development objectives, with two main points: managing and preserving the region's natural resources on a long-term basis; facing major environmental threats, as these have become major challenges for the future of the small island states.

The 'Pacific Plan' was adopted by the Pacific Islands Forum leaders at the Port Moresby, PNG summit in October 2005. It is a framework setting general policy objectives, economic policy objectives and objectives for regional unity. It is not binding, but it is used as a framework for regional cooperation and as a reference for island countries in their negotiations with aid donors.

The Pacific Plan has four objectives:

1. Economic growth – facilitating regional trade; adopting similar standards to make goods and services available across a wide geographic area; economic unity in the Pacific.
2. Sustainable development – regional plans to improve environmental management and the management of natural resources; harmonization of the health sector; improving networks in sports and physical education, and training.

3. Good governance – enhancing justice; harmonizing structures within the judicial system; bringing local laws into line with international conventions, treaties and agreements.
4. Regional security – maritime security, national police force efficiency; strengthening customs relations; pinpointing stress indicators in relationships and sources of conflict in the region.

The Pacific Plan Committee, however, admits that major progress must be made in fighting the effects of climate change, and underscores two new challenges facing Pacific countries, increases in the price of energy and increases in food prices.

Consequently, it is essential for the small island states to set up a common wholesale supply mechanism for oil products and basic essentials by requesting help, notably from World Bank experts.

It is interesting to point out that, in this connection, France is the only European state to be present in the Pacific through its communities (if we except the United Kingdom, with Pitcairn, an islet with a population of 60...)

France is the only European member of regional organizations – SPC, OREP.

Note: EU's contribution to the development of island states is significant, through the EDF's national and regional programs (funded up to 19.3 per cent by France.)

### **Economic and trade unity**

The 1988 Matignon Agreements, extended by the 1998 Noumea Agreement, are an 'essential turning point for New Caledonia on the domestic level and pave the way for a more and more fruitful integration into its neighbouring and regional environment'.

This unity has been enhanced and asserted through many instances of cooperation in a great number of sectors... The opening up of our countries, and exchanges of every kind are the driving forces towards a gradual increase in economic and social welfare at the local as well as at the global level, which is an essential contribution to world stability.' (See the speech by the New Caledonian government President at the Forum in Niue, August 2008).

Economic and trade unity is one of the four pillars of the Pacific Plan and in the end it represents 'a real opportunity to improve the standard of living of people in Forum countries or countries that are associated with its operation.'

International agreements in free trade are therefore being negotiated. The adoption of two international agreements occurred during the 2001 Pacific Islands Forum.

The Pacific Agreement on Closer Economic Relations (PACER) reflects relations within the general framework of future economic cooperation between the Forum member states. It is the negotiation of a free-trade agreement between the island countries on the one hand and Australia and New Zealand on the other.

PACER, which includes Australia and New Zealand, still requires, according to the Pacific ACP countries, 'more time for careful preparations...' Australia and New Zealand are finalizing their bilateral agreement and urging the Forum member states' leaders to expedite PACER's implementation.

The second agreement is the Pacific Islands Countries Trade Agreement (PICTA). In 2003 it covered only exchange of goods between member countries. In 2007, the scope of the agreement was widened to include services (air and sea transportation, financial services, telecommunications, health, education and tourism). The Forum member nations wish to be able to include in this agreement the French and American non-independent Pacific territories as soon as PICTA is approved. Only 6 Forum members have so far ratified PICTA, but only four (the Cook Islands, Fiji, Samoa, Niue) are in a position to implement it (regional trade relations). New Caledonia has officially informed the Forum's Secretariat of its wish to begin negotiations regarding its possible membership in PICTA.

### **The Economic Partnership Agreements (EPA)**

The island states that are both Forum and ACP group members enjoyed a most-favoured-nation status with the EU as a result of the Cotonou Agreement. These favourable but exceptional arrangements ended in January 2008; they are gradually supplanted by a free-trade arrangement in compliance with international practice as it results from EPAs. During the 39th PIF in Niue, the ACP members enjoying privileged relations (most-favoured-nation clause) with the EU wished that EPAs 'would bring benefits to their Pacific Island countries'. Pacific leaders are committed to having their countries increasingly take part in the international trade system, but the Pacific ACPs are the smallest economies in the world, with few resources enabling them to engage in trade negotiations. They want this specific situation to be taken into account. The regional Free-Trade zone made possible by PICTA (including the 14 island states except Australia and New Zealand) is still in the process of being set up. The deadline is 2009.

The EU is a South-South instrument for unity, and as such, it has revived negotiations. Fiji and Papua New Guinea have negotiated an interim agreement dealing directly with the EU (market access, fisheries, and rules for product origin). Vanuatu and Solomons could also soon join the Pacific interim agreement. An analysis of the economic and social impact of this agreement should allow New Caledonia to eventually choose to join a regional free-trade zone or not, and if/when necessary, to implement the tools and regulations needed for preserving, or even enhancing, economic activity in New Caledonia.

Foreign trade control in New Caledonia (control of the flow of goods and respect for import/export restrictions rules) has led to reforms in market protection sustaining the development of local industry and activity.

The difficulty lies in the necessary protection of the local economy to preserve and foster the country's activity while gradually opening up to the regional and world market. Opening up is 'conducive to trade development and to wealth increase in an increasingly interdependent market at all levels (globalization).' The obstacles in determining the rules on product tracing between New Caledonia and the European Union within the framework of the overseas

association decision have not been totally cleared, hence the cautiousness in reaching an agreement.

The World Trade Organization meeting took place in Geneva in July 2008 with a view to concluding the Doha round on liberalizing world trade, and as it has failed at this stage, we realize how complex and difficult this subject is both at a global level and at a regional or bilateral level.

This subject has a major global interest and also specific interests for businesses, for local manufacturers, merchants and local jobs, but also for governments and international authorities or organizations of which New Caledonia is a member or to which it is associated through France.

### **III. French policy in the South Pacific**

French cooperation and aid policy for development in the South Pacific is focused on three pillars:

- A North-North type cooperation policy with New Zealand and Australia.
- A North-South aid policy for the development of the Island Pacific.
- A regional cooperation policy through its overseas countries and territories (OCT), being established under a new 'South-South' scheme, enhancing the regional unity of those French communities endowed with a specific status.

Thus France is one of the key contributors to development aid in the Pacific, next to Australia, at the same level as Japan and New Zealand, and ahead of the United States.

France contributes to the stability and development of the Pacific region and prompts the European Union to enhance its commitment, which is already significant. For the region's states, foreign affairs are essentially linked with trade (foreign affairs is trade). France's foreign relations in the area could translate as 'Foreign affairs is aid.'

### **Geostrategy**

France's cooperation policy with Australia and New Zealand is based upon military cooperation agreements and scientific and technical collaboration. Between these two nations and France, there exists a common will to strengthen their diplomatic relations in order to serve the region's interests. Military cooperation is multi-faceted. It is meant both for assistance and regional protection for the benefit of the South Pacific small island states, which are encouraged to take part in military programs or exercises. The two main points are: 1) looking for a strong defence relationship with Canberra and Wellington and 2) integrating French Pacific territories into their regional environment in order to contribute to stabilizing the Pacific Islands as a whole. Therefore, the activities of the Armed Forces (FANC) in New Caledonia with respect to international relations is geared towards integrating New Caledonia into its region.

The mission of the Armed Forces in New Caledonia with respect to cooperation is: 1) enhancing training and setting up civilian or military cooperation, 2) performing surveillance

of exclusive economic zones (EEZ) as in Fiji, Tonga or Vanuatu, 3) performing cooperation activities, 4) humanitarian assistance in the case of natural disasters (the FRANZ Accord), 5) staff exchanges.

Regional security is illustrated by a major military cooperation exercise involving armies from many nations, called 'Southern Cross.' It takes place every other year. So in the area where French forces (COMSUP) operate, regional cooperation, performed by the FANC, consists in keeping alive relations with neighbouring countries in order to preserve the 'interoperability' levels reached with the Australians and New Zealanders; supporting the rule of law in the island states; maintaining good relations with Fiji, Tonga and Vanuatu; extending cooperation with Papua New Guinea (PNG) and initiating cooperation with Samoa and the Solomon Islands.

As a result, this position allows France to take part in the protection of sovereign interests (sovereignty rights, EEZ, New Caledonia's territorial boundaries) and to contribute to regional stability. It helps enhance New Caledonia's incorporation into the South Pacific area through its many activities and fosters good-neighbour relations, notably with Melanesia, which is a priority. These actions contribute to regional influence, through which France wants to give a new momentum to regional unity in the Pacific.

Mr Yves Jégo, the Overseas Under-secretary, indicated in late August 2008 that all this is about '... further pursuing regional cooperation by the three French communities, New Caledonia, French Polynesia and Wallis and Futuna toward their frequently-mentioned incorporation into the region to which they belong ...'

The Noumea Agreement provides a sort of road map for New Caledonia which is often cited as a model: '...having increasing exchanges shows that cooperation exists and responds to globalization, which in turn is the strengthening of exchanges... in the Pacific we need to reinforce relations with the neighbouring countries, and these exchanges showcase French presence in the Pacific, a major, historic presence, growing stronger given the current challenges, including environmental ones...'

The New Caledonian government President underscored, in his 19 August 2008 speech before the Pacific Islands Forum's leaders in Niue, '... the shared values uniting the Pacific Islands (dialogue, sharing of responsibilities in agencies and in local communities, respect for cultural identities) as well as the will to continue the incorporation process within the Pacific as a whole...'

## **Conclusion**

The integration of New Caledonia into the region continues through enhancing its role as a regional player as a result of its being an associate member in the Pacific Islands Forum; as SPC's host, and as a privileged partner in the cooperation policy of the French Republic and the EU in the Pacific.



New Caledonia strengthens its incorporation into the region thanks to its privileged relationships and collaboration with neighbouring countries and with the numerous diplomatic representations in the area.

This translates into activities relating to external relations in the form of multilateral or bilateral regional cooperation – taking part in the Pacific Islands Forum; the Pacific Plan follow-up; the management of French aid and cooperation systems in the Pacific; the micro-projects Fund; the coordination and management of the European Union's financial instruments (EDF); the representation of New Caledonia and the organization of formal visits outside and inside New Caledonia.

In 2009 the third France-Oceania Summit will be held in Noumea, and during the summit 10 years of regional cooperation will be assessed. Thus New Caledonia affirms itself as a model player with political and economic influence in the region. New Caledonia displays, for the benefit of the island countries and states in the region, its image as a stable and continuously evolving modern polity within the framework of the Noumea Agreement. It offers strong infrastructures, an outlook characterized by development, and creates conditions for extending its relations with neighbouring countries by stepping up exchanges and partnerships in all areas where collaboration is possible.

In this way, New Caledonia proves its real ability to act and its will to cooperate through its regional incorporation policy, and especially incorporation into Melanesia.

# 24. European Union law resources for Melanesian unity

Professor Jacques Ziller<sup>1</sup>

In light of the interdisciplinary character of this first conference organized by House Blong Melanesia it seemed to me that there were at least two ways the topic – European Union Law Resources for Melanesian Unit – could be comprehended for a paper contributed to a session dedicated to ‘New Caledonia Applying for Melanesian Unity’. There is a specific technical approach to regional unity in the Pacific, taking into account the fact that the region includes on the one hand ACP countries, independent countries in free association with the European Community (EC)<sup>2</sup> as part of the Cotonou Agreement (which succeeded the Lomé Agreement), and on the other hand non-independent overseas countries and territories (OCT), which are also associated with the European Community in partly similar and partly different ways. There is also a broader approach, focused on European experience in regional unity through the creation of European communities during the 1950s, and the European Union starting in 1993. This paper uses both approaches.

## A. Resources provided by EU Law as a type of regional unity

A mistake has too often been made regarding European support for regional unity in other parts of the world, notably in Africa and Latin America. That is the institutional copy-paste approach, consisting of copying institutions, even regulations, while making only minimal adjustments to the situation these components are tacked on, and often these components are impossible to separate from the original model, which is also difficult to transfer. This is a faulty process, for it ends up transplanting institutions that are not adapted to the context in which they have to operate. It is better to be just inspired by what is original and what works satisfactorily in European unity, and most of all by what is relevant to other regions.<sup>3</sup> As I see it, four specific elements of the European experience regarding regional unity are particularly relevant to Melanesian unity projects, and especially for New Caledonia’s participation in them.

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<sup>1</sup> University of Pavia

<sup>2</sup> Note: Union and Community should be merged into a single organization, the European Union, when the Lisbon Treaty takes effect. In some ways, I am getting ahead of myself when I use the words European Union (EU) and EU law as equivalents for European Community (EC) and community law (EC law), which for the time being are technically more accurate.

<sup>3</sup> See Jacques Ziller, *The Challenge of Governance in Regional Integration - Key Experiences from Europe*, European University Institute, Working Papers Law, No. 2005/11

## 1. The functionalist approach

The first possible contribution of the European experience in regional unity, and most certainly the most significant one for other parts of the world, is the functionalist approach of the project which led to the setting up of European Communities. Functionalism and neo-functionalism mean an approach that has been theorized by international relations scholars, particularly Ernst Haas<sup>4</sup> after it had been implemented by Jean Monnet, the man who inspired the 9 May 1950 Schuman Declaration.

The Schuman Declaration is certainly the best illustration for the functionalist approach; it states, ‘Europe will not be built overnight, nor will it be built as a whole – it will be built by practical achievements which first of all will bring on actual solidarity.’ Certainly, the project referred to a remote future, namely the establishment of what was dubbed ‘The United States of Europe’. But the approach was apparently a more modest one, precisely a functionalist approach in that it was about setting up a common market for coal and steel in Europe along with the institutions required for the best operation of this limited-objective body.

For a brief introduction to the functionalist approach, we will say that it is continuously focused on the immediate content of the regional integration project to be set up, even if there are still unexpressed ‘mental reservations’ or further projects. This approach necessarily leads to an extremely pragmatic attitude, and the question of whether each of the achievements stemming from it remains adjusted to its objectives can vary as time goes by.<sup>5</sup> Adopting a functionalist approach to European integration has major consequences.

I believe the first document mentioning shared sovereignty – although it does not use these exact words – is precisely the 9 May 1950 Schuman Declaration. In my opinion, the 1988 Matignon-Oudinot and the 1998 Noumea Agreement signatories were acting as direct heirs to Jean Monnet and Robert Schuman, saying in some ways, ‘Let us focus on what unites us, and not on what divides us’, let us set up institutions to work together.

The functionalist approach leads also to a type of legal analysis – precisely, functional analysis, with which French administrative law scholars have been familiar since at least Léon Duguit<sup>6</sup> – which is the approach used on a regular basis by the European Court of Justice (ECJ). This approach differs from the institutional/organic approach, which is more formalistic and used in many legal organizations. The functionalist approach makes it possible to go beyond appearances and develop particularly useful concepts with regard to regional integration.

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<sup>4</sup> See Ernest Haas, *The Uniting of Europe: Political, Social and Economic Forces 1950-1957*, Stanford University Press, 1968

<sup>5</sup> See, among others, Jean-Louis Quermonne, *Le Système politique de l'Union Européenne*, Paris, Montchrestien, Collection Clefs, 2005; and John Temple Lang, ‘Checks and Balances in the European Union: The Institutional Structure of the “Community Method”’, in *European Public Law*, 12/2006, pp 127-154

<sup>6</sup> It is worth noting that the Dean of the Bordeaux School of Law also authored a very interesting analyses on sovereignty: *Souveraineté et liberté: Leçons faites à l'Université Columbia New-York, 1920-1921*, Paris, Alcan, 1922.

One last illustration of the functionalist approach to integration, and notably of functional analysis performed by the ECJ, is provided by the notion of the ‘primacy’ of community law over member states’ laws. Politicians and jurists who are not community law specialists often construe primacy as applying to the European Community law the notion of ‘supremacy’, which is so well illustrated by Article VI of the Constitution of the United States. Article VI provides that ‘This Constitution, and the laws of the United States [...] shall be the supreme law of the land.’ Unlike supremacy, primacy is not absolute; it applies only to Community law provisions that are clear, unconditional and precise enough to be endowed with the power to be directly enforced by member states’ courts and public authorities, and it applies only in instances where the Community has powers.<sup>7</sup>

In the tradition of the functionalist approach, there is no notion of a hierarchy between the law of the whole and the laws of member states, but a rule allowing resolving the likely clashes between Community standards and member states’ standards.

## **2. The centrality of joint action and the institutions’ functionality**

In my opinion, this is a major resource stemming from the European regional integration experience. The Founding Fathers of the European Communities experience, Jean Monnet, Robert Schuman, Konrad Adenauer, Alcide de Gasperi, Paul Henri Spaak, to name just the best-known among them, and the jurists who assisted them, especially Paul Reuter, Pierre-Henri Teitgen and Maurice Lagrange,<sup>8</sup> initially had in mind primarily joint action, stemming from their functionalist approach.

In this respect, the words used in the Treaty of Rome setting up the European Economic Community strike us as particularly interesting. There is no mention of powers, but of Community actions. Things are being done in common, and the appropriate institutions are created for that purpose. Here, the way things are done is the reverse of what constituent powers are often prone to do. Constituent powers proceed to create institutions to govern relations between the governed and the rulers, and they let these institutions determine the possible actions to perform.

Conversely, as part of an approach based upon common action and the institutions’ functionality, there is more flexibility in creating institutions adapted to various actions. The procedure consists of agreeing on objectives, on diagnosis, i.e., on identifying resources and constraints – which is often a difficult proposition – and on ways to act. Only on the basis of such an agreement are institutions set up.

What is particularly meaningful in the European experience is that as a result of this approach there has been a balance between the use of supranational-type actions, with institutions separate from participant members and given powers of their own – especially

<sup>7</sup> Regarding this topic, see Jacques Ziller, *Les Nouveaux traités européens: Lisbonne et après*, Paris, Monchrestien, Collection Clefs, 2008, pp 49 and 101.

<sup>8</sup> See, in particular, Paul Reuter, *La Communauté européenne du charbon et de l’acier*, Paris, LGDJ, 1953; and Pierre-Henri Teitgen, *Cours de droit institutionnel communautaire. Structure et fonctionnement des communautés*, Paris: Les Cours de droit, 1976; as for Maurice Lagrange, who was the first French prosecutor at the ECJ, see remarks by Jean Monnet in his *Mémoires*, Paris: Fayard, 1976, pp 519, 568 and 570.

the European Coal and Steel Community and the European Commission – and types of action for which the intergovernmental approach, the traditional procedure of sovereign states, is used.

### 3. Differential integration

This is the third particularly relevant point in the European experience in regional integration. Differential integration is a more and more relevant topic in the framework of European integration. It is cited more and more often on account of the setbacks suffered by the treaty establishing a Constitution for Europe in 2005 and the 2008 Lisbon Treaty. Here, projects that do not necessarily involve all the participant members in the regional whole – 27 in the European Union since 2007 – are started.

This procedure is relatively new regarding some legal techniques implemented since the 1992 Maastricht Treaty and the 1997 Amsterdam Treaty, but the concept is not a new one. This aspect has always been present when it comes to taking into account what political analysts and economists call asymmetry between member states. For that matter, differential integration accounts for the peculiar character of the voting system within the Council, whereas when the undifferentiated principles such as one state/one vote were applied, processes were blocked in their early stages.

Legal techniques for differential integration are many – temporary or geographical special dispensations, transitional periods, ‘opt-ins’ and ‘opt-outs’, enhanced cooperation, etc. The only technical limit is the legal minds’ inventiveness. It must be emphasized, however, that if differential integrations mean too many components, citizens will have more trouble comprehending the regional integration project. It does not matter if it is only about limited-impact technical achievements. By contrast, it is very important as the scope of common actions extends and as the impact of decisions made outside the democratic institutions of each state grows more significant.

### 4. Multilingualism and cultural diversity

This is an essential aspect of the European integration experience, although it is most often largely underestimated by legal minds. Naturally, the 13 official languages used in the European Union are very few compared to the thousands of Melanesian languages, and many compared to the three vernacular languages of Melanesia, English, French and Bislama. No matter. The major thing is to be mindful of the fact that in the European experience, it has been possible to develop a legal system which takes multilingualism fully into account – sometimes very easily, sometimes with considerable difficulty.

In a few words, there are European law rules<sup>9</sup> which are directly enforceable, that is, they are enforceable without the need for them to be turned into national laws, decrees or ordinances. Obviously, since this law is enforced directly in all the participant members, it must be

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<sup>9</sup> See Alain Fenet, ‘Diversité linguistique et construction européenne’, in *Revue trimestrielle de droit européen*, 2001/2, p 235 ff.; in Italian, Diana Urania Galetta and Jacques Ziller, ‘Il regime linguistico della Comunità’, in Mario P Chiti and Guido Greco, *Trattato di diritto amministrativo europeo*, Milan: Giuffrè, 2nd edition, 2007, pp 1067-1113.

written in all languages used in those states – as it turns out, 23 since 1 January 2007. This dispensation has led Community institutions to develop procedures and systems enabling the different countries to publish these laws in 23 languages at the same time. For its part, the ECJ is constantly reasserting the linguistic parity principle, and it takes into account all linguistic versions when constructing the Community's law, with well-established principles in case of conflicting interpretations resulting from linguistic issues.

Another particularly relevant aspect, in connection with linguistic diversity, is that of cultural diversity, which is sanctioned notably by the Preamble to the Charter of Fundamental Rights of the European Union, proclaimed in Nice on 12 December 2000. One of the aspects of this recognition of cultural diversity regards identity symbols, which matter so much in New Caledonia and Melanesia. The issue is not unknown to the European Union, and it is illustrated by the provisions adopted for the euro. While all bills are the same in all member states in order to take into account the fact that they are meant to circulate not only in all member states but also worldwide, European coins are different, depending on issuing countries.<sup>10</sup> As I see it, in case Pacific francs are replaced by euros, it would be quite conceivable to have specific identity symbols, just as is the case for Monaco, San Marino and the Vatican – although these are not European Union members, they are part of the monetary union.

All this goes to show that in the concept of European integration there is a whole series of practical consequences leading to positive lessons – when the solutions are operative – or on the contrary negative ones – when the institutions and procedures specific to the Union or to the European Communities are not operative. As an entity applying for Melanesian unity, New Caledonia benefits from its being part of the French Republic, and thus it can theoretically rely on fifty years of expertise among academics and practitioners in European integration.

### **B. The resources and constraints for Melanesian unity resulting from New Caledonia's status as an entity in association with the European Union**

One much more concrete and focused way to comprehend the title of the paper I was asked to contribute consists in analysing what, in the framework of a New Caledonia application for Melanesian unity, could be regarded as a resource stemming from the European Union's positive law. This results especially from New Caledonia's status as an entity in association with the Community among overseas countries and territories (OCTs).

From the point of view of Melanesian regional unity, both useful opportunities and insurmountable constraints result from the fact that the European Union operates strictly under the law. Here we are not assessing the economic and financial aspect of EU aid to OCTs and ACP and the EU's Pacific policy. From a legal analysis and political science point of view, it is about drawing conclusions from the fact that the EU's action is conducted under very strict legal rules.

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<sup>10</sup> Regulation (CE) No. 975/98 by the 3 May 1998 Council on unitary values and technical specifications of euro coins meant for circulation, *European Communities Gazette*, L 139, 11.5.1998, pp 6–8, and a 14 December 2001 Commission paper, 'Characteristics of euro coins', COM(2001) 776 final – ECG, C 373, 28.12.2001.

The European Union is not a state, but a group made up of sovereign states and based upon international treaties: the treaty instituting the European Community and the treaty on the European Union – complemented by the Euratom Treaty. It is also based on all the protocols and schedules, which have the same status as agreements between states (EU members), as well as the international agreements concluded between the European Community and other states or international organizations. The body these treaties make up includes clauses that are relevant to and that cannot be ignored by the Union's institutions when they act; the same applies to derivative law, i.e., directives, regulations, decisions and other instruments adopted by the Union's institutions on the basis of treaties. What is interesting from the point of view of New Caledonia joining Melanesian unity are the constraints resulting from the legal nature of these instruments and the adoption procedures that apply. Before analysing what, in this instance, are the European Union policy components that are relevant for Melanesian unity, two consequences can be singled out for emphasis; they relate to New Caledonia and to the other Melanesian states.

### **1. New Caledonia is the only OCT in Melanesia**

The whole EU policy regarding the Pacific can develop only on the basis of clauses in the treaties, whether they relate to OCTs (New Caledonia, French Polynesia and Pitcairn) in association with the Community on the basis of a system within the treaty (4th part); or to the independent sovereign states in association with the European Community (this is the case for the four independent states in Melanesia, Fiji, Papua New Guinea, Solomon Islands, and Vanuatu) on the basis of a particularly important association agreement (Yaoundé, Lomé, and now Cotonou Agreements);<sup>11</sup> or to other states that are not in association, such as Australia and New Zealand, or the United States. In each case an analysis of the powers of the Community or the European Union is necessary in order to undertake an action and conclude possible agreements, and specific decision processes are necessary to the exercise of these powers.

a) It is particularly important not to lose sight of the fact that as soon as a change in policy toward the Pacific is likely to fall outside what is allowed by the treaties in their present condition, the legal bases must be changed. For that purpose, a change in the founding treaties (EC Treaty and EU Treaty) is necessary, and this change can be performed only through unanimous agreement between all governments within the Union – whether they have any specific interest in the Pacific or not – followed by ratification, which requires authorization from Parliament – or even a referendum – as well as the agreement of the Heads of State, again in all member states. One good illustration of these constraints is the fate of the clause allowing, if and when necessary, an OCT to become an outermost region or vice-versa. The clause's fate was predicated on the ups and downs of the 2005 referendums in France and the Netherlands, and the 2008 Irish referendum.

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<sup>11</sup> To get the full text of this agreement, as it results from the 2005 half-way review, see Decision 2005/599.CE of the 21 June 2005 Council regarding the signing, in the name of the European Community, of the agreement amending the partnership agreement between the ACP group on the one hand, and the European Community and its member countries on the other hand, signed at Cotonou, on 23 June 2000, European Union Gazette, no. L 209, 11 August 2005.

It is to be noted in this connection that, except for this ‘link’ clause and some other minor changes in form regarding the policy of aid to development, neither the 29 October 2004 Treaty establishing a Constitution for Europe – now lapsed – nor the 13 December 2007 Lisbon Treaty – whose ratification is still uncertain, at least as regards its date – plan any changes relevant to our topic.

There is another important point: the agreement making up the basis for relations between the European Union and the ACP states is based on the clauses relevant for concluding association agreements. They are Articles 310 and 300, subsection 3, paragraph 2 of the EEC treaty. These documents show that it is necessary on the one hand to have a unanimous decision by the European Union Council, and thus a unanimous decision by the member states, and on the other hand the official approval by the European Parliament with a majority – and not a mere plurality – of its members. The procedure is different in the case of the other agreements between the Community and other states. Here, the European Parliament plays only a consultative role, and more often than not, the Council’s decision is made on the basis of a qualified majority. This means that regarding the Union’s Pacific policy, there are numerous players with the ability to block an action: the European Commission, all member states, and the European Parliament.

In this regard, it is particularly important to become aware of the rising powers of the European Parliament within the framework of internal politics, particularly since the Amsterdam Treaty, which came into force on 1 May 1999. This rise in power goes along with the Parliament’s rise in power in matters of foreign policy, resulting from the Maastricht Treaty, in force since 1 November 1999. The Maastricht Treaty requires the Parliament’s official approval for association agreements. As a result, the European Parliament has become a major player in European policies both in internal and foreign domains. This means that if people want a new action by the Union, they must convince not only the relevant services within the Commission and the European Commissioners in charge of aid and development and external relations, but also the governments of all member states – or at least their permanent representatives in Brussels – as well as the members of the European Parliament, particularly the members of the Parliamentary committees with powers in the matter, and the agreement project’s rapporteurs.

b) As noted above, New Caledonia is the only OCT in Melanesia, and one of the four OCTs in the Pacific, along with French Polynesia, Wallis and Futuna, and Pitcairn, a British territory with minor political and economic importance – if we except the possible consequences of the existence of the vast EEZ, or even the continental shelf surrounding it. Now OCTs are governed on the one hand by the relevant provisions in the EC Treaty (Articles 182 to 187) with the constraints already noted regarding their possible amendment, and on the other hand by an Association Declaration, based upon Article 187.

The above means first that from a formal standpoint, it is a unilateral act by the Council and not an agreement between European institutions and OCT institutions, even though practice has changed toward a more and more effective partnership between these different institutions in the working-out of this decision.



This also means that the decision must be based on a proposal by the Commission. The Commission can withdraw its proposal if the Council attempts to depart from it in a way that to the Commission would seem to run counter to the Community's interests.

This also means that governments in each member state in the Union can oppose this decision, which must be unanimous, whereas the European Parliament can at most issue a consultative opinion if it wishes, but it cannot bring any changes to or influence the contents of the decision.

This also means that the decision is likely to be reviewed by the ECJ, and thus it can be struck down or invalidated through a demurrer if it contradicts the EC Treaty provisions, whether in form or content.

This also means that, especially in a period like the present period, when preparations for the renewal of the association decision are ongoing, we must take into account other players than the relevant Commission services alone, particularly of member states' governments, whether they are interested in the Pacific or in OCTs or not.

## **2. The other Melanesian states belong to the ACP group linked to the European Union by the Cotonou Agreement**

The other four Melanesian states are in association with the Community through the Cotonou Agreement between the EC and the ACP; the same applies to the Pacific independent states except for Australia and New Zealand. As it is an association agreement, we must take into account the fact that on the basis of Article 300 in the EC Treaty, first it is the Commission which must present the recommendations to the Council. On the basis of these recommendations, the Council, unanimously, commissions the Commission and if necessary gives it instructions for negotiation. Then the Commission conducts the negotiations in the Community's name, until an agreement is signed between the Community and all the ACP states. Next, this agreement is submitted, for approval, to the European Parliament through the official approval process, and then to the Council, which, again, must make a unanimous decision.

It must be added that the association agreement between the Community and the ACP states – we know that since June 2000 it has been the Cotonou Agreement, and previously the Lomé Agreement – must comply with the agreements relating to the World Trade Organization (WTO). Moreover, the EU's policy toward the ACP countries is not confined to negotiations for the association agreement. For the agreement's implementation, which is not restricted to aid funded by the EDF, the European Commission negotiates Economic Partnership Agreements (EPAs) – and this is new with the Cotonou Agreement. EPAs are free-trade agreements taking into account the differences in development levels between the EU and the ACP countries; they are negotiated with the various countries combined into various regions – big economically integrated regions, regions in the process of being integrated or in the process of enhancing integration, such as the Caribbean, the Pacific and Africa (or the Africas). As we know, the year 2008 is precisely the year when these negotiations should come to fruition.

### 3. Aspects of the European Union's policy that are relevant to Melanesian unity

The European Union's foreign policy in the Pacific is not governed by a specific and constraining treaty or a legal act but by acts which specialists are wont to call, rightly or wrongly, 'soft law', that is, acts which are not binding in law. These acts, however, can have important consequences in practice, because they are viewed as morally mandatory for the various institutional players they address. Three documents are particularly interesting for our topic, and therefore deserve analysis.

a) First, we will mention the 'Communication from the Commission to the Council, the European Parliament and the European Economic and Social Committee – EU Relations with the Pacific Islands – A Strategy for a Strengthened Partnership'.<sup>12</sup> There are particularly important points in the EU's strategy for the topic of regional integration, since the Union, like other parts of the world, wants to foster regional, even sub-regional integration. The Commission's communications are, as noted above, documents which are not binding, but once they have been adopted by the Commission and transmitted to Parliament and to the Council, and if neither of these institutions nor a government in a member state negative them, they become particularly significant reference documents for the development and the implementation of the Union's policies. If somebody can refer to a specific passage in a given document in a process where support, notably financial support, is requested from the European Union, the requesting party has a significant argument for at least opening negotiations, whereas lacking this reference, they may get a blunt refusal, such as 'Your project is quite interesting, but it is not part of the European Union's priorities.' As it turns out, a certain number of passages in the 2006 Communication deserve to be pointed out, for the big number of these references clearly shows how important the support to regional (or sub-regional) integration is (*my italics*) :

Point 3: 'The strategy proposed consists of three components:

(1) a *strengthened relationship between the EU and the Pacific ACP countries and region* in order to pursue a broad political dialogue on matters of common interest ranging from political and security to economic, trade, social, environmental and governance issues, thus enhancing the visibility and political profile of the EU-Pacific partnership on both sides;

(2) *more focused development action*, with greater emphasis on regional cooperation to build up critical mass, enhance regional governance and facilitate cross-fertilization. The main focus will be on matching the key priorities of the region, notably as defined in the Pacific Plan;

(3) *more efficient aid delivery*, including greater use of budget support and closer coordination with other partners, in particular Australia and New Zealand.'

Point 3.2. 'More focused development action

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<sup>12</sup> SEC(2006) 642} /\* COM/2006/0248 final

‘Focus is necessary to ensure optimal impact. It is proposed to focus on *three priorities* reflecting interlinking key needs of the Pacific and European comparative advantages: *Governance, regionalism and sustainable management of natural resources*.

#### Point 3.2.2 Regionalism - Achieving critical mass

‘The Pacific Plan is based on the concept of regionalism. Stronger regional cooperation would improve the region’s capacity for dealing with the development challenges it faces. *An effective development support strategy must therefore be based primarily on assistance for regional integration* to build up critical mass, to enhance regional governance and to facilitate cross-fertilization.

[...]

‘A long-term formula for effective and politically well-anchored regional integration in the Pacific is still under construction. In certain areas regional cooperation is already yielding good results, such as the Pacific Islands Forum Fisheries Agency (FFA), which brings together 17 member governments. The Pacific Plan, while an important step, must be considered a ‘living document’ and the start of a process rather than the end. Pacific regional cooperation is bound to evolve and the EU’s policy for the region will therefore have to adapt over time. This is best done *through sustained support to the Forum Secretariat and other relevant CROP (Council of Regional Organizations in the Pacific) agencies in particular as regards natural resources management, vulnerability and governance*. This will encourage strengthening Pacific regionalism in areas where it is needed and where the EU can bring real added value.

#### ‘Economic Partnership Agreement

[...]

‘Only a group of larger Pacific countries are involved in trade in goods with the EU. The main traded products are fish and fish products, and sugar. Fiji, as a Sugar Protocol country, is eligible for assistance for its adaptation strategy following the sugar reform. The expected restructuring of the sugar industry in Fiji together with the EPA should improve competitiveness. Moreover, accompanying measures for Sugar Protocol countries, benefiting from specific EU funding, are very likely to reinforce the action on sustainable development of natural resources, focusing on energy production from biomass and reforestation.

‘The EU remains a distant and comparatively small trading partner for the region and the eventual impact of trade liberalization under the EPA on the Pacific ACP countries collectively is likely to be relatively small. On the other hand, the proposed regional free trade agreement with Australia and New Zealand (PACER) is of another order of magnitude and could entail significant adjustment costs for the Pacific ACP

countries. It will therefore be important to favour *a gradual approach to trade liberalization in combination with other measures, such as opening developed partners' markets to labour from the Pacific ACP countries and increasing development assistance.*

'In order to maximize the desired effect of the EPA, it is crucial that *the negotiations and outcome are closely coordinated with programming and, in due course, implementation of development assistance*, at both regional and national levels, in order to harness synergies. Of particular importance *are trade-related assistance and capacity-building, socio-economic, financial and tax governance as well as targeted support measures* including compliance with international customs standards and trade facilitation where relevant, sugar, the private sector or human resource development and social protection.

*Through flexibility, constructiveness and innovation the EU can set new development friendly standards in trade negotiations with small developing island economies, which could be taken into account by the region's other developed trading partners when (re)negotiating their own trade arrangements with the Pacific ACP countries.'*

b) As regards the consequences of this strategy, it is important to draw attention to the Green Paper, 'Future Relations Between the EU and the Overseas Countries and Territories'.<sup>13</sup> The Green Paper has been a much-used tool for over a decade. When the EU wishes to work out, develop or change a policy, it starts by publishing a Green Paper, a preparatory document meant to be referred to and usually including a certain number of issues to which the concerned public, and mainly those to whom the policies are targeted, are asked to respond. It is interesting to mention the following passages from the Green Paper on future relations with OCTs:

'The *aim* of the present Green Paper is therefore not to set out a new policy or establish new financial instruments or detailed procedures, but *to examine a series of challenges and opportunities and to obtain input from interested parties before defining a new partnership between the EU and the OCTs*, in particular in view of the expiry of the current Overseas Association Decision at the end of 2013. [...]

'Question 5: *What could be the advantage for the OCTs of increased regional cooperation and integration?* How could a transfer of knowledge between the OCTs and their neighbours be encouraged? [...]

'Question 7.1: What are in your view the *benefits of greater regional economic integration that could present an advantage for certain OCTs* in response to globalization and the erosion of their trade preferences vis-à-vis the Community? [...]

'Question 7.2: *How could the OCTs engage in wider regional trade and how could the Community facilitate this?* [...]

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<sup>13</sup> {SEC(2008) 2067} COM(2008) 383 final Brussels, 25 June 2008.

‘Question 14: *How could the OCT-EC association be adapted to take greater account of the OCTs’ diversity* without increasing the administrative burden for the OCTs and the Commission? [...]

‘The period of public consultation will commence on 1 July 2008 and end on 17 October 2008.

‘The European Commission invites you to submit your contribution using the electronic form that you can find on its website at the following address:

[http://ec.europa.eu/yourvoice/consultations/index\\_fr.htm](http://ec.europa.eu/yourvoice/consultations/index_fr.htm)’

This Green Paper is, as usual, the first stage in a consultation. Thereafter, responses to the queries are analysed in-depth by the European Commission services and they are used to set up the following document, which, more often than not, is a White Paper or a Paper by the Commission expounding the outline, along with a certain number of key details, of the future policy. Of course, responses that run totally counter to the objectives mentioned in the Green Paper cannot be expected to be taken into account if they are isolated. However, interactions can arise, and thereafter they may materialize in specific projects. It is worth restating that the Green Paper and the Commission’s paper are program documents, legally not binding, but in practice they can prove particularly useful as a lever for action.

c) A third document is particularly relevant to our topic. It is The European Union’s Cooperation Program for OCT Countries - Overseas Countries and Territories regional integration impact study,<sup>14</sup> including, among other things recommendations regarding the amending of the association decision in order to allow the OCTs to be parties to EU-other countries agreements on services. In particular, two excerpts deserve quoting:

‘The aim of this OCT regional integration impact study, in accordance with its terms of reference, is to clarify the choices now facing the OCTs with regard to their trade arrangements with European Union MS and neighbouring States in their geographical region, at a time when those States are negotiating a radically different framework for their mutual future economic and trade relations from the beginning of 2008.’ (p. vii)

‘On the other hand, a possible strategy for New Caledonia and French Polynesia would be to join PICTA, in order to benefit eventually from the PACP services markets, while integrating in a more marked way the regional decision-making circles and thus being able to exert some influence on future negotiations on the implementation of the PACER agreement, since the latter will have a substantial impact, from both an offensive and defensive point of view.’ (p. 16)

This document is particularly interesting as an example of what sociologists call an ‘epistemic community,’ a group of specialists – academics, practicing professionals, and

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<sup>14</sup> A study for the European Commission by Pohl Consulting & Associates Consortium, July 2007, available on: [http://ec.europa.eu/development/icenter/repository/OCT\\_Impact\\_Study\\_RegInt\\_and%20EPA\\_20070907\\_EN.pdf](http://ec.europa.eu/development/icenter/repository/OCT_Impact_Study_RegInt_and%20EPA_20070907_EN.pdf)

politicians – who deal with the same issues and share the same language. The author of this report is Jean-Michel Salmon (see p. ii of the report) – who, for that matter, is a member of the Institut de droit d’Outre-mer, whose assistant director and founder is Jean-Yves Faberon, one of the organizers of this colloquium. Jean-Michel Salmon is a French academic working out of Martinique and one of the few specialists in small island economies, which are particularly significant for our topic. Of course, this report has no legal value whatsoever, and it is not even a document issued by an institution. It does, however, show in a very concrete way how we can follow up on exchanges such as those House Blong Melanesia is initiating through this conference. If House Blong Melanesia succeeds in developing an epistemic community, it will grow into an essential player in Melanesian unity.

In closing, obviously, we must specify again that the economic dimension of the EU’s Pacific policy is essential, but it is not the only one. Among the innovations that will come as a result of the Lisbon Treaty’s taking effect, there is a particularly relevant provision regarding the Pacific. It will appear in the future Article 191 of the Treaty on the Functioning of the European Union, which develops Article 147 of the EC Treaty: ‘Union policy on the environment shall contribute to [...] promoting measures at the international level to deal with regional or worldwide environmental problems, and in particular combating climate change.’



### **III. The Future**

#### **25. Discussion: what role can New Caledonia play in Melanesian unity?**

**Jean-Yves Faberon, Christiane Waneissi, Laurent Semavoine, Charles Washetine, Simon Loueckhote, Jean-Brice Herrenschildt, Gerard Fey, Louis-José Barbancon, Paul De Deckker**

**Jean-Yves FABERON**

New Caledonia has powers with regard to external relations, but so do the provinces, and precisely, our session chairwoman, Mrs WANEISSI, whom I hail as both a lovely and strict person, has an assignment in regional relations at the Southern Province. How does the Southern Province complement New Caledonia and where do the other two Provinces stand in this regard?

**Christiane WANEISSI**

Article 33 of the Organic Law gives authority to Province Presidents, whether in the South, in the Islands or in the North, to conclude agreements and sign cooperation conventions with their counterparts in the region. Therefore, in Vanuatu, our counterpart is, of course, the province and not the Vanuatu government. It is important to specify at what level the Southern Province's actions are conducted: health, for example, since the Province has powers in this area, social work and sanitary education, or the environment. This is how we act in Tana, Vanuatu.

**Laurent SEMAVOINE**

The Southern Province has a significant cooperation program with communities in various countries, Vanuatu among them. During the latest joint commission meeting, on 1 July 2008 in Port Vila, the Vanuatu government asked New Caledonia to coordinate the efforts of the three provinces so we could, together, contribute a more complete and perhaps easier-to-read program with regard to our various partners and interlocutors. During the coming months we will start working on this, for the Islands Province has also developed interesting programs, and the Northern Province has projects that it would like to implement in 2009. Those responsible for regional cooperation and external relations will be available, along with representatives from the three provinces, to set up a joint cooperation project in 2009 and ensure wide dissemination of information regarding the projects and events which will be organized as part of decentralized cooperation. Decentralized cooperation will be a welcome



addition to regional cooperation as implemented by the government within the framework of New Caledonia's incorporation into its surrounding region. I believe that in the distribution of powers we have built a balanced system made up of regional cooperation and decentralized cooperation, and the whole system is highly likely to develop. The French diplomatic representations in the Pacific and the neighbouring countries are increasingly calling on us to set up new partnerships. This is true for Australia and New Zealand, but also, and mostly in recent years, for Melanesian countries, especially Vanuatu, Fiji, and Papua New Guinea. Closer cooperation projects are also being examined with the two other French Pacific OCTs, French Polynesia and Wallis and Futuna. In the course of the increasingly frequent meetings and events in Melanesian countries, an atmosphere marked by dialogue and friendship is shaping up, and this necessarily generates new opportunities for honest partnerships, for cross-fertilization made more valuable by more and more dynamic cooperation despite constraints, differences and challenges. Relationships are more and more enthusiastic in this area, which now is of interest to most people.

### **Charles WASHETINE**

I think that since yesterday – and this morning as well, at least those who attended – we have seen how the incorporation of many countries into the region has proceeded, with all the realities that we witness. I wonder if so strong a commitment as Australia's does not reflect a will to take control of the zone. In New Caledonia we have some means for emancipation; this is not the case for most Pacific island countries which are now facing many problems. But at the same time, New Caledonia views Europe's contribution favourably – three billion [Pacific francs] are given yearly to New Caledonia. We hail this, as it enables New Caledonia to train its youth. Right now we have a peculiar status: we are not totally independent, but at the end of the day, the question is for us to see how New Caledonia will be able to influence things, especially since the Noumea Agreement allows us to play the regional cooperation card. Thus, initially, New Caledonia was not a Forum member, but later it became an observer, and now it is an associate member. But we can wonder about the limit of big states' interventionism in small states; small states have no recourse but to turn to neighbouring countries in the name of Pacific solidarity. This is an open question.

### **Laurent SEMAVOINE**

Of course, a will for cooperation with Australia and New Zealand has been shown, on account of geographical closeness and development levels. That's a fact, but New Caledonia has also shown a willingness to cooperate with Melanesian countries. There is a micro-project fund. It might be contended that it is not very significant in terms of volume, but it shows the will to cooperate. The micro-project fund is a funding instrument which fosters dialogue and allows people to initiate a project, which could later be extended through exchanges, creation and dissemination within the networks that spring up within and between Melanesian countries. The bilateral cooperation convention with Vanuatu is significant. It can act as a model for the other countries that contemplate setting up such a partnership with New Caledonia some time in the future. The Vice-Chair of the New Caledonian government, Déwé Gorodey, yesterday said, 'In the final analysis, one area has been conspicuous, and that is the cultural area. In the cultural area exchanges are spontaneous, frequent and regular.' And Déwé Gorodey illustrated her idea with the Melanesian Arts Festival and the Pacific

Arts Festival, two major events in which most countries in the region take part. Certainly, we still have the technical and financial tools to provide assistance and support, but now New Caledonia is really involved through a clear wish for real participation, and year-round exchanges, in virtually all Melanesian countries. The involvement relates to artists' residencies, cultural programs, and musical exchanges. Besides, we are anticipating the France-Oceania Summit, which is scheduled in Noumea in September 2009. The summit will be a clear example of a renewed French will to cooperate, to be involved and to show solidarity in the South Pacific. France, given its three communities in the region, regards the region as strategic and essential. Cooperation over the last ten years will be assessed, and new objectives will be spelled out for regional cooperation and New Caledonia's incorporation into the area. This issue directly affects New Caledonia and it is a highly political one. It is not to be dealt with only by technicians. Debates will be conducted and directions determined through impetus from the executive, from local political leaders, from members of parliament, with New Caledonia's decision-makers and population. That is where the will originates, just as does the initiative to establish wise partnerships and rich cooperation between Melanesian countries.

#### **Charles WASHETINE**

It seems we have a concept problem. We cannot manage to define the cooperation issue. We are mixing cooperation and technical assistance. What I heard in Mr Ziller's paper is that normally, integration must be found in common action by governments so there is real cooperation between Melanesians. I am not talking about integration, but we have to find, at the institutional level, the kind of cooperation that enables Melanesian countries to operate in common, with common actions. We are also dependent on France's foreign policy, just as in African countries, where cooperation was actually based on handouts. What matters for us here, in Melanesia, are exchanges in cultural and economic terms. How will these exchanges materialize? When I hear Mr Ziller mention common actions I think, 'We probably must have a common market in Melanesia. That is what I mean by cooperation: interchanges, not simply repeated technical assistance through the provinces or through the New Caledonian government. In Melanesia there are two key countries, Papua New Guinea and New Caledonia, with significant mineral resources. What are Papua New Guinea and New Caledonia doing with the other countries in terms of cooperation in the mineral and metallurgical fields so exchanges can actually be viewed as partnerships? Now the image people have of Vanuatu and other Melanesian countries is always the same; they view them as assisted nations. Now, within the Spearhead Group there is a common market in which Melanesian countries exchange their goods. It is perhaps advisable to find a better definition of 'cooperation' as we analyse relations between New Caledonia and Melanesian countries. That's because in New Caledonia, when people think about outside, they think not of Melanesia but rather of Paris and Queensland. They don't think about Vanuatu, Papua or Fiji.

#### **Simon LOUECKHOTE**

The evolution of New Caledonia's geo-political status must not impede New Caledonia's incorporation into the region. I had the opportunity to state this many times while addressing the various delegations that come to New Caledonia: just because we are not a completely

emancipated and independent country does not mean we should not have a say among the Pacific Forum countries.

New Caledonia is in this part of the world; it cannot stay out of ongoing debates. It must take part, for example, in the debate about the environment. New Caledonia must take part in all debates and be a part of pressure groups, committees and regional organizations that exist in this part of the world.

To contribute to the debate about cooperation and technical assistance we must not play on words and run the risk of doing nothing. I'm afraid speculating on definitions of cooperation and technical assistance, supposing we can find the right definitions, will result in our doing nothing. I don't think that the New Caledonian communities that help Vanuatu have ulterior political motives. Each of us, New Caledonian government officials, knows what kind of situation Vanuatu is in.

Many ni-Vanuatu come over to New Caledonia and explain their problems to us, and we sincerely want to help them out. So whether it's called cooperation or technical assistance doesn't matter. It doesn't matter what words we use to describe this action to help Vanuatu! The major thing is for us to be able to act. Let's not forget that the French state has accepted to share this right of sovereignty with New Caledonia; so we should use it to the full. New Caledonia has a role to play in this part of the world. As we said, given its important natural resources, its ability to exploit them, and its ability to create wealth, New Caledonia has a duty towards the neighbouring countries, including Melanesian countries.

### **Jean-Brice HERRENSCHMIDT**

I think we must be careful what we say. When we talk about incorporating New Caledonia into the rest of Melanesia, we must be careful to avoid condescension. New Caledonia is not the only one to contribute something to Melanesia; it is a two-way street.

I think we can learn much from current research activity. There is a great French research tradition in Vanuatu. Why is research conducted in Vanuatu? Precisely because we can learn a great deal from the rest of Melanesia, including things about New Caledonia itself. I'll take a very concrete examples to show I'm not dealing with ideology but trying to show how other countries can contribute to our knowledge. There is much talk about culture, and in the cultural domain we have the Vanuatu Cultural Centre, which operates in a pretty interesting way: for example, they devised the 'Tabu Rum', a place where customary copyright and customary lore are protected. It is a room in the Cultural Centre which is taboo, i.e., restricted to people authorized by customary officials to consult what is held there. For example, a clan secret is accessible only to people belonging to that clan, a video is accessible only to the village people, etc. This is a very interesting process, and it raises a great deal of questions here in New Caledonia. There are surely things that we could do here in a social sciences context where people are looking for the means to protect clan identities and guarantee the confidentiality of information provided in order to gain access to it.

There are many other fields that we can study there. In Vanuatu, the coastal environment is being sold off to foreign investors. Identity transformations in Melanesian villages and the

advent of cell phones in villages show us how fast Melanesian societies are changing. We have a lot of things to learn because those countries are ahead of us in a certain number of areas. So we must really go back to what Jean-Pierre was saying a moment ago: we must act more and more in the spirit of exchange. Technical assistance is OK, but as the gentleman was saying a moment ago, we must act in a real spirit of cooperation, really do things in common, in areas where each has something to bring to the others. And we, as researchers, are familiar with and used to this. It has been going on for years and years, and I'll mention Joël Bonnemaïson as an example; thanks to people like him, we have been able to better comprehend Kanak societies by going to Vanuatu, Fiji, etc., and comparing the findings. So we have a great deal to learn from Melanesian countries.

As I see it, and in conclusion – as I wouldn't like to speak too long – regarding political cooperation and political and economic unity, which are much talked about, it is still too early. There is a prerequisite, exactly like the ongoing process in New Caledonia: that is the need for mutual recognition. And I think that just as the Noumea Agreement provides for 'the recognition of the Kanak identity' here in New Caledonia (and let's not forget we are engaged in a long process), also, on a Melanesia-wide scale, we need a construct: we need to build mutual recognition. And when Jean-Pierre says, 'Today, we, Melanesians from outside, we tell you that you are part of Melanesia,' he actually means 'We acknowledge you as being part of Melanesia.' And now, as we talk with Melanesian countries, we feel like telling them, 'Yes, we too feel we are from Melanesia.' We are just in the early stages of the process of building mutual recognition. Common recognition can be grounded in a domain in which it is probably easier to build than in the political or economic domain, namely the cultural domain, where exchanges already exist. We deeply feel that this is the way to go. Another domain, as Mr Loueckhote suggested, is the environment, and here, obviously, we will be working on a scale much bigger than our coral reefs and islands. We have some areas where we know that with respect to recognition and common action, exchange processes are already in train, and here we are not in a situation that consists in saying, 'Because we have money and because we have the technology, we are bringing you something and you'll follow our model.' We can build mutual recognition by working together in areas where people have been working for years, and I think that we need this prerequisite before we can build a more comprehensive political and economic unity. Thank you.

### **Gerard FEY**

My testimony is in line with what has just been said about areas in which cooperation is under way between the region's different nations. I'm the presiding judge at the Noumea Court of Appeals, and in this capacity, it seemed to me quite useful to go along with New Caledonia's desire to fit more closely into the surrounding region by commencing judicial cooperation with the neighbouring countries.

Just for your information, there is a Chief Justices Conference in the South Pacific, and it meets every two years. It was held in Noumea in 2001 and in Port Vila last year.

During these meetings we share our experiences, and these exchanges are very rich, for we very often face comparable or similar situations, in particular the coexistence of European-

inspired rules and local customs and traditions. With regard to justice, the objectives are the same, but each country has its own history and its practices, and it is interesting to compare these.

Beyond that, we have started cooperation with Vanuatu which is by no means technical assistance. As part of this cooperation, we decided to twin the Noumea Court of Appeals and the Vanuatu Supreme Court, presided by Chief Justice Vincent Lunabek. Judges, prosecutors, court clerks, secretaries and administrative officials from Vanuatu visited our court and we visited theirs. These exchanges allow us to become familiar with other working methods and to share experiences, in particular about the place that custom has in our respective judicial systems – giving custom its place, recognizing custom, human rights protection.

These issues are present in all those countries, and we need to discuss them without trying to determine who is right and who is wrong: on this kind of subject we are on an equal footing. This cooperation must be fostered, and we are lucky we were able to get enough funds to pursue it.

I also take part in another conference with a larger scope, the Asia-Pacific Conference. It meets every two years and works on the fundamental principles for the good administration of justice, which is an essential basis for economic and social development in all countries.

### **Christiane WANEISSI**

Should we make a distinction between technical assistance (the content of technical assistance) and cooperation? Should we also make a distinction between aid for development, humanitarian aid, and cooperation? And what is the content we can ascribe to political will to assist? Maybe we should remember that for a long time this power was exerted by the State. Later, when the Organic Law allowed the New Caledonian government and the various provinces to engage in cooperation in Melanesia and in the rest of the world as well, there were interchanges. The Pacific Ocean is a zone of interchange, and we have not waited until things were formalized within the institutions to interchange with neighbouring countries. There have always been interchanges, whether in agricultural or other products, just as in Europe. And cooperation is a new and very rich tool. The Southern Province has started, and it is important for the other two Provinces to follow the same dynamics. Cooperation is the modern word, but interchanges have always existed. Jean-Pierre Nirua precisely talked about the necessity for New Caledonia to continue the interchange process. Our ancestors exchanged, and these interchanges will not be discontinued with status change. In terms of political definition, what do we wish to do with our cooperation? What is the message that New Caledonia wants to proffer? Professor Ziller, early in his paper, said something particularly important: New Caledonia and the Pacific, and Melanesia generally speaking, have something to bring to the table, and that is identity, Melanesian identity.

### **Louis-José BARBANCON**

I would like to bring an additional thought to this conference and its themes. I am concerned, just like Dr Rogers, about the way we are going to be able to convey to our youth all the thoughts that we have expressed. What kind of world are we going to hand on to our youth?

We are thinking about New Caledonia and Melanesian Unity. At the same time, in high schools, curriculums will be modified, and some chapters in the planned textbooks, in 11th grade, in 12th grade, etc. will deal with the Pacific. One chapter will be entitled the Pacific Interface, the Oceanic Interface. In geography, textbooks will show students that development in the Pacific is all but impossible because of two elements that have emerged: the island nature of the Pacific and the mindsets of chiefdoms and traditional customs. I'm worried because on the one hand in this kind of colloquium we try to say that we must think about this Melanesian unity, and on the other hand, in their schooling, our children will be branded with these two original sins meant to prove that they have no chance of developing. In short, it is because they are neither Europeans nor Asians that they cannot develop. It would be a good thing if the proceedings of this colloquium were published very quickly, and education inspectors, who are by definition omniscient, have an understanding look at what has been said in this colloquium, because in this room, for the last couple of days, I have not seen many of those who are preparing the future chapters. So this is the thought I wanted to share, because what's at stake once again is the future of our youth; I cannot see how to give to this cause, New Caledonia's incorporation into Melanesia, a dimension which is both useful and noble. Thank you.

**Paul De DECKKER**

In response to Louis-José Barbançon's wish, I'd like to tell you that the proceedings of the colloquium are scheduled to be published very quickly. Publication will not depend on Jean-Yves Faberon and Paul De Deckker but on the paper's authors. The deadline for paper collection is 30 September. The job will be done in a scientific way, because both of us think, and I believe you all agree, that what has been said is essential for the future. But it must be technically faultless. So tedious editorial work will start, and I personally pledge to see that the job is done properly with the help of all those who would contribute to it. In this way, we will satisfy the inspectors mentioned by Louis-José Barbançon. Given the scarce media coverage this scholarly event has received, I have a feeling that some deem it premature and politically incorrect. House Blong Melanesia – whose founding conference gathered us together these last two days – has allowed us to move forward and advance our knowledge amid general agreement. We must avoid making this an overly intellectual affair. As an example, the word 'development' does not exist in Melanesian languages; the concept does not exist, just like the word 'work', or 'labour' and the concepts that they convey. Indeed, from an etymological standpoint, in French the word 'work' or 'labour' implies suffering. Now the Melanesian context is of a hedonistic nature, and some find out that people do not like to suffer. We must take this into account when we contemplate development policies, for development automatically depends on the good will – or lack of it – of the people.

So let's go on with the work. I have assurances that the publication will be achieved quickly, both in French and in English. Thus our exchanges during the last couple of days will be available to all those who are interested in Melanesia. The objective of moving things forward will then be more clearly outlined.



# CONTENTS

*Christian Huetz de Lempis* Lands and seas: the Melanesian world,  
a geographical approach

*Ian Campbell* Political sociology: of men and cultures

*Paul Néaoutyine* Economy and the environment: which sustainable  
development for Melanesia?

*Laurent Chassot* Melanesia, law and union: Customs

*Richard Herr* Democratic intervention, Biketawa and the 2006 Fiji military coup

*Daniel Dormoy and Laurent Tesoka* The incorporation of human rights  
by Melanesian states

*Hamid Mokaddem* The works of Jean-Marie Tjibaou, a Kanak  
permanent reformulation

*Jean-Yves Faberon* Kanak identity in law

*Elie Poigoune* Kanak identity in fact, or what it means to be a Kanak now

*Stewart Firth* External influences on Melanesia

*Nathalie Mrgudovic* Asserting internal dynamics: the Melanesian  
Spearhead Group

*Paul De Deckker* The Diversity of regional organizations: a general overview

*Jean-Pierre Nirua* New Caledonia and non-French Melanesians:  
the Melanesian standpoint

*Laurent Sémaoine* New Caledonia's regional cooperation:  
what is at stake and what are the prospects?

*Jacques Ziller* European Union law resources for Melanesian unity