



# Oceanic Diplomacy: The Kéamu Accord, Kastom and Maritime Boundaries

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In July 2009, delegations from the Government of Vanuatu and New Caledonia's independence movement Front de Libération Nationale Kanak et Socialiste (FLNKS) met on the island of Tanna in Vanuatu's Tafea Province. Together with customary leaders, they signed the Kéamu Accord, described as:

a solemn commitment between the Kanak people and the people of Vanuatu that whatever the political and institutional future of New Caledonia, Matthew and Hunter islands will always remain the property of the people of Vanuatu (UPM 2009).

Matthew and Hunter are uninhabited volcanic islands located east of New Caledonia and southeast of Vanuatu. In the language of Vanuatu's Aneityum island, Matthew is known as Umaenupne or Umāinupni (Tepahae and Lynch 2001:273). Hunter is Umaeneag or Umāineañ (it is also called Leka by people from Vanuatu's southeastern island of Futuna). Both are disputed territory, claimed by the independent Republic of Vanuatu and France, the administering colonial power in New Caledonia.

Even before the joint French–British condominium of New Hebrides gained independence as Vanuatu in 1980, there were questions over the administration and control of Matthew and Hunter. Since independence, repeated French assertions of sovereign rights over the waters around the islands have angered governments in Port Vila as well as the Kanak independence movement FLNKS, which supports Vanuatu's position in the territorial dispute.

The signing of the Kéamu Accord is a striking example of 'Oceanic diplomacy'. Complementing state-to-state negotiations, Salā George Carter, Greg Fry and Gordon Nanau described Oceanic diplomacy as the:

distinctive diplomatic practices and principles which come out of the long history and diverse

cultures of the Pacific Islands. These longstanding traditional systems are still important in the conduct of relations among tribes and clans within the postcolonial states of the Pacific (Carter et al. 2021).

Beyond state-to-state relations, these processes are also significant for ties between sovereign and colonised peoples. Oceanic diplomacy seeks to strengthen cultural relationships, in contrast to the often purely transactional nature of much international diplomacy.

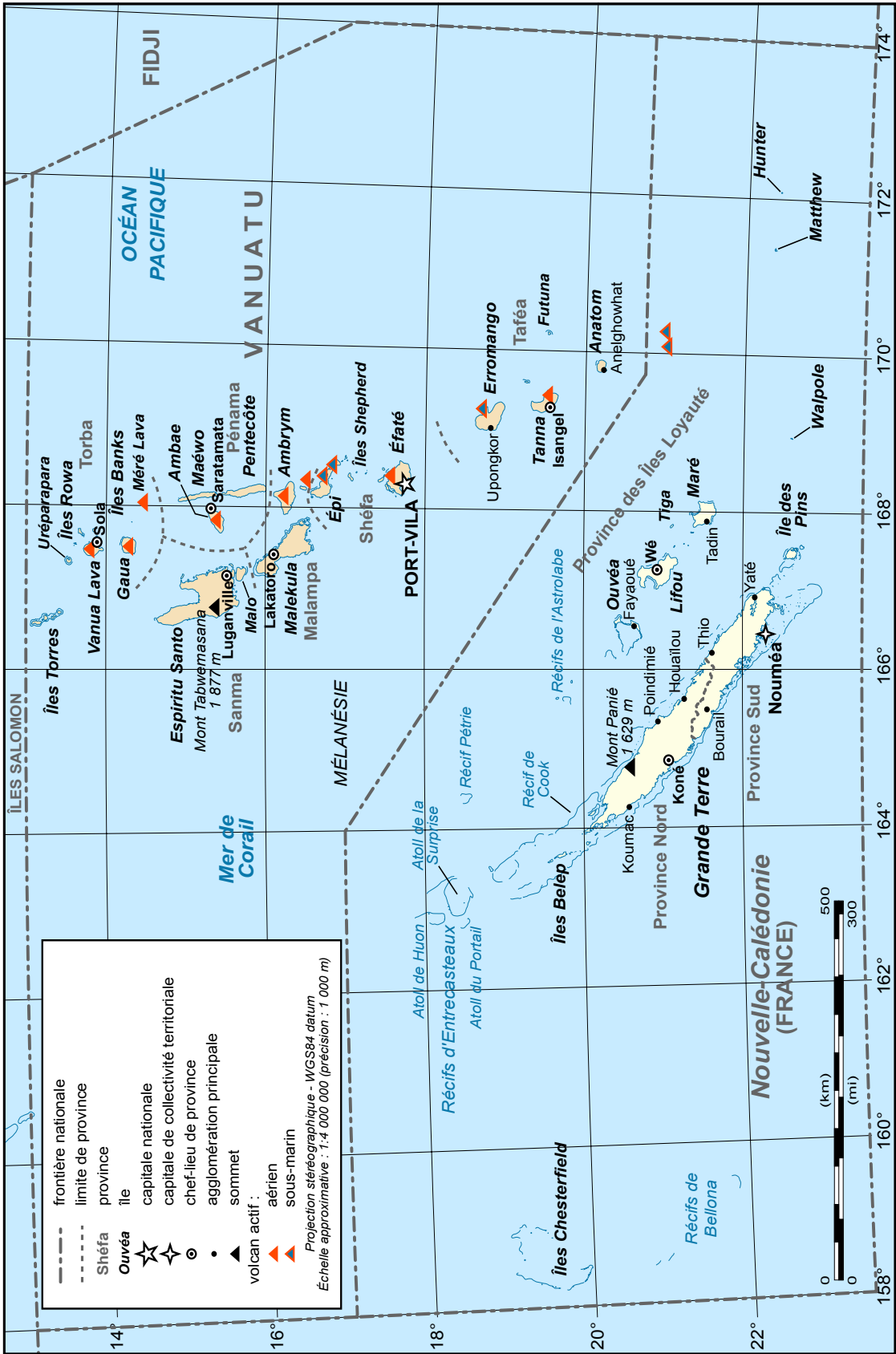
The 2009 Kéamu Accord highlights the multilayered, often intersecting, processes that make up this diplomacy: building cultural connections across colonial boundaries between chiefs and clans; the use of oral history and legend to inform contemporary diplomatic relations; strengthening relations between political elites and local customary leaders; efforts by a national liberation movement to reinforce ties with a neighbouring independent state; and political diplomacy within a subregional organisation, the Melanesian Spearhead Group (MSG). All of this is overlaid by the ongoing challenge from the FLNKS and the Government of Vanuatu to the French Republic, which is currently involved in state-to-state negotiations with Vanuatu to resolve the long-running territorial dispute.

The resolution of disputes over maritime boundaries is important for the regional 'Blue Pacific' strategy promoted by the Pacific Islands Forum (PIFS 2022), with significant economic and strategic implications for Pacific countries and territories. In 2018, Dame Meg Taylor — then forum secretary general and Pacific oceans commissioner — stressed:

The settlement of maritime boundaries provides certainty to the ownership of our ocean space, as Pacific people taking control of our domain, which is critical to managing our ocean resources, biodiversity, ecosystems and data, as well as for fighting the impacts of climate change (Maclellan 5/9/2018; Taylor 2018).



Figure 1. The French government's perspective on the maritime boundary between New Caledonia and Vanuatu



Source: Eric Gaba, [Wikipedia Commons](#).

For this reason, Pacific Island states are seeking to finalise the 45 interstate maritime boundaries across the region in line with the provisions of the 1982 United Nations Convention on the Law of the Sea (UNCLOS). Beyond this, they are active in negotiations for a new global treaty to protect biodiversity in the high seas beyond national jurisdictions. Both processes are complicated by the presence of colonial powers in the islands region — United States, France, United Kingdom and New Zealand — that negotiate on behalf of their dependencies.<sup>1</sup>

The territorial dispute over Matthew and Hunter islands has obvious implications for the control and management of ocean resources as nations seek to assert sovereign rights over their Exclusive Economic Zones (EEZs) and extend rights over the continental shelf under Article 76 of the UNCLOS. Island states are seeking to increase revenues from foreign fishing fleets, as distant-water fishing nations operate in their EEZs. The waters between New Caledonia and Vanuatu have long been the site of contested sovereignty involving fishing fleets, with the French Navy seizing fishing boats licenced to fish in Vanuatu waters (Radio Australia 7/12/2004; Makin 10/7/2014). Beyond the vast tuna resources of the western and central Pacific, there is growing interest from transnational corporations in the exploitation of deep-sea resources (oil and gas reserves, seabed minerals and marine biodiversity).

Large ocean states in the Pacific are urgently seeking to finalise maritime boundaries with neighbouring states given the effects of global heating and sea-level rise that may lead to loss of territory in low-lying atoll nations (Bernsard et al. 2021; Gordon 2021; Wallis and Strating 2021). At their online forum summit on 6 August 2021, Pacific leaders issued the *Declaration on Preserving Maritime Zones in the Face of Climate Change-related Sea-Level Rise*. This innovative statement seeks to expand the EEZ provisions of the UNCLOS in the twenty-first century. Leaders of forum member states affirmed:

We intend to maintain these zones without reduction, notwithstanding climate change-related sea-level rise, and further declare that we do not intend to review and update the baselines and outer limits of our maritime zones as a consequence of climate change-related sea-level rise (PIFS 2021).

Before discussing the Kéamu Accord, this paper outlines the historic dispute over Matthew and Hunter islands, then introduces the role of *kastom* (custom), legend and oral history in Melanesian societies. Given the complexity of the international Law of the Sea, the paper only briefly touches on the legal issues around territorial disputes and maritime boundaries in the Pacific; interested readers can find details in the vast academic literature (Girardeau and Gravelat 2019; Heathcote 2021; Mosses 2019; Song and Mosses 2018).

## Disputes in international law

During most of the period of the joint Anglo–French condominium of New Hebrides (1904–1980), Matthew

and Hunter islands were administered from Port Vila rather than Nouméa, capital of the neighbouring French territory of New Caledonia. However, the United Kingdom government had little interest in Matthew and Hunter, and a 1965 letter from Her Majesty's Britannic resident commissioner in Port Vila acknowledged that:

the islands of Matthew and Hunter are considered by the French administrative authorities as being attached to New Caledonia. The British Government is content with this view (Wilkie 1965).

The condominium — dubbed the ‘pandemonium’ by ni-Vanuatu leaders like Walter Lini and Sethy Regenvanu — had overlapping colonial systems of law, governance and education (Lini 1980; Regenvanu 2004). In the late 1970s, ni-Vanuatu nationalists transformed the New Hebrides National Party into the Vanua’aku Pati, formed an interim government and led the country to independence in 1980.

In the mid-1970s, sensing these winds of change, French officials made efforts to assert sovereignty over Matthew and Hunter, even as they supported secessionist movements on Santo Island in the New Hebrides. In December 1975, French authorities deployed the minesweeper *La Bayonnaise* from New Caledonia to Hunter, where French troops installed a plaque purporting to assert sovereignty (this was the modern equivalent of nineteenth century French explorers burying a bottle on Pacific beaches to symbolise their annexation of territory). In July 1976, and reaffirmed by a decree in February 1978, France unilaterally declared a maritime zone off New Caledonia that included the disputed islands (JORF 1978).

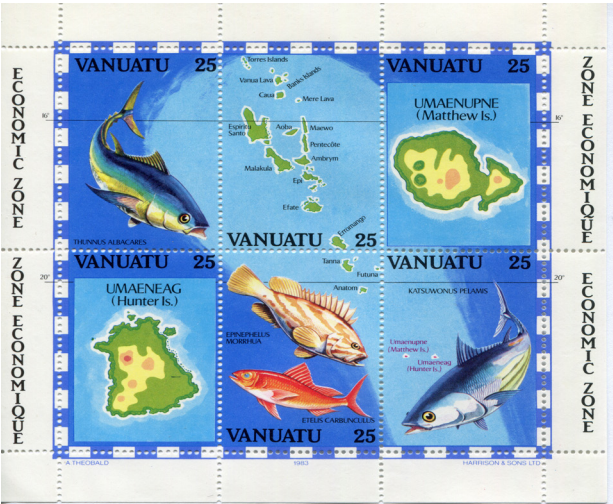
After Vanuatu’s independence, a delegation of ni-Vanuatu officials and customary elders travelled to Hunter aboard the *Euphrosyne* on 9 March 1983 accompanied by Radio Vanuatu journalist Bob Makin (2010). Chiefs from Vanuatu’s southern islands — Philip Tepahae of Aneityum, Kanawi of South Tanna and Rafe of Futuna — placed namele leaves, food and kava on the island as gifts for the spirit Maorijikjik. The delegation raised the Vanuatu flag, sang the national anthem and removed the French plaque (Willie 11/3/2021).

In July of that year, France in turn sent a troop of French legionnaires to reassert sovereignty, marking their visit with a Bastille Day ceremony on 14 July. Vanuatu then issued postage stamps featuring the names Umaenupne and Umaeneag, and in later years, the anniversary of the 1983 trip was commemorated as Matthew and Hunter Day by participants (Makin 12/3/2015).

Under Article 76 of the UNCLOS, there are mechanisms to extend the continental shelf beyond the traditional 200-mile limit that give sovereignty and control over marine resources around every islet, reef and archipelago. Parties can lodge a claim to the United Nations Commission on the Limits of the Continental Shelf (UN-CLCS) to extend boundaries beyond 200 nautical miles through recognition of the extent of the undersea continental shelf. In May 2007, the French government attempted to extend

New Caledonia’s maritime boundaries through this mechanism ‘on the basis of equitable geographical representation’ (Government of France 2007; UN-CLCS 2009).

**Figure 2. Vanuatu stamps issued in 1983 with the economic zone incorporating Umaenupne/Matthew and Umaeneag/Hunter**



Source: Author’s collection.

Vanuatu then issued a series of submissions to UN-CLCS as well as protests and diplomatic notes to the French government, including a direct letter from then prime minister Ham Lini to French President Nicolas Sarkozy on 3 July 2007. In response to Vanuatu’s protests, France requested that the UN-CLCS refrain from considering the portion of its submission relating to that sector of New Caledonia’s continental shelf (de la Gorce 2007).

Speaking before the United Nations General Assembly (UNGA) in 2011, then Vanuatu prime minister Sato Kilman (2011) decried the foreign forces ‘dividing peoples, families, cultures, and disconnecting the traditions of our ancestors’:

Denying the right for a country to exercise its political freedom over its maritime territorial boundaries, preventing the Indigenous people of a country to exercise their culture and traditional linkages with integral part of its lands, sovereign since time immemorial, remains one of the biggest crimes of our times. We are therefore calling on the United Nations to ensure our fundamental rights can be exercised in all parts of our territory.

The following year, then prime minister Kilman (2012) again affirmed to the UNGA:

The territorial dispute over the southern two islands of Vanuatu, Matthew (Umaenupne) and Hunter (Leka) islands, with the French Republic since our independence 32 years ago is a reminder that we must continue to uphold the notion that the rule of law should not be used as an instrument of powerful nations to coerce weak and small nations, especially over territorial disputes.

Today, legislation in both Vanuatu and New Caledonia claims the two islands as part of each country’s territory.<sup>2,3</sup> In February 2018, delegations from France and Vanuatu met in Sydney for the first round of talks to resolve the outstanding dispute. A second round of negotiations took place in Brussels, Belgium, on 24–25 June 2019 (*Pacnews* 18/2/2018, 7/3/2019, 2/7/2019). Further talks scheduled in 2020–21 were delayed due to the COVID-19 pandemic.

For France, with its far-flung colonial empire, the UNCLOS provides significant economic and strategic advantages. In Europe, hemmed in by other European Union member states, France has only 340,290 square kilometres of EEZ. Its overseas collectivities and dependencies, however, add another 11 million square kilometres worldwide (without its territories in the Pacific, Caribbean, Indian and Atlantic oceans, France’s EEZ would rank 45th in the world instead of being the second largest maritime EEZ power).

For this reason, over the last decade, successive French presidents have paid more attention to oceans policy, extending military, environmental and maritime research programs across the oceans. At a time when the Pacific Islands Forum has adopted the *2050 Strategy for a Blue Pacific Continent*, France too is increasing its focus on the region, especially because more than seven million square kilometres of EEZ are claimed in the Pacific alone.<sup>4</sup> The dispute over Matthew and Hunter is part of a broader French agenda of management and control over ocean resources in the Pacific. In 2014, France’s then overseas minister George Pau-Langevin said that France must be a world leader in oceans policy and ‘blue growth’:

As well as traditional economic activities (fisheries and aquaculture, maritime transport), other activities can take place in the same domain: renewable offshore energy, offshore exploration for hydrocarbons, deep water sea-bed mineral resources, blue biotechnologies and more (Pau-Langevin 2014).

Over the last two decades, France and Australia have cooperated on exploration for deep sea hydrocarbon resources in the waters between New Caledonia and Queensland (MacLellan 2010b, 2018). In 2021, French President Macron announced a billion euros for ocean research as part of the ‘France 2030’ industrial policy (MacLellan 2022), and the French Senate has initiated a series of inquiries into EEZs, the role of overseas territories in oceans policy and the exploration and exploitation of seabed minerals (Sénat 2022).

**Kastom, chiefs and tradition**

At a time of state-to-state negotiation of maritime boundaries in the Pacific, governments have drawn on the expertise and knowledge of customary chiefs and elders, who act as guardians of custom (*kastom* in Bislama and *coutume* in French). The dispute over the status of Matthew and Hunter is a key example.

In both New Caledonia and Vanuatu, governments have created national councils of chiefs as a mechanism to allow customary leaders to play representative and advisory roles, especially around issues of land, customary law and Indigenous rights.

In New Caledonia, a key element of the 1998 Nouméa Accord — entrenched in legislation in March 1999 — was the creation of new political institutions, including three provincial assemblies, a congress and a multi-party government designed to unite supporters and opponents of independence in collegial governance. In recognition of the culture and identity of the Kanak people, this agreement also created the Sénat coutumier (Customary Senate), a 16-member national council for Indigenous customary chiefs.<sup>5</sup>

The Sénat coutumier is made up of two chiefs from each of the eight *aires coutumières* (customary regions) in New Caledonia: Iaaï, Drehu and Nengone on the Loyalty Islands and — from north to south — Hoot Ma Whaap, Paicî-Cèmuhi, Ajië Aro, Xârâcùù and Drubea-Kapumë on the main island of Grande Terre. It serves as an advisory body that the government and Congress must consult about legislation that affects Kanak identity (Chauchat 2011:87–95).

Recognising the importance of *kastom*, Vanuatu has also entrenched a role for customary authorities in national governance through both the national constitution and subsequent legislation (Forsyth 2009). After independence in 1980, the new government under then prime minister Walter Lini created the Malvatumauri (National Council of Chiefs) as a formal advisory body of chiefs recognised in the Constitution of the Republic of Vanuatu.<sup>6</sup> Members of the council are elected by their fellow chiefs sitting in district councils of chiefs.

A *kastom* leader in Aneityum, the late chief Phillip Tepahae, detailed the ongoing role of chiefs in Vanuatu's southern islands while acknowledging the historic challenges to their authority from missionaries and colonial officers (Talbot Wood 2021:80–86; Tepahae 1997). Such disputes over chiefly authority highlight the contemporary contestation over the role of the councils of chiefs, which have played a political as well as customary role and sometimes operate in tension with elected parliamentarians (Tabangcora 2018; Tutugoro 2020).

The national councils only have an advisory, not legislative, role, and some customary leaders have disputed whether these state-approved institutions actually respect the traditional role of chiefs and clans. In New Caledonia, for example, Nidoish Naisseline, the high chief of Guama (Maré Island), criticised the Sénat coutumier as a French colonial construct in 2005:

In the eyes of Kanak society, it's a nonsense to speak of a Customary Senate, given that our custom is based on a tradition transmitted from generation to generation and the so-called Customary Senate was only created eight years ago through the organic law. More than this, it's made up of 16 members chosen at the regional level by customary

councils whose geographic limits have been arbitrarily fixed through the referendum law.

The notion of a customary region is a recent invention of the French administration and constitutes a veneer that covers an imported administrative and geometric vision. This privileges borders over the social and spatial reality of Kanak society, where each person and human group defines itself in relation to networks of living relationships that traverse mountains, rivers and oceans. The so-called Customary Senate therefore doesn't correspond to any Kanak reality and has no legitimacy to represent our custom.<sup>7</sup>

Across many parts of Melanesia, these 'living relationships that traverse mountains, rivers and oceans' are part of contemporary society. Though disrupted by colonial dispossession, there is a strong tradition of customary *chemins* (pathways) in New Caledonia across land and ocean, from Grande Terre to outlying islands and beyond. These pathways proscribe connections of alliance, reconciliation and ceremony, with Emmanuel Kasarhérou (2004:51) noting the:

complex system of relationships that exists between clans, creating a network of traditional pathways that link them. Thus, the entire country can be seen as a great web of criss-crossing paths, of interrelated ties ... the map of this network of relational pathways, which records the political history of the Kanak nation, exists only within the memory of oral tradition.

In their 2014 *Charter of the Kanak People*, the Sénat coutumier listed these pathways as one of 18 fundamental elements of Indigenous Kanak culture, 'the tool of communication used by the Clans or Chieftainships to send a message to other Clans and Chieftainships' (Sénat coutumier 2014:17). The pathways also highlight the 'natural sovereignty Chieftainships and their Clans exert over their own traditional territory, delimited sometimes by the summits of mountains, rivers, sometimes by a rock, a sound, a reef or the sea horizon' (ibid.:30).

Despite this cultural knowledge expressed in Kanak *coutume* (custom), tensions exist with French law over ownership and sovereignty of littoral and maritime areas. In customary law, land tenure extends from mountain to reef, and cultural pathways extend across the ocean and across colonial boundaries. However, in her study of Kanak maritime law, Marie-Hélène Teulière-Preston (2000:129–30) noted:

The definition of maritime space, the way it can be appropriated, and — as a consequence — its mode of management, varies from one system to the other. In New Caledonia, since French colonisation, two systems of the appropriation and management of the maritime world have been super-imposed ... As far as definitions of maritime areas and the rules for their exploitation are codified (orally) in the Kanak world, they are generally not taken into account.

In contrast to the dominance of French law in its colonial territories, ni-Vanuatu author Anna Naupa reported that in independent states, 'Indigenous knowledge has been effectively used in maritime boundary determination across the Pacific where island nations' UNCLOS-determined economic exclusion zones overlap' (Naupa 17/9/2021). However, she also argued that 'the role of culture in maritime zone preservation is often overlooked and needs greater prominence in regional diplomacy' (ibid.).

For this reason, the use of customary dialogue in the dispute over Matthew and Hunter provides an important example of the tension between Oceanic diplomacy and international law.

## The Kéamu Accord

In the southeastern part of the Vanuatu archipelago, Tafea Province includes the islands of Tanna, Aneityum, Futuna, Erromango and Aniwa. The island of Aneityum is also known as 'Kéamu', and anthropologists note that this name continues to be used on Futuna and the northern islands of New Caledonia (Talbot Wood 2021). In dispute are the southernmost islands Matthew (Un̄ainupni) and Hunter (Um̄aineañ).

After France lodged its bid to extend New Caledonia's continental shelf through the UN-CLCS in May 2007, the Government of Vanuatu met FLNKS representatives at the opening of the new MSG secretariat in Port Vila in May 2008 (the FLNKS, not the Government of New Caledonia, represents the French dependency in the subregional organisation). They asked Kanak leaders to facilitate research on whether Kanak customary leaders had any cultural rights over Matthew and Hunter.

The request came to Kanak politician Victor Tutugoro, president of the pro-independence Union progressiste mélanésienne (UPM), one of four parties that make up the independence coalition FLNKS. A long-time spokesperson for the independence movement, he has played a central role in regional networking, often representing the FLNKS at MSG meetings.<sup>8</sup> In an interview, Tutugoro described how this request was passed on to the Sénat coutumier in Noumea for deliberation:

Through the MSG, we discussed what role the customary authorities might play, and what role the countries of the region like Vanuatu and Fiji might play, to influence the discussion about this contested zone. The problem for us in New Caledonia was that the French state had unilaterally decided that the islands were part of New Caledonia.

We tried to research inside our country, through our customary leaders, what had happened before the arrival of the whites. So we, the FLNKS, began to work with our customary leaders, especially through the customary structures in the Loyalty Islands, in Ouvea, Lifou and Mare. Through this consultation, it was soon clear that not one, *not one*, of our customary groups had any rights over Matthew and Hunter.

At the same time, the Government of Vanuatu did similar work on its side. It appeared that there were cultural connections on Kéamu, known as Aneityum, in the south, where customary authorities had made reference through stories. It was Jean-Marie Léyé, one of the presidents of Vanuatu, who affirmed that the customary links extended to Matthew and Hunter, and this was shown through genealogy and stories from people in Vanuatu.

The customary chiefs and President Léyé told us that Kéamu Island was part of the pathway that the old people had travelled in the old days, coming down from Papua New Guinea and Solomon Islands and moving on through Vanuatu towards us for cultural exchanges, as well as with Australia, before the arrival of the whites.<sup>9</sup>

FLNKS representative Charles Wea attended the 2008 MSG summit and joined Tutugoro to facilitate dialogue with Kanak customary chiefs:

At the time, there was discussion at the United Nations commission on the definition of land and maritime boundaries. It was within this context that we began discussing the recognition by customary authorities over Matthew and Hunter. Victor [Tutugoro] and I were asked to see if the customary chiefs, especially from the Loyalty Islands — Lifou, Ouvea, Maré — had customary and cultural ties to Matthew and Hunter. So we approached the Sénat coutumier to ask if they had ties to the two islands. They came back to us and said 'no'.

It was only Maré — not Matthew and Hunter — that had traditional ties to Tanna at the time of the arrival of yam. The yam that we are growing in Kanaky came from Tanna to Maré: that's why we call Maré the 'cradle of the yam'. Long ago, when the [Yasur] volcano started to burn Tanna, people said, 'We have to save the yam'. So people ran away with the yams and landed in Maré.

People from Tanna and Aneityum told me legends and stories, how they used to go down to the islands [Matthew and Hunter] to fish. Our people from Maré and Lifou have stories with Tanna and Aneityum but not with those two islands. So this history was very important for Vanuatu, as they had evidence to assist their claims over the two islands.<sup>10</sup>

Such oral transmission of history through myths, legends and songs is central to *kastom* in Vanuatu, as Lisa Ann McDonald (2015:117–18) noted:

As a means of intergenerational knowledge transmission, oral traditions are a cornerstone of ni-Vanuatu intangible heritage ... Oral histories assert claims to land and identity, chiefly status and sacred rites. Collective memory is formulated by the celebration of ancestral spirits and mythological protagonists.

Bob Makin, the Radio Vanuatu journalist who joined the 1983 trip to claim the islands, reported on Tafea's

cultural connections with Matthew and Hunter:

All the southern islands have stories about the two outliers which involve the spirit of the south, Maorijikjik. Custom chiefs who accompanied the first post-independence voyage to the two southern active volcanoes were agreed about their significance in legend (Makin 11/3/2013).

There are a range of oral legends across Vanuatu describing the arrival of the god Maui Tikitiki in Efate and the southern islands of Vanuatu that have been documented in stories collected since the nineteenth century by linguists, geographers and anthropologists (Lindstrom 2021; Taonui 2006). These stories show linguistic connections to wider Oceanic traditions around Maui and the ‘fishing up’ of volcanic islands (Nunn 2003). Makin (12/3/2015) wrote about this cultural history in relation to the southern islands:

Whilst Matthew and Hunter have had little permanent cultures of residence from Vanuatu, they are at the centre of Vanuatu legends describing the arrival of the great god Mauitikitiki in the islands of Tafea.

These islands were visited by flotillas of southern islands’ canoes for fishing purposes over centuries, travelling between the southern (Tafean) volcanic islands and the rocky pyramids of stone which constitute the active volcanoes of Matthew and Hunter, on our side of the New Hebrides Trench. The canoeists would measure their progress by way of the underwater volcanoes which also provided quantities of fish.

## Signing the Accord

The FLNKS and Vanuatu government moved to codify the findings of this oral history through the Kéamu Accord.

On 4 April 2009, the members of the Sénat coutumier in New Caledonia issued a declaration stating: ‘We recognise through custom the historical fact that Matthew and Hunter islands belong in *kastom* to the chieftainships of Tanna’ (LNC 30/7/2009b). Their declaration highlighted the ‘lasting relations between the Loyalty Islands Province and the Tafea Province ... to allow the free movement of people and trade to prosper between the two countries without ulterior motives’ (ibid.).

Wea reaffirmed the political and cultural value of the process, despite arguments by French politicians that the Accord has no legal standing:

They all said that the Accord had no legal value. But it was more a customary agreement, an act of traditional recognition. The signing of the paper during the Tafea–Kanak festival gave it a more cultural dimension, to say the Kanak people and the Vanuatu people have a long cultural relationship. But it was important for us that the chiefs and customary leaders from the islands said that Matthew and Hunter belong to Vanuatu, not Kanaky.<sup>11</sup>

The information was passed to Port Vila, where the Vanuatu government, led by then prime minister Edward Natapei, proposed it be formalised at a ceremony on Tanna. The opportunity came through plans for a Tafea–Kanak festival involving customary leaders from the two countries celebrating ‘the historic ties between the two fraternal peoples of Melanesia’ (Tafea has maintained close ties with New Caledonia under a 2008 Vanuatu government policy that promotes twinning provinces with neighbouring MSG countries).

After the proposed Accord was taken to Kéamu (Aneityum) for approval by customary authorities, the formal signing then took place on 21 July 2009 during the cultural festival at Lenakel (the main town on Tanna, which serves as the provincial capital for Tafea Province).

The Vanuatu delegation was led by then prime minister Edward Natapei and then minister for foreign affairs and external trade Joe Natuman — who only took up the role of foreign minister the previous month — together with representatives from the Malvatumauri. Both ni-Vanuatu leaders were born in the southern islands: Natapei hailed from the isolated southeastern island of Futuna, while Natuman represented Tanna constituency in the Parliament of Vanuatu.<sup>12</sup>

They were joined in Lenakel by FLNKS representatives Victor Tutugoro and Charles Wea, Sénat coutumier president Ambroise Doumaï and other Kanak customary leaders. While Tutugoro hails from the Néboueba tribe near the east coast town of Ponérihouen on Grande Terre, both Wea and Chief Doumaï come from laaï (Ouvea) on the outlying Loyalty Islands.

Years later, Tutugoro recalled the day with pride:

It was a great event. On the day, there was a custom ceremony and then the signing of the document. There was a formal exchange of custom gifts between the Sénat coutumier of New Caledonia and the Malvatumauri, which is the Vanuatu council of chiefs. This customary exchange showed that Kanak chiefs renounced any claims, of any sort, over Matthew and Hunter, and that the sovereignty of the islands remained with the customary authorities of Vanuatu, especially from Tanna and the province of Tafea.<sup>13</sup>

Announcing the agreement, the two delegations stated:

The people of the Republic of Vanuatu, through its prime minister Edward Natapei, and the Kanak people, through the FLNKS spokesperson Victor Tutugoro, have co-signed an agreement known as the ‘Kéamu Accord’, which recognises the membership of Matthew and Hunter Islands in the Republic of Vanuatu (MacLellan 2010a).

Tutugoro reaffirmed, in line with the Sénat coutumier declaration, that ‘the Indigenous [Kanak] people have no history or traditions on these islands’.<sup>14</sup>

On 29 July 2009, Tutugoro’s UPM party issued a statement in Nouméa affirming that the Kéamu Accord is:

a solemn commitment between the Kanak people and the people of Vanuatu, that whatever the political and institutional future of New Caledonia, Matthew and Hunter islands will always remain the property of the people of Vanuatu (UPM 2009).

The Kéamu Accord reinforced Vanuatu's policy and two weeks later, on 10 August, the Natapei government made a further submission to the UN-CLCS, noting that:

the Republic of Vanuatu recognises that the islands of Matthew (Umaenupne) and Hunter (Leka) of the Republic of Vanuatu, and the continental margin which extends from them, are land territory and maritime regions over which there is a longstanding dispute with the Government of the French Republic and this dispute has not been settled in accordance with international law to date (Government of Vanuatu 2009:2).

At this time, the rotating chair of the Sénat coutumier was held by Ambroise Doumaï, the high chief of Mouli District on Iaaï (Ouvea). Speaking to reporters, Doumaï stressed that the Customary Senate's declaration was not part of the state-to-state negotiations over Matthew and Hunter:

That the Vanuatu government uses it to support its claim, that is their right. For the FLNKS to use it is also their right. But we remain at the customary level and we say that the diplomatic issue at stake does not concern the Kanak. We lose nothing [in the state-to-state negotiations] since these islands are not ours (LNC 30/7/2009b).

Charles Wea stressed it was important that customary leaders and not politicians determined the evidence of cultural links:

We took that case straight to the Sénat coutumier, and they took it out to the *aires coutumières*. We didn't take it to the FLNKS Political Bureau at that time, as it was a custom matter. We just facilitated communication. When the senate gave its answer that the Kanak people don't have a relationship with the two islands, that's when we brought the issue inside the BP [*bureau politique*]. So the FLNKS only supported this Accord because of the decision of the senate.<sup>15</sup>

## Kéamu, Melanesia and Polynesia

For the Sénat coutumier, the declaration on Matthew and Hunter was part of a broader program of acknowledging other pre-colonial connections, including links between the Loyalty Islands and the three kingdoms that make up the French overseas territory of Wallis and Futuna.

Just days after the signing of the Kéamu Accord, on 25 July the Sénat coutumier also signed an agreement with customary leaders from Wallis and Futuna at a ceremony at the Jean-Marie Tjibaou Cultural Centre in Nouméa. This New Caledonia–Wallis and Futuna declaration highlights 'customary and Christian values,

elements at the heart of tolerance, stability and social peace' and sets out the objective 'to re-establish the historic links ruptured by colonisation, which pass from the Kanak side through the chieftainships of Iaaï and Pouébo' (LNC 30/7/2009b).

These custom pathways to the three Polynesian kingdoms in Wallis and Futuna (Uvea, Alo and Sigave) run through Pouébo, a town on the northeast coast of New Caledonia's main island Grande Terre, and Iaaï, the custom name for Ouvea, the northernmost of the four Loyalty Islands. There are two Indigenous languages spoken on Ouvea: Iaaï and the Polynesian outlier language of Faga Uvea — the latter highlighting the cultural connection to the kingdom of Uvea in Wallis and Futuna (Miroux 2010).

Charles Wea said that these historic connections have relevance today in Kanak custom on his home island:

Ouvea was the gateway for people arriving from the Pacific, like the story of Kaukelo from the kingdom of Wallis. He ran away, and they told him, 'You take the canoe and go to the ocean'. Kaukelo took a large canoe, and they went to Samoa, to Tonga and then they end up in Ouvea. That's why today, in Ouvea, when they make ceremonies, people say 'the Tonga clan' or 'the Samoa clan'. That's because every time he stopped on the way to Ouvea, in Tonga or Samoa, Kaukelo picked up one or two people. That's the story and that's why some people in Ouvea speak in Faga Uvea.<sup>16</sup>

The use of customary reconciliation processes has been a central feature of cultural and political life in New Caledonia, especially after Les Événements (The Events) — the period of armed conflict that divided the community between 1984–88 (MacLellan 2005, 10/5/2019). This post-conflict experience has heightened the importance placed decades later by the FLNKS on cultural reconciliation, dialogue and pan-Melanesia diplomacy.

The FLNKS, rather than the Government of New Caledonia, is a full member of the MSG, which also includes the independent nation states of Vanuatu, Papua New Guinea, Fiji and Solomon Islands. While the MSG was created in Port Vila on 14 March 1988 in solidarity with the FLNKS, it was only formalised as a legal institution on 23 March 2007 when members signed the *Agreement Establishing the Melanesian Spearhead Group*. The MSG secretariat in Port Vila was formally opened at the 17th MSG Leaders' Summit on 30 May 2008 — the very summit that sparked the discussion between the FLNKS and Vanuatu government over Matthew and Hunter.

This diplomatic bonding with Vanuatu reinforced the FLNKS's standing within the subregional organisation. The FLNKS and Vanuatu often share common positions on West Papuan self-determination that have clashed with policies advanced by the larger MSG member countries (MacLellan 2015:271–78). For this reason, the adoption of the Kéamu Accord helped strengthen the existing relationship between the FLNKS and Vanuatu at a time of sharp debate

and difference within the MSG over West Papua and democratic rights in Fiji.

The Kéamu signing ceremony came just two weeks after MSG leaders gathered again in Port Vila for a special leaders' retreat on 10 July 2009. At the July summit, the central agenda item was Fiji's suspension from the Pacific Islands Forum in May following the Bainimarama regime's abrogation of the 1997 Fiji Constitution. Seeking 'Pacific Way' resolution of the dispute, the final MSG communique 'called on members of the Pacific Islands Forum to engage in open and constructive dialogue with Fiji', utilising 'genuine dialogue and reconciliation consistent with Melanesian values and traditional practices' (MSG 2009:2) — a process one might call Oceanic diplomacy!

## French anger

To the anger of French loyalists and the French High Commission in New Caledonia, the Kéamu Accord signing came just days before the French government hosted the 3rd France-Oceania Summit in Noumea, held on 31 July 2009 (Government of France 2009). Conservative politician and businessman Didier Leroux condemned the Kéamu Accord as 'without value under international law', describing it as 'a gross provocation' just days before the opening of the France-Oceania Summit:

It also reflects an irresponsible vision of international relations and of the particular problem of Matthew and Hunter ... the FLNKS blithely sells off the maritime heritage of New Caledonia even before it has achieved its objective of independence (LNC 30/7/2009a).

Senator Simon Loueckhote (2009), New Caledonia's representative in the French Senate in Paris, also claimed:

This document has no legal value since it has not been signed by a French legal authority. I also wonder about the behaviour of the prime minister of Vanuatu who should not ignore international rules (Calédosphere 27/7/2009).

In a recent interview, Tutugoro recalled that 'the French were very angry about the agreement':

The French High Commissioner reproached me several times that we were undercutting international negotiations over areas that could have significant resources, such as oil deposits or undersea minerals. He was joined in this criticism by all the local political class, the anti-independence people and even some right-wing Kanak like Simon Loueckhote. Invariably, we'd reply to these people: we are acting according to law — these islands don't belong to us, and the agreement is between brothers of the same culture. We won't go back on this: if tomorrow they discover great wealth around the islands, then it belongs to them.<sup>17</sup>

The Oceanic diplomacy of the FLNKS and Vanuatu reverberated so strongly at the time because France was using its summit to court forum member states.

Paris hoped to upgrade the statuses of New Caledonia and French Polynesia from forum observers to full membership (finally achieved in 2016). Tutugoro's UPM party stressed that France's refusal to act on Matthew and Hunter damaged its regional relations:

France must demonstrate its influence in the face of economic, political and cultural expansion into the area by Australia, New Zealand and above all China, which is nibbling away at international markets and which, little by little, is establishing its influence in the Pacific area (UPM 2009).

After the May 2009 election of Philippe Gomès as president of New Caledonia, pro-French leaders — backed by the French state — were also seeking a change in the territory's representation within the MSG. Gomès and successive anti-independence leaders have lobbied for the Government of New Caledonia to replace the FLNKS within the subregional organisation. However, until now, strong support for Kanak self-determination within the MSG has delayed this transition. In August 2019, then president Thierry Santa — leader of the anti-independence Rassemblement party — told the author:

I've raised this with both Papua New Guinea and Vanuatu, which are ready to support our request that New Caledonia be a full member of the MSG. But this is a discussion we must have at home with the independence movement. To my understanding, they [the FLNKS] want to remain as the sole member from New Caledonia within the MSG.<sup>18</sup>

In the years after the Kéamu Accord signing, the issue of Matthew and Hunter has repeatedly surfaced in debates within New Caledonia.

In April 2014, the Government of New Caledonia announced creation of Le Parc naturel de la mer de Corail (the Coral Sea Nature Park). The purported boundaries of the park — the fourth largest marine protected area in the world — include Matthew and Hunter, reinvigorating the dispute with Vanuatu (Girardeau and Gravelat 2019:66–68; Government of New Caledonia 2014).

New Caledonia's largest independence party Union Calédonienne issued a formal policy statement in late 2017 that included a series of policies to strengthen ties with the region. These included an explicit commitment that 'the situation of Matthew and Hunter Islands will be resolved in accordance with the agreement with Vanuatu signed on behalf of FLNKS' (UC 2017:16).

In February 2018, in preparation for a referendum on self-determination that November, the FLNKS held a congress at Arama tribe near the northern town of Poum on Grande Terre with a theme highlighting the importance of the coming year: 'Yet Tim Men Ta Yabwat (at the dawn of a new day)'. Amongst many pressing issues, the congress took time to pass a resolution reiterating its position that 'the islands of Matthew and Hunter form part of the natural heritage of the Republic of Vanuatu' (FLNKS 2018; Maclellan 7/3/2018, 2019a).

A year later, after a meeting of its Political Bureau on 5 March 2019, the FLNKS committed:

to making its voice heard on the subject in future discussions relating to the end of the Nouméa Accord process and, in particular, regarding the delimitation of Kanaky-New Caledonia's maritime boundaries (FLNKS 2019).

In response, the three New Caledonian representatives in the French parliament — Senator Gérard Poadja and deputies Philippe Gomès and Philippe Dunoyer — issued a statement that Matthew and Hunter 'form an integral part of the territory of New Caledonia and also the Coral Sea Nature Park' (Sénat 2019). The three politicians, all members of the anti-independence Calédonie ensemble party, argued that only the French state and not the Government of New Caledonia had the legal authority to negotiate on issues of sovereign rights.

In July 2021, Louis Mapou was appointed president of New Caledonia, the first time in nearly 40 years that a pro-independence Kanak politician had led the collegial government. In his first major speech outlining the government's program, Mapou stressed the importance of the 'regional integration' of New Caledonia, and noted that 'within the framework of regional cooperation, we will propose the implementation establishment of a "Peace Park" on Matthew and Hunter Islands, which could be managed in consultation with Vanuatu' (Government of New Caledonia 2021).

## Conclusion

The Kéamu Accord is, in essence, a cultural agreement amongst Melanesian peoples. But its signing takes on greater importance in the context of France's role as a colonial power in the Pacific and the legal impact of decolonisation processes in international law — historic for New Hebrides/Vanuatu but ongoing in Kanaky-New Caledonia.

Today, the future of Matthew and Hunter is being fought out in complex and contested state-to-state negotiations between France and Vanuatu, even as the FLNKS seeks an end to colonial rule from Paris (Song and Mosses 2018). As boundary negotiations restart between France and Vanuatu, international lawyers have begun to assess the ways that the Kéamu Accord may affect the ongoing territorial dispute in international law and diplomacy.

While both dependencies were listed on the 1946 United Nations list of non-self-governing territories (NSGTs), France refused to meet its decolonisation obligations for many decades. However, following UNGA resolution 41/41A of 2 December 1986, New Caledonia was re-listed on the United Nations NSGT list. Under Article 73e of the Charter of the United Nations, France — as the administering power — has responsibilities to report to the United Nations Special Committee on Decolonization about the progress of the decolonisation process, a responsibility it resisted between 1947–2004 (Regnault 2013).

Under a series of international declarations, treaties and UNGA resolutions, France has obligations to protect the economic, social, cultural and political

rights of colonised and indigenous peoples living in its NSGTs. Such rights are re-affirmed in the UNCLOS and repeated resolutions of the United Nations Special Committee on Decolonisation. For example, the latest UNGA resolution on New Caledonia in December 2021 reaffirms that "natural resources are the heritage of the peoples of the Non-Self-Governing Territories, including the indigenous populations" (United Nations 2021).

This clause repeats provisions of a 2012 United Nations General Assembly resolution on economic rights for peoples in NSGTs, which also:

calls upon the Administering Powers to ensure that the exploitation of the marine and other natural resources in the Non-Self-Governing Territories under their administration is not in violation of the relevant resolutions of the United Nations, and does not adversely affect the interests of the peoples of those Territories (United Nations 2012).

In her detailed assessment of the ongoing dispute, Associate Professor Sarah Heathcote of the ANU College of Law argued that 'on the evidence available today, France (on behalf of New Caledonia), rather than Vanuatu, has a stronger claim to sovereignty over the islands' (Heathcote 2021:671). However, she also noted the political significance of the Kéamu Accord, given France's role as a colonial power in New Caledonia:

Both the Kéamu Accord and the Nouméa Accord ... raise interesting issues as to their status under international law given that New Caledonia is an NSGT with a right to self-determination, as well as the increasing recognition of Indigenous rights over land as articulated in Article 26 of the 2007 Declaration on the Rights of Indigenous Peoples. Article 26 affirms the fundamental connection between Indigenous peoples and the lands that they have traditionally used or occupied (ibid.:673).

Given that France is a signatory to the Declaration on the Rights of Indigenous Peoples, Heathcote concludes that:

arguably in relation to Hunter and Matthew, as a matter of international law, France should take into account the FLNKS' views — including, notably, that expressed in the Kéamu Accord (ibid.).

In November 2011, the then United Nations special rapporteur on the rights of indigenous peoples James Anaya formally wrote to the French government, raising the alleged denial by France for Indigenous peoples of Vanuatu to access Matthew and Hunter, 'which are sites of religious and cultural significance to them, for the purposes of carrying out ceremonies' (Anaya 2012). In reply, France affirmed that Matthew and Hunter islands are under French sovereignty and control 'and that the Government is unaware of religious or cultural practices affiliated with the islands' (ibid.).

Examining the implications for the France–Vanuatu dispute of the International Court of Justice rulings on the Chagos Islands and Western Sahara, ni-Vanuatu legal scholar Morsen Mosses (2019:475) suggested that:

although France's claims based on effective occupation are likely to override Vanuatu's claims related, among other things, to custom, culture and traditions, the right to self-determination, as a rule of customary international law, will likely prevail.

For this reason, relationships across colonial boundaries — over time and space — have ongoing implications for the peoples of Melanesia. As negotiations continue between France and Vanuatu over the fate of the islands, the Melanesian nation will continue to value the important declaration from the Indigenous people of New Caledonia. The Kéamu Accord provides an important model of multi-layered Oceanic diplomacy in the twenty-first century.

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## Author notes

Nic Maclellan is a correspondent for *Islands Business* magazine (Fiji) and a contributor to *Pacnews*, *Inside Story* and other regional media. He has published widely on French policy in the Pacific Islands and is co-author of *La France dans le Pacifique — de Bougainville à Moruroa* (Editions La Découverte, Paris) and *After Moruroa — France in the South Pacific* (Ocean Press, New York and Melbourne). He has been awarded the 'Outstanding Contribution to the Sector' award by the Australian Council for International Development and the Walkley Foundation's Sean Dorney Grant for Pacific Journalism.

## Endnotes

1. Sixteen territories remain on the United Nations' list of non-self-governing territories, including six in the Pacific: New Caledonia and French Polynesia (under French administration); Tokelau (New Zealand); Pitcairn (United Kingdom); and Guam and American Samoa (United States). Other territories — such as Wallis and Futuna — have not yet been relisted, and there are also self-determination movements in postcolonial nations, such as West Papua (Indonesia) and Bougainville (Papua New Guinea). For discussion, see Maclellan 2015:263–81.
2. A 2010 parliamentary Act describing Vanuatu's maritime zone states that 'the territorial sea of Vanuatu comprises ... b) those areas of the sea having as their inner limits the low water line of the coasts of Matthew (Umaenupne) and Hunter (Leka) islands enclosed by basepoints 1:249 for Matthew (Umaenupne) and basepoints 1:255 for Hunter (Leka) islands and as their outer limits a line established seaward from those baselines every point of which is at a distance of 12 nautical miles'.
3. In Article 1 of the March 1999 organic law that introduced the 1998 Nouméa Accord into French law, the territory of New Caledonia includes 'the islands of Matthew and Fearn or Hunter' (*JORF* 1999:4197–225).
4. French Polynesia has an EEZ of more than 5,030,000 square kilometres, while New Caledonia adds 1,740,000 square kilometres and Wallis and Futuna a further 300,000. For discussion, see Maclellan 2018.
5. The role and responsibilities of the Sénat coutumier are set out in Chapter 4, Articles 137–48 of the Loi organique No. 99–209 du 19 mars 1999 relative à la Nouvelle-Calédonie (*JORF* 1999) (as amended).
6. The powers of the Malvatumauri are detailed in Chapter 5, Constitution of the Republic of Vanuatu, the Malvatumauri Council of Chiefs Act No. 23 of 2006, and subsequent amendments in 2019.
7. Speech by the high chief of Maré Nidoish Naisseline before the Ligue des droits de l'homme et du citoyen de Nouvelle-Calédonie, Noumea, 20 July 2005. Republished in Naisseline 2008:473–74.
8. It is important to note that the FLNKS, not the Government of New Caledonia, represents the French dependency in the subregional organisation, alongside the governments of the independent states of Papua New Guinea, Solomon Islands, Vanuatu and Fiji. The United Liberation Movement of West Papua — currently an observer — is also seeking full membership in a process contested by MSG associate member Indonesia.
9. Victor Tutugoro 6/10/2021. President of UPM and spokesperson for the FLNKS, personal communication. Jean-Marie Lényé Lenelgau (1932–9 December 2014) was a ni-Vanuatu politician and president of Vanuatu from 2 March 1994 to 2 March 1999.
10. Charles Wea 25/3/2022. Member of the Parti de Libération Kanak (Palika) party and former FLNKS representative in Australia, born in Gossanah Tribe in the north of Iaai (Ouvea), personal communication.
11. Charles Wea 25/3/2022, personal communication.
12. Edward Nipake Natapei Tuta Fanua'araki (17 July 1954–28 July 2015) twice served as prime minister of Vanuatu between 2001 and 2004 and again from 2008 to 2010. Appointed foreign minister on 19 June 2009, Joe Natuman later served as prime minister in 2014–15 and took over the leadership of the Vanua'aku Pati after Natapei's death.
13. Victor Tutugoro 6/10/2021, personal communication.
14. Victor Tutugoro 14/2/2010, personal communication. See also Maclellan 2010a:16–18.
15. Charles Wea 25/3/2022, personal communication. The FLNKS Bureau politique is an executive made

- up of representatives of each of the four political parties in the independence coalition.
16. Charles Wea 25/3/2022, personal communication. For discussion of Wallisian arrivals in Ouvea in the eighteenth and nineteenth centuries, see Howe 1977:46–47. Wallisian migrants Kaukelo, Peka and Atunai were renamed Nekelo, Beka and Drumai, joining with local chief Bazit in conflicts with traditional rivals on Iaai.
  17. Victor Tutugoro 6/10/2021, personal communication. Simon Loueckhote is a conservative Kanak politician from Ouvea who has participated in a number of anti-independence parties since the 1980s. Loueckhote served as the Senator for New Caledonia to the French Senate between 1992–2011.
  18. Thierry Santa 17/8/2019. Leader of the Rassemblement-Les Républicains party and president of New Caledonia June 2019 to February 2021, personal communication. See also Maclellan 2019b:37.
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