



Pacific Patrol Boat Program: Legislative frameworks to broaden the role of the PPBP

—DISCUSSION PAPER—

Background

The Pacific Patrol Boat Program (PPBP) commenced in 1983 and has resulted in the delivery and operation of 22 patrol boats for 12 Pacific island countries. The Program is funded by Australia through the Defence Cooperation Program and includes training and associated infrastructure.

Fisheries management is an essential element of all Pacific island nations' economies. Surveillance and enforcement of maritime and fisheries law is of critical importance to the longer term interests of the region. The Australian Government introduced the PPBP to assist Pacific island countries to manage their Exclusive Economic Zones (EEZ) and to increase their abilities to monitor and apprehend illegal fishers.

Scope and Purpose

The PILON Secretariat was asked to look at the legislative frameworks required to ensure that PPBs can be effectively used to address broader criminal threats including transnational crime. This discussion paper is intended to assist countries to:

- review their current legislative frameworks in relation to the enforcement powers which apply on a patrol boat
- consider ways to strengthen their legislative frameworks to ensure they can enforce all relevant domestic legislation; and
- consider ways to strengthen their legislative frameworks to ensure they can work cooperatively in the region to combat trans-border crime

In-depth analyses of each individual country's legislative frameworks are beyond the scope of this discussion paper. Countries will need to take account of specialist legal advice on the legislative frameworks relevant to their particular set of circumstances.

Legislative Framework

The original purpose of the PPBP was to enforce fisheries legislation and undertake regional maritime surveillance. The patrol boats are generally crewed and operated by police or defence personnel (with the exception of Marshall Islands where the boats are operated by an independent organisation—Sea Patrol).

A preliminary review of the PPBP across the region reveals that each country operates under a range of different legal frameworks including customary international law, international conventions and domestic legislation. Different sets of laws apply

depending on whether a vessel is within its territorial sea, contiguous zone, EEZ or in international waters.

The Australian Defence Force and Pacific Islands Chiefs of Police recently released Enclosure 2 for the Pacific Patrol Boat Operations Manual, an 'Enforcement Guide for Transnational Crime'. The Enclosure highlights the significant issues presented by transnational crime in the region and provides guidance for enforcement officers on collection and handling of evidence in relation to these crimes. As indicated in the Enclosure it is important that each country has a clear understanding of which activities its legislative frameworks currently enable it to interdict and the means by which the laws may be enforced.

Criminal Offences

The Enforcement Guide for Transnational Crime sets out some of the key trans-border crime types that crews may come across in the course of their duties including: drug, arms, human, flora and fauna trafficking; people smuggling; identity crimes; terrorism; money laundering offences; and intellectual property crime. In order to use the PPBs to effectively police these types of activities, the activities need to be offences and criminalised through legislation. At present the criminalisation of these activities varies significantly across the region.

The *United Nations Convention against Transnational Organized Crime* and its three Protocols provide a framework for the criminalisation of a range of transnational crimes. Parties commit to taking a series of measures against transnational organized crime including creating offences in their domestic law for money-laundering, participation in an organized criminal group, corruption, migrant smuggling and trafficking in people or firearms. A number of Pacific countries have ratified this Convention and implemented domestic legislation to criminalise specific activities. However, coverage of such legislation across the region is less than uniform. For example, domestic legislation criminalising people smuggling and people trafficking has not been implemented in all countries. In some cases legislation on the importation of illicit drugs, does not include provisions to criminalise or control the importation of precursor chemicals. Additionally, some legislation has not been updated to include modern illicitly manufactured drugs commonly known as 'Ice' or 'Ecstasy'.

Enforcement powers in the maritime zone

Under international law, enforcement of crimes committed in the contiguous zone (24 nautical miles from the baselines) can include action to prevent breaches of customs, fiscal, immigration or sanitary laws and regulations. Enforcement powers in the EEZ (up to 200 nautical miles from the baselines) are primarily limited to resource management and pollution prevention. Currently, international fisheries agreements are the primary source of enforcement powers for the Patrol Boats operating in the contiguous zone and/or the EEZ. These international agreements do not provide a sufficient legal framework for the enforcement of broader criminal jurisdiction.

Criminal jurisdiction in the maritime zone

When countries consider updating their criminal legislation or introducing new offences to address trans-border crimes they need to determine the extent of jurisdiction they wish to exercise over the offences. Generally states enact legislation which is limited to their territory or their nationals. If they wish to extend jurisdiction over certain offences as far as their EEZ this should be explicitly addressed in legislation. There are a number of international conventions which cover transnational crimes and provide clear guidance on criminalisation of this type of activity as well as imposing a minimum level of jurisdiction that State Parties are obliged to exercise over the offences. For example, under the 1988 *Convention for the*

Suppression of Unlawful Acts Against the Safety of Maritime Navigation, Parties to the Convention must extend criminal jurisdiction for the offences under the Convention to their flag vessels, their territory and their nationals, regardless of where the crime is committed.

PPB crews need to have a very clear understanding of the domestic and international criminal laws that they are authorised to enforce. They need to understand the criminal jurisdiction for those offences and which maritime zones they can be enforced in. In reviewing current criminal legislation countries should consider:

- criminalising certain types of transnational crimes and ensuring they extend to maritime zones
- updating existing criminal offences
- extending the jurisdiction over certain offences to maritime zones
- ratifying relevant international transnational crime conventions
- the extent to which international transnational crime conventions have been implemented into domestic law
- ensuring PPB crews have the requisite enforcement powers to address criminal activities that they encounter in the maritime zones.

Cross-vesting of enforcement powers

At present the PPBs are operated primarily by police and defence personnel. To ensure that the vessels can effectively address a broad range of activities such as customs, immigration, quarantine and fisheries offences as well as other transnational crimes, countries need to ensure that the law enforcement officers crewing the vessels are vested with the requisite enforcement powers. In some cases customs, immigration or fisheries officers are vested with particular powers which may not automatically apply to police or defence personnel.

One way in which to facilitate the cross-vesting of powers—whether inter-agency or inter-jurisdiction—is by arranging for the enabling legislation to include authority to vest certain powers contained in the legislation to ‘a person’. The legislation can then identify who has the authority to vest the powers and the parameters of that authority. Normally, where inter-agency cross-vesting occurs, the authorised delegate may declare in writing that a particular person has authority to exercise specific powers under the named legislation for a specified period of time.

Differing legal requirements for enforcement officers

The requisite basis upon which an officer may board and search a vessel, detain persons or seize goods varies between states and different legal regimes. To search and detain a person customs and immigration legislation generally requires an officer to have ‘...*reasonable cause to suspect...*’ or ‘...*reasonable grounds to suspect...*’ that the relevant conduct has occurred. Police legislation on the other hand, generally requires a belief ‘*on reasonable grounds...*’ Some criminal legislation requires police to base their decision to board a vessel ‘...*upon reasonable circumstances and after consultation with his or her immediate senior officer...*’. Countries will need to consider the requisite conditions which are required by officers where legislation cross-vests powers between officers. It is important that officers are aware and understand such requirements prior to undertaking enforcement action.

International Crime Cooperation

International agreements enabling countries to work together across jurisdictions can be a useful tool for combating transnational crime and maximising the efficiency of countries’ resources. For example, the 1992 *Niue Treaty on Cooperation in Fisheries*

Surveillance and Law Enforcement in the South Pacific Region envisages Parties cooperating by reaching agreement to conduct fisheries and law enforcement activities within each others territorial sea and archipelagic waters. The Treaty specifically anticipates Parties authorising officers from another Party to enforce fisheries laws on their behalf. When considering a Subsidiary Agreement countries should be mindful of the benefits of cooperation with neighbouring countries and cooperating in the enforcement of offences beyond fisheries laws. Countries may wish to consider ensuring that relevant legislation allows them to vest powers in law enforcement officers from another country.

Powers important in the interdiction of transnational crime include the powers to:

- board a vessel
- arrest and detain people and/or the vessel
- seize the vessel and/or specific items on the vessel
- gather evidence of the crime
- force the vessel to land and/or tow the vessel to land
- use force to stop a vessel suspected of doing something illegal
- pursue a vessel that refuses to stop

When reviewing legislative frameworks in relation to the vesting of appropriate law enforcement powers countries need to consider:

- ensuring legislation allows for specific law enforcement powers to be cross-vested between law enforcement agencies in that country
- the desirability of cross-vesting certain enforcement powers to law enforcement officers from other countries (usually neighbours or those with a maritime presence in the region)
- vesting PPB crew, from whatever agencies they are from, with relevant law enforcement powers

Should countries seek to increase the effectiveness of PPBs by working together and policing one another's waters then they will need to ensure that they have clear processes in place for dealing with seized vessels, alleged offenders and other evidentiary material. Where this does not occur immediately and while still in the waters of the Party concerned, then countries will need to ensure that they have modern crime cooperation legislation in place to facilitate the effective prosecution of offences. The legislation includes:

- Mutual legal assistance** - the framework for mutual legal assistance within the Pacific is generally sound. However, there are currently limits on the capacity of some countries to provide assistance.
- Extradition** - A regional approach to extradition is important for consistent action against criminal activity within the region. Inconsistent adoption of extradition standards within the region may significantly reduce the deterrent effect of the legislation. Gaps within extradition legislation can enable offenders to evade justice.

Harmonisation of offences and penalties

In order to avoid the creation of safe havens for trans-border criminal activities in the region it is useful to ensure relevant criminal laws are aligned to the extent possible. Inconsistencies in the criminalisation of certain activities may lead to certain countries' EEZs and territorial waters being targeted as transit zones for organised crime.

For example, in some cases there is no criminal offence in place to enforce criminal sanctions against a person who imports precursor materials, which can be used for the manufacture of illicit synthetic drugs. This can allow for certain countries to be targeted for the manufacture and trafficking of synthetic drugs, and being used as a transshipment point to transport the drugs.

Appropriate penalties that relate to the seriousness of the crime and provide a sufficient deterrent for criminal activity would assist in reducing safe havens within the region.

Identifying legislative priorities

Countries should consider reviewing current domestic legislation to identify areas where the enforcement powers listed above are lacking. A list of priority legislation could then be developed and assistance sought to amend, reform, or develop and draft new legislation.