Regional Strategies for the Implementation of Environmental Conventions: Lessons from the South Pacific?

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Introduction

In recent years the pace of treaty-making in the area of the environment has sped up enormously, particularly in the period leading up to, and following, the United Nations Conference on Environment and Development (UNCED) held in Rio Janeiro in June 1992. However, to date comparatively little attention has been devoted to the special difficulties faced by developing countries, and in particular small island countries, in the implementation of this increasingly complex international regime.[1] Problems of implementation are deserving of focus because their neglect calls into question the whole treaty-making exercise.

This article addresses a number of issues relating to the implementation by South Pacific island countries (PICs)[2] of environmental conventions. What are the particular factors which have led to PICs ratifying and implementing some environmental conventions but not others? This issue is important, as only when such factors are accurately identified can effective strategies be devised to overcome these problems. In UN jargon such strategies are often described as "capacity building" and include training, information exchange and technical assistance. Related to this is the issue of the extent to which a regional strategy can be the most effective way of channelling efforts to enhance capacity building. The South Pacific region is a particularly interesting area in which to analyse these issues as it has an active regional environment organisation—the

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1 On implementation generally, see Lawrence, "International Legal Regulation for Protection of the Ozone Layer: Some Problems of Implementation" (1990) 2 *Journal of Environmental Law* 17; see also Gehring, "International Environmental Regime: Dynamic Sectoral Legal Systems" (1990) 1 *Yearbook of International Environmental Law* 35; Rose, "Implementation of International Environmental Law" (1993) 2 *Review of European Community and International Environmental Law* (special volume).

2 These are American Samoa, Cook Islands, Federated States of Micronesia, Fiji, French Polynesia, Guam, Kirabati, Marshall Islands, Nauru, New Caledonia, Niue, Northern Mariana Island, Palau, Papua New Guinea, Pitcairn, Solomon Islands, Tokelau, Tonga, Tuvalu, Vanuatu, Wallis and Futuna, and Western Samoa.

South Pacific Regional Environment Programme (SPREP).[3] In addition the region contains many small countries of limited financial resources.

A further related issue is why PICs have been active participants in the negotiation of some environmental conventions but not others. It is clearly more difficult for a country not involved in the negotiation of a particular convention to implement it. For example, the PICs through the Association of Small Island States (AOSIS) were a significant force in the negotiation of the UN Framework Convention on Climate Change,[4] an instrument which was perceived as touching their interests. By way of contrast, few PICs were involved in the negotiation of the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, 1989[5] which on its face also impacted significantly on their interests.

Largely through examining the patterns of participation in global and regional environmental conventions, this article seeks to draw some conclusions about whether the best way forward is to negotiate regional conventions tailored to meet the particular requirements and aspirations of the region, or whether the further implementation of global conventions will better protect the South Pacific environment.

Capacity Building in the United Nations System

As stated above, the term "capacity building" is often used to refer to the enhancing of the capacity of States to participate in the negotiation and implementation of conventions. Capacity building is one of the elements contained in the "Montevideo Programme for the Development and Periodic Review of Environmental Law" which set the agenda for the work of the United Nations Environment Programme (UNEP) in the area of environmental law from 1982–92. The first element of the programme consists of "enhancing of the capacity of States to participate effectively in the development and implementation of environmental law".[6] The objective is "to achieve the full participation of all states in the development and effective implementation of environmental law and policy".[7] Activities which may be used to achieve these objectives include assistance by States in improving or establishing institutional administrative machinery, improved dissemination of information, and training of appropriate personnel.[8] The Montevideo Programme was revised and endorsed by the UNEP Governing Council Meeting in Nairobi in May 1993, and within the financial constraints of the organisation, will be used as a basis for UNEPs activities in this field over the next ten years.[9]

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3 See text at nn 46–47 below.
4 31 ILM 849, see text at nn 40–43 below.
5 28 ILM 657, see text at nn 59–61 below.
6 See eg UN Doc UNEP/ENV.LAW/2–2l.2, Annex I, p 7 (12 September 1992).
7 Ibid.
8 Ibid.
9 UN Doc UNEP/GC.17/L.21/Add.4 (20 May 1993). For an overview of UNEPs capacity building efforts in this field see UN Docs UNEP/GC.17/Inf.6 (2 February 1993) and UNEP/GC.17/7.

Capacity building in the context of environmental conventions also received some attention in the Preparatory Working Group III leading up to the UNCED. The Working Group's Report entitled "Survey of Existing International Agreements and Instruments and its Follow-up" identified, in a broad brush fashion, some of the major factors involved in the implementation of environmental conventions.[10] The report noted the increasing incorporation of reporting duties in such conventions and that where reporting obligations were included, many countries faced difficulties. Thus, for example, only about 60 per cent of the parties to the 1972 London Convention[11] complied with the obligation to report on ocean dumping activities. The percentage of parties reporting under the International Convention for the Prevention of Pollution from Ships (MARPOL 1973/78)[12] was approximately 30 per cent, with major gaps particularly in developing countries.[13]

The Report to UNCED concluded that "the implementation of agreements or instruments have mainly been influenced by such factors as financial resources, technical and scientific assistance, public information and national reporting duties. By contrast, international supervisory bodies, non-compliance procedures and dispute settlement procedures, have so far not played a major role".[14] These "structural elements" in environmental conventions are designed to facilitate their smooth implementation. They include monitoring and reporting mechanisms established directly by a particular treaty, or by the conference of parties to the treaty which regularly meets to address these issues.[15] The most advanced structural elements include:

(a) an organ which will provide the conference of parties with objective scientific information as to the nature and extent of the particular environmental problem;

(b) an organ which reviews national reports submitted by contracting parties on a regular basis;

(c) an organ which makes an assessment on the basis of these reports, as to whether the contracting parties are in compliance with the convention, and possibly recommends action to be taken by the contracting parties, and

(d) a dispute settlement mechanism.

At least some of the structural and capacity building elements of implementation were included in Chapter 39 of Agenda 21 of UNCED.[16] This

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10 See UN Doc UNCED Doc A/CONF.151/PC/103 (2 March–3 April 1992).

11 International Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, 1046 UNTS 120.

12 12 ILM 1319.

13 Note 10 above, p 21.

14 Note 10 above, p 21 at para 25.

15 The most developed of these structures is perhaps that contained in the Montreal Protocol of Ozone Depleting Substances: see Koskenniemi, "Breach of Treaty or Non-Compliance? Reflections on the Enforcement of the Montreal Protocol" (1992) 3 *Yearbook of International Environmental Law* 123.

16 United Nations Conference on Development and Environment, *Agenda 21: Programme of Action for Sustainable Development* (1993).

rather short document, recognises the link between socio-economic development and capacities to implement environmental conventions. Thus it is stated that "the effective participation of all countries, in particular developing countries, should be ensured through appropriate provision of technical assistance and/or financial assistance".[17] Chapter 39 calls for the periodic review and assessment of "both the past performance and effectiveness of existing international agreements or instruments as well as the priorities for future law-making on sustainable development".[18]

Who is to carry out the task of review and assessment? Agenda 21 refers to the UNEP through its Montevideo Programme as one option. However, the newly created Commission on Sustainable Development (CSD)—one of the key outcomes of the Rio Conference—does also have some role to play here. The CSD—which met for the first time in New York from 14–25 June 1993—will be conducting a major review of UNCED outcomes, including Agenda 21, in 1997. Part of the mandate of the CSD is "to consider, where appropriate, information concerning the progress made in the implementation of environmental conventions, which could be made available by the relevant Conferences of Parties".[19] Where an international environmental treaty does not succeed in achieving its objectives, a treaty party may raise the issue at a meeting of the conference of parties. However, the CSD may provide an alternate—and useful—venue in which these issues may be raised by both State and non-government organisations.

Adequacy of Participation

One can only gain an understanding of the magnitude and importance of the issue of capacity building in the South Pacific region against the background of the range of obligations assumed by PICs under environmental conventions.

Global conventions for the protection and preservation of the marine environment[20]

The 22 island countries of the South Pacific occupy a region of 30 million square kilometres. This is four times the area of the continent of Australia and over three times the area of the United States of America. All South Pacific countries share an intimate association with the marine environment. For most island communities the ocean represents both a source of sustenance and cultural inspiration.[21] It is no accident, therefore, that regulation of the marine environment has so far received much attention in the region.

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17 Ibid, para 39.9.
18 Ibid, para 39.5.
19 See GA Res.47/191 (1992) para 3 (h).
20 I wish to gratefully acknowledge the assistance of Dr Greg French, of the Australian Department of Foreign Affairs and Trade, in the preparation of this section.
21 See Carew-Reid J, *Environment, Aid and Regionalism in the South Pacific* (1989), p 12.

The last few decades have seen the development of a series of legal mechanisms and structures for the protection and preservation of the marine environment. A significant step in this development was principle 7 of the 1972 Stockholm Declaration on the Human Environment,[22] which enjoined States to take all possible steps to prevent pollution of the seas by substances that are liable to create hazards to human health, to harm living resources and marine life, to damage amenities or to interfere with other legitimate uses of the sea.[23] This principle was to prove influential in the development of a whole range of legal mechanisms, from the global to the local level.

The 1982 United Nations Convention on the Law of the Sea

Principle 7 heavily influenced the most significant single global instrument dealing with the marine environment: the 1982 United Nations Convention on the Law of the Sea (CLOS).[24]

The CLOS will come into force on 16 November 1994, 12 months after Guyana lodged the 60th instrument of ratification with the Secretary-General of the United Nations. As of 7 July 1994, 62 states had ratified the Convention. Due to political difficulties relating to Part XI of the CLOS, which deals with seabed mining, a number of the world's maritime powers, including the United States had for many years refused to become parties. However consultations convened by the Secretary-General of the UN to resolve these difficulties have born fruit and on 28 July 1994 the UN General Assembly adopted by overwhelming vote the "Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982". The Agreement will allow the participation of all the major industrialised countries in the CLOS, and on 29 July was signed by 40 States, including the United States and Australia. Australia is intending to ratify the CLOS in October this year. Mr Satya Nandan, the Fijian representative and former UN Under-Secretary-General for Ocean Affairs and the Law of Sea, played a pivotal role in these negotiations.

Although not yet in force, Part XII of the CLOS has served as a catalyst for a whole series of international agreements of both a global and regional character for the protection and preservation of the marine environment.

The CLOS represents the first attempt by the international community to create a comprehensive global legal framework for the protection and preservation of the marine environment.[25] To this end it encompasses all aspects of the marine environment and all sources of marine pollution. The word "framework" is important in this regard: the CLOS does not go into great detail in setting specific standards for various forms of marine pollution.

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22 (1972) 11 ILM 1416.

23 See Timagenis GJ, *International Control of Marine Pollution* (1980), vol 1, pp 90–92.

24 21 ILM 1261, see articles 192 and 194 (1).

25 Timagenis, n 23 above, vol 2, p 577 ff.

The CLOS thus creates an overall structure for the protection and preservation of the marine environment and a general obligation for States to implement and elaborate upon this structure through both global conventions addressing particular forms of pollution and regional agreements tailored to the requirements of discrete sea areas.[26]

All PICs with the exception of Kiribati, Tonga and the Marshall Islands are signatories to the CLOS. The Marshall Islands acceded on 9 August 1991. As the CLOS closed for signature on 10 December 1984, Kiribati, the Marshall Islands and Tonga now only have the option of accession. Only two South Pacific Forum States have ratified or acceded to the CLOS: Fiji was the first State to ratify the CLOS (10 December 1982), and the Federated States of Micronesia became the latest, acceding on 29 April 1991. It should be noted, however, that the low participation rate in the CLOS has occurred world-wide and is not just confined to the South Pacific.

Other global conventions

Global conventions have been negotiated for the regulation of pollution from shipping and dumping as well as civil liability and compensation for pollution from vessels and seabed activities and intervention on the high seas in cases of emergency. In addition, the 1990 International Convention on Oil Pollution Preparedness, Response and Cooperation[27] negotiated under the auspices of the International Maritime Organisation (IMO) aims to create a framework for mutual assistance in cases of oil spills. Australia is the only South Pacific country to have ratified this Convention. The Convention could protect PICs interests in case of a major oil spill: parties are obliged to assist other parties when requested to do so. The provider of assistance must take into account the needs of developing countries when an assessment is made of the recovery of costs of assistance. This could be of relevance to PICs as assistance could be required from Australia, Singapore, or even the United Kingdom, in case of a major spill. Little, if any new legislation is required for a country ratifying the Convention. The lack of knowledge about the Convention would appear to be the major reason for the paucity of PIC ratifications.

The two major areas where there are as yet no global conventions which relate to and elaborate on the environmental protection requirements of the Law of the Sea Convention are marine pollution from land-based sources (articles 207 and 213 of CLOS), and marine pollution from or through the atmosphere (articles 212 and 220 of CLOS). These gaps have been discussed frequently in the past, but an international consensus on the need for and the substance of a global convention regulating these forms of pollution has not yet arisen.

However, from 6–9 December 1993, UNEP hosted a meeting of government experts which recommended measures to address land-sourced marine pollution

26 Ibid, pp 600–02.
27 3O ILM 733.

(LSMP) including the strengthening of the existing regional seas agreements.[28] This meeting followed earlier UNEP sponsored meetings which had led to the drafting of the Montreal Guidelines on Land Based Sources of Marine Pollution. These are a set of non-legally binding rules designed to be used as a model by states in the drafting of regional instruments in this field. The United States will host a global intergovernmental conference on LSMP in 1995. The convening of such a conference was called for by UNCED: "The UNEP Governing Council is invited to convene as soon as practicable, an intergovernmental meeting on the protection of the marine environment from land based sources".[29] At this stage it is difficult to predict the direction in which this issue will evolve. At present only a small group of countries appear to be interested in the negotiation of a global framework convention in this area; others would prefer resources to be channelled into existing regional mechanisms.

Article 7 of the SPREP Convention places a general obligation on a party to take measures to prevent pollution from rivers or other sources in their territory. It is possible that in the future a Protocol to the Convention specifically dealing with LSMP will be negotiated.[30]

MARPOL

The Convention for the Prevention of Pollution from Ships, 1973 (together with a 1978 Protocol: MARPOL 73/78) contains provisions for protecting the marine environment through minimising operational and accidental discharge from ships of oil, hazardous and noxious substances, sewage and garbage. It also provides for port States to inspect ships to enforce these provisions. Thus, for example, a ship suspected of discharging oil in Vanuatuan waters which then proceeded to an Australian port could be required to submit to inspection. If the suspicions were confirmed by tests, prosecution could be commenced. This is possible because both Australia and Vanuatu are States parties to MARPOL. Such actions would be far more difficult in States which have not ratified/acceded to MARPOL. The only South Pacific countries currently States parties to MARPOL are Australia, Tuvalu, Vanuatu, and the Marshall Islands.

London Dumping Convention

The Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, 1972 (London Convention) regulates the kinds of materials which may be dumped at sea. The dumping of matter listed in Annex I is prohibited, while the dumping of matter listed in Annex II requires a prior

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28 See, "Preliminary Review of Regional Seas Agreements, in Particular Their Effectiveness in the Control of Marine Pollution from Land-Based Activities", UN Doc UNEP/LBS/WG. 1/1/2 (8 November 1993).

29 United Nations Conference on Development and Environment, n 16 above, para 17. 26.

30 For a discussion of regional instruments in other parts of the world see M'Gonigle, "Developing Sustainability and the Emerging Norms of International Environmental Law: The Case of Land-Based Marine Pollution Control" (1990) 28 *Canadian Yearbook of International Law* 169.

special permit; the dumping of all other wastes or matter requires a prior general permit (article IV).

In November 1993 the Consultative Meeting of parties to the London Convention agreed to a number of amendments to the Convention including a ban on the dumping of all radioactive material at sea (including low-level) and, from 1995, a ban on the dumping of all industrial waste at sea. These amendments were agreed under the "fast-track" procedures contained in article XV of the Convention, which meant that they entered into force 100 days after their adoption (that is 19 February 1994) except for those countries which made declarations that they were "unable to accept the amendment at that time" (article XV(2)). The Russian Federation made a declaration in relation to the ban on radioactive waste dumping at sea. In the past France and the United Kingdom have opposed a total ban on radioactive waste dumping at sea, while the United States and Japan appear to have ended their opposition to such a ban. The Japanese change in position followed recent reports of the dumping of radioactive material in the sea of Japan by the Russian navy.

In relation to the dumping of industrial waste at sea, only one country has lodged a declaration: Australia made a declaration indicating that it will phase out the dumping of jarosite (a by product of zinc smelting) at sea by the end of 1997. PICs face particular difficulties in the disposal of wastes owing to their limited land area available for landfill and the high percentage of land held in customary tenure.[31] Nevertheless the PICs most active in the negotiation of the amendments to the London Convention did not seek any special provisions for island countries.

Membership of the London Convention among South Pacific States is higher than for MARPOL: Australia, Kiribati, New Zealand, Papua New Guinea, Nauru, Solomon Islands, Tuvalu and Vanuatu are States parties. Nonetheless, almost half of the States of the South Pacific remain outside the London Convention framework. The South Pacific Forum agreed in 1990 to recommend that observer status for SPREP at meetings of States parties to the London Convention be supported.[32] The 1993 South Pacific Forum Communique urged those members party to the London Convention to support actively a total ban on the dumping of radioactive wastes at sea.[33] Such a total ban was included in the amendments of the Convention adopted at the meeting of parties in November 1993.

Regional legal mechanisms for the protection and preservation of the marine environment

The UNEP Regional Seas Programme has played a significant role in transforming many of the environmental provisions of the Law of the Sea

31 See Watling D and Chape S, *Environment: Fiji, The National State of the Environment Report* (1992), pp 105–06.

32 For discussion of SPREP Convention and its Dumping Protocol see text accompanying n 80 below.

33 Twenty–Fourth South Pacific Forum, Nauru (10–11 August 1993) *Forum Communique* SPFS (93)11, para 41.

Convention, including those referring to environmentally sensitive areas, into norms of international law which are binding upon the parties to these conventions. An example of this process in the South Pacific context is the Convention for the Protection of the Natural Resources and Environment of the South Pacific Region, 1986 (SPREP Convention).[34] Article 8 of the SPREP Convention reconfirms the duty under article 208 of the Convention on the Law of the Sea on States to adopt laws and regulations to prevent, reduce and control pollution of the marine environment relating to seabed activities. Currently, no global international conventions exist containing this duty.

The SPREP Convention represents the most significant regional legal initiative for the protection and preservation of the South Pacific marine environment. It includes a Protocol for the Prevention of Pollution of the South Pacific Region by Dumping[35] and a Protocol concerning Cooperation in Combating Pollution Emergencies in the South Pacific Region.[36]

The SPREP Convention requires parties to take all appropriate measures to prevent, reduce and control pollution in the Convention area from vessels, land based sources, sea bed activities, atmospheric discharges, waste disposal, storage of toxic and hazardous waste, testing of nuclear devices and coastal engineering activities and to protect and preserve rare and fragile ecosystems, depleted, threatened or endangered fauna and flora and their habitat; and to deal quickly with pollution emergencies. Parties also agree to develop and maintain technical guidelines and legislation required for effective environmental impact assessment, to cooperate in research, monitoring, exchange of information and provision of technical assistance and in elaboration of rules governing liability and compensation for damage resulting from pollution.

The SPREP Convention entered into force in August 1990 following ratification/accession by ten States. The SPREP Convention and its related Protocols has achieved a relatively high level of participation from PICs. Currently ten governments (including France, Australia and New Zealand), of the 19 eligible governments in the region, are party to the SPREP Convention. Vanuatu has indicated its intention to accede to the Convention. Nine States are party to the Dumping Protocol and ten to the Pollution Protocol, both of which entered into force on 22 August 1990.

The atmosphere and the stratosphere

The PICs represent only a minute portion of the world's production and consumption of ozone depleting substances. It comes therefore as no surprise that few PICs have participated in the Montreal Protocol on Substances that Deplete the Ozone Layer, 1987[37]; Australia, New Zealand, Kiribati, Papua New Guinea, Solomon Islands and Fiji are the only parties amongst South Pacific countries.

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34 26 ILM 38.
35 Ibid.
36 Ibid.
37 26 ILM 1550.

There has been increased interest in the Protocol recently amongst Forum members owing to the concerns of PICs that they may become subject to trade bans imposed on non-parties under the Protocol. To date, the parties to the Montreal Protocol have imposed bans on exports of ozone depleting substances such as CFCs to non-parties. The Protocol provisions relating to such bans were included in order to induce non-parties to become parties and a fund has been created to assist developing countries to meet the "incremental costs" of carrying out their obligations under the Protocol. The possibility of gaining access to financial assistance for the conversion to ozone benign technologies may have been a more potent factor in developing countries' decision to ratify the Protocol than the threat of being subject to trade bans.[38] Montreal Protocol parties agreed in November 1993 to adopt a budget for the Protocol's Multilateral Fund at the level of $US510 million for the period 1994–96.[39]

In contrast the PICs took a very active role in the negotiation of the UN Framework Convention on Climate Change 1992[40] through the Association of Small Island States (AOSIS).

Entry into force of the Convention requires 50 countries to deposit instruments of ratification. The Convention entered into force internationally on 21 March 1994 with the first conference of parties to take place in Berlin from 28 March–7 April 1995. Amongst the South Pacific countries the following have become parties: Australia, Cook Islands, Fiji, Micronesia, New Zealand, Vanuatu and the Marshall Islands.

According to some of the climate change predictions, a number of PICs, including Kiribati and Tuvalu, are likely to become submerged over the next 50 years.[41] Not surprisingly PICs have argued strongly for the rapid negotiation of Protocols to the Convention which would contain legally binding targets and timetables in relation to greenhouse gases.[42]

The Convention imposes few concrete obligations on PICs who ratify but may, upon entry into force, assist PICs in gaining financial assistance in adapting to climate change impacts. Article 4(4) of the Convention provides that developed country parties "shall also assist the developing country parties that are particularly vulnerable to the adverse effects of climate change in meeting costs of adoption to those adverse effects".[43]

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38 See Lawrence, "Technology Transfer Funds and the Law—Recent Amendments to the Montreal Protocol on Substances that Deplete the Ozone Layer" (1992) 4 *Journal of Environmental Law* 15.

39 Report of the Fifth Meeting of Parties to the Montreal Protocol (19 November 1993), UN Doc UNEP/OEL.Pro.5/12, p 13.

40 31 ILM 849.

41 See *Intergovernmental Panel on Climate Change, Report of Working Group 3*, WMO, UNEP (1989) p xliv.

42 See eg n 33 above, at paras 29–31.

43 See Lawrence, "Implementation of the Climate Change Convention in the Pacific" in Boer B (ed), *Strengthening Environmental Legislation in the South Pacific, Workshop Proceedings* (1992), Workshop sponsored by Australian Centre for Environmental Law, SPREP, IUCN and UNEP, held at Apia, Western Samoa.

Nature conservation and the preservation of biodiversity

The Convention on Conservation of Nature in the South Pacific, 1976 (Apia Convention)[44] provides for the designation of protected areas which may comprise national parks or national reserves. Parties to the Convention are under an obligation to notify the Bureau (SPREP by delegation from the South Pacific Commission) of the establishment of such protected areas and the legal and administrative means by which they are managed, and must conserve indigenous flora and fauna in these areas. State parties are also subject to obligations not to alter the boundaries of national parks or allow commercial exploitation of their natural resources except after "the fullest examination". Parties must maintain a list of endangered species and protect these species "as completely as possible", and "carefully consider the consequences" of the deliberate introduction of new species.

The Apia Convention entered into force on 26 June 1990, 14 years after its negotiation. The Apia Convention currently has only five parties (Australia, the Cook Islands, Fiji, France and Western Samoa) however, Vanuatu has indicated that it will accede to the Convention. Papua New Guinea, New Zealand and the Solomon Islands have also indicated that their governments are working towards becoming parties to the Convention.[45]

The reasons for the low number of parties to the Apia convention are partly historical. The Convention was drafted under the auspices of the International Union for the Conservation of Nature (IUCN) in response to resolutions of a Regional Symposium held jointly with the South Pacific Commission (SPC) in 1971. In 1976 a decision was made by the South Pacific Forum and SPC to develop a comprehensive environmental protection programme which led to the establishment of the SPREP Action Plan and the SPREP Convention. In 1993 a treaty establishing SPREP as an intergovernmental organisation under international law was signed.[46] This decision led to the neglect of the Apia Convention whose objectives were subsumed within the SPREP Action Plan.[47] Uncertainty remains amongst some PICs as to the coverage and roles of the SPREP and Apia Conventions, and the Programme and Action Plan, and some PICs have also expressed the view that negotiation of a Biodiversity Protocol to the SPREP Convention would more adequately address the protection of the terrestrial environment.

There is considerable overlap between the Apia Convention and the global Convention on Biological Diversity, 1992[48] which entered into force on 29 December 1993 following the depositing of the 30th instrument of ratification. The Biodiversity Convention aims to conserve biological diversity through the nomination of reserves, and ensure the equitable sharing of the benefits arising

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44 1990 ATS No 41; 24 SD 103.

45 Information from Australian Nature Conservation Agency (ANCA).

46 Agreement Establishing the South Pacific Regional Environment Programme (SPREP). The Agreement is not yet in force. Text available from SPREP Secretariat.

47 Carew-Reid, n 21 above, p 93.

48 31 ILM 818.

out of the utilisation of genetic resources.[49] While this Convention goes beyond the Apia Convention, particularly in relation to genetic resources, the Apia Convention better reflects some particular regional concerns, such as the preservation of traditional hunting and fishing rights.

At present, of the South Pacific countries, Australia, New Zealand, Cook Islands, Fiji, Marshall Islands, Micronesia, Western Samoa, Papua New Guinea and Vanuatu are parties. France and the United Kingdom have also become parties.

Wildlife Conventions

Membership of the PICs in the International Whaling Convention, 1946 (IWC)[50] has been low. Currently there are 36 contracting parties to the Convention including Australia, New Zealand, France and the United States (Hawaii, Marshall Islands). The only PIC to be a member has been the Solomon Islands.

In general, developing countries are well represented in this Convention, while recently payments of annual subscriptions has become problematic for some developing countries. Low participation by PICs in the Convention stems from their lack of involvement in commercial whaling.

The South Pacific Forum has expressed support for the IWCs moratorium on commercial whaling, one of the key issues in the IWC.[51]

On 26 May 1994, the IWC adopted a decision to establish a circumpolar sanctuary for whales in the entire Southern Ocean area which covers some 30 per cent of the world's oceans and contains about 90 per cent of the world's surviving whales. The proposal for the sanctuary was adopted by 23 votes in favour (including Australia), to one against (Japan) with six abstentions (China, the ROK, Solomon Islands and three Caribbean States). Repeated accusations have been made that Japan "bought" the abstention of island countries who abstained with promises of financial aid. Norway did not participate in the voting. Of the South Pacific countries only Australian waters will overlap with the sanctuary area.

The Convention for the Prohibition of Fishing with Long Driftnets in the South Pacific, 1989 (Wellington Convention),[52] which came into force with the fourth ratification on 17 May 1991, seeks to ban large-scale high seas driftnet fishing in the South Pacific. South Pacific countries party to the Convention include Australia, Cook Islands, Fiji, Kiribati, Micronesia, Nauru, New Zealand and Tokelau.

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49 See Krattiger A et al (eds), *Widening Perspectives on Biodiversity* (1994). See especially King, "The South Pacific Biodiversity Conservation Program" in Krattiger ibid, pp 37–40.

50 161 UNTS 72.

51 Note 33 above, p 8 at para 34.

52 29 ILM 1449.

The Convention on International Trade in Endangered Species of Wild Fauna and Flora, 1973 (CITES Convention)[53] entered into force on 1 July 1975; Australia became a party in 1976. Although 121 countries are now signatories to CITES, only Australia, Papua New Guinea, New Zealand and Vanuatu represent the South Pacific region. (France and the United Kingdom are also parties.)

The main reasons for this low membership in CITES include a lack of information as to how the Convention works, and a lack of the infrastructure and resources necessary to implement the Convention.[54]

The Convention on the Conservation of Migratory Species of Wild Animals, 1979 (Bonn Convention)[55] aims to secure, through multilateral cooperation, the conservation of animals which undergo cyclic migration across one or more international boundaries. The Convention entered into force internationally on 1 November 1983. Of particular concern to Australia are marine turtles, cetaceans (whales and dolphins), dugongs and certain species of migratory birds. Currently there are 46 parties to the Convention but no PICs are parties. Australia, France and the United Kingdom are parties to the Convention. This low participation by PICs stems from the perception that the Convention is primarily concerned with northern hemisphere—especially European—animal migration.

The vital role that wetlands play in moderating natural phenomena such as floods and droughts, as well as their conservation values and recreational and educational potential, has found reflection in the Convention on Wetlands of International Importance especially as Waterfowl Habitat, 1971 (Ramsar Convention).[56] There are 98 parties to the Ramsar Convention, about half being countries in Central and South America, Asia, and Africa. The only South Pacific countries represented are Australia, New Zealand, Papua New Guinea and the metropolitan powers: France, United Kingdom and the United States.

Lack of participation by PICs in Ramsar is probably related to both a lack of knowledge about the Convention and a perception that it is irrelevant to PIC concerns.[57]

The UNESCO Convention for the Protection of the World Cultural and Natural Heritage, 1972 (World Heritage Convention)[58] is designed to ensure the protection of sites of particular natural or cultural value or beauty. Currently 130 countries are parties to the Convention. Australia and New Zealand (extending coverage to the Cook Islands and Niue), Papua New Guinea, the Solomon Islands and Fiji are the only countries of the South Pacific Region to become parties to the Convention.

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53 1976 ATS No 29.
54 See text accompanying n 82 below.
55 19 ILM 15.
56 1975 ATS No 48.
57 The current development of Australian national wetland programmes may help generate valuable information to assist regional implementation.
58 1037 UNTS 151.

The United Kingdom, United States and France are also parties to the Convention.

Hazardous wastes

The Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, 1989[59] places obligations on parties to minimise the generation and transboundary movement of hazardous wastes. The Convention imposes obligations based on the principle of "prior informed consent" according to which, before an exporting country can approve a shipment, it must have the importing country's written consent.[60] Under the Convention it is prohibited to export wastes to a party which has prohibited all waste imports. Despite some well publicised proposals to export wastes to some PICs, Australia and Fiji remain the only countries in the South Pacific region to be a party to the Convention along with the Metropolitan powers France and the United Kingdom.[61] Currently the Convention has 65 parties.

However, the 22 Heads of Government of the South Pacific Forum agreed in August 1993 following a proposal by Papua New Guinea, to the negotiation of a regional convention, complementary to the relevant global regimes commence by March 1994, with the aim of having the Convention open for signature at the 1995 Forum.[62] The Forum members acknowledged "that there was an urgent need to prohibit the importation [of wastes]...into...the region" as well as controlling wastes generated within the region.[63] Forum member governments who had not yet done so, were urged to become parties to the Basel Convention.[64]

Two negotiation sessions for this new regional Convention have taken place in Suva, on 8–9 March and 6–8 July 1994.[65] At these negotiations, it was agreed that the regional instrument should be linked to the Basel Convention to enable countries to become parties to both instruments and also to ensure that countries outside the region were bound by the import ban contained in the Convention. It was also agreed that the instrument should have less onerous reporting obligations than the Basel Convention, recognising the difficulties PICs faced in this regard. The latest draft of the Convention contains, with some square brackets, an obligation on small island developing State parties to the Convention to prohibit the import of hazardous wastes generated outside the Convention Area, and a corresponding obligation on parties to ban the export of

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59 Note 5 above.
60 Ibid, article 4.
61 New Zealand and Micronesia have indicated that they may ratify the Convention in the near future.
62 Note 33 above, at para 50.
63 Ibid.
64 Ibid.
65 See *Summary Report, First Meeting on the Draft Treaty Banning Hazardous and Toxic Wastes within the South Pacific*, Suva Fiji (7–8 March 1994), Forum Doc. SPFS (94) 4.

hazardous wastes to small island developing state parties.[66] If accepted this wording would require Australia, for example, to prohibit exports of hazardous wastes for disposal and recycling to PICs but would allow Australia to import waste from PICs who did not have the technological capacity to deal with wastes themselves. Movements of hazardous wastes (for disposal as well as recycling) could occur between PICs under this proposal.[67] At this stage it would seem that SPREP would most likely act as the Secretariat for the Convention and that the Convention would allow subsequent ratification by SPREP members (such as the United States and France) who are not Forum members.

Many complex issues surround the further negotiation of this regional instrument, including the definitions of wastes and how nuclear waste and hazardous products are to be dealt with. The question of the import of nuclear waste into the South Pacific region has become an issue of some sensitivity following reports that the Marshall Islands is examining the possibility of creating a nuclear storage facility on one of its islands already contaminated by United States nuclear testing in the 1950s.[68]

Barriers to Participation in and Implementation of Environmental Conventions by PICs[69]

Relevance to PICs' problems

One crucial reason for low participation of PICs in some global environmental conventions has been the lack of relevance of these conventions to the interests of PICs. Participation of PICs in such conventions would offer them few tangible benefits and would do little to further the objectives of each convention. Examples of such conventions are the IWC Convention relating to whaling and the Montreal Protocol relating to ozone depletion. Although recently, PICs have become interested in the Montreal Protocol owing to a concern that they may be

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66 Article 4 of "Draft 3" of the Convention attached to Forum Doc SPFS(94) OCB. 10. The Convention Area includes the territory, territorial sea, continental shelf and the Exclusive Economic Zone of the Forum member parties listed in article 2(1) of the Draft.

67 Ibid, article 4 together with article 6 of the Draft.

68 See Davis, "Bikini's Silver Lining", *The New York Times Magazine* (1 May 1994), pp 44–70.

69 This section draws upon a Report entitled "Implementation of Environmental Conventions in the South Pacific: An Australian Perspective" which comprised an Australian Government contribution to UNCED Working Group III Third Session in August 1991. The Report was derived from a survey conducted by various Australian Federal Government departments responsible for the implementation of a number of environmental treaties in Australia. The survey aimed at determining the level of participation by PICs in a number of environmental treaties and to determine the key factors which contributed to the low level of involvement in the negotiation and implementation of such treaties where this occurred.

subject to bans imposed by parties to the Protocol with respect to the export of products containing CFCs and other ozone depleting substances.[70]

Failure of PICs to ratify some environmental conventions has been linked to a perception on their part that such involvement would—if anything—hinder rather than advance their national development goals, or that the implementation of such instruments is simply a lower priority than, for example, the development of infrastructure or education. More work needs to be done in this area to determine whether the obligations imposed by environment conventions do in fact hinder the economic development of the states concerned, or whether the problem here is more one of perception, reflecting a lack of information about the conventions as well as a lack of the resources to implement them.

It is also relevant to note that the environmental conventions contain few hard obligations which impinge on the difficult decisions confronted by PICs especially in relation to such issues as the management of tropical forests. The problems in this field are acute. For example, it is estimated that in the Solomon Islands the life of the accessible timber resource (that is that which is economically feasible to log) has been estimated to be perhaps as little as 15 years if the maximum allowable cut under existing timber licence agreements is taken.[71]

The history of the Ramsar Convention[72] provides an interesting example of the problem of relevance and a lack of information about the Convention. The pre-occupation by developed northern hemisphere nations with the importance of wetlands as water fowl habitat left some non-member nations with a view that the Convention was not relevant to their particular situation. The contracting parties to the Convention have attempted to accommodate these concerns by establishing a wetland conservation fund specifically designed to assist developing countries to join the Convention and manage wetlands in a sustainable manner.[73]

The Bonn Convention[74] has also been perceived as being concerned with northern hemisphere animal migration movements and of no relevance to the Pacific; this may gradually change following Australia's recent accession to the Convention.

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70 See text accompanying nn 97–98 below.

71 Leary T, *Solomon Islands State of the Environment Report* (1991), cited in Boer B, *Solomon Islands, Review of Environmental Law* (1992). The recently renegotiated International Tropical Timber Agreement, 1994 (advance text available from UNCTAD Secretariat) includes amongst its objectives the aim of ensuring that all exports of tropical timber and timber products come from sustainably managed sources by the year 2000 (article I(d)). This is an indicative target, not a "hard" obligation. In the South Pacific region only Australia, New Zealand and Papua New Guinea are parties.

72 See n 56 above.

73 Information from Australian Nature Conservation Agency (ANCA).

74 Note 55 above.

Lack of resources and legal/administrative structures to ensure implementation

The lack of resources to devote to the implementation of environmental conventions is a problem faced by many developing countries. This problem is magnified in the case of micro States which have a tiny resource base and a small government bureaucracy. The PICs provide a good example of this problem. Western Samoa is the largest country in Polynesia in the South Pacific region with a population of roughly 165,000. Despite a more than seven fold increase in budgetary allocation for environment and conservation activities between 1985 and 1990 the total amount of resources remains low. Thus, the Environment and Conservation Division of the Western Samoan Department of Lands and the Environment is made up of only three permanent staff, two of whom are field officers responsible for national parks and reserves development and management. It is apparent that even where environmental concerns are given relatively high priority by such governments, the number of personnel available to become involved in the increasingly specialised field of environmental protection is severely limited.[75]

These limitations also apply to participation in multilateral work including attendance at meetings of parties to environmental conventions. Where there are so few officers involved in domestic environmental programmes, even if assistance is provided to enable attendance at meetings, the benefits of this must be weighed against the effect of the absence of an officer on national programme delivery. This is particularly true for meetings held outside the region which involve longer absences due to the time spent travelling to and from the venue.

A further example of the problem of resource constraints is provided by the MARPOL Convention[76] which places an obligation on governments to provide facilities at ports and terminals for the reception of oil and chemical waste or cargo residues, garbage and sewage to the extent that such facilities meet the needs of the ships using the particular port. Many PICs would face serious difficulties in providing the necessary facilities owing both to financial and technical constraints.[77] In most small island countries there is very little suitable land on which land disposal of waste may be carried out. This is made especially difficult, in PICs where land is often held in customary tenure, with the government unable to take land for this purpose.[78]

Implementation of the Protocol to the SPREP Convention concerning pollution emergencies will clearly make demands on the resources of PICs.[79] Article 3(2) of the Protocol requires the drafting of legislation and drawing up of contingency plans to cope with pollution emergencies, and the designation of an appropriate national authority to coordinate such action.

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75 Discussion with participants at the Apia Workshop, n 43 above.
76 Note 12 above.
77 See text accompanying n 31 above.
78 Information from the Australian Maritime Safety Authority.
79 Note 36 above.

Similarly, the SPREP Convention Protocol concerning the dumping of hazardous waste at sea,[80] requires national laws, regulations and measures to implement the system of permits: either "special" or "general" depending on the type of substance concerned (see articles 5 and 6) and a system for the keeping of records (see articles 3 and 11 of the Protocol).

A further barrier to implementation of environmental conventions in developing countries is the lack of coordination of government departments (and legislation) involved in environmental policy. Western Samoa has recently addressed this issue by creating a single environmental agency which can address conservation issues in an integrated fashion.[81]

A useful example of the problem of a lack of infrastructure and legislation is provided by the CITES Convention. While Australia has been able to implement the Convention through its Wildlife Protection (Regulation of Exports and Imports) Act 1982 (Cth),[82] many South Pacific countries have limited wildlife laws and would require new legislation and trained personnel to ensure accurate certification relating to import and export of CITES listed wildlife at customs points, before becoming parties to CITES.

Of course legislation alone achieves nothing and is a necessary but not sufficient condition for effective implementation of the policies embodied in environmental conventions. To be effective such national legislation must be based on accurate information and be linked to adequate monitoring and enforcement mechanisms and institutions.

Collection of data

The collection of accurate data is a vital precondition for implementation and monitoring of environmental conventions. It was apparent from the June 1994 meeting of the Open Ended Working Group of the Montreal Protocol relating to the ozone layer that difficulties were being experienced by 34 countries in meeting data reporting requirements under the Protocol.[83]

Similarly, at the Technical Working Group of the Basel Convention, held in Geneva, 6–8 July 1994 a major developing country expressed the view that the reporting requirements of the Convention had become overly bureaucratic and particularly difficult for developing countries to meet.[84]

These difficulties underline the need to provide developing countries with expert assistance in this area, as well as the need for standardised formats for enabling the collection of comparable data. Problems related to excessive requirements for data collection have arisen when decisions on formats have been made by officials not directly involved in implementing them.

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80 Note 34 above.
81 See n 43 above and text accompanying n 75 above.
82 No 149 of 1982.
83 UN Doc UNEP/OZL/Rat 38 (30 June 1994), pp 33–34.
84 Information from Dr G Thompson, Environment Protection Agency, Canberra, Leader of the Australian Delegation to this meeting.

Collection of reasonably accurate data on the dimensions and nature of a particular environmental problem is a precondition for developing an effective regulatory framework.[85] Thus for example, before an effective programme (including adequate legislation) is developed to ensure the effective disposal of hazardous waste, it is necessary to conduct a survey—through, for example questionnaires—to determine the disposal needs of a particular community. The undertaking of such a survey is a formidable task involving considerable numbers of trained personnel.

Lack of expertise

This category is closely linked to the problem of a lack of resources generally (discussed above), and reflects the fact that many environmental problems stem from the use of old, inefficient and environmentally damaging technology, where "technology" is understood as including ways of doing things, as well as expertise. For example, devastation to island reefs and fishing stocks may be produced from run-off from dangerous old pesticides into rivers and a failure to use emission control devices in relation to small industrial plants (for example, paint or dye factories).[86]

An apposite example in this regard is the problem faced by Tonga in becoming a party to the Wellington Convention[87] banning driftnets. While the Convention is aimed principally at the use of driftnets on the high seas, it also compels State parties to ban the use of driftnets longer than 2.5 kilometres in their territorial waters. Tonga is currently using such driftnets in its territorial waters and appears unlikely to become a party to the Convention until persuaded that such nets can be replaced with equally efficient small scale nets.

This example demonstrates that the technology required to facilitate compliance with at least some environmental conventions may be very simple indeed, but nevertheless costly.

Cost of participation

A particular cost for PICs in joining global environmental conventions is the exorbitant cost of attending meetings which often take place in Europe. Examples of such conventions are the Bonn and Basel Conventions where most meetings take place in Europe. Further costs entailed in participation of some

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85 This notion has not always been followed in practice. For example the regional convention on hazardous wastes currently being negotiated under the auspices of the Forum (see text at n 66 above) has been launched with very little data available as to the movements of wastes for disposal and recycling occurring in the region and the amount of wastes generated in the region. Greenpeace International has reported in detail a number of proposals which have been made involving dumping of wastes in the region while most, if not all, have come to nought following strong opposition by PICs. See Vallette J and Spalding H (eds), *The International Trade in Wastes: A Greenpeace Inventory* (1990), pp 42–59, 181, 186, 187, 197. See also, "Hazardous Wastes Storage and Disposal in the South Pacific" UNEP Regional Seas Reports and Studies (1984) 48 UNEP.

86 Watling and Chape, n 31 above, p 105.

87 Note 52 above.

conventions include the financial contributions to fund Secretariat costs (for example, the IWC Convention).

By way of contrast, special trust funds have been created to assist developing countries to participate in the negotiation, and meetings of the conference of parties, of particular environmental conventions. This occurred in relation to the Conventions on Climate Change, Biodiversity, Desertification and the Basel Convention. The reasons why such assistance has been forthcoming for some conventions but not others are complex. The success of some conventions, for example, the Montreal Protocol and the Climate Change Convention, will depend on the implementation by at least the larger developing countries. The industrialised countries have, in relation to these conventions, been willing to provide financial assistance for both participation in the negotiations, and implementation of the Convention as a carrot for such involvement.[88] The Australian Government has funded PICs attendance at climate change negotiations through SPREP.[89] This Australian assistance has occurred despite PICs taking positions very different to Australia on major issues related to the Climate Change Convention. With some environment conventions encouragement of PICs involvement has been part of a strategy to gain the necessary minimum of ratifications to bring the convention into force internationally. With other conventions, particular western countries have, on occasion, been seeking to enlist allies in the negotiations (for example, the IWC Convention).

Strategies for Capacity Building

The provision of information and technical assistance

Information and technical assistance may be provided in a number of forms including:

- the holding of seminars, workshops and conferences;
- training through secondment and exchanges; and
- assistance in drafting environmental management plans and legislation.

The transfer of information ("technology transfer" in the broadest sense) may take place on a bilateral or multilateral basis. In the multilateral area, funding, expertise, and information is available through UNEP, UNDP, FAO and the Global Environmental Facility of the World Bank.

Workshops and seminars

Workshops or seminars relating to both global and regional environmental conventions may assist developing countries to implement these conventions by helping government officials gain knowledge as to the obligations contained in these conventions. Exchanges of different countries' experiences can be useful

88 Lawrence, n 38 above.
89 Information from Department of Foreign Affairs and Trade, Canberra.

in the development of national implementation strategies.[90] An example of such an activity was the workshop held in May 1990 by the Australian National Parks and Wildlife Service (ANPWS)[91] on wildlife trade in the Oceania region designed to outline the provisions of the CITES Convention, to strengthen regional cooperation in regulating trade in wildlife and to identify assistance projects which will help countries increase their controls on trade in wildlife.

Training

Expertise may also be conveyed through short term secondments or exchanges between government agencies. To maximise the transfer of knowledge such secondments or exchanges need to involve specific projects. Thus, for example, the ANPWS and the Office of SPREP signed in 1990 a framework memorandum of understanding which has facilitated the secondment of officers from either agency to undertake training or short term project work, in the field of nature conservation.[92]

Assistance in drafting management plans and legislation

In a working paper prepared for the first meeting of the parties to the Apia Convention[93] held in Noumea, it was suggested that the SPREP could assist PICs in implementing the Apia Convention by providing assistance in the review and establishment of national legislation and with the development of national park or other conservation area management plans. Similarly, the SPREP could assist parties with the preparation of assessments required pursuant to eventual environmental impact assessment legislation and procedures. The latter would, according to the working paper, be facilitated if a Protocol was added to the Convention setting out standardised environmental impact assessment procedures applicable to all parties.

Substantial assistance (US $10 million) has been made available to SPREP member countries from the Global Environmental Fund (GEF) Biological Diversity Programme[94] for the establishment and management of 20 protected

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90 In relation to the Montreal Protocol, the Australian Government has assisted Thailand with a country study and has assisted in a regional workshop held by the Australian Air Conditioning and Refrigeration Industry and the Australian Fluorocarbon Industry. In the area of marine pollution, a number of workshops have been held in Australia in recent years on oil spill contingency planning and response training for the South Pacific region, with many representatives of PICs in attendance.

91 Now called the Australian Nature Conservation Agency (ANCA).

92 Under this arrangement ANCA officers were seconded to assist with the preparations for the Fifth South Pacific Conference on Nature Conservation and Protected Areas, held in Tonga (4–8 October 1993). In addition ANCA has provided financial support for Australian biologists to work with SPREP in implementing the South Pacific Regional Marine Turtle Conservation Programme (Information from AMSA).

93 Working Paper Prepared by the SPREP Secretariat for the First Meeting of Parties to the Apia Convention, Noumea (10–12 July 1991).

94 See, *Report of the Chairman to the December 1993 Participants Meeting,* Global Environment Facility (November 1993), p 57.

areas. This programme could assist PICs in implementing Apia Convention obligations.

As part of the SPREP Programme national environmental management strategies are being prepared for most South Pacific States. A component of the development of these strategies is assessment of the adequacy of existing legislation and of participation in international legal instruments.[95] The strategies, once adopted, will indicate national priorities in relation to international environmental law and will enable industrialised regional countries like Australia and other donors to target assistance to meet these priorities in bilateral and regional programmes, particularly through SPREP.

During 1989–90, four missions were carried out by Australian experts for the purpose of developing draft marine pollution contingency plans for Tuvalu, Vanuatu, Western Samoa, Fiji, Cook Islands, Niue and Tokelau.[96] This assistance will considerably lessen the demands on the resources of PICs in implementing the Protocol to the SPREP Convention concerning Pollution Emergencies.

A good example of successful technical assistance is that provided by the Industry and Environment Programme Activity Centre (IE/PAC) of UNEP which, combined with financial support from the Multilateral Fund of the Montreal Protocol, has enabled Fiji to prepare a Country Programme for implementation of the Protocol.[97] In May 1993 the Fiji Government endorsed the Programme, which involves the total phase out of consumption of ozone depleting substances by the year 2000. The Programme involves the establishment of an Ozone Fund under the Ministry of Housing and Urban Development and a monitoring sub-unit in the same Department, the refitting of commercial refrigeration equipment, and the training of regulatory officers including Customs officials. The whole Programme is budgeted at US $465,300. While Fiji is a small consumer of ozone depleting products, the Programme's Action Plan points out that the institutional strengthening, public awareness and training aspects of the Action Plan will provide valuable experience in dealing

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95 Such reviews have been funded by the Asian Development Bank, the World Conservation Union (IUCN), SPREP and the Australian Centre for Environmental Law. See Boer B, *Solomon Islands: Review of Environmental Law* (1992); Harding E, *Federated States of Micronesia: Review of Environmental Law* (1992); Pulea M, *Cook Islands: Review of Environmental Law* (1992); Pulea M, *Kingdom of Tonga: Review of Environmental Law* (1992); Harding E, *Republic of the Marshall Islands: Review of Environmental Law* (1992), all published by SPREP.

96 Information from Australian Maritime Safety Authority (AMSA). AMSA conducted an oil spill response course in Suva, Fiji in 1992 with funding from the IMO and SPREP. The course involved 25–30 participants, mostly from port authorities, oil terminals and environment ministries from a range of South Pacific countries. SPREP has funding to continue a programme relating to oil spill contingency planning and response in the South Pacific region.

97 See, "Country Programme: Fiji" (29 May 1993) UN Doc UNEP/OZL. Pro/ExCom/10/22.

with environmental issues relating to other conventions to which Fiji is a party (for example, Climate Change and Biodiversity Conventions).[98]

Technical assistance may also take the form of assistance in the drafting of legislation, for example wildlife conservation legislation. Some assistance of this nature is presently delivered by UNEP, the World Conservation Union (IUCN), Environmental Law Centre Bonn, and the Australian Centre for Environmental Law. The Forum Fisheries Agency has provided assistance to PICs in the drafting of legislation concerning the conservation of marine species. As yet, however, the actual assistance provided to PICs from all of these sources is limited owing to a lack of funds.

It is clearly essential that such activities reflect the needs and concerns of the countries involved and not other agendas. Proper coordination of these programmes is also essential to avoid duplication and confusion. SPREP is best placed to act as this coordinator. At the same time smooth coordination with UNEP, particularly the UNEP regional office in Bangkok, must be ensured. Perhaps a solution here would be for UNEP to place an officer in SPREP.[99]

Assistance in attending meetings

As mentioned above, some existing global conventions, such as the Basel Convention, have funds to assist developing countries' attendance at meetings. Involvement in the negotiation of a treaty brings with it an understanding of the obligations contained in the treaty and a greater likelihood of its implementation.

Advantages of a Regional Approach to Environmental Regulation and Implementation

The SPREP Convention and its Protocols demonstrate that a regional approach to environmental law-making may result in a set of obligations more in accordance with regional concerns and consequently improve chances of effective implementation.[100] As with other conventions developed under the UNEP Regional Seas Programmes, SPREP Convention obligations are modelled on provisions of the CLOS and the London Convention. However, the obligations embodied in the SPREP Convention have also been modified to reflect a regional concern about the environmental effects of nuclear testing.

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98 Ibid, p 28.

99 While the UN Economic and Social Commission for Asia and the Pacific (ESCAP) and the UNEP regional office, both in Bangkok, are meant to cover the Pacific, in practice the geographic distance and rather divergent interests of the groups of countries involved has meant that these institutions have remained of limited value to PICs.

100 For a discussion of the related subject of the development of regional customary international law in relation to the environment see Crawford, "The Role of Transnational Environmental Law in Protecting the Environment of Asia and the Pacific" *Conference Papers: Second National Environmental Law Association/ Lawasia International Conference on Environmental Law* (5–7 August 1991).

It is arguable that many of the objectives of the global CITES Convention could be pursued on a regional basis through the Apia Convention. PICs, by joining the Apia Convention, could become engaged in the compilation of lists of endangered species which would form the basis for eventual compliance with CITES Convention obligations, but without committing themselves immediately to the obligations of the CITES Convention.

The development of regional conventions may reduce the otherwise large costs of PIC attendance at global convention meetings held outside the region.[101] Clearly it is much cheaper for PICs to attend meetings in their own region than to travel to Europe, Africa or America for meetings of the parties of global conventions. Further efficiencies are also ensured by combining the meetings of the parties to a number of conventions at the one time. A good example of this is the usual back-to-back meeting of the SPREP and Apia Conventions.

The SPREP Convention and Protocols offer the advantage that difficulties encountered in their implementation may be quickly addressed as they arise through meetings of the parties. Such regional mechanisms to address problems in implementation may be more accessible and responsive to particular regional needs than global mechanisms.

A further advantage of the development of regional conventions is that, owing to the fewer number of countries involved, and their more direct participation in negotiations, a stronger convention is more likely to emerge reflecting particular regional concerns and therefore more likely to be implemented by the countries of the region.

Monitoring of convention obligations may also be facilitated by a regional approach. Since 1991 SPREP has been conducting a regional environment assessment and monitoring programme. This programme will allow the collection of information on the environment using consistent parameters in a standardised format to allow comparison over time.

While the SPREP example demonstrates that regional conventions may enable global strategies to be transformed into effective regional conventions, global and regional strategies remain complementary. Only global action can address environmental impacts resulting from the actions of countries outside the region. Problems relating to climate change, migratory animals, shipment of hazardous wastes and degradation of the global commons cannot be solved by regional action alone. Regional conventions can not impose obligations on countries outside the region, only a global convention can do this.

Moreover, there are disadvantages in pursuing the drafting of regional conventions without first seeking to better implement the existing global instruments. One possible consequence may be the development of overlapping or conflicting obligations which makes it even more difficult for PICs with

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101 However, even the negotiation sessions of South Pacific instruments are sometimes poorly attended. For example only eight Forum members attended the second negotiation session of the regional convention on hazardous wastes (see text accompanying nn 62–68 above).

limited resources to implement such instruments. For example, it could be argued that most of the objectives being pursued through the negotiation of a regional convention on hazardous wastes could have been achieved by PICs becoming parties to the Basel Convention. For example, one of the objectives of the regional initiative is to prohibit the import of hazardous wastes into PICs. PICs could have achieved this objective by ratifying the Basel Convention and imposing national import bans. The Basel Convention allows countries to impose total bans on the import of hazardous wastes which must be respected by other parties.[102]

Involvement in global conventions can also mean that PICs can take advantage of technical assistance and training programmes funded by a larger group of countries.

Conclusion

This article has argued that low participation by PICs in certain global environmental conventions has occurred owing to their lack of involvement in the negotiation of such conventions, a perceived and real lack of relevance to PIC concerns, lack of infrastructure (including trained personnel and legislation) to ensure implementation and a lack of basic information concerning the conventions.

Some of these barriers to participation are being overcome, and the PICs were active in the negotiation of the global conventions on climate change and biodiversity. Moreover, the example of the SPREP Convention shows that global obligations may be translated into regional conventions which are adapted to meet particular regional concerns.

The UNCED objective of reviewing existing conventions to assess whether they are actually meeting the environmental objectives for which they were drafted should be actively pursued primarily by the conference of parties of the various environmental conventions. This review will allow all countries to better assess the value of both the conventions themselves and participation in them.

The availability of resources to be devoted to capacity building in this field is a question of priorities for both developing and developed countries. Effective participation in environmental conventions by PICs will only occur where they are persuaded that participation will ultimately further both their environmental and developmental goals. In this respect the need for action to be taken at both the national, regional and international level to attain the goal of sustainable development was recognised in the Programme of Action for the Global

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102 This is one of the options contained in the model legislation developed by the Secretariat of the Basel Convention to assist countries in implementing the Convention. See Basel Convention Series/SBC No 94/003 (April 1994), UN Doc UNEP/SBC/94/2, Part V, p 9.

Conference on the Sustainable Development of Small Island Developing States adopted in Barbados in April 1994.[103]

The Programme noted that the "limited human resources and small size of small island developing States makes it especially important to pool these resources through regional cooperation and institutions" as a necessary part of their progress towards sustainable development.[104] The Programme also stressed the importance of strengthening the capacity of small island developing states to ratify environmental conventions, through, for example, the provision of training and capacity building services.[105]

The generally low level of participation in the negotiation of—and the implementation of—environmental conventions needs to be overcome by a variety of creative strategies. These include the negotiation of regional instruments complementary to the global regimes and the inclusion of financial mechanisms and assistance for capacity building which will enable implementation on the ground. Some of the examples outlined in this article of technical assistance to PICs for capacity building illustrate the type of practical activities which may play some part in helping to preserve the environment of the South Pacific for future generations.

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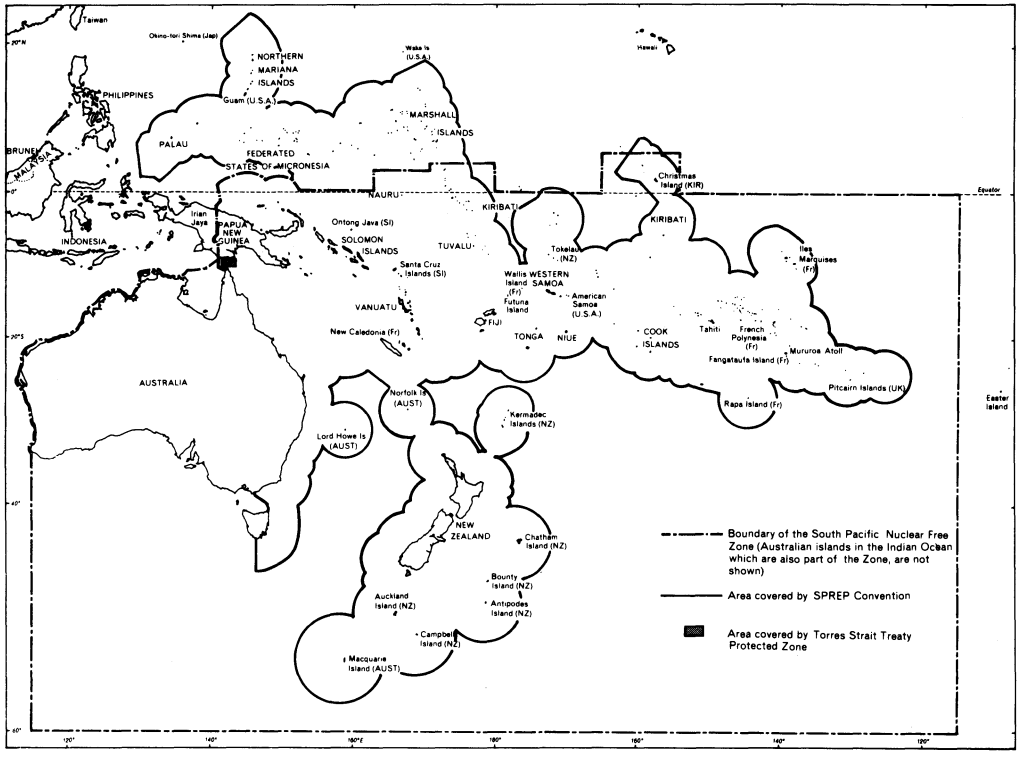
103 See, *Programme of Action for the Sustainable Development of Small Island Developing States*, advance unedited text provided by the Secretariat (4 May 1994).

104 Ibid, p 25, para 50.

105 Ibid, p 24, para 49 Section C (iii).



Map 1: Area covered by South Pacific Regional Environment Protection Convention
Map reproduced from Carew-Reid J, *Environment, Aid and Regionalism in the South Pacific* (1989), p 91.
Courtesy of the National Centre for Development Studies, Research School of Pacific and Asian Studies, The Australian National University.