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SPECIAL CONFERENCE ISSUE  
14th ANNUAL ANZSIL CONFERENCE:  
PACIFIC PERSPECTIVES ON INTERNATIONAL LAW

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VICTORIA UNIVERSITY OF WELLINGTON

*Te Whare Wānanga o te Ūpoko o te Ika a Māui*



FACULTY OF LAW  
*Te Kauhanganui Tatai Ture*

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# ADDRESS AT THE OPENING OF THE AUSTRALIAN AND NEW ZEALAND SOCIETY OF INTERNATIONAL LAW 14TH ANNUAL CONFERENCE

*Rt Hon Helen Clark\**

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*This is the edited text of the address given by the Rt Hon Helen Clark at the opening of the Australian and New Zealand Society of International Law 14<sup>th</sup> Annual Conference on 29 June 2006.*

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It is axiomatic that the Pacific is important to New Zealand. It is our region; it is where we live. We have very close constitutional relationships with the Cook Islands, Niue and Tokelau. Their people are New Zealand citizens. We have strong historical and cultural ties to the other countries of the Central and Eastern Pacific. More recently, we have had a greater involvement with the Western Pacific. Australia is, of course, our oldest and closest friend. It is also our partner in many of the activities we undertake in the Pacific and beyond. The Pacific is and will remain a significant focus of attention for New Zealand and, I am sure, for Australia as well.

I want today to highlight a number of issues which bear on some of the broad themes the conference will be considering over the next few days: peace and security, human rights, the conservation and use of natural resources, and trade and economic development. Those themes accord closely with the goals of the Pacific Plan which was endorsed by the Leaders of the Pacific Islands Forum ("the Forum") at their meeting in Port Moresby last October. New Zealand has put significant effort into the development of the Plan. It is our top regional priority.

Although it may seem counter-intuitive to international lawyers, the Pacific Plan is not about creating new regional rules or legal institutions. Its focus is on strengthening national capacity through regional co-operation. The intended outcomes, however, are directly relevant to the themes of this conference: security and good governance, sustainable development, and enhanced

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\* Prime Minister of New Zealand.

economic growth. Strong, stable institutions allow the rule of law to flourish, just as the rule of law is a foundation for fair and stable governance.

Today, the South Pacific is an integral part of the global community, and it shares with the rest of the world many of the current global challenges and problems. It also has its own particular issues which reflect the differing historical experiences of the countries within the region. In terms of legal arrangements, Pacific constitutions and legal systems vary from the Westminster models which were developed before and continued after independence. They have evolved into amalgams of Western and customary law, and onto often carefully calibrated arrangements which seek to address the particular circumstances of a country. Thus, there is no single model and no single shared tradition. Some Pacific countries have enjoyed peace and stability; others have not. Some have weak institutions of state. All have capacity and human resource constraints. Some have ethnic tensions, destructive parochialism, and occasionally corruption. At the extremes, there have been three coups in Fiji, a determined secessionist movement in Bougainville, and in the Solomon Islands a devastating breakdown of law and order.

The Forum countries have recognised that we need to be able to deal collectively with these kinds of problems. The Biketawa Declaration issued from the Forum Leaders' Meeting in Kiribati in 2000 was a milestone in developing an effective regional security arrangement of the kind envisaged in Chapter VIII of the UN Charter. In the Declaration, Forum Leaders recognised that in time of crisis or in response to a member's request for assistance, action can be taken on behalf of all Forum members to restore security, and they set out the procedures to be followed.

RAMSI, the Regional Assistance Mission to the Solomon Islands, is the first and so far only example of the Biketawa procedures in operation. Because of the Biketawa Declaration, RAMSI could be put together very quickly, following a request from the Solomon Islands Government in 2003. RAMSI is very much a regional operation, with Defence and Police staff from Australia, New Zealand, the Cook Islands, Fiji, Papua New Guinea, Samoa, Tonga, Vanuatu, Kiribas, Tuvalu, Palau, the Federated States of Micronesia, the Marshall Islands, and Nauru working alongside Solomon Islanders. RAMSI has worked to establish stability and law and order. The riots and destruction which followed the recent Solomon Islands' elections were a set back, and show the limitations of what even a concerted regional effort can achieve in the short term. RAMSI's focus is now on rebuilding the institutions of government and getting the economy moving.

But ongoing reform of the Solomon Islands' institutions, economy and governance will need to be owned and driven by the people of the Solomons, including by their leaders, if the reforms are to be durable. That is why New Zealand, like Australia, has emphasised to the Solomon Islands leadership the need to put national interests first, and to avoid a return to the divisiveness, parochialism, and corruption which underlay much of the troubles earlier and in more recent times. RAMSI shows what the region is capable of when things go really awry. It is of course far better to try to ensure that these kinds of situations do not arise at all. That is why so much of the focus of

the Pacific Plan is on improving leadership capacity, governance arrangements, and respect for human rights and the rule of law.

New Zealand's international development agency, NZAID, currently spends around a third of its Pacific budget on governance-related initiatives. It is also pursuing a series of specific leadership initiatives under the Pacific Leadership Development Strategy. These are aimed at establishing a dialogue forum for emerging Pacific leaders, promoting training for emerging Pacific women leaders, and developing a graduate diploma programme for managers of non-governmental organisations. We are also inviting Pacific organisations to put forward proposals for leadership development initiatives which target community, traditional, and faith-based leadership.

In co-operation with Australia and with the Chief Justices of our two countries, New Zealand has recently established the Pacific Judicial Development Programme. It will support Pacific countries to enhance the competence of their judicial officers and the supporting court officials, and of the processes they use for the administration of justice. We are also hoping that the Pacific Islands Law Officers Meeting in 2006 will address how other obvious skills gaps in Pacific legal arrangements, in areas like police prosecutions, public law, law reform and legal drafting, can be filled. New Zealand is also working to strengthen governance mechanisms which will increase respect for human rights in the region. We are promoting the establishment of a dedicated human rights desk within the Forum Secretariat which can help advance respect for human rights within the region, and co-ordinate and facilitate support for Forum members from the United Nations (UN) and other agencies. This should help with adherence to and implementation of the key international human rights instruments.

One of the major challenges all countries face is how to implement the many new, international legal requirements and standards which flow from mandatory decisions of the UN Security Council and new international treaties. The challenge is especially large for small developing countries with limited policy and other resources. Yet evolving international standards must be adhered to, and those around counter-terrorism have become particularly pressing and salient. Since the Rainbow Warrior bombing more than twenty years ago, there has not been a terrorist attack in the South Pacific, but our peoples are inevitably affected by terrorist attacks in other parts of the world. Countries in this region have recognised that new counter-terrorism measures have to be put in place, both to protect our own citizens and visitors, and to give effect to our international obligations.

Here in New Zealand, we are in the process of updating and significantly revising the Terrorism Suppression Act 2002, through which we meet our obligations under the UN Security Council's counter-terrorism resolutions and implement some of the recommendations of the OECD's Financial Action Task Force (FATF). A separate and wider policy initiative is currently under preparation to enable New Zealand to implement the full range of FATF recommendations. Since the passage of the Act in the wake of the September 11 terrorist attacks, it has become clear

that in some respects the legislation does not allow New Zealand to be as responsive as we would wish to be in implementing the changing requirements of the UN counter-terrorism arrangements. Parliamentary counsel are currently preparing amendments to the TSA to be brought to Parliament later this year.

For many Pacific countries implementing the UN's counter-terrorism regime has been a particular challenge. Some have found it difficult to allocate the resources needed to draft what can be very complex legislation. Most have found it difficult to comply with the UN's reporting requirements. New Zealand has helped Pacific partner governments meet their obligations by providing technical assistance to strengthen critical infrastructure, and by assisting the development of model counter-terrorism legislation to meet the circumstances of the Pacific.

Through our dedicated Pacific Security Fund, New Zealand is providing up to \$3 million per year to fund collaborative security and counter-terrorism capacity building projects. We have:

- Hosted a number of Pacific Islands Forum counter-terrorism meetings;
- Led the development of Operation Ready Pasifika – the first region-wide counter-terrorism contingency planning exercise;
- Compiled a counter-terrorism resource document of relevant international instruments; and
- Assisted Forum Governments to comply with new security standards, such as the International Ship and Port Facility Security Code.

New Zealand has also committed significant resources to the Proliferation Security Initiative (PSI). We see the PSI as a practical response to the threat of proliferation of weapons of mass destruction and their potential acquisition by non-state actors, including terrorists. New Zealand has participated in regional exercises and expert level meetings held in Asia, North America and, most recently, Australia. To date 70 countries have expressed their support for the PSI, and it has been commended by the UN Secretary-General for filling a gap in international defences against the proliferation of nuclear, chemical and biological weapons.

I am aware that some have alleged that the PSI is inconsistent with international law, as contained, in particular, in the Nuclear Non-Proliferation Treaty and the UN Convention on the Law of the Sea (UNCLOS). I can assure you that New Zealand would not have associated itself with the Initiative if it had considered that to be the case. On the contrary, our advice is that the non-proliferation focus of the PSI is fully consistent with and reinforces the Nuclear Non-Proliferation Treaty. The adoption late last year of the Protocols to amend the Convention on the Suppression of Unlawful Acts against Ships has also broadened the international framework within which the PSI can be implemented. It would appear that the criticisms with respect to the PSI's consistency with UNCLOS stem from a concern that PSI participants may not respect the freedoms of the high seas, and the rights of innocent and transit passage as set out in UNCLOS.



It is worth noting however, that one of the foundation principles of the PSI is that it will be implemented in accordance with both international and domestic law. For New Zealand, as I believe for all PSI participants, respect for the fundamental principles of international maritime law is essential, because those principles underpin our security, economic, and trading relationships. Indeed we all have a direct and continuing interest in ensuring that the PSI is implemented in accordance with international law.

Security and sound governance arrangements are also important for managing the natural resources of our region. This is particularly so in the case of fisheries, which for many Pacific Island countries represent their single most significant resource. Lack of effective surveillance and enforcement capabilities, however, make fisheries a difficult resource to manage effectively. Here too, New Zealand does what it can to help. New Zealand annually provides 320 hours of surveillance patrol by Royal New Zealand Air Force Orion aircraft, as well as ongoing co-operation and advice on illegal fishing activities in the region. We participate in the Forum Fisheries Agency's Monitoring, Control, and Surveillance Network. We have ratified the Niue Treaty on Co-operation in Fisheries Surveillance and Law Enforcement in the South Pacific. Earlier this year, New Zealand, Australia, and France signed a Trilateral Declaration on Maritime Surveillance which formalises our commitment to co-operating in maritime surveillance and combating illegal, unregulated, and unreported fishing in the Pacific region.

We hope that these arrangements can give teeth to domestic fisheries laws, and support the implementation of relevant international instruments. The Western and Central Pacific Fisheries Convention and the US Tuna Treaty are particularly important as they provide the key mechanisms and framework for managing the valuable tuna resources of the region.

New Zealand, in partnership with Australia and Chile, has taken the initiative to convene negotiations aimed at establishing a South Pacific Regional Fisheries Management Organisation, to manage the non-tuna resources of the high seas of the Central and South Pacific. The talks got underway at the first meeting in Wellington in February, under the New Zealand Chair, Bill Mansfield (a Ministry of Foreign Affairs and Trade alumnus and Australian and New Zealand Society of International Law member). We hope that the next round in Australia in November will make real progress in drawing up both a future convention and interim measures which can apply until a new convention is in force. We understand that some Forum countries are keen to include the high seas enclaves in the Western and Central Pacific within the Convention. New Zealand has no objection in principle to including the enclaves, provided it makes sense to do so from a fisheries management perspective.

On the subject of interim measures, we are very aware of the call by a number of countries of the region, led by the President of Palau, for the establishment of a global moratorium on bottom trawling. That issue will be considered at this year's Forum meeting and at the UN General Assembly.

New Zealand strongly supports measures to control destructive fishing practices and to protect marine biodiversity. The New Zealand Minister of Fisheries is currently consulting with the public here on a fishing industry proposal to close thirty per cent of New Zealand's exclusive economic zone (EEZ), and some areas beyond the EEZ, to bottom trawling and dredging.

This proposal, supported by New Zealand's fishing industry represents a significant step forward in recognising the need for protection of the marine environment in the EEZ and in the high seas beyond. New Zealand supported the decision at last year's Pacific Islands Forum to task the Forum Fisheries Agency and the South Pacific Commission to develop a legal framework which could control bottom trawling on seamounts. We believe bottom trawling controls should be among the interim measures to be considered during the negotiations on the South Pacific Regional Fisheries Management Organisation.

I turn now to the challenges of developing fair rules for international and regional trade. We see a strong rules-based multilateral trading system as offering the best opportunities and the best protection for small economies like ours. We are also very aware that many small economies fear being overwhelmed if they open themselves up to competition. We recognise that difficult decisions have to be made about how quickly and how far countries should open themselves to competition.

In our view, however, over the longer term small countries are disadvantaged by protectionist systems dominated by the major trading blocs. New Zealand is investing a great deal of negotiating time and effort in the Doha Round of the World Trade Organization (WTO) and in the World Trade Organization dispute settlement procedures. In our region we welcome the decision by Tonga to move to accede to the WTO.

The WTO framework does provide for trading partners to negotiate more far-reaching arrangements than those agreed to by the WTO. New Zealand, like many countries, has chosen to negotiate free trade agreements which supplement what is being achieved through the multilateral process. The Closer Economic Relations Trade Agreement with Australia is one of the most comprehensive free trade agreements in the world. It continues to evolve as Australia and New Zealand work towards establishing a single economic market. Looking out to the Pacific Rim, we have ratified the P4 Closer Economic Partnership Agreement with Brunei, Singapore, and Chile, which spans the Pacific from west to east; and our free trade agreement with Thailand came into force in 2005. We are in negotiations for free trade agreements with China and Malaysia and, in partnership with Australia, with ASEAN.

Closer to home, New Zealand, Australia, and members of the Pacific Islands Forum have negotiated the Pacific Agreement on Closer Economic Relations (PACER). PACER provides a framework for enhanced economic co-operation, and for the future negotiation of a comprehensive agreement on trade and economic co-operation among all Forum partners, with a view to the eventual formation of a single market. It also makes it clear, however, that the development needs

of Pacific Islands countries and their progressive integration into the global economy are to guide all stages of the process.

This morning I have been able to give only a snapshot of some of the issues facing New Zealand and the Pacific. Inevitably, the focus here will be on areas of current effort and concern. In closing, however, I would like to note the very real contribution that the Pacific has made to the development of international law through its support for international agreements and institutions.

Despite their small size and limited resources, Pacific Island countries have had a real impact on the negotiation of key instruments such as the UNCLOS, the UN Fish Stocks Agreement, and the Kyoto Protocol on Climate Change. They have also played a very influential role in the development of the Statute of the International Criminal Court. A mark of that influence was the election of Judge Neroni Slade of Samoa to the first panel of judges of the Court.

New Zealand works very closely with the Pacific in all international forums. We are proud of our joint contribution and we value our strong working relationships with Pacific Island nations. New Zealand itself is also proud to be strengthened by its indigenous and Pacific communities. They are fast growing parts of our population. We treasure the diversity of the Pacific. We subscribe to the Pacific Plan's vision for it as a region of peace, harmony, security, and economic prosperity; respected for its governance, the sustainable management of its resources, the observance of democratic values, and for its defence and promotion of human rights. I wish you well for your conference and, for visitors, for your stay in Wellington.

