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‘ESSENTIALLY SEA-GOING PEOPLE’¹

How Torres Strait Islanders shaped Australia’s border

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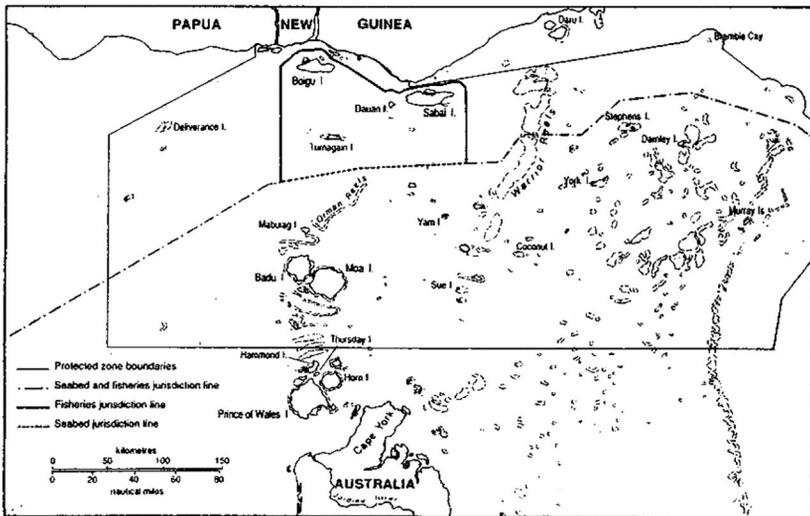
As an Opposition member of parliament in the 1950s and 1960s, Gough Whitlam took a keen interest in Australia’s responsibilities, under the United Nations’ mandate, to develop the Territory of Papua New Guinea until it became a self-determining nation. In a chapter titled ‘International Affairs’, Whitlam proudly recalled his government’s steps towards Papua New Guinea’s independence (declared and recognised on 16 September 1975).² However, Australia’s relationship with Papua New Guinea in the 1970s could also have been discussed by Whitlam under the heading ‘Indigenous Affairs’ because from 1973 Torres Strait Islanders demanded (and were accorded) a voice in designing the border between Australia and Papua New Guinea. Whitlam’s framing of the border issue as ‘international’, to the neglect of its domestic Indigenous dimension, is an instance of history being written in what Tracey Banivanua-Mar has called an ‘imperial’ mode. Historians, she argues, should ask to what extent decolonisation was merely an ‘imperial’ project: did ‘decolonisation’ not also enable the mobilisation of Indigenous ‘peoples’ to become self-determining in their relationships with other Indigenous

1 H. C. Coombs to Minister for Aboriginal Affairs (Gordon Bryant), 11 April 1973, cited in Dexter, *Pandora’s Box*, 355.

2 Whitlam, *The Whitlam Government*, 4, 10, 26, 72, 115, 154, 738.

peoples?³ This is what the Torres Strait Islanders did when they asserted their political interests during the negotiation of the Australia–Papua New Guinea border, though you will not learn this from Whitlam’s ‘imperial’ account.

In this chapter, after describing the border that resulted from Australia’s negotiations with Papua New Guinea from 1973 to 1978 under the Whitlam and Fraser governments, I will describe how the Torres Strait Islanders’ interests shaped the Australia–Papua New Guinea border. I will conclude by discussing how this passage of events illustrates the possibility of a history of the decolonising of *peoples* and not merely of *territories*.



Map 11.1: The Australia–Papua New Guinea boundary.

Source: Annex 7 to the treaty between Australia and the independent state of Papua New Guinea concerning sovereignty and maritime boundaries in the area between the two countries, including the area known as Torres Strait, and related matters. Prepared by the Division of National Mapping, Canberra, and the National Mapping Bureau, Port Moresby.

3 Banivanua-Mar, *Decolonisation*, 8–9.

The Australia–Papua New Guinea border

The Torres Strait Treaty⁴ was signed on 18 December 1978 and became effective in 1985, expressing the agreement by Australia and Papua New Guinea that the border between them should have the following features:

- Distinct seabed and fisheries jurisdictions. While a fisheries jurisdiction line and a seabed jurisdiction line are in exactly the same position over much of their lengths – that is, running approximately halfway between the Australian and the Papua New Guinea mainlands – they diverge, so that the fisheries line includes the islands Saibai, Dauan and Boigu within Australian fisheries jurisdiction. In this area between the divergent seabed and fishery lines (known as the ‘top hat’ or ‘box’) Papua New Guinea has jurisdiction in matters relating to the seabed (such as sedentary fisheries, minerals and petroleum), while Australia has fisheries jurisdiction and jurisdiction over the inhabitants of Saibai, Dauan and Boigu and over uninhabited islands and reefs that are sometimes visited by both Papuans and Torres Strait Islanders.
- A ‘protected zone’. This area overlaps both seabed and fisheries jurisdiction lines, covering most of Torres Strait, excluding Thursday Island (the administrative centre of the Torres Strait region). According to Article 10 of the Treaty, what the ‘protected zone’ protects are ‘the marine environment and indigenous fauna and flora’ and ‘the traditional way of life and livelihood of the traditional inhabitants’ living in the Torres Strait and in 13 villages on the Papuan coast. ‘Protection’ has included an embargo on oil drilling.
- Provision for the ‘traditional inhabitants’ of the Strait. The ‘traditional inhabitants’ are understood to include certain citizens of both Australia and Papua New Guinea, so that each set of persons may move about within the protected zone as if there were no national boundaries running through it. That is, the protected zone has the effect of suspending, in ways significant to these people, the operation of the border between the two nation-states, so that relationships between Papuans and Torres Strait Islanders are governed by evolving custom.

4 ‘Treaty between Australia and the Independent State of Papua New Guinea concerning sovereignty and maritime boundaries in the area between the two countries, including the area known as Torres Strait, and related matters, 18 December 1978’ (15 February 1985): Department of Foreign Affairs, *Australian Treaty Series* 1985 No. 4.

- A governing body. A Joint Advisory Council, with members from both Australia and Papua New Guinea, contributes to both nations' practices of implementation of the treaty.

This was not what the Australian Government initially intended. Whitlam came to power in December 1972 believing that Australia's border with the soon to be independent Papua New Guinea was too far north, and that shifting the border to a point halfway (latitude 10° south) between the two nations (giving more of the Torres Strait to Papua New Guinea) would respect the new nation's legitimate interests. However, Whitlam's advisers told him that the Torres Strait Islanders passionately opposed any change in a boundary that – since colonisation – had placed all Torres Strait Islanders within the same jurisdiction – first Queensland's (1879–1900) and then Australia's (from 1901). The Torres Strait Islanders persuaded both the Whitlam and Fraser governments to honour their territorial unity as a sea-going people.

Notwithstanding that the Torres Strait Islanders, throughout negotiations from 1973 to 1978, opposed *any* boundary that bisected the Strait – begrudging even the median line that now apportions only 'seabed' sovereignty – the treaty makes major concessions to Torres Strait Islanders that I will underline. First, *all* inhabitants and all fisheries of the islands of the Torres Strait remain within Australia's jurisdiction and thus within Australia's duty of care, as Islanders continue to expect it. Second, marine resources that continue to form a significant part of their livelihood are under protection against threatening 'development'. Third, the treaty makes space for customary jurisdiction: Papuans and Torres Strait Islanders behave towards each other according to their evolving protocols, as they use the seas and lands of the Torres Strait.

How the wishes of Torres Strait Islanders came to matter

In 1901, when the Australian colonies confederated to form the Commonwealth, the new nation's border in the Torres Strait was where the colony of Queensland had drawn it in 1879, thus including within Queensland (and consequently Australia) all residents of 17 inhabited islands (out of 100 islands in total) in the Torres Strait. Three of these islands are very close to the Papuan coast: Saibai, Dauan and Boigu.

Under the federal compact, Queensland controlled the Strait's seaways and sea bottom. Some of this power shifted to the Commonwealth when the Whitlam Government passed the *Sea and Submerged Lands Act 1973*, but Queensland retained authority over the fishing rights of the entire Strait. Queensland also administered the lives of those living on Torres Strait's 13 reserves. The 1967 referendum had given the Commonwealth concurrent power over these people, but by the time the Whitlam Government was elected in December 1972, the Commonwealth had declined to use this new power, respecting Queensland's continuing legal and administrative supremacy over Aboriginal and Torres Strait Islander peoples.

The imminence of Papua New Guinea's independence forced the Commonwealth to rethink its relationship to the Torres Strait. Australians who wished to deal equitably with Papua New Guinea saw the boundary as unjustifiably favouring Australia. Whitlam had hypothesised in May 1972 that, if the future nation of Papua New Guinea were to litigate the International Court of Justice, Australia would not be able to defend a border that enlarged Australia at the expense of the new nation. Whitlam would have been aware of a motion passed by Papua New Guinea's House of Assembly in May 1972, moved by Ebia Olewale and Naipura Maina, that the border be moved south to latitude 10° south. Olewale continued in the next few years to press this view, asserting that 'the people are Papuans, and my elders can trace the history of how these people migrated down to those islands'. While Olewale conceded that 'they might be rightful owners', he thought it relevant that:

They have relatives on the Papuan coast, who also claim that they own those islands. There are relatives living on those islands and there are relatives living on the Papuan coast ... these same people have got to be brought together, and the only solution is to move this border south.⁵

The Queensland Government understood itself to be in a strong position to block such a change because, under Section 123 of the *Colonial Boundaries Act* (passed by the British Parliament in 1895, but binding the Commonwealth from 1901), the Commonwealth Parliament may alter the boundary of a state only with the consent of the parliament of that state and the approval, by referendum, of the majority of the electors

5 Quoted in Griffin, *The Torres Strait*, xxii; and see Griffin, 'Impasse'.

of that state. The Premier of Queensland, Joh Bjelke-Petersen, told Canberra that he would not give a portion of his state to another country. Queensland's conservative government was confident that Queenslanders would support standing up to 'Canberra'. Over the next five years, the government of Queensland presented itself to the public (and especially to the Torres Strait Islanders) as if it should be a third party to a border negotiation that was, strictly speaking, a matter for Australia and Papua New Guinea only. The tactics of Queensland were always to claim to be the only legitimate representative of the Torres Strait Islanders.

The Torres Strait had long had structures of political representation enabled by colonial government – the closest that Australia's domestic colonial administration has come to 'indirect rule'.⁶ The policy of the London Missionary Society (from its arrival in the Strait in 1871) had included the formation of Indigenous enterprises from 1897. In 1899, 'without precedent anywhere in the Pacific', the Government Resident John Douglas (on Thursday Island) had initiated elected councils to advise administrators on each island.⁷ Against the advice of Douglas, the Queensland Government in 1904 subjected the Islanders to the *Aboriginals Protection and Restriction of the Sale of Opium Act 1897*; however, the councils continued. They were among a series of secular and religious institutions through which the Islanders participated actively in their own governance throughout the twentieth century. The Islanders staffed and, to a significant extent, managed the marine industries initiated by mission and government – the collection of trochus, trepang, pearls and pearl-shell. These industries were effectively subsidised by a continuing Indigenous economy of gardening and fishing, for the declaration of the islands as reserves left natural resources in Islander hands. In 1936, angered by officials' control over their earnings, they demonstrated the strength of this Indigenous economy when they withdrew their labour from the commercial fishing fleet for four months. The Queensland Government response eventually included allowing each elected council authority over police and courts. A meeting of councillors in 1937 cancelled certain state by-laws, and the state government wrote these changes into the *Torres Strait Islanders Act 1939*, which differentiated the Islanders' governance from the administration of Queensland Aboriginal people's lives. Wartime

6 Silverstein, *Governing Natives* has recently argued that reforms proposed in the Commonwealth's administration of the Northern Territory in 1939 would have produced 'indirect rule' had they been implemented.

7 Beckett, *Torres Strait Islanders*, 45.

service further confirmed the Islanders' sense of worth and entitlement. Over 700 Islanders served, most of them in the Torres Strait Light Infantry Battalion or the Torres Strait Pioneer Company (in contrast, there was no distinct 'Aboriginal' corps in the Second World War). From 1949, the state's system of 'indirect rule' included recognising a trio of Strait representatives – those elected from the Western, Central and Eastern island reserves. Beckett has pointed out the continuity of representative personnel, each man's community standing sustained by his job – boat captain, local official, store-manager. The Islanders were also proud of the persistence of the Strait's two languages, Miriam and Mabuia, and their fervent adherence to Christianity did not extinguish reverence for the ancestors of their pre-colonial cosmology. Their mainland contact with Aboriginal people told them that Islanders were a comparatively well-treated colonised people. Most Islanders residing in the Strait were not restless for change, but anxious to continue the security that Queensland's hegemony afforded.⁸ The Queensland premier was therefore building confidently on a long tradition of government-solicited Islander politics in his February 1973 tour of the island reserves, when he endorsed the formation of a 'Border Action Committee'.

For the Whitlam Government to develop a border policy, it had either to accept what amounted to a Queensland/Islander veto on any change in the border's position (a hopeless start to any conversation with the leaders of Papua New Guinea) or to open its own line of communication with the Torres Strait Islanders, so that its public negotiating position (when talks with Papua New Guinea began) would be safe from the Torres Strait Islanders' denunciation. Once in power, Whitlam was advised to be less specific about where he would like the boundary. The Chair of the Council for Aboriginal Affairs (CAA), Dr H. C. Coombs, warned Whitlam in January 1973 that he must take seriously not only that the Islanders felt 'genuine anxiety and concern' about the possible border change, but also that they were evidently pleased that the Queensland Government was voicing their opposition to it. In the same memorandum, Coombs recommended that Whitlam set up a series of meetings between the CAA and the Islanders, between the Islanders' representatives and members of Whitlam's Cabinet (Whitlam, Bill Morrison, Foreign Minister, and Gordon Bryant, Minister for Aboriginal Affairs), and between representatives of Papua New Guinea and the Islanders.

8 Fisk and Tait, 'Rights'.

Perhaps, from such meetings, the Islanders would assent to the border change in exchange for security of land tenure, joint citizenship and the continuation of Australia's social service and other benefits. 'It would be important that Islanders' representatives see [the solutions resulting from these meetings] as successes won by their personal efforts. They would then be more likely to advocate them among their own people.'⁹ In a joint statement with Michael Somare (Chief Minister of Papua New Guinea) on 17 January 1973, Whitlam declared that Australia was willing to negotiate the relocation of the border with Papua New Guinea, and that the Queensland Government and the Islanders would be consulted.

What could the Whitlam Government offer Torres Strait Islanders that they were not already getting from Queensland's patronage? The national government, at that time, had little first-hand knowledge of a people that had long been administered exclusively by the Queensland Government. The 1971 Australian Census had counted 9,664 people of Torres Strait Islander descent. Of the 3,926 living on the islands of the Strait, 2,348 were residents of reserves administered by the Queensland Government. If we add the residents of Bamaga Reserve, on the tip of Cape York, we can say that there were 2,932 Islanders living under the Queensland Government's direct supervision in 1971. More than half (59 per cent) of those identifying as Torres Strait Islanders in 1971 did not live on the islands of the Strait but on the mainland: 37 per cent in Queensland, the other 22 per cent in the other states and territories of Australia. Islanders were numerous on the mainland because they were confident that they could improve their lot by selling their labour in the wider Australian economy. This diaspora maintained a sense of connection with the land, seas and people of the Strait, despite long absences, but they were not the subjects of Queensland Government patronage, and indeed some had left the reserves because they had fallen foul of the Queensland Government and of Torres Strait Islanders to whom the state had delegated a degree of power. Was their estrangement from the reserves an opportunity for the Whitlam Government to (in Coombs's words to Bryant) 'break the nexus between the Torres Strait Islanders and the Queensland government'?¹⁰ Could transactions between the Commonwealth and the Islanders form a new public version of the Islanders 'interest', removing a domestic political obstacle to negotiating a new border?

9 Coombs to Whitlam, 10 January 1973, cited in Dexter, *Pandora's Box*, 360–61.

10 Coombs to Whitlam, 16 March 1973, cited in Dexter, *Pandora's Box*, 363.

The Whitlam Government did not tackle this question in a unified way in 1973; the Minister for Aboriginal Affairs, Gordon Bryant, competed with the CAA in finding a way to talk to the Islanders. Since 1970, the Office of Aboriginal Affairs (OAA), the executive arm of the CAA, had been reaching out to the people of the Strait in an exploration of possible paths of regional economic development. The OAA had funded a zoologist from The Australian National University (ANU), Dr Robert Bustard, to experiment in the farming of turtles in the Strait. When Bustard left ANU in 1971, the OAA recommended further funding for his project – now known as Applied Ecology. Bustard was necessarily in continuous dialogue with turtle-farming Islanders about how they saw their future. The CAA was also briefed by Jeremy Beckett, an anthropologist who had started to visit the Strait in 1958, leading to his 1964 PhD thesis and to ongoing visits. Initiating their own contact in Cairns on 14 February 1973, the CAA (Coombs, Barrie Dexter and William Stanner) met with Tanu Nona, Getano Lui (Snr) and George Mye (who currently represented the Western, Central and Eastern island reserves), confirming that the Islanders wished to send a delegation to Canberra.

Bryant did not want the CAA to be the only source of his government's knowledge of Strait politics; he sought to establish his own 'task force' for consultations, but this was quickly vetoed by Whitlam, acting on Coombs's advice.¹¹ Bryant sent a staff member to the Strait in March 1973 to prepare the Islanders for a visit from Bryant himself in April. Believing the council chairmen to be too beholden to the state government, Bryant and his staff paid a lot of attention to Islanders not living on the reserves (i.e. to politically articulate Islanders on Thursday Island). These two visits made the councillors on the reserves uneasy; their coolness towards Bryant confirmed his assessment of them as no more than 'favoured sons of the Queensland government', unlike the progressive Islanders he had been able to speak to on Thursday Island.¹² Bryant's visit placed Barrie Dexter, Secretary of the Department of Aboriginal Affairs, in an awkward position. Formally responsible for carrying out his minister's plans, Dexter had become convinced that they were ill-conceived. The cardinal rule guiding Commonwealth diplomacy in the Strait must be to avoid offending the men who were powerful in the reserve councils and who were, for the moment, supporting the Border Action Committee; Bryant's overtures

11 Dexter, *Pandora's Box*, 364.

12 Bryant to Whitlam, 29 May 1973, cited in Dexter, *Pandora's Box*, 293–94.

had broken that rule. This tension within the Whitlam Government's early diplomacy towards the Islanders reflected not only wider tensions between Bryant's and the CAA's approach to 'Aboriginal affairs', they also were rooted in the differentiating impact of Queensland's years of indirect rule. Some Islanders had flourished under Queensland reserve supervision and others had found it better to escape the reserves (to Thursday Island or the mainland). Those who had left were apt to be regarded as exiles by those who stayed, their claims to political participation sometimes contested by the reserve chairmen and by Queensland's officials.

Between February and June 1973, the Department of Aboriginal Affairs was arranging to bring Islander representatives to Canberra for a face-to-face meeting with Prime Minister Whitlam, and the department felt it had no choice but to respect the wishes of the Island Advisory Council chairmen about who could speak for the Torres Strait Islanders. Bryant sought to include an additional 12 Islanders whom he judged less compliant with Queensland Government wishes. When the official delegation of 42 gathered in Canberra on 12 and 13 June, it voted to exclude Bryant's 12. This and other missteps by Bryant led to Whitlam replacing him with James Cavanagh on 9 October 1973. Cavanagh trusted the CAA's approach to giving Islanders voice to Canberra, and so his appointment confirmed that the Torres Strait Islanders to whom the Whitlam Government would listen were those established leaders with whom both the Queensland Government and (increasingly) the CAA felt comfortable.

The Torres Strait Islands as a Commonwealth territory?

Before describing what the Whitlam Government learned from its June 1973 meeting with Torres Strait Islanders, we should note the wider context of the Australian Government's Strait diplomacy: the Whitlam Government's aspiration to end the Queensland Government's control over Aboriginal and Islander lives.

To 'break the nexus between the Torres Strait Islanders and the Queensland government', as the CAA advised Whitlam on 16 March (and substantially repeated to Bryant on 11 April 1973), the Australian Government should legislate Commonwealth control over all reserves in all states, and then

give Aboriginal residents title 'in accordance with traditional native law and practice'.¹³ The government could then establish the Torres Strait reserve islands as a separate Commonwealth territory, governed by a council representing the former island reserves. To legitimise such an intervention, the government should conduct a referendum among Islanders 'to ratify (a) the relocation of the border, (b) the establishment of the Commonwealth Torres Strait Territory, (c) the legislation to confirm traditional land tenure, [and] (d) the measure to protect Islanders' fishing rights within the Torres Strait area'.¹⁴ This would remove the Queensland Government from the politics of negotiating a new boundary with Papua New Guinea and give Australia an explicit Islander mandate to negotiate a border change with Papua New Guinea. In such negotiations with Papua New Guinea, the CAA further advised, Australia should seek agreement that Australia would continue to be sovereign over the islands, rocks and reefs to the north of the new boundary. Repeating this advice to Bryant on 11 April 1973, the CAA gained Bryant's support.¹⁵

Barrie Dexter later acknowledged that one of the CAA's greatest political failures was not persuading the Whitlam or Fraser governments to take over Queensland's reserves.¹⁶ Although Whitlam and Bryant announced in September 1973 that they would do so, and that they would fight Queensland in the High Court if necessary, Whitlam referred the policy to an interdepartmental committee that took until April 1975 to make a submission to Cabinet. Cabinet sent the idea back to this committee for reconsideration of the policy's administrative complexities and financial costs. By the time the Whitlam Government fell on 11 November 1975, Cabinet had still not agreed to a workable course of action.

There is no doubt that some Torres Strait Islanders supported the idea of making the Torres Strait a territory of the Commonwealth. At a Townsville seminar to discuss the border issue, held under the joint auspices of the Townsville College of Advanced Education and the North Queensland branch of the Australian Institute of International Affairs on 29–31 October 1976, Murray Island-born Eddie Mabo endorsed the proposal as a step towards Torres Strait Islanders' autonomy – first within Australia and then (possibly) outside Australia:

13 Coombs to Whitlam, 16 March 1973, cited in Dexter, *Pandora's Box*, 363.

14 Coombs to Whitlam, 16 March 1973, cited in Dexter, *Pandora's Box*, 363.

15 Dexter, *Pandora's Box*, 356.

16 Dexter, *Pandora's Box*, 477.

We are a people of unique identity and we should work towards an ultimate goal of independence. We want to be recognised separately from our Papuan brothers and from our Australian brothers. We are the Islanders ... I would like to suggest that the Federal Government take over all the Torres Strait region from Queensland and then negotiate with the Islanders themselves to vest their administration in their own hands. The area could then be declared an autonomous region within the Commonwealth of Australia with its own sovereign rights and the right to secede.¹⁷

Australian Government caution about taking over all Aboriginal and Islander reserves in Queensland meant that a referendum was never held to test Islander support for making the Torres Strait a Commonwealth territory. More pertinent to this chapter is that the idea of such a territory quickly became irrelevant to solving the specific political problem of securing an Islander mandate for border negotiation, because another solution emerged from the June 1973 meeting between the Australian Government and the Islander delegation.

Towards the protected zone

In the June 1973 meeting, Islanders rejected a border change, asserting that ‘everything that is contained within the [current] border – land and waters – are ours by tradition’.¹⁸ According to the CAA’s notes, they rejected as misconception that, historically and culturally, they were linked with the Papuans. They did not acknowledge Papuan fishing rights in the Strait, though they admitted to tolerating Papuans fishing at Warrior Reef. They spoke proudly of establishing their supremacy over Papuans in nineteenth-century battles. The representatives were unanimous also in rejecting oil drilling in the Strait: ‘any spills would destroy everything that means life for our people’.¹⁹ When questioned on the possibility of petroleum royalties, they insisted that they were interested in survival, not in wealth. They said that they wanted their Australian citizenship to continue, and they wished Australia to retain the uninhabited islands close to the Papuan coast, seeing them as belonging to residents of islands nearby.²⁰ When

17 Mabo, ‘Perspectives’, 35. Emphasis in original.

18 George Mye cited in Dexter, *Pandora’s Box*, 367.

19 Mye cited in Dexter, *Pandora’s Box*, 367.

20 The DAA notes on this meeting are included in H. C. Coombs’s Minutes to Whitlam, H. C. Coombs Papers, National Library of Australia (NLA) MS 802, Box 46, between Minutes 135/73 and 136/73.

Whitlam joined this meeting (welcomed by the Islanders' hymns), he made it clear that he wanted them to consider a border change. He cited United Nations' interest in the border issue since 1971, and foreshadowed that Papua New Guinea would get self-government on 1 December 1973 and full independence 12 or 15 months after that.

Assessing these discussions for Whitlam, Coombs summarised what he understood to be the Islanders' position:

1. the land and sea is all one region owned by them; 2. they are ethnically distinct from Papuans; 3. they opposed any oil or mineral development of the seabed, at any price; 4. they feared PNG control over the seas, as Japanese interests would be given permission to fish; 5. they did not like the proposal to move the border, and nor did their Papuan friends see any point in the change.²¹

The meeting made it possible for the Australian Government to discern differences among the Islanders' hopes and fears. Not only were they fearful that parts of the Strait would be ceded to Papua New Guinea (a point already being made effectively by the Queensland premier), but they were worried that their seas would be despoiled by oil drilling (which the Queensland Government was more likely to permit). The prime minister told the Islander representatives in June that Queensland, not the Commonwealth, had been promoting off-shore oil drilling in the Strait.²² Thus was revealed a point of leverage for the Commonwealth: perhaps the Commonwealth could distinguish itself as the Islanders' better champion by linking the change in the border with a promise of environmental protection?

At the June meeting in Canberra, Whitlam persuaded the Islanders to meet with Papuans from the coastal villages and discuss border change. They did so on Yam Island on 19 and 20 September 1973. Getano Lui (Snr) said of this discussion:

We told the Papuan people we did not want our border changed. They said they did not ask for it to be changed either. The Papuan people asked about fishing – they wanted to know if they could go on fishing in the Torres Strait. We said we were happy to share the

21 Coombs to Whitlam, 12 June 1973, Minute 127/73, NLA MS 802, Box 46.

22 The 28-page transcript of the 12–14 June meeting of the Torres Strait Islander delegation in Canberra is in NLA MS 802, Box 11, folder 81.

fishing. Both peoples said they were worried about the damage to our fishing grounds and islands if there was oil drilling or mining and we decided to ask for protection against this. Out of the conference there came an agreement between us – and we are the people directly involved.²³

Coombs, who also attended the meeting, was quick to convey its resolutions to Whitlam:²⁴

That the waterways between the Torres Strait and the coastal area of the western district of Papua New Guinea be reserved wholly and solely for the use of our two peoples, namely the coastal people of the villages of the western district of Papua New Guinea and the Islander inhabitants of the Torres Strait Islands as was tradition practised by our forebears; drilling for oil in such waters which could result in possible oil spillage and the consequent threat of pollution to the environment be banned; fishing by outside interests should also be banned.²⁵

In combination, the Canberra and Yam Island meetings gave the CAA confidence that the border change proposal could be reformulated so that environmental protection would be its central feature, a regime acknowledging the customary fishing practices of both Torres Strait Islanders and coastal Papuans. Referring to the 'unique and integrated environment on which the livelihood and the culture and traditions of the Islanders and the peoples of the South-western coast of Papua-New Guinea depend', the earliest draft of this proposal (in October 1973, shortly after Cavanagh succeeded Bryant as minister) outlined possible government guarantees of residents' free movement and fishing. The Islanders and Papuans would have the benefit of scientific scrutiny of future 'economic projects' before any were submitted for approval by the chairmen of the councils of the Torres Strait Islands and of the coastal communities of south-western Papua New Guinea. In this proposal, the licensing of marine harvesting would be restricted to locals and to companies in which locals had at least 85 per cent equity. The Torres Strait would be administered 'as a National Park in accordance with internationally accepted practices for such Parks'. If the governments of Australia and Papua New Guinea could agree to administer jointly a marine park in the Strait, perhaps they would not need to plot a precise

23 As reported in the *Courier Mail*, 10 May 1976, and cited by Griffin, 'Impasse', 230.

24 Coombs to Whitlam, 24 September 1973, cited in Dexter, *Pandora's Box*, 369.

25 Resolutions of the Yam Island meeting are cited in Dexter, *Pandora's Box*, 369.

boundary between the two nations. Referring to permanent residents of the Torres Strait Islands and the south-western coast of Papua New Guinea, the draft recognised 'traditional and customary practices of the local inhabitants with respect to the taking of fish and other living marine products' and the right of 'traditional and customary freedom of movement of local inhabitants' including navigation.²⁶

Negotiations by the Fraser Government

Although in 1974 and 1975 the concept of a jointly administered protected zone without boundary found favour among some of the departments that were determining the Whitlam Government's approach to negotiating with Papua New Guinea, the negotiations had not commenced by the time the Whitlam Government was sacked in November 1975. Champions of the Torres Strait Islander interest now had to pitch the protected zone model within an interdepartmental committee that would advise a government led by Malcolm Fraser. Their advocacy succeeded. On 26 February 1976, Cabinet (in Dexter's summary) 'endorsed the concept of a Protected Zone, preferably with no seabed boundary through it, and the concept of no prospecting or mining initially'.²⁷ What remained in dispute, within the Fraser Government, was how closely the Australian Government should involve the Islanders in the consideration of its tactics once the negotiations started. As the Australian Government was anticipating pressure from Papua New Guinea to concede a hard border bisecting the Strait, it had to consider at what point to make tactical concessions to Papua New Guinea's expectations. Unless there were close communications between Canberra and the Islander leaders, it was possible for the Queensland Government, not party to the border negotiation, to embarrass the Australian Government by telling the Islanders that Canberra was about to sell them out by allowing a new line to be drawn through the Strait.²⁸

26 In this paragraph I draw on two documents drafted by Coombs: 'Drafting notes on Torres Strait Border', 8 October 1973, NLA MS 802, Box 11, folder 81; and 'Draft Agreement', 29 October 1973, NLA MS 802, Box 12, folder 88.

27 Dexter, *Pandora's Box*, 451.

28 Dexter gives a detailed account of the battles within the Australian Government in *Pandora's Box*, 450–60.

Islander leaders such as Getano Lui (Snr) were quick to warn the Fraser Government that, were the negotiators to concede such a new border, the Islanders would complain to the International Court and the United Nations; the Queensland Government said it would support them.²⁹ Within the Australian Government, some officials were more willing than others to take this risk; they saw justice in Papua New Guinea's wish for a hard border bisecting the Strait, and they thought that there was a good chance that international adjudicators would agree. In this perspective, Australia's tactics should be to signal early in the negotiations that it was sympathetic to pressure from Papua New Guinea to draw a hard median border. In April 1976, Commonwealth departments (Aboriginal Affairs and Attorney-General's) that continued to present the Torres Strait Islander interest in a borderless protected zone found themselves standing between Australian officials preparing to concede a new border and those, outside the negotiations, opposed to this concession. Trying to persuade the Torres Strait Islanders not to turn back to the Queensland Government as their champion, the departments of Aboriginal Affairs and Attorney-General's struggled against the Department of Foreign Affairs, seeking to maintain the Torres Strait Islander perspective within the Australian negotiating position.

In the ensuing negotiations, a compromise position emerged. A seabed resources line bisecting the Strait gave Papua New Guinea something of what it wanted, partly satisfying those who had thought it equitable between nation-states that the people and resources of the Strait be bisected, and partly satisfying those who wanted Australian sovereignty to continue over all the lands and seas that the Torres Strait Islanders understood to be their customary territory. The seabed resources boundary was a line of potential, not immediate, significance because the protected zone disallowed mining and drilling of the seabed for 10 years after the treaty's commencement (and this embargo has since been extended).

Concluding reflections

This story would have made an apt case for the kind of history of decolonisation practised by Tracey Banivanua-Mar – a perspective on decolonisation made possible, she once wrote, by 'the angle of vision offered from the Pacific'.³⁰ That is, instead of supposing that the only

29 Dexter, *Pandora's Box*, 452.

30 Banivanua-Mar, *Decolonisation*, 8.

significant territorial results of decolonisation have been clearly bounded independent nation-states, historians of decolonisation should look for evidence of what the colonised peoples wanted and considered themselves entitled to have. If we 'refocus on people rather than territory, as agents of decolonisation', then we may notice Pacific Indigenous 'formations of decolonisation' that have 'exceeded the nation'. Banivanua-Mar's framework sensitises the historian to Pacific peoples' aspirations to devise political structures that correspond with their own evolving sense of who the Pacific's peoples are and how they want to relate to each other; such a history would note the distinctions that such peoples would make among themselves and the relationships that they wish to sustain. Such histories 'may learn of the innovative means by which independence and self-determination were practised in the absence of it being gifted by administering states'.³¹

I have puzzled over why Banivanua-Mar did not see the possible richness of the Torres Strait case for her 2016 book; perhaps she would have tackled it had her productive life not ended so early. But her professed interest in what she calls 'stateless forms of decolonisation' may be a clue to the absence of the Torres Strait border story from her work.³² For Torres Strait Islander agency in the period 1973–78 was hardly 'stateless'. On the contrary, the historical conditions of their awkward force (awkward from the point of view of the governments of Australia and Papua New Guinea) included the fact that Australia is a federation with a long heritage of states (Queensland, at least) jealously preserving their patronage over *their* Indigenous people. Torres Strait Islander intransigence was amplified by Queensland's insistence on its rights as a state. It is partly an effect of the politics of Australian federalism that two nation-states had to consider what Banivanua-Mar calls the 'primarily transnational lateral connections and networks throughout the peripheries' – in this case, the customary relationships between the Torres Strait Islanders and their nearest Papuan neighbours.³³

The Torres Strait Islanders, in the story that I have told, were simultaneously Queenslanders, Australians and familiar neighbours of coastal Papuan villagers. As Queenslanders they had long experience of indirect rule. As Australians they had recently become fully eligible

31 Banivanua-Mar, *Decolonisation*, 8.

32 Banivanua-Mar, *Decolonisation*, 20.

33 Banivanua-Mar, *Decolonisation*, 9.

for welfare payments that were generous by the standards of their region. As sea-going peoples of the Strait, they saw value in state protection of shared marine resources. In 1973 they began to announce themselves as critics of a particular instance of what Banivanua-Mar calls the ‘imperial’ assumption that decolonisation is a two-party transaction – in this case, between Australia and Papua New Guinea. Such an ‘imperial’ view of the border issue persists in Donald Denoon’s 2009 remark: ‘a deal could perhaps have been struck much sooner, if not for the Islanders stubborn resistance.’³⁴ His words express both ‘imperial’ frustration that a two-sided transaction became devilishly three-sided and admiration for Torres Strait Islander gumption.

The resulting Torres Strait Treaty hopefully expresses a community of interest among those living partly on the marine resources of the Torres Strait. Olewale represented this community of interest as ‘Papuan’, but in the September 1973 Yam Island meeting it was possible to represent the people of the Strait without such singular ethnicity. Before that meeting, when briefing Canberra in June 1973, Torres Strait Islanders had clearly stated their longstanding sense of distinction from, and even superiority over, the coastal Papuans who also used parts of the Strait’s fisheries. Political circumstances generated a search for common interests. The resulting protected zone is not only an agreed jurisdictional overlap between two nation-states, but also the continuing commons of these sea-going peoples. With the emergence of Papua New Guinea from Australia’s mandate, and with the currency of the idea that equitable dealing required Australia to cede seas and islands to the new nation, it became politically necessary for the Papuans and the Torres Strait Islanders to state joint opposition to nation-state partitioning and economic development of a region of their customary mingling. The Papua New Guinea independence process and the politics of Australian federalism were the contexts in which the Strait’s ‘primarily transnational lateral connections and networks throughout the peripheries’ could be simultaneously Papuan and Torres Strait Islander.³⁵

34 Denoon, *The Hundred*, 12.

35 Banivanua-Mar, *Decolonisation*, 9.

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