

# Australia's treaty activity in the Asia-Pacific: a sub-regional trends analysis

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## Abstract

This paper investigates Australian treaty making with neighboring countries in the Asia-Pacific. Patterns of Australian treaty making with South East Asian countries are markedly different to those with South West Pacific countries and the difference is continuing to deepen. Treaties with the former are primarily bilateral and commercially oriented, whereas those with the latter are plurilateral and oriented to natural resources management and development. There is a major gap in Australian subregional treaty activity for natural resources management in South East Asian countries. A coalescence of issues in the law enforcement and security categories is occurring and the new direction in Australian regional treaty making for both subregions is to strengthen capacity to enforce the rule of law in national legal systems. Commercial treaty making remains and is likely to continue to be the strongest area of treaty activity.

## 1 Introduction

State treaties, like an individual's personal contracts, tell a story of a nation's commitments. Australia is party, as at mid-2006, to 1850 treaties in force.<sup>1</sup>

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<sup>1</sup> Commonwealth of Australia, Department of Foreign Affairs and Trade, Treaty Database ('DFAT Treaty Database'); available at <http://www.info.dfat.gov.au/Info/Treaties/Treaties.nsf> (accessed 8 June 2006).

They range across 969 multilateral, 830 bilateral, and 23 plurilateral treaties concluded with countries in every corner of the world, as well as 18 treaties with international organizations.<sup>1</sup> Among these are 140<sup>2</sup> treaties with regional neighbors.<sup>3</sup> This paper investigates Australian treaty making with neighboring countries in the Asia-Pacific. Its purpose is to identify patterns and describe trends in that treaty making so that we might better understand Australia's relations with its neighbors. The changing character of Australia's legal commitments to them provides insight into future developments in those relations.

The approach to identifying trends in treaty making that is taken here is to determine the number of treaties made annually and to plot the changes in numbers and character over time. Primary data on Australian treaties were gathered from the Australian Treaties Library, available online from the Australian Legal Information Institute (AustLII),<sup>4</sup> and from the Australian Treaties Database of the Australian Department of Foreign Affairs and Trade (DFAT).<sup>5</sup> These two sources of treaty information were supplemented through discussions with DFAT officials and by reports of the Parliament of Australia Joint Standing Committee on Treaties, which enabled the identification of treaties not found in the databases. Renewals or extensions of existing treaties were not recorded as new treaties.

For the purposes of analyzing trends in Australia's regional treaty-making activity, treaties have been divided into categories determined by the character of the activity each addresses. Once data were divided into treaty categories, annual data became sparse and the years were aggregated into five-year periods so that the data was grouped sufficiently to allow trends to be easily observed. The five treaty activity categories are: (1) defense strategy, (2) natural resources, (3) commerce, (4) friendship and cooperation, and (5) law enforcement.<sup>6</sup> These are divided into subcategories that allow more detailed examination of trends within each category. Each is analyzed in a separate section of this paper, following which the overall trends are discussed.

The first methodological difficulty was to identify, for the purposes of this study, which countries should be considered as neighbors to Australia.

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2 Data are based upon the treaties identified through the DFAT Treaty Database, see note 1.

3 The definition of Australia's region is set out later. Regional treaties with multiple parties are described as plurilateral, as they are open to only a group of regional countries.

4 AustLII Australian Treaties Library; available at <http://www.austlii.edu.au/au/other/dfat/treaties>. The Australian Treaties Library is a joint project of AustLII and DFAT.

5 DFAT Treaties Database, see note 1.

6 JSCOT has classified Australian treaties in a similar way: security; environment; finance and investment; transport and communications; economic and cultural cooperation; legal; human rights and human resources; health and food products and services; and energy. The JSCOT categories are appropriate to cover all the treaties that Australia participates in globally. However, within Australia's own region, treaties on human rights and human resources, health and food products and services, and energy are less prevalent and less relevant as categories.

The 'Asia-Pacific', if considered as 'Asia and the Pacific', one of the five United Nations geographic regions, comprises 49 independent member countries with national capitals in the region, including Middle Eastern and Central Asian countries and covering the majority of the Earth's surface and population.<sup>7</sup> This vast area extends beyond that which Australians would generally consider neighbors within their shared geographical region. At the other extreme, if Australia's neighborhood is limited to proximate countries with which it shares most in common, the only candidate country is New Zealand. Ironically, New Zealand's customs union and relationship with Australia is so intimate that it could distort and mislead if included in a trends analysis of Australian treaty making within a broader range of regional countries. Therefore, Australian treaties with New Zealand were excluded from the data gathered.<sup>8</sup> For similar reasons, treaty making related to Antarctica was excluded due to the anomalous character of the Antarctic region.<sup>9</sup>

An eminent work on Australia's regional relations divides regional Asian countries into three subregions: North East Asia, South East Asia, and South Asia.<sup>10</sup> For the purposes of this study of Australian treaty-making activity in Asia-Pacific, the Asian countries considered will be confined to those located on the Pacific Ocean. This has the effect of confining the range of 'neighboring' countries to those that are geographically more proximate to Australia. An examination of regionalism among East Asian countries bordering the Pacific Ocean indicates a north-south divide between them. Despite movement toward pan-East Asian regionalism, divisions remain between North East and South East Asia, i.e. between China, Japan, and South Korea vis-à-vis the members of ASEAN.<sup>11</sup> The neighboring countries that this study considers will therefore be further confined to South East Asia. This approach allows the study to focus more closely on the Asian subregion geographically most proximate to Australia.

The relationship that South West Pacific Island States have with Australia (and New Zealand) is a special one. Despite ethnic divisions, the countries of this subregion share a regional identity due to their geographic isolation from the rest of the world and their relative proximity to each other.<sup>12</sup> In economic

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7 See website of the United Nations Economic and Social Commission for Asia and the Pacific, at <http://www.unescap.org/about/member.asp> (accessed 8 June 2006).

8 Australia has 27 treaties in force with New Zealand and 60 not in force (DFAT Treaty Database, accessed 8 June 2006). Where information on treaties with New Zealand treaties help build a clearer picture of Australian regional treaty making, that information appears in footnotes to the text.

9 Australia is party to four multilateral treaties concerning Antarctica; *ibid.*

10 See Goldsworthy (2003b).

11 See Tay (2004).

12 See Chand (2005).

terms, Australia is their principal export market, import source, and aid donor.<sup>13</sup> In terms of international security arrangements and public policy formation, the relationship is also close, with Australia's role capable of being described as hegemonic.<sup>13</sup>

The Australian neighborhood then, in a broad sense, is two different sub-regions: the South West Pacific and South East Asia. The latter comprise the 10 members of ASEAN (the Association of South East Asian Nations) and East Timor.<sup>14</sup> The 14 South West Pacific nations with independent treaty-making power (excluding Australia and New Zealand) comprise the members of the Pacific Islands Forum.<sup>15</sup> The following sections analyze Australian treaty making with the countries of those two subregions.

## 2 Defense strategy

Treaties concerning defense strategy are characterized here as those concerning international boundaries and defense cooperation.

International boundary treaties seek to avoid conflicts over claims to sovereign territories and rights. Australia being an island, all its international boundary treaties are maritime.<sup>16</sup> Half of all the maritime boundary treaties are with Indonesia: four out of eight,<sup>17</sup> plus one that is not in force – the 1997 exclusive economic zone treaty.<sup>18</sup> Treaties with other subregional countries set maritime boundaries, i.e. with the Solomon Islands<sup>19</sup> and Papua New

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13 See Scollay (2005).

14 ASEAN website available at <http://www.aseansec.org> (accessed 8 June 2006). East Timor falls into neither the ASEAN nor Pacific Forum political groupings. It seeks observer status and eventually membership with ASEAN, and has observer status at the Pacific Forum. For the purposes of sub-regional grouping of data in this study, it is counted as a South East Asian country.

15 Pacific Forum website available at <http://www.forumsec.org.fj/> (accessed 8 June 2006).

16 The Australian Antarctic Territory has land boundaries. These are not delimited by treaty and are unlikely to become so while Antarctic sovereignty is disputed.

17 Agreement with the Government of the Republic of Indonesia Establishing Certain Seabed Boundaries [1973] ATS 31; Agreement between the Government of the Commonwealth of Australia and the Government of the Republic of Indonesia Establishing Certain Seabed Boundaries In the Area of the Timor and Arafura Seas Supplementary to the Agreement of 18 May 1971 [1973] ATS 32; Agreement between Australia and Indonesia concerning Certain Boundaries between Papua New Guinea and Indonesia [1974] ATS 26; Agreement between the Government of Australia (and on behalf of Papua New Guinea), and the Government of Indonesia concerning Administrative Border Arrangements at the Border between Papua New Guinea and Indonesia [1974] ATS 27.

18 Treaty between the Government of Australia and the Government of the Republic of Indonesia establishing an Exclusive Economic Zone Boundary and Certain Seabed Boundaries [1997] ATNIF 4.

19 Agreement between the Government of Australia and the Government of the Solomon Islands Establishing Certain Sea and Seabed Boundaries [1989] ATS 12.

Guinea<sup>20</sup> in the South West Pacific. In addition, but beyond this survey, Australia has adopted maritime boundary treaties with France<sup>21</sup> and, most recently, with New Zealand.<sup>22</sup> No boundary has been set with East Timor.

In relation to the defense cooperation treaties, the single most active partner is Singapore, with which Australia has six bilaterals, adopted to assist Singapore to meet its defense training needs.<sup>23</sup> As at the time of writing, a new bilateral mutual security agreement is in the process of negotiation with Indonesia<sup>24</sup> and an historic peace agreement with Thailand (then Siam) remains in force.<sup>25</sup> There are also two plurilateral defense cooperation agreements with South East Asian countries, being the five powers agreements adopted in the 1950s, dealing with forces stationed during the Cold War.<sup>26</sup> The ASEAN Treaty is more appropriately categorized as a friendship and cooperation treaty and is treated as such subsequently.<sup>27</sup>

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- 20 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 [1985] ATS 4.
- 21 Agreement on Maritime Delimitation between the Government of Australia and the Government of the French Republic [1983] ATS 3.
- 22 Treaty between the Government of Australia and the Government of New Zealand Establishing Certain Exclusive Economic Zone Boundaries and Continental Shelf Boundaries [2006] ATS 4. Australia's treaties with East Timor are discussed below in relation to natural resources, as they describe arrangements for resource distribution and do not delimit sovereign boundaries.
- 23 Exchange of Notes constituting an Agreement between the Government of Australia and the Government of Singapore concerning the Status of Forces [1988] ATS 6; Agreement between the Government of Australia and the Government of the Republic of Singapore for Cooperation in Defence Science and Technology [1993] ATS 14; Agreement between the Government of Australia and the Government of Republic of Singapore concerning the Location of the RSAF Helicopter Squadron at the Army Aviation Centre, Oakley [1997] ATS 25; Agreement between the Government of Australia and the Government of the Republic of Singapore for the Reciprocal Protection of Classified Information Transmitted between the Australian department of defence and the Singapore Ministry of Defence [1997] ATS 18; Agreement between the Government of Australia and the Government of the Republic of Singapore concerning the Use of Shoalwater Bay Training Area and the Associated Use of Storage Facilities in Australia [2000] ATS 7; Agreement with the Government of the Republic of Singapore Concerning the Use of Shoalwater Bay Training Area and the Use of Associated Facilities in Australia [2006] ATS 7.
- 24 ABC (Australian Broadcasting Commission) News Online, 'PM to discuss security treaty with Indonesia' 8 June 2006; available at <http://www.abc.net.au/news> (accessed 8 June 2006).
- 25 Final Peace Agreement between the Government of Australia and the Government of Siam [1946] ATS 13.
- 26 Exchange of Notes constituting an Assistance to the Singapore Armed Forces in the Furtherance of the Agreement on the Five Power Defence Arrangements for Malaysia and Singapore, with Annexes [1971] ATS 21; Agreement between the Government of Australia and the Government of Malaysia concerning the Status of Forces [1999] ATS 14.
- 27 The Treaty of Amity and Cooperation in South East Asia, as amended by its two Protocols with an Exchange of Letters recording interpretations of key provisions (ASEAN Treaty), was acceded to by Australia on 10 December 2005, [2005] ATS 30.

In strong contrast, all defense treaties in the South West Pacific are plurilateral, comprising the Bougainville peace monitoring treaties<sup>28</sup> and the Solomon Islands peace monitoring treaty.<sup>29</sup>

### 2.1 Analysis

The majority of defense strategy treaties are defense cooperation agreements with ASEAN countries. Of these, the majority are bilateral and are with Singapore, reflecting Singapore's unique strategic vulnerability in the sub-region. In contrast, defense strategy treaties with countries of the South West Pacific are all plurilateral. These are likely to increase in number as Australia's concern to address potential state failure in the subregion with its attendant security implications is clearly articulated.<sup>30</sup>

The dates of adoption of maritime boundary treaties indicate that their negotiation was triggered by international events, such as the crystallization of international law delimiting the continental shelf, entry into force of the United Nations Convention on the Law of the Sea, and the independence of new neighboring states. Political prospects for the delimitation of maritime boundaries with East Timor and with contiguous Antarctic claimant states are distant. Now that Australia has settled its regional boundaries as far as possible, few new treaties can be expected in future.

## 3 Natural resources management

The majority of Australian natural resources management treaties are with South West Pacific countries. In relation to fisheries, most Australian treaties are plurilateral in the South West Pacific subregion. Australia is a party to the treaty establishing the Forum Fisheries Agency,<sup>31</sup> a sub-organ of the Pacific Forum,<sup>32</sup> which has an important role in supporting subregional negotiation

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28 Protocol concerning the Peace Monitoring Group made pursuant to the Agreement between Papua New Guinea, Australia, Fiji, New Zealand, and Vanuatu concerning the Neutral Truce Monitoring Group for Bougainville done at Port Moresby on 5 December 1997 [1998] ATS 12; Protocol concerning the Bougainville Transition Team made pursuant to the Agreement done at Port Moresby on 5 December 1997, between Australia, Papua New Guinea, Fiji, New Zealand, and Vanuatu concerning the Neutral Truce Monitoring Group for Bougainville, as amended by the Protocol, done at Port Moresby on 29 April 1998 [2003] ATS 15; Agreement between Australia and Papua New Guinea regarding the Status of Forces of Each State in the Territory of the Other State [1977] ATS 6.

29 Agreement between Solomon Islands, Australia, New Zealand, Fiji, Papua New Guinea, Samoa, and Tonga concerning the Operations and Status of the Police and Armed Forces and Other Personnel deployed to Solomon Islands to assist in the Restoration of Law and Order and Security [2003] ATS 17.

30 See Lambach (2006).

31 South Pacific Forum Fisheries Agency Convention [1979] ATS 16.

32 The Pacific Forum used to be called the South Pacific Forum (Agreement Establishing the Pacific Islands Forum [2005] ATNIF 28).

and administration of treaties with foreign fishing States. Australia is also party to the Niue treaty establishing cooperative measures to monitor and enforce subregional fishing standards.<sup>33</sup> However, some of these fishing treaties do extend beyond the South West Pacific subregion, corresponding to the geographic ranges of the fish stocks concerned. Examples include the Western and Central Pacific tuna treaty,<sup>34</sup> the Indo-Pacific commission treaty,<sup>35</sup> and Asia-Pacific aquaculture treaty.<sup>36</sup> The only bilateral fishing treaty that Australia has is with an ASEAN member, Indonesia.<sup>37</sup>

Australian environmental treaty making in the South West Pacific is also exclusively plurilateral. The adoption of general marine environmental protection agreements peaked in the 1980s.<sup>38</sup> Those on other subject matters range widely from oil pollution at sea,<sup>39</sup> across to the prohibitions on nuclear weapons,<sup>40</sup> hazardous wastes importation,<sup>41</sup> and drift-net fishing.<sup>42</sup> Other than one pan-regional treaty that ranges across the Asia-Pacific, concerning plant protection,<sup>43</sup> there are no Australian environmental treaties that include ASEAN member states.

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33 Niue Treaty on Cooperation in Fisheries Surveillance and Law Enforcement in the South Pacific Region [1993] ATS 31.

34 Convention on the Conservation of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean [2004] ATS 15. The Southern Bluefin Tuna treaty does not include any Pacific Island countries (Convention for the Conservation of Southern Bluefin Tuna [1994] ATS 16).

35 Agreement for the Establishment of the Indo-Pacific Fisheries Council now known as Asia-Pacific Fishery Commission [1949] ATS 4; Amendments to the Agreement for the Establishment of the Indo-Pacific Fisheries Council of 26 February 1948 ([1949] ATS 4) – Title revised to: Agreement establishing the Indo-Pacific Fishery Commission [1977] ATS 34.

36 Agreement on the Network of Aquaculture Centres in Asia and the Pacific, as amended [1998] ATS 19.

37 Agreement between the Government of Australia and the Government of the Republic of Indonesia relating to Cooperation in Fisheries [1993] ATS 18. A memorandum of understanding was also adopted in 1974 for traditional fishing activities off the north-west coast of Western Australia.

38 Convention on Conservation of Nature in the South Pacific [1990] ATS 41; Convention for the Protection of the Natural Resources and Environment of the South Pacific Region (SPREP) [1990] ATS 31; Agreement establishing the South Pacific Regional Environment Programme (SPREP) [as an intergovernmental organisation] [1995] ATS 24.

39 Protocol concerning Co-operation in Combating Pollution Emergencies in the South Pacific Region [under SPREP] [1990] ATS 32. Note that the contemporaneous Protocol for the Prevention of Pollution of the South Pacific Region by Dumping has not been ratified by Australia and is now considered outdated.

40 South Pacific Nuclear Free Zone Treaty [1986] ATS 32.

41 Convention to Ban the Importation into Forum Island Countries of Hazardous and Radioactive Wastes and to Control the Transboundary Movement and Management of Hazardous Wastes within the South Pacific Region [2001] ATS 17.

42 Convention for the Prevention of Fishing with Long Driftnets in the South Pacific [1992] ATS 30.

43 Plant Protection Agreement for the South East Asia and Pacific Region [1956] ATS 11.



Seabed hydrocarbon resource sharing arrangements with East Timor<sup>44</sup> form an exception to the pattern of Australia's regional natural resources treaties as they concern natural resources other than environment or fisheries, and deal with allocation rather than protection or management.

### 3.1 Analysis

Australian subregional natural resources treaties focus on environment and fisheries. With only two exceptions (one with each of Indonesia and East Timor) they are plurilateral and concluded with South West Pacific countries. The dearth of natural resource treaties with South East Asian countries despite their utility suggests a subregional governance hiatus.

The limited administrative resources of individual South West Pacific island countries result in treaties being negotiated collectively and in the establishment of collective subregional implementation arrangements. Fisheries form a major South West Pacific resource, but the limited availability of administrative resources obstructs the enforcement of fisheries standards. This challenge has been approached collectively too. Thus, cooperative enforcement measures, such as satellite-based vessel monitoring systems, shared databases, certification of fish catch landings in the market country, and port-state controls where fish are landed, are cooperative responses evident in the Niue treaty and the Western and Central Pacific Tuna treaty.

## 4 Commercial treaties

Commerce forms the subject of Australia's greatest regional treaty activity, approximately twice that of any other category.<sup>45</sup> Commercial treaties can be divided into the three subcategories of: trade, tax and investment, and transport and communications. In relation to trade, regional bilateral treaty making took off in the 1970s, with ASEAN partners.<sup>46</sup> Two free trade

44 Timor Sea Treaty [2003] ATS 13. Not yet in force are the Agreement Between the Government of Australia and the Government of the Democratic Republic of Timor-Leste Relating to the Unitisation of the Sunrise and Troubadour Fields ([2003] ATNIF 6) and the Treaty with the Government of the Democratic Republic of Timor-Leste on Certain Maritime Arrangements in the Timor Sea ([2006] ATNIF 1).

45 See Table 1.

46 Trade-related agreements in the following list include foreign exchange and intellectual property protection matters: Trade Agreement between the Government of the Commonwealth of Australia and the Government of the Republic of Indonesia and Agreed Minute [1973] ATS 23; Trade Agreement between the Government of Australia and the Government of the Republic of the Philippines with Agreed Minutes [1979] ATS 6; Trade Agreement between the Government of Australia and the Government of the Kingdom of Thailand [1979] ATS 17; Agreement on Economic Cooperation with the Government of the Kingdom of Thailand [1990] ATS 29; Agreement between the Government of Australia and the Government of the Republic of Indonesia concerning the Protection and Enforcement of Copyright [1993] ATS 25; Agreement on



agreements with Singapore and Thailand have recently been adopted.<sup>47</sup> There are no plurilateral trade agreements with ASEAN partners. However, in the South West Pacific, five trade treaties are plurilateral,<sup>48</sup> with only one bilateral.<sup>49</sup>

Concerning tax and investment, all Australian regional treaties are bilateral. Fourteen are double tax agreements with ASEAN countries,<sup>50</sup> whereas three

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Trade and Economic Co-operation with the Socialist Republic of Vietnam [1990] ATS 18; Agreement with the Government of Malaysia on Trade and Economic Cooperation [1998] ATS 5.

47 Singapore-Australia Free Trade Agreement [2003] ATS 16; Mutual Recognition Agreement on Conformity Assessment with the Government of the Republic of Singapore [2001] ATS 9; Amendments to Chapter 5 of the Singapore-Australia Free Trade Agreement including Technical Regulations and Sanitary and Phytosanitary Measures, Sectoral Annex on Food Products and Sectoral Annex on Horticultural Goods [2006] ATS 9; Australia-Thailand Free Trade Agreement [2005] ATS 2.

48 Agreement establishing the South Pacific Bureau of Economic Co-operation [1973] ATS 13; Amendments to the Agreement establishing the South Pacific Bureau for Economic Cooperation of 17 April 1973 [1985] ATS 36; South Pacific Regional Trade and Economic Cooperation Agreement [SPARTECA] [1982] ATS 31; Amendment to Agreement establishing the South Pacific Bureau for Economic Cooperation of 17 April 1973, Article IX.3 [1985] ATS 37; Pacific Agreement on Closer Economic Relations [2004] ATS 10.

49 Agreement between the Government of Australia and the Government of Fiji on Trade and Economic Relations [AFTERA] [1999] ATS 32.

50 Agreement between the Government of the Commonwealth of Australia and the Government of the Republic of Singapore for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income [1969] ATS 14; Exchange of Notes constituting an Agreement between the Government of the Commonwealth of Australia and the Government of the Republic of Singapore Extending the Operation of Article 18(3) of the Agreement for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income of 11 February 1969 [1975] ATS 18; Agreement between the Government of Australia and The Government of the Republic of the Philippines for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income [1980] ATS 16; Agreement between the Government of Australia and the Government of Malaysia for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income [1981] ATS 15; Exchange of Notes constituting an Agreement to further extend the operation of Article 18(3) of the Agreement for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income of 11 February 1969 [1981] ATS 31; Agreement between Australia and the Kingdom of Thailand for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income [1989] ATS 36; Exchange of Notes constituting an Agreement to Further Extend the Operation of Article 18(3) of the Agreement between the Government of the Commonwealth of Australia and the Government of the Republic of Singapore for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income of 11 February 1969 [1989] ATS 26; Protocol amending the Agreement with the Government of The Republic of Singapore for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income [1990] ATS 3; Agreement between the Government Australia and the Government of the Socialist Republic of Vietnam for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income [1992] ATS 44; Exchange of Notes constituting an Agreement to Amend [Article 23] of the Agreement with the Socialist Republic of Vietnam for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income of 13 April 1992 [1997] ATS 20; Agreement between the Government of Australia and the Government of the Republic of Indonesia for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income [1992] ATS 40; Exchange of Letters constituting an Agreement Prolonging the Effect of Certain Provisions of the Agreement between the Government of

are with Pacific island countries.<sup>51</sup> There are only five investment promotion and protection agreements: four with ASEAN members<sup>52</sup> and one in the South West Pacific.<sup>53</sup>

In the field of transport and communications, most treaties are with ASEAN member states and were formed in the 1960s and 1970s. These comprise 14 bilateral air services agreements<sup>54</sup> and 2 postal agreements with

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Australia and the Government of Malaysia for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income of 20 August 1980 [1999] ATS 24; Protocol amending the Agreement between the Government of Australia and the Government of Malaysia for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income [2000] ATS 25; Exchange of Letters constituting an Agreement to Amend the Agreement with the Socialist Republic of Vietnam for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income of 13 April 1992, as amended by an Exchange of Notes of 22 November 1996 [2003] ATS 9; Second Protocol amending the Agreement between the Government of Australia and the Government of Malaysia for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income as amended by the First Protocol of 2 August 1999 [2004] ATS 1.

- 51 Agreement between Australia and the Independent State of Papua New Guinea for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income [1989] ATS 37; Agreement between Australia and Fiji for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income [1990] ATS 44; Agreement between Australia and the Republic of Kiribati for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income [1991] ATS 34.
- 52 Agreement with the Socialist Republic of Vietnam on the Reciprocal Promotion and Protection of Investments [1991] ATS 36; Agreement with the Republic of Indonesia concerning the Promotion and Protection of Investments [1993] ATS 19; Agreement with the Lao People's Democratic Republic on Reciprocal Promotion and Protection of Investments [1995] ATS 9; Agreement with the Republic of the Philippines on the Promotion and Protection of Investments [1995] ATS 28.
- 53 Agreement with the Independent State of Papua and New Guinea for the Promotion and Protection of Investments [1991] ATS 38.
- 54 Agreement between the Government of the Commonwealth of Australia and the Government of the Kingdom of Thailand relating to Air Services [1960] ATS 4; Agreement between the Government of the Commonwealth of Australia and the Government of The Republic of Singapore relating to Air Services [1967] ATS 25; Agreement between the Government of Australia and the Government of the Republic of Nauru Relating to Air Services [1969] ATS 23; Agreement between the Government of the Commonwealth of Australia and the Government of the Republic of Indonesia for Air Services Between and Beyond Their Territories [1969] ATS 4; Air Transport Agreement between the Government of the Commonwealth of Australia and the Government of the Republic of the Philippines [1972] ATS 8; Agreement between the Government of the Commonwealth of Australia and the Government of Malaysia Relating to Air Services [1973] ATS 5; Exchange of Notes between Australia and Malaysia constituting an Agreement amending the Agreement relating to Air Services of 9 Oct 1967 [1971] ATS 7; Exchange of Notes constituting an Agreement amending the Agreement relating to Air Services of 3 November 1967 ([1967] ATS 25) [1976] ATS 6; Air Transport Agreement between the Government of Australia and the Council of Ministers of the Socialist Republic of the Union of Burma [1976] ATS 23; Exchange of Notes constituting an Agreement amending the Schedule to the Agreement relating to Air Services of 17 September 1969 ([1969] ATS 23) [1976] ATS 25; Exchange of Notes constituting an Agreement to further amend the Schedule to the Agreement relating to Air Services of 17 September 1969 ([1969] ATS 23) [1984] ATS 34; Exchange of Notes constituting an Agreement between Australia & Thailand to amend the Schedule to the agreement relating to air Services of 26 Feb 1960 [1985] ATS 29; Agreement between the Government of Australia and the Government of His Majesty the Sultan of Yang Di-Pertuan of Brunei Darussalam relating to Air Services [1992] ATS 20; Agreement between the Government of

ASEAN members.<sup>55</sup> In the South West Pacific, five bilateral air services agreements were negotiated in the 1980s.<sup>56</sup> There is one pan-regional communications treaty, the Asia-Pacific Telecommunity Treaty, adopted in 1977.<sup>57</sup>

#### 4.1 Analysis

Most commercial treaties are bilateral agreements with ASEAN countries, but Pacific Forum countries do have a substantial presence in this category. Recent free trade agreements indicate a current resurgence in bilateral trade treaty making with ASEAN partners, due to Australian governmental focus on a new generation of sophisticated bilateral free trade agreement negotiations.<sup>58</sup> A peak in double tax agreement-making occurred during the 1990s. Investment agreements were adopted in the early 1990s but, being largely symbolic and unenforceable, seem to be falling from favor.<sup>59</sup>

In contrast to the ASEAN bilateral agreements, commercial treaties between Australia and South West Pacific countries are predominantly plurilateral, due to small national markets. The geographic isolation of Pacific island countries makes international transport and communications arrangements important and they concluded bilateral air service agreements shortly after individual countries achieved independence. The data indicate a gradual decline in the transport and communications related treaties since. The decline can be attributed to two factors: first, once agreements for air services and postal coordination have been made, they do not need to be remade; second,

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Australia and the Government of the Socialist Republic of Vietnam relating to Air Services [1995] ATS 26. See air services agreements with Pacific island countries, below.

55 Agreement between the Governments of the Federation of Malaya and the State of Singapore and the Government of the Commonwealth of Australia concerning the Exchange Postal Parcels subject to Trade Changes between Malaya and Christmas Island [1962] ATS 15; Agreement on Postal Relations between the Government of Australia and the Government of the Socialist Republic of Viet Nam [1979] ATS 18.

56 Agreement between the Government of Australia and the Government of Papua New Guinea relating to Air Services [1980] ATS 29; Agreement between the Government of Australia and the Government of Fiji for air services between and beyond their respective Territories [1982] ATS 7; Agreement between the Government of Australia and the Government of the Republic of Vanuatu relating to Air Services [1993] ATS 17; Agreement between the Government of Australia and the Government of Samoa Relating to Air Services [2001] ATS 18; Agreement between the Government of Australia and the Government of the Cook Islands Relating to Air Services [2002] ATS 27. A treaty with Tonga is yet to enter into force (Agreement between the Government of Australia and the Government of the Kingdom of Tonga relating to Air Services ATNIF 16).

57 Constitution of the Asia-Pacific Telecommunity [1979] ATS 4.

58 Michael L'Estrange, Secretary, DFAT, Developments in Free Trade Agreements, paper delivered on at the 10th Anniversary Seminar of JSCOT; available at <http://www.aph.gov.au/house/committee/jsct/treatyscrutiny/index.htm> (accessed 8 June 2006).

59 See, for example, the comments of the JSCOT in its 11th (1997) and 56th (2003) reports, concerning an investment promotion and protection agreement with Kazakhstan; available at Parliament of Australia, Joint Standing Committee on Treaties; <http://www.aph.gov.au/house/committee/jsct/reports.htm>.

the decline in subregional airline development due to the financial burdens created by geography and demography.<sup>60</sup>

## 5 Friendship and cooperation

Friendship and cooperation treaties can be divided into three subcategories: cultural and consular cooperation, science and technology, and development cooperation.

The largest subcategory is cultural and consular, concerning publications exchanges, cultural exchanges, and consular relations. These treaties are long-standing bilateral ones with ASEAN countries.<sup>61</sup> Pacific island countries also participate in cultural and consular agreements, again plurilateral. The latter can be divided into two groups: those that are organized under the auspices of the United Nations Economic and Social Commission for Asia and the Pacific (ESCAP),<sup>62</sup> and those adopted through the Pacific Forum.<sup>63</sup>

There are only three science and technology agreements. One of them is in the South West Pacific subregion.<sup>64</sup> It is a plurilateral geoscience cooperation treaty, to establish the South Pacific Applied Geoscience Commission, which engages in scientific activities such as examining the seabed for hydrocarbon

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60 See Findlay *et al.* (2005).

61 Exchange of Notes between Australia and the Republic of Vietnam constituting an Agreement relating to the Exchange of Official Publications [1954] ATS 19; Exchange of Notes between Australia and Thailand constituting an Agreement relating to the Exchange of Official Publications [1956] ATS 17; Exchange of Notes constituting an Agreement between the Government of Australia and the Government of the Philippines relating to Visa Fees [1960] ATS 3; Exchange of Notes with Malaysia relating to the assumption by the Malaysian Government of the Responsibilities of the Singapore Government under the Agreement of 6 June 1963 with Singapore concerning the Provision of Treatment in Singapore Hospitals for Asian Residents of Christmas Island and for the Extension of the Operation of the Agreement [1965] ATS 10; Agreement between the Government of the Commonwealth of Australia and the Government of the Republic of Singapore concerning the Provision of Treatment in Singapore Hospitals for Asian Residents of Christmas Island [1968] ATS 13; Cultural Agreement between the Government of the Commonwealth of Australia and the Government of the Republic of Indonesia [1968] ATS 12; Agreement establishing a Cultural and Social Centre for the Asian and Pacific Region [1968] ATS 19; Cultural Agreement between the Government of Australia and the Government of Thailand [1974] ATS 33; Cultural Agreement between the Government of Australia and the Government of the Republic of Singapore [1975] ATS 34; Cultural Agreement between the Government of Australia and the Government of Malaysia [1975] ATS 39; Cultural Agreement between the Government of Australia and the Government of the Republic of the Philippines [1980] ATS 9; Consular Agreement between the Government of Australia and the Government of the Socialist Republic of Vietnam [2004] ATS 25; Agreement with the Government of the Kingdom of Thailand on Bilateral Cooperation [2005] ATS 18.

62 Regional Convention on the Recognition of Studies, Diplomas, and Degrees in Higher Education in Asia and the Pacific [1985] ATS 33.

63 Agreement establishing the South Pacific Commission [SPC] [1948] ATS 15; Agreement establishing the South Pacific Forum Secretariat [1993] ATS 16; Agreement establishing the Pacific Islands Forum Secretariat [2006] ATS 5.

64 Agreement establishing the South Pacific Applied Geoscience Commission [SOPAC] [1991] ATS 8.

resources and putting together the data for delimiting boundaries between the countries. The other two are bilateral agreements concerning nuclear science and technology, with the Philippines<sup>65</sup> and Singapore.<sup>66</sup> Two science cooperation agreements with Indonesia have not entered into force.<sup>67</sup>

### 5.1 Analysis

The second largest category of treaties, i.e. after commerce treaties, concern friendship and cooperation. Comparing subregions, most friendship and cooperation agreements are bilaterals formed with ASEAN countries, where the sole plurilateral exception is the ASEAN Treaty itself.<sup>68</sup> There are no bilateral cultural or consular agreements with Pacific island countries and the agreement establishing the Pacific Forum is the only plurilateral agreement specific to the subregion which might be argued to fall into this category. In general, new cultural and consular agreements are not being made.

Development cooperation forms almost half the number of all friendship and cooperation treaties. While the earlier treaties were mostly with South East Asian countries,<sup>69</sup> an equal number of more recent development cooperation agreements are with South West Pacific countries.<sup>70</sup> The intensity

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65 Agreement between the Government of Australia and the Government of the Philippines concerning cooperation in the Peaceful uses of Nuclear energy and the Transfer of Nuclear materials [1982] ATS 25.

66 Exchange of Notes between the Government of Australia and the Government of the Republic of Singapore constituting an Agreement concerning Cooperation on the Physical Protection of Nuclear Material [1989] ATS 34.

67 Agreement between the Government of Australia and the Government of the Republic of Indonesia concerning Cooperation in Nuclear Science and Technology [1997] ATNIF 9; Agreement between the Government of Australia and the Government of the Republic of Indonesia for Cooperation in Scientific Research and Technological Development (Jakarta, 11 July 2005) [2005] ATNIF 11.

68 The Treaty of Amity and Cooperation in South East Asia, as amended by its two Protocols with an Exchange of Letters recording interpretations of key provisions (ASEAN Treaty), was acceded to by Australia on 10 December 2005, [2005] ATS 30.

69 Exchange of Notes between Australia & Thailand constituting a Agreement relating to duty free entry of Colombo Plan Equipment [1959] ATS 14; Agreement between the Government of Australia and the Governments of Cambodia, Laos, Thailand, Vietnam concerning Tax Exemptions of Contributions of Australia for the Development of Water Resources of the Lower Mekong Basin [1960] ATS 15; Exchange of Notes constituting an Agreement between Australia and the Kingdom of Laos concerning the Foreign Exchange Operations Fund (FEOF) for Laos [1963] ATS 28; Agreement on Development Cooperation with the Government of the Kingdom of Thailand [1989] ATS 4; Protocol with the Government of Thailand concerning the Financing of a Railway Project in Thailand [1989] ATS 23; Agreement on Economic Cooperation with the Government of the Kingdom of Thailand [1990] ATS 29; General Agreement on Development Cooperation with the Government of the Republic of the Philippines [1998] ATS 11; General Agreement between the Government of Australia and the Government of the Republic of Indonesia on Development Cooperation [1999] ATS 13. There is also on pan-regional treaty, the Charter of the Asian and Pacific Development Centre 1969 [1968] ATS 19.

70 Exchange of Notes constituting an Agreement on the Exchange of Planting Material between Malaya and Papua and New Guinea [1962] ATS 14; Guarantee Agreement (Second Power

of Australian development cooperation treaty making with South East Asian countries is inverse to its intensity with South West Pacific countries, with the 1980s being the period of inversion.

Although two of the four bilateral science and technology agreements with South East Asian countries have not entered into force, it seems likely that the numbers of these agreements will grow as ASEAN member economies and technological capacities continue to rapidly develop.

## 6 Law enforcement treaties

Law enforcement treaties divide into two subcategories: criminal justice procedural cooperation and general judicial cooperation. Criminal justice procedural cooperation entails arrangements for mutual assistance, extradition, and transfer of offenders. All Australia's criminal justice cooperation treaties with neighbors are bilateral and all are with ASEAN countries.<sup>71</sup> The majority are extradition treaties.<sup>72</sup> More recent features are bilateral mutual assistance treaties, which enable their parties to utilize formal channels in gathering and delivering reports, documents, and witnesses to secure evidence that can then be presented in criminal court proceedings.<sup>73</sup> Most recent,

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Project) with the International Bank for Reconstruction and Development [IBRD] relating to a Loan from the Bank to the Government of Papua New Guinea [1974] ATS 37; Treaty on Development Co-operation between the Government of Australia and the Government of Papua New Guinea, and Exchange of Letters [1989] ATS 24; Agreement on Trade and Commercial Relations between the Government of Australia and the Government of Papua New Guinea with Agreed Minutes and Exchange of Letters [1991] ATS 37; Rehabilitation and Development Cooperation Agreement with the Government of the Republic of Nauru [1994] ATS 15; Treaty on Development Cooperation with the Government of Papua and New Guinea [2000] ATS 30; Joint Agreement on Enhanced Cooperation between Australia and Papua New Guinea [2004] ATS 24; Agreement between Australia and Nauru concerning additional police and other assistance to Nauru [2004] ATS 21.

71 Interestingly, Australia has more criminal justice cooperation treaties with its ASEAN neighbors than the ASEAN member countries have with each other. There is an effort that has been spearheaded by Malaysia to improve ASEAN regional cooperation in criminal matters through the adoption of a regional mutual assistance treaty, but that has only four parties at the present time.

72 Treaty between Great Britain and Siam (Thailand) for the Mutual Surrender of Fugitive Criminals [1911] ATS 9; Extradition Treaty between Australia and the Republic of Indonesia [1995] ATS 7; Treaty on Extradition between Australia and the Philippines [1991] ATS 5. Not yet in force are the new Treaty between the Government of Australia and the Government of Malaysia on Extradition (Putrajaya, 15 November 2005) and An Exchange of Notes between the Government of Australia and the Government of Malaysia on the Treaty on Extradition (Kuala Lumpur, 7 December 2005) [2005] ATNIF 32.

73 Treaty between Australia and the Republic of the Philippines on Mutual Assistance in Criminal Matters [1993] ATS 37; Treaty between Australia and the Republic of Indonesia on Mutual Assistance in Criminal Matters, with annex [1999] ATS 10. Not yet in force are the new Treaty between the Government of Australia and the Government of Malaysia on the Mutual Assistance in Criminal Matters (Putrajaya, 15 November 2005) and An Exchange of Notes between the Government of Malaysia and the Government of Australia on the Treaty on Mutual Assistance in Criminal Matters (Kuala Lumpur, 7 December 2005) [2005] ATNIF 33.



however, is the adoption of transfer of offenders' agreements, which enable convicts to serve their sentences in their countries of nationality. Australia has adopted one agreement with Thailand<sup>74</sup> and will soon also do so with Indonesia.

In the area of general judicial cooperation, meaning the business of transfer of civil proceedings and recognition of judgments in non-criminal matters, there are few treaties. Australia has an agreement with Thailand on civil and commercial litigation cooperation<sup>75</sup> and has agreed to provide judicial hearing of appeals for Nauru.<sup>76</sup>

### 6.1 Analysis

Law enforcement comprises the smallest of the four broad categories of subregional treaties. Most Australian regional law enforcement treaties concern criminal justice cooperation, are relatively recent, and are with ASEAN member countries. It is apparent that there is a recent trend toward deepening cooperation in criminal justice cooperation with ASEAN member countries. The pending bilateral treaty on security cooperation with Indonesia will reflect the new recognition of domestic law and order management as an international security concern, as that treaty is expected to address law enforcement cooperation together with cooperation in matters of defense, counter-terrorism, intelligence, etc. Conversely, law enforcement cooperation is a feature of the plurilateral cooperation treaties adopted for the maintenance of peace and development of legal order in the South West Pacific subregion, discussed earlier under the defense strategy and development cooperation categories.

## 7 Discussion

The lack of effective international integration among countries across the east and the western waters that surround Australia means that there are very few pan-regional treaties that are applicable, as indicated in Figure 1. There are treaties that extend beyond the South West Pacific subregion into some parts of South East Asia that are designed to cover the geographic range of fish

74 Agreement with the Kingdom of Thailand on the Transfer of Offenders and Co-operation in the Enforcement of Penal Sentences [2002] ATS 22.

75 Agreement between the Government of Australia and the Government of the Kingdom of Thailand on Judicial Assistance in Civil and Commercial Matters and Cooperation in Arbitration [1998] ATS 18.

76 Agreement between the Government of Australia and the Government of the Republic of Nauru relating to Appeals to the High Court of Australia from the Supreme Court of Nauru [1977] ATS 11. Tangentially related is the treaty with Nauru on recognition of the settlement for the phosphates case in each jurisdiction (Agreement between Australia and the Republic of Nauru for the Settlement of the Case in the International Court of Justice concerning Certain Phosphate Lands in Nauru [1993] ATS 26).



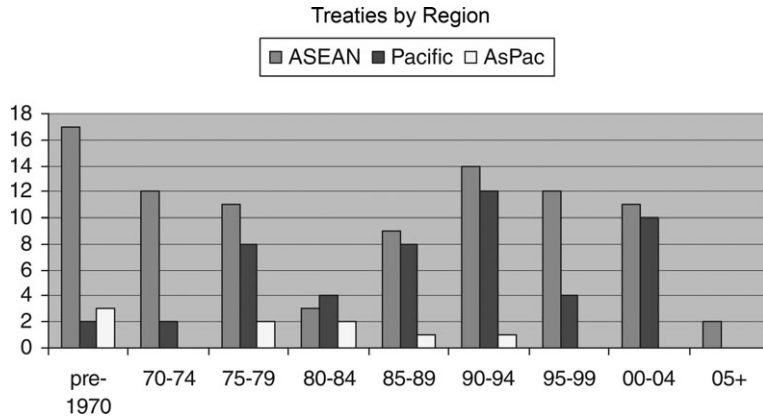


Figure 1 Pan-regional treaties by region.

stocks and related fishing activity. The pan-regional treaties are those of the United Nations Economic and Social Commission for Asia and the Pacific, which extend also to East, Central, South, and West Asia. Reflecting the lack of integration across that wide region, they tend to be superficial and formalistic.

Comparing the rates of treaty-making activity across subject matter categories, almost half of all treaties relate to commercial matters: trade, double tax agreements, investment protection, air services, postage, etc., as indicated in Figure 2. The second greatest area of activity is the category of friendship and cooperation: cultural, consular, science, technology, and development. In both categories, most treaties are bilateral.

The South East Asian and South West Pacific subregions are very distinct in almost every way: population size, economy size and development, social structure and culture, geography, natural resources, and subregional cohesion. As indicated in Table 1, the number of treaties with South East Asian

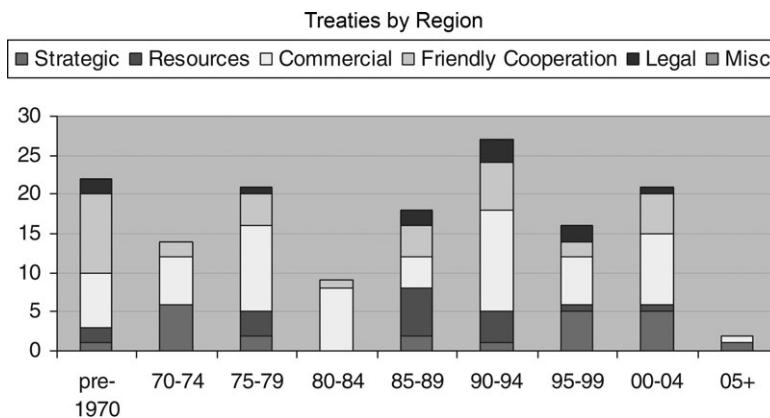


Figure 2 Pan-regional treaties by category.

**Table 1** Regional treaties categories and number of treaties in force

Category	No.	Subcategory	No.	Subregion No.		
				SEA	Pac	AsPac
Defense strategy	19	Maritime boundaries	7	5	2	–
		Defense cooperation	12	9	3	–
Natural resources	18	Environment protection	8	–	7	1
		Fisheries management	9	1	4	4
		Hydrocarbons	1	1	–	–
Commerce	61	Trade relations	17	11	6	–
		Tax and investment	22	18	4	–
		Air and communication services	22	16	5	1
Friendship & cooperation	34	Cultural and consular	14	13	–	1
		Science & technology	3	2	1	–
		Development cooperation	17	8	8	1
Law enforcement	8	Criminal justice	6	6	–	–
		Judicial cooperation	2	1	1	–
Total no. treaties	140		140	91	41	8

SEA, South East Asia; Pac, South West Pacific; AsPac, Asia-Pacific.

countries (91) is more than double those with South West Pacific countries (41), despite the larger number of South West Pacific countries. This substantial contrast is attributable to the relative predominance of plurilateral treaties with South West Pacific countries, the shorter independent histories of South West Pacific countries, and the far greater size of the South East Asian country economies and populations leading to a higher intensity interaction with them.

A comparison of the patterns of Australian treaty making with each subregion demonstrates strong differences in the nature of Australian commitments to each. In contrast to the predominantly plurilateral treaties negotiated with the countries of the South West Pacific subregion, the vast majority of Australian treaties with South East Asian countries are bilateral. Several factors explain this phenomenon. First, as plurilateral treaties are collectively negotiated by the individual countries of each subregion, it is essential that the countries of the subregion have common interests as the basis for their collective negotiation. Those common interests are more readily identifiable for the countries of the South West Pacific than they are for those of South East Asia. The Pacific island countries' limited administrative resources, small economies, and geographic isolation shapes their cooperation with each other, despite the presence of subregional tensions, to formulate common negotiation

positions to engage Australia in subregional economic and resource management.<sup>77</sup> In contrast, the ASEAN member countries have far less need of Australian engagement and, consequently, for any common negotiation position vis-à-vis Australia. Further, the greater cultural, economic, demographic, and political differences between South East Asian countries give rise to proportionately greater tensions within the ASEAN bloc that obstruct common ASEAN negotiation positions.<sup>78</sup>

Although some might suggest that the weakness of the ASEAN Secretariat as an institution also impedes such negotiations, to do so would mistake the normal role of international secretariats, which do not hold negotiating mandates on behalf of their members.<sup>79</sup> Even in the South West Pacific, where subregional secretariats (e.g. Pacific Forum, Forum Fisheries Agency, South Pacific Regional Environment Programme, and South Pacific Commission) have exceptional influence, they do not negotiate on behalf of member countries.

Focusing on patterns of Australian treaty making in the South West Pacific, plurilateral treaties predominate across all treaty categories. Within the subregion, the new direction that is emerging is intervention to provide multilateral support of security within unstable island countries. The cause of this trend would seem to be the rise in domestic political turmoil and ethnic violence currently fracturing security in some countries of subregion, e.g. Papua New Guinea, Fiji, and the Solomon Islands.<sup>80</sup> Australia's active response to this instability has been termed 'cooperative intervention' and is partly conditioned by the rise of terrorism in South-East Asia.<sup>81</sup> The treaties governing the 2003 Regional Assistance Mission to the Solomon Islands and 2004 Enhanced Cooperation Package with Papua New Guinea are examples of this response to the new coalescence between international strategy and domestic order.

There is a longstanding and ongoing focus on natural resources evident in South West Pacific treaties. This is the only category of Australian treaties where activity with South West Pacific countries is greater than with South East Asian countries. Most environment treaties were adopted in the 1980s. Environmental treaty making has tended to be driven by external influences. For example, subregional treaty-making conferences on nuclear weapons, hazardous waste movement, and drift-net fishing were catalyzed by broader global events. Therefore, contemporary areas of global concern that can be

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77 See Fry (2005).

78 See Huxley (1996).

79 The European Commission is exceptional in this respect, as European Union member countries can choose to delegate a common position to the Commission to negotiate on their behalf.

80 See O'Connor (2006).

81 See Hegarty and Powles (2006).

expected to also become future subregional regime negotiation topics include the protection of coral reefs, the maintenance of biosafety (i.e. barriers against invasion by introduced marine pests or genetically modified organisms), and the use of trade restrictions to support environmental measures. There is now more subregionally driven attention on cooperative fisheries management, as fish stocks come under greater pressure. Implementing a fisheries management treaty across a vast maritime space is difficult for any country but especially for South West Pacific island countries with few surveillance resources to deploy on the water or in the air. Therefore, treaty responses establishing cooperative enforcement measures with Australia will continue to be on the subregional negotiation agenda. Thus, Australian natural resources treaty making is likely to continue to be concentrated in the South West Pacific subregion and to be plurilateral, with the current focus on fisheries dominating in the near future.

Focusing on Australian treaty making with the countries of South East Asia, it is apparent that most treaties engage those subregional countries with open economies and that most treaties concern commercial relations. In general, there has been a shift from symbolic or formalistic treaty making with South East Asian neighbors, on matters like cultural exchange, toward matters of everyday practical engagement, such as criminal justice cooperation. This trend reflects a pattern of increasing Australian engagement with South-East Asia that commenced tentatively in the second decade after the Second World War and accelerated in the 1960s and 1970s.<sup>82</sup> The latter period saw the termination of the 'White Australia' policy on immigration, the adoption of policies on 'multiculturalism', and a new discourse on integration with Asia.<sup>83</sup> Through the 1980s and 1990s, Australian neo-liberal economic policies reduced tariffs, subsidies, and other protections, opening up the domestic market to Asian manufactures.<sup>84</sup> Through these latter decades, a popular fascination with East Asian themes emerged in art and culture, hybridizing and fusing them with other contemporary Australian themes.<sup>85</sup> Perceived economic opportunity drove forward widespread acceptance of the notion of Australian 'enmeshment' with Asia.<sup>83</sup> The adoption of double tax agreements peaked as a greater number of Australians went to work in South East Asia.

Nevertheless, trade and investment links with Australia are not of central importance to all ASEAN member countries. This is apparently due to Australia's relatively small market population, strict quarantine regulations, conservative pattern of overseas investment, and historic pattern of trade with

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82 See Goldsworthy (2001).

83 See Goldsworthy (2003a).

84 See Robison (1996).

85 See Broinowski (1996).

markets in the UK, USA, and, more recently, Northeast Asia.<sup>86</sup> However, in addition, cultural factors might have catalyzed Malaysia to actively veto Australian participation in the ASEAN Free Trade Area.<sup>87</sup> Consequently, although there is little growth in the number of trade treaties made each year, there is movement from the trade facilitation treaties adopted in the 1970s to free trade treaties with available subregional partners in the mid-1990s. A hiatus in trade treaty making during the 1980s and early 1990s might be explained by the peak in the Uruguay world round of multilateral trade negotiations and the Australian economic recession.

Plurilateral defense cooperation treaties with ASEAN countries date from the Cold War and are of diminishing relevance. They are being replaced by plurilateral security dialogues, such as the ASEAN Regional Forum.<sup>78</sup> That bilateral defense cooperation treaties, such as those with Singapore, predominate is another sign of the internal tensions among ASEAN members.

The new focus on bilateral criminal justice cooperation, concerning extradition and mutual legal assistance, responds to the regional growth in transnational crime. It also reflects the expansion of Australian security concerns to address the transnational impacts of domestic political, ideological, and inter-ethnic violence. Although treaty making in the areas of judicial cooperation, which relates to transfer of proceedings in what are usually private international commercial matters, is rare, it is nevertheless an area of potential increase in bilateral activity with some South East Asian countries, as their trade and investment ties with Australia deepen. The lack of treaty activity on natural resources management, despite longstanding related Australian aid and cooperation, signifies unwillingness in the subregion to commit to build governance capacity in this area.

## 8 Conclusion

Patterns of Australian treaty making with South East Asian countries are markedly different to those with South West Pacific countries. Treaties with the former are primarily bilateral, whereas those with the latter are plurilateral. The predominant subject matters of treaties with each subregion also differ, as agreements with the South East Asian countries are more commercially oriented than treaties with the South West Pacific countries, which have a stronger focus on natural resources and development. It is notable that there is a major gap in Australian subregional treaty activity for natural resources management in South East Asian countries. In contrast, Australian treaty

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86 Australian imports and exports account for only 2% of the trade of the major ASEAN member country economies (Brunei, Malaysia, Philippines, Singapore, Thailand, and Indonesia). See Tan (2003).

87 See Searle (1996).

activity on South West Pacific natural resources management and development will continue to strengthen, focusing on the enforcement of fishery management standards there. Thus, the difference between subject matters of Australian treaties across the two subregions seems set to deepen.

Overall, the new direction in Australian regional treaty making is to strengthen capacity to enforce the rule of law in national legal systems, as evidenced by recent bilateral criminal justice cooperation treaties with South East Asian countries and multilateral treaties to support public security in Pacific island countries. A coalescence of issues in the law enforcement and security categories is occurring. Commercial treaty making remains and is likely to continue to be the strongest area of treaty activity, particularly to liberalize bilateral trade with South East Asian countries. General friendship treaty-making activity is in decline as Australia's relationships mature into more specific commitments.

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