SEA TENURE AND THE MANAGEMENT OF LIVING MARINE RESOURCES IN PAPUA NEW GUINEA

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Customary Marine Tenure

Use of coastal waters in Papua New Guinea takes place under a great diversity of locally defined, informal, exclusive, communal, relatively closed, or even private tenure arrangements in what has come to be labeled "sea tenure" or customary marine tenure (CMT) (Anell 1955; Baines 1989; Balfour 1913; Cranstone 1972; Kearney 1975, 1977; Moore 1977; Narokobi 1984; Quinn, Kojis, and Warpeha n.d.; Spring 1982; Tenakanai 1986). CMT in Papua New Guinea includes mixtures of exclusive individual and public-access traditions with ownership tied to specific environments, species, or technology--or to some combination of all three (Carrier 1981, 1982a, 1982b; Carrier and Carrier 1983, 1989). CMT community membership is small, interrelated and bound by cultural rules that specify who has access to resources (Akimichi 1981; Bergin 1983; Chapman 1987; Cordell 1984; Couper 1973; Johannes 1978b, 1982a, 1989a, 1989b; Johannes and MacFarlane 1986, 1991; Rodman 1989; Ruddle and Akimichi 1984; Schoeffel 1985; South Pacific Commission 1988).

Although sea tenure is vital to over 400,000 ethnically diverse coastal peoples of Papua New Guinea, the fate of these CMT resource-management systems, especially in the transboundary Torres Strait region, are increasingly threatened by commoditized fisheries and contentious mining and oil projects. Advocacy expressed in this article for maintaining tradition-based sea tenure in Papua New Guinea stems from my own

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long-standing anthropological research association with the Wopkaimin landowners around the Ok Tedi mining project, located in the Fly River headwaters (Hyndman 1991b). Environmental disaster from the Ok Tedi project ramifies throughout the Fly River socioecological region (Hyndman 1991a). Refugees from pollution there are migrating to Daru, the Western Province administrative center situated below the Fly estuary; and coastal fisheries are threatened. Moreover, the need for a baseline appraisal of sea tenure in contemporary Papua New Guinea became apparent at a 1990 conference, "Sustainable Development for the Traditional Inhabitants of the Torres Strait Region," sponsored by the Australian Great Barrier Reef Marine Park Authority (Lawrence and Cansfield-Smith 1991). This article, then, is intended for CMT researchers and policymakers. Versions have been presented to a World Wildlife Fund review for Papua New Guinea (Hyndman 1992); to John Cordell, director of the Torres Strait transboundary indigenous conflict, resolution project; and to the Fourth Annual Common Property Conference held in Manila in June 1993.

Issues of conservation, common property, and identity inform the following analysis of CMT in Papua New Guinea and the Melanesian transboundary Torres Strait Islands. The existing ethnographic record on sea tenure in Papua New Guinea is shown to clearly include systems of informal, closed, communal, collectively-held coastal marine property. These customs carry special legitimacy that can only be imposed from within by a group on its members. Sea-tenure estates are not broken-down traditions but living customs, which have always transformed and related to basic resource-management tasks. They are diverse, flexible, dynamic, and capable of regulating many kinds of subsistence and commercial activities associated with marine fishing, hunting, and gathering. The article concludes that CMT systems are viable, if fragile and still incompletely understood, limited-entry solutions to managing living marine resources.

Customary Sea Tenure in the Tomes Strait Islands

Subsistence, trade, politics, and identity in the Torres Strait flow from the sea (Cordell 1991a, 1991b; Cordell and Fitzpatrick 1987; Harris 1977; Marsh 1986; Marsh and Saafeld 1991; Miller and Limpus 1991; Nietschmann 1989; Olewale and Sebu 1982). A century ago the Cambridge Anthropological Expedition noted the Islanders' intricate system of marine natural history knowledge and use. Islanders assert exclusive ownership of islands, waters, and reefs between Cape York Peninsula and the sea territories of the Kiwai and other southwest coastal Papuan peoples (Nietschmann and Nietschmann 1981; Nietschmann 1989). In addition to Islanders' regard for the Strait as a whole being their territory, each group holds exclusive rights over fringing and adjacent reefs and intervening waters. These are home-island claims that are partitioned into areas controlled by specific clans and then further subdivided into individually owned zones. Today, named marine-tenure boundaries are still resilient and held in place through culturally defined cognitive maps, even though in some places occupation and resource use beyond the home reefs may be attenuated (Fitzpatrick 1991a, 1991b; Johannes and MacFarlane 1990).

Customary Sea Tenure in Papua New Guinea

Well-developed ownership of marine ecosystems exist along the south coast of Papua New Guinea (Frusher and Subam 1981; Gaigo 1977, 1982; Haines 1978/1979; Hudson 1986a, 1986b; Kwan 1991; Pulseford 1975; Swadling 1977). Papuan maritime geography is best documented among the Kiwai (Ely 1987; Landtman 1927; Lawrence 1991). Kiwai clans own land, mangrove systems, and reefs. Dugong and turtle hunting are preeminent in subsistence and identity construction among the Kiwai.

Sea tenure is also well documented among peoples along the north coast and the islands off the mainland of Papua New Guinea. From the archipelagic waters surrounding the island groups are reports for the Massim area of Milne Bay (Malinowski 1918, 1922; Lauer 1970; Williamson 1989), for New Ireland and New Britain in the Bismarck Sea (Bell 1953-1954; Panoff 1969-1970), and for Ponam Island off Manus (Carrier 1981; MacLean 1978). From the mainland are reports for the Siassi people (Pomponio 1992), the seafaring Sepiks (Lipset 1985), and other peoples of the north coast (Cragg 1981, 1982; Keurs 1989).

Complex CMT systems are found among Ponam Islanders and the Siassi. Various Ponam Islander patrilineages own different areas of marine space, resources, and exploitative technology (Carrier and Carrier 1983). Under the Ponam system of overlapping rights, a patrilineage owning a particular technology can use it in another patrilineage's domain if permission for the target species is obtained and the various right holders are each allocated a portion of the catch. A particularly intricate system of tradition and place characterizes Siassi sea tenure (Pomponio 1992). CMT among the Ponam Islanders and the Siassi is embedded in gift economies and kinship-ordered modes of production.

Since Malinowski's classic Argonauts of the Western Pacific (1922), CMT among Trobriand Islanders has been shown to conclusively exist and to be embedded in factors other than biological resources. When Trobriand Islanders fought over sea tenure, it was not for scarce resources but for the status of participation in the gift economy (Malinowski 1918). Among the Trobriand Islanders, CMT is both resource and territory based. Coastal village CMT considers coastal areas to be connected to the land, and maritime ownership includes beachs, estuaries, coastal waters, and fisheries resources. Living and nonliving resource exploitation, whether subsistence or commercial, is exclusive to the village community (Williamson 1989). Labai villagers, moreover, claim exclusive reef ownership when mullet schools and Kevatariya fishermen own distinct portions of reef claimed as "our gardens" (Williamson 1989). The importance of fishing in the Trobriand economy with various right holders each allocated a portion of the catch has long been noted (Malinowski 1918); and Massim peoples generally spend 17 percent of their work time fishing (Moulik 1973).

The ethnographic record has generally undervalued the use of marine resources by coastal maritime peoples (Pernetta and Hill 1983). Along the western Papuan coast the average daily subsistence catch per person is around 80 grams of fish and 80 grams of crabs and prawns (Haines 1982). Exploitation of marine resources is also extensive in coastal New Ireland (Wright 1990) and New Britain (Epstein 1963; Harding 1967). On New Ireland, Tigak Islanders eat on average 23.4 grams whole weight per day of locally caught fish (Wright 1990), while along the West New Britain coast 11.4 grams of fresh fish is consumed per person per day (Green and Sanders 1978). Fish accounts for 2 percent by weight of subsistence production among Karkar Islanders on the north coast (Norgan and Durnin 1974).

Legal Ownership of the Sea and Living Resources

A process of dispossession and disruption of indigenous fishing cultures is a matter of historic record in many parts of Melanesia. Legislating commons status for inshore fisheries was a convenient maneuver by colonists seeking to displace or nullify marine-tenure claims of indigenous peoples. Johannes points out that "the value of marine tenure [in Oceania] was not generally appreciated by Western colonisers. It not only ran counter to the tradition of freedom of the seas which they assumed to have a universal validity, but it also interfered with their desire to exploit the islands' marine resources--a right they tended to take for granted as soon as they planted their flags. Colonial governments often passed laws that weakened or abolished marine tenure" (1978b:358-359).

In Papua New Guinea, however, colonial administrations implicitly recognized customary maritime rights. German and British colonial administrators acknowledged customary fishing rights (McCubbery 1969). The commodity trade for pearls, trochus shells and bêche-de-mer was covered by the Colonial Ordinances of British New Guinea from 1891. The Fisheries Ordinance of the Territory of New Guinea enacted by the British further recognized customary sea tenure with the provision, "this Ordinance shall not apply to any native fishing in waters in which by native custom he has any rights of fishing" (Williamson 1989:40). Later, the colonial Australian Pearl-Shell and Bêche-de-mer Ordinance of 1952-1953 provided coastal peoples with the exclusive right to all marine animals, except whales, to a distance of 800 meters offshore (Williamson 1989).

After independence Papua New Guinea signed the 1982 United Nations Convention on the Law of the Sea, which allows claim for a territorial sea of up to 12 nautical miles, an archipelagic sea with exclusive ownership of all marine resources, and a 200-nautical-mile Exclusive Economic Zone (EEZ). In addition to the Law of the Sea Convention, Papua New Guinea has signed other international treaties. The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) controls the taking and export of certain maritime species customarily acquired for subsistence and exchange by coastal peoples (Williamson 1989). Australia and Papua New Guinea cater for the Torres Strait Islanders and the Kiwai and other southwestcoast Papuans in a unique international treaty signed in 1978. Article 10 of this treaty establishes a Protected Zone in which the fishing practices of Islanders, the Kiwai, and other traditional owners are protected. Implementing the treaty is intended to accommodate indigenous sea tenure and provide for continuity of the subsistence fishery.

Papua New Guinea also enacted, in 1977, domestic ocean-resources and marine-territory laws collectively known as the National Seas Legislation. According to Williamson (1989), however, nothing in the act establishes the division of rights to Papua New Guinea waters within the state. Neither sovereignty under Section 2(2) of the Constitution nor regulation rights within internal waters through the Fisheries Act expressly confer state ownership rights to coastal waters. Beach areas belong to the state through the Mining Act. The Fisheries Act regulates the commercial fishery but does not reserve to the state fisheries ownership. It is Section 5 of the Customs Recognition Act that implicitly recognizes the preexistence of customary rights to coastal-water fisheries according to the customs of the different indigenous peoples. These customary coastal-waters and fisheries rights can be interpreted to protect property from unjust deprivation by Section 53(1) of the Constitution (Williamson 1989).

At present there are three statutes that may be used to establish protected areas in Papua New Guinea. These are the National Parks, Conservation Areas, and Fauna (Protection and Control) Acts (Eaton 1985). The objectives of the National Parks Act (1982) is "to provide for the preservation of the environment and of the national cultural inheritance by . . . the conservation of sites and areas having particular biological, topographical, geographical, historical, scientific or social importance." The Conservation Areas Act (1978) has similar objectives; however, conservation areas established under this legislation do not have to be on public land but can be developed on land or marine space that is privately owned or held under customary tenure. Moreover, it includes provisions for a National Conservation Council to advise on the selection and management of conservation areas and "to encourage public interest in and knowledge of conservation areas and conservation generally," The Fauna (Protection and Control) Act (1966) is mainly concerned with protection through sanctuaries, protected areas, and wildlife-management areas of certain species of wildlife considered to be endangered. In sanctuaries all wildlife is protected except for certain specified animals that may be hunted. In protected areas certain specified fauna is protected and hunting of other types of wildlife is allowed. Wildlife-management areas represent an attempt to involve customary land and marine owners in the control of living-resource exploitation (Eaton 1985).

About 97 percent of Papua New Guinea is still held under customary land tenure (Eaton 1985; Pulea 1985; Williamson 1989). Only 1.4 million hectares of land, 3 percent of the total area, has been alienated from customary tenure. Most of this is held by the government, but 160,000 hectares are freehold and 340,000 hectares are leased to private interests (Eaton 1985). During the past decade it was estimated that there were 390,000 coastal people, or 13 percent of the total population, who exercised customary rights and use of marine resources (Frielink 1983). As previously discussed, land and sea tenure and ownership of resources are vested in kinship groups and use rights are inherited from a common ancestor. Land and sea tenure provides people with more than subsistence; it gives them their identity and constitutes the basis of their social relationships. The relationship of indigenous CMT systems to the national government is analogous to the Law of the Sea Convention with respect to the EEZ (Nietschmann and Ely 1987; Williamson 1989). Jurisdiction over navigation, criminal activities, pollution, and environmental matters lies with the government, but as in the EEZ of the coastal state, ownership rights to living resources lie with the indigenous owners of use rights over the reefs. The granting of fishing licenses by the government without the consent of the indigenous owners of the reef would represent uncompensated expropriation (Williamson 1989). CMT ownership of marine space and species provides a strong cultural and historical base for present-day EEZ claims. When almost all of the tuna fishing grounds in the Pacific were transferred to EEZs, the U.S. fishermen became resource pirates until negotiating an appropriate fisheries treaty with the Forum Fishing Agency in 1986 (Nietschmann and Ely 1987).

The Future for CMT Management of Living Resources

In analyzing the potential and desirability of integrating Melanesian CMT into contemporary fisheries- and marine-management frameworks in the transboundary Torres Strait region, Cordell suggests that the following three questions stand out (1992:122): (1) What happens to CMT patterns during the transition from subsistence to commercial economies? (2) What are the resource-management and biological-conservation impacts of CMT? (3) What uses, if any, can be made of CMT systems that work to define user and access rights--in essence, to preserve the social order--rather than the balance of nature? These questions raise the critical ethical issues in CMT research: To what extent, if at all, do outsiders (anthropologists included) have the right to speak about and represent indigenous peoples' sea-tenure systems? The highest standards of professional accountability must apply and CMT studies should proceed only with the consent and active collaboration of the indigenous peoples involved. The peoples themselves should have the final say about what constitutes their CMT systems.

On the first question, Haines (1982), Carrier (1987), Johannes and MacFarlane (1992), and Polunin (1990) have concluded that CMT offers little potential to mitigate change and resolve conflict. Such a contentious conclusion appears premature given that these Melanesian sea-tenure estates, including the Marovo *puava* in the adjacent Solomons (Hviding 1988), remain some of the most extensive and sophisticated traditional knowledge systems in Oceania for spatially managing and socially regulating coral-reef fisheries (Clarke 1990). Wright (1990) takes the opposite position and describes CMT systems in Papua New

Guinea that have allowed the successful negotiation of the transition to modernity through commercial fishing ventures and has suggested that directions for utilizing CMT in the development of marine resources in Papua New Guinea may be found in the judicial system used at present to resolve village disputes over land rights.

On the second question, Johannes (1982b), Clarke (1990), and Nietschmann (1989) have already shown that through closed areas and seasons, food taboos, and game restrictions, Melanesian CMT systems in Papua New Guinea and the Torres Strait have enhanced species conservation. Carrier (1987), on the other hand, cautions that Ponam Islander limited-entry sea-tenure systems did not necessarily conserve resources and that it is dangerous to presume intended or Unintended conservation when one finds a limited-entry CMT system in Papua New Guinea. Indigenous peoples' choices in aquatic-resource use in Papua New Guinea and the transboundary Torres Strait Islands cannot he explained by open-access, common-property models and the terminology itself is misleading and inappropriate (Carrier 1987; Nietschmann 1989). Open-access common property assumes a model of optimization, that people act out of self-interest alone without regard for community. Lack of community designates the open-access commons but under CMT, sea-tenure holders in Papua New Guinea are well-defined peoples who do not lack use rights.

On the last question, what these CMT systems really do is consolidate a people's control over fishing grounds and defend against encroachment. Management utility of CMT systems should not stand or fall merely on the basis of a conservation test. Although it is doubtful that sea-tenure systems were designed purely with conservation in mind (Carrier 1987; Polunin 1990), they do represent important attempts by indigenous peoples to deal with problems of managing resources by controlling and restricting access (Cordell 1989, 1992). As Carrier points out, "because of the way repute was generated, however, the scarce resource was not fish but ownership itself, for this is what made it possible to be generous" (1987: 164). Melanesian CMT systems preserve the social order by embedding aquatic resources in the gift economy and the kinship mode of production.

More research will enable policymakers to go beyond documenting general features of CMTs to specifying how they can be integrated with contemporary systems of marine use. In Papua New Guinea indigenous owners of CMT systems can become involved in the protection of their living land and marine resources through wildlife-management areas. Of the eleven wildlife-management areas established, the first and largest is Tonda, with 5,900 square kilometers in southwest Papua. The management committee regulates outsider hunting and fishing with licenses and royalties paid on deer, duck, and fish. Maza is the only completely marine management area and covers 184,230 hectares in the transboundary Torres Strait Islands region. Indigenous peoples, while having to contend with impositions on their commoditization of turtle, dugong, and fish catches, have expressed concerns over exploitation by commercial fishermen from outside the protected area. The great advantage of wildlife-management areas is that sea-tenure and land-tenure rights are retained by indigenous owners and CMT management is encouraged. The aim is sustainable utilization of renewable living resources.

Government policies and CMT systems need to accommodate one another. What seems the imperative is the principle and obligation of the Papua New Guinea government to uphold indigenous peoples' rights and controls over their ancestral marine domains. It is impossible to isolate the sea from the total fabric of maritime economy and culture. It is through customary sea tenure that Papua New Guinea's maritime peoples are progressing with past customs to forge their cultural identity in the modern world.

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