The Intervention You Have When You're Not Having An intervention':
Australia, PNG and the Enhanced Cooperation Program

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THE INTERVENTION YOU HAVE WHEN YOU’RE NOT HAVING AN INTERVENTION: AUSTRALIA, PNG AND THE ENHANCED COOPERATION PROGRAM

CHARLES HAWKESLEY

Introduction
The idea of non-interference in the domestic affairs of states has been a hallmark of international relations since the seventeenth century. The universalisation of the nation-state model following decolonisation over the twentieth century rendered this ideal of state sovereignty the basis of the modern international political system. States mostly keep out of each other’s business, but intervention may take the form of war to enforce regime change.

More often interventions in the form of peacekeeping operations can occur if sufficient political will exists within the United Nations system or regional organisations to end conflict or combat humanitarian catastrophes. In this regard failed states are an international concern as the breakdown of a state’s capacity to control its population and administration may have severe implications for its neighbours. Challenges to state authority may result in violence, murder, the creation of refugee flows, or perhaps increased criminal activity through transnational crime groups taking hold.

As a supporter of the ‘coalition of the willing’, Australia has played only a bit part in weighty international events, but as Paul Kelly (2004) has argued, Australia has long held dear the notion that it is ‘Punching Above Our Weight’. While an international lightweight in military terms, in the Pacific region Australia resembles a superpower. For the US, the Pacific is Australia’s responsibility (Kerin 2004), and if Australia can’t fix even these small island states then what use is it to the Western alliance? The trend in the Pacific is now about security and arresting ‘state collapse’ before it occurs. The 2003 Regional Assistance Mission to the Solomon Islands (RAMSI) and the Enhanced Cooperation Program (ECP) between Australia and Papua New Guinea (PNG) are part of this new trend. They are both interventions — RAMSI at least looked like one — but while the ECP has been lumped in with aid, the reality is far more intrusive.

Australia and PNG: the political context
The Australia-PNG relationship is complex. Despite the asymmetry of power, the contest is rarely one-sided. Australia has had a long history of involvement in PNG affairs, much of it from a position of formal political control. After almost eighty years of colonial rule Papua New Guinea became self-governing in 1973 and independent on 16 September 1975. Since then, relations between PNG and Australia have been close, but sometimes problematic. As the incident involving PNG Prime Minister Sir Michael Somare’s forced shoe removal at Brisbane Airport in March 2005 (Mathieson 2005) has shown, the relationship can be testy at times. The appearance of how things are done matters as much as what is actually done.

While aid after independence initially took the form of cash grants, by the late 1980s the economic thinking on aid had shifted to the point that conditionality was introduced to the aid budget from 1989 onwards. From then on, tied aid became the norm as the money stopped flowing into the budget but started to support specific projects. The tied aid arrangement was thought by both sides to be beneficial as it would encourage sustainable spending by PNG administrations, but the danger of linking aid to Australia’s interests was clear (Fry 1997, 302) and accusations of neo-colonialism have dogged many subsequent Australian initiatives. AusAID’s gradual adoption of the ‘whole of government approach’ (AusAID 2005, xiii) is tied to Australia’s national security as it aims to stabilise neighbouring countries through aid programs that concentrate mainly on poverty reduction through the promotion of sustainable development.

The Pacific is an important part of Australia’s aid commitment. The 2005 AusAID budget totals almost $2.5bn of which $955 million (38%) goes to the Pacific, making it the largest portion by region, exceeding the aid commitment to SE Asia (including Indonesia), which accounts for 26% of all aid funds (AusAID 2005). PNG alone receives $492 million of Australian aid. As a developing state, PNG certainly has its share of problems and there are few if any in PNG who would argue that they do not need the assistance.

Despite occasional differences of opinion, Australia has been the only country on whom PNG can rely, and it has done so consistently since independence. Traditionally Australia has supplied around one third of PNG’s budgetary spending (PNG Budget 2003, 10). For PNG in particular, the point of the aid program is to avoid this ‘fragile state’ (AusAID 2005, 22) becoming a collapsed state. The ‘whole of government’ approach...
thus incorporates Australian aid money tied to a variety of public sector programs: governance 30%; transport and infrastructure 17%; health, including programs to arrest the spread of HIV/AIDS 17%; education 14%; and now the extra money for salaries to the personnel required for the ECP 16% (ibid).

The ECP and the whole-of-government approach have emerged following the failure of the wider neoliberal agenda, and its obsession with smaller administration and a reduced role for the state. Even the celebrated neoliberal, Francis Fukuyama (2004, 24-28), has now observed the new conventional wisdom is that strong state institutions and the rule of law are more important than the scope of the state’s activities. The failure of ‘Washington consensus’ policies to deliver smaller but more efficient government administration has led to a reappraisal of how aid can be used and for what purposes. Assistance has become a byword for intervention in sovereign states.

PNG’s problems are partly financial. Throughout the 1990s, PNG experienced significant economic problems as a result of falling commodity prices for its major exports of copper, gold, petroleum, silver, forest products, coffee, cocoa, palm oil, copra, coconut oil, tea, rubber (Costello in IMF, 2001, 2-3). This led to a diminished capacity to pay its own way and a consequent reduction in the scope and quality of state services. Regan and May (2000, 169) described the perception amongst PNG's drive for the reduced debt to GDP ratio, public sector ‘rightsizing’ programs and a dynamic public sector of the agreed Medium Term Development Strategy 2005-10 (PNG Budget 2005, 9-19) with its own Sub National Initiative that aims to support service delivery in the provinces (AusAID 2005, 28).

This renewed focus on strengthening institutions (‘nation building’) is a corollary of the focus on security following the attacks on the US of 11 September 2001. During 2003, a number of Australian reports drew attention to the problems of PNG governance and to the possibility of PNG becoming a ‘failed state’. Helen Hughes (2003, 1-2) argued that aid to the Pacific had to come with conditionality, mutual obligation and key performance indicators. Susan Windybank and Mike Manning’s (2003) report Papua New Guinea on the Brink urged a more interventionist stance in PNG in the interest of Australian security.

Both drew attention to the failure of the state to provide law and order, how this could lead to large scale refugee flows and the possibility of transnational crime holding. Such reports perhaps either influenced or reinforced government thinking and the Enhanced Cooperation Program emerged publicly shortly after mid 2003 as an attempt to exert greater control over PNG. Following the initial success of RAMSI, a more muscular approach was developed for the long-standing problem of how to make PNG work more efficiently. PNG is, however, a much larger, more populous and a more difficult country to ‘fix’ than the Solomon Islands. If the situation in PNG really is as bad as the Howard government believes, the ECP appears to be a very small band-aid for a very big problem.

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The Enhanced Cooperation Program

Australia announced the new conditions in giving aid to PNG in September of 2003. Australian Foreign Minister Alexander Downer hailed the agreement to place, at that time, two hundred federal police and other advisers into PNG public service ‘to eradicate the misuse of funds, audit finances, and promote the efficient delivery of critical services such as health and education’ as a ‘new era’ of Australia-PNG relations. PNG’s initial acceptance was achieved with a stick —agreement came after Downer threatened to cut some of the $330 million per annum in programme aid (Allard 2003).

Finally, on 11 December 2003 the governments of Australia and Papua New Guinea agreed that the Enhanced Cooperation Program (ECP) would go ahead with the aims of increasing the capacity of the PNG state to develop ‘good governance’. In February 2004, the first of up to 230 Australian Federal Police (AFP) officers and 64 other officials were deployed (DFAT 2004a). The problem with the ECP is not assistance from Australia per se, but the manner in which the new policy was so aggressively pursued. It has been consistently touted as a ‘partnership’ but the reality is the ECP, like the non-alcoholic party drink of the 1970s, constitutes ‘the intervention you have when you’re not having an intervention’.

There is a long history of Australia providing technical assistance to the PNG public service in a wide range of matters, and it is no real surprise that just under one quarter of the people funded by the ECP are bureaucrats working in policy, advisory and legal positions. The 64 ‘officials’ were to be deployed in a variety of departments, mostly in the areas of legal affairs in non-policing roles (18 positions), finance (36 positions) and migration and aviation (10 positions) (DFAT 2004a). Legal officers were to be based in Port Moresby,
including the position of Solicitor General, and three others working in the Solicitor General’s Office. There would be five officers in the Prosecutor’s Office working as litigation lawyers, two legal officers with correctional services and four judges appointed to the national and Supreme Courts (ibid). By May 2005, only 43 Australian public servants had taken up positions with eight going to law and justice, 10 to border control and transport and 25 to economic and public sector administration agencies (AusAID 2005, 27). These officials are not only ‘advisers’. The Department of Finance covers economic advice as well as planning and spending. Treasury was to receive at least four Australian officials to work on a range of issues including policy advice, policy reform, investments, asset sales, wages, aid, commodity stabilization, the Structural Adjustment Package and taxation policy. Department of Finance would house an official to monitor expenditure control while the Department of Personnel management would receive policy advice. Customs would get some assistance with capacity building.

The Department of Planning and Rural Development would receive an officer who would be the Joint Head of the Secretariat and oversee revisions to the Development Cooperation Treaty that forms the basis of the bilateral aid relationship. There would be four officials deployed to the Department of Foreign Affairs and immigration to work on immigration issues and two officials to give assistance to PNG’s aviation authorities (DFAT 2005a). These officers are there to sharpen up the PNG public service, to get it organised and efficient so it acts more swiftly to respond to Australia’s understanding of PNG’s needs.

According to DFAT ‘Australian officials will help PNG’s economic management by improving budget formulation and fiscal discipline; assisting with economic policy; establishing better performance management in the public sector; and addressing problems in the public service payroll’ (ibid). PNG returned its first surplus budget in three years in 2005, due in no small measure to the increased surveillance over budgetary processes (DFAT 2004b). Call it intervention or call it aid, the result is the same.

While public sector activity is one part of the ECP, the main focus is law and order. Respect for the authority of the state is seen to be the basis of civil society, as this apparently encourages freedom and commerce. Around 230 Australian Federal Police and other state police were to be stationed in a variety of locations, principally in what are regarded as ‘trouble spots’: Port Moresby, Bougainville, Lae, Mt Hagen, and along the Highlands Highway that links Lae to Mt Hagen.

Their functions would include providing advice on equipment, planning, training and operations but they would also be ‘in-line’, working alongside the Royal PNG Constabulary. Australian concerns about corruption and a general crisis of law, order and governance prompted the introduction of police in both managerial and actual policing roles. Again, the ‘thin blue line’ (White 2003) seems a curious response to what has been sold as possible ‘state collapse’ in PNG. The conditions governing police deployment have now perhaps caused the entire deal to unravel.

**Immunity and sovereignty**

PNG is a sovereign state, and sovereign states do not normally require foreign armed troops to help them control their own country. PNG accepted the ECP as it had little choice, but negotiations dragged through to June 2004 due to hostility to the notion of sovereign immunity for Australian personnel. A compromise emerged in June 2004 with ‘broad agreement on a revised draft’ and a proposal to establish ‘a joint consultative committee to consider cases where immunity may need to apply’ (ABC News 2004).

In July 2004, the PNG Parliament passed the ECP Act enabling the operation to go ahead and providing Assisting Australian Police with immunity. The Vienna Convention on Diplomatic Relations 1961 provides for immunity from prosecution for representatives of foreign states on authorised business, and the principle has also been extended to peacekeeping forces to avoid petty or vexatious litigation that detract from the tasks at hand.

Soeverign immunity does not mean blanket immunity from prosecution — troops and other officials are still accountable under the jurisdictions of their own states for criminal acts. Immunity for ECP personnel has proved to be a vexed issue. Article 8 of the agreement of 30 June 2004 tried to set up a system where Australia and PNG had concurrent jurisdiction for offences committed in PNG punishable under PNG law, and exclusive Australian jurisdiction for matters recognised as crimes in Australia but not in PNG. In cases where an act was a crime in PNG but not in Australia the Joint Steering Committee created to monitor the entire ECP would decide which state would have jurisdiction for the alleged offence (Australian Treaty Series 2004).

At the time of writing, 115 of the Australian Federal and State police personnel deployed to Port Moresby and Bougainville had been withdrawn following the 13 May 2005 PNG Supreme Court ruling on certain provisions of the ECP agreement and the enabling Act (DFAT 2005a; AAP 2005). The panel of judges chaired by the Chief Justice unanimously found that sections of the ECP agreement dealing with the sovereign immunity of deployed personnel were inconsistent with the PNG
constitution (*Post Courier* 2005a). The decision does not mean the entire ECP has to be scrapped, but it does mean that at the moment Assisting Australian Police cannot enjoy immunity.

The PNG Supreme Court has ruled that the Joint Steering Committee would interfere with the prosecutorial powers of the Royal Papua New Guinea constabulary, which are held to be sacrosanct by the country’s Constitution, as well as with the office of the Public Prosecutor. According to John Nonggorr (2005), who represented the PNG State in this case, the Supreme Court also ruled that ECP personnel could not insist on immunity from claims concerning breaches of constitutional rights and freedoms, and this is a matter that affects not only the ECP deployment but potentially all visiting diplomatic personnel.

The Australian government wants the police to return as soon as the legal obstacles are removed. Australian Prime Minister John Howard told Brisbane radio station 4BC on 18 May that Australia would not budge on the immunity issue and ‘It may well be that the only solution to the problem is an amendment to the PNG constitution’ (Howard 2005). Australian lawyers were involved in drafting both the ECP Agreement and the ECP Act that went through the PNG Parliament, and advice from the PNG State Solicitor’s Office that the immunity was unconstitutional was ‘not considered or accepted’ (*Post Courier* 2005a).

The legal technicalities are now being reconsidered—Alexander Downer and PNG’s Foreign Minister Sir Rabbie Namaliu want some closure to the issue before the 30th anniversary of independence in September. As Sir Rabbie noted ‘We both know that we are coming from two positions — that we obviously need to move gradually so that we can arrive at a common position. But if it’s seen to be done is a spirit of brinkmanship, then that’s where problems start’ (*Post Courier* 2005c).

Australia would do well to heed his advice. PNG may in fact need to change its constitution to allow not only ECP personnel but also diplomats to enjoy immunity, but to say so openly is to draw Australia into unproductive quarrels with PNG over the level of Australian intervention in PNG’s national affairs. It is also indicative of a failure to understand the real issue at stake with the ECP is PNG’s sovereignty, not Australia’s security.

**Conclusion**

PNG politicians are not actually against Australian assistance. Even the Governor of Morobe Province, Luther Wenge, who took the matter to the Supreme Court, now wants Australia to help in creating a new programme to assist PNG (*The National* 2005a). The question for Australia remains how to achieve what it wants in PNG without looking like it is intervening; to date this has proved impossible.

The problem for Australia is that PNG is a sovereign state and still has a sovereign government with sovereign institutions. The ECP is not a humanitarian intervention and the ECP police personnel are not peacekeepers. Australian assistance is welcome if it is offered in an appropriate way. Australia can help PNG work effectively if it pursues less abrasive methods. PNG may be on the ropes but it can still throw a few uppercuts to defend itself. If it wants effective cooperation with its nearest neighbour, Australia needs to treat PNG as a sovereign state, not as a collapsed state, and to give it the respect it deserves.

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Endnotes

1 In 1906 the Australian Commonwealth took responsibility for the Australian Territory of Papua, the former British Protectorate of New Guinea. The settlement of World War I permitted Australia to extend its rule over the former German colony of New Guinea, which at that time comprised the rest of eastern half of the mainland of New Guinea as well as the Islands of the Bismark Archipelago. After the Pacific War, the New Guinea section was administered as a United Nations Trust Territory and the Papua part as an Australian Territory.

2 Downer’s view is not shared by all commentators. Tim Anderson (2003a) in a letter to *The National* argued this was neo-colonialism but re-colonisation. Anderson is also the author (2003b) of the report *A Grand Deceit: The World Bank’s Claims Of Good Governance In Papua New Guinea*, which is highly critical of the gap between the rhetoric of ‘good governance’ and the actual effects of privatisation policies.

3 Initially, the agreement was sometimes referred to by government and media as a ‘package’, sometimes as a ‘programme’ or sometimes as ‘the enhanced agreement’. Governmental terminology has now settled on “Enhanced Cooperation Program”.

4 This term ‘partnership’ was used widely by the former Minister for Territories, Sir Paul Hasluck, in the 1950s and 1960s when describing the nature of Australia’s relationship with Papua New Guinea.

5 The deployments to Mt Hagen, Lae and the Highlands Highway had not yet taken place.

6 There is some dispute as to the number of judges on the panel. *The National* (2005a) claims there were three. *The Post Courier* (2005b) cites the Head of the Institute.
of National Affairs, Mike Manning, who said there were five.

References


Post Courier. 2005b. 19 May 2005. ‘Ruling Not a
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