

Vulnerability of the South Pacific Region to Transboundary Crime

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Abstract

This study investigates why the South Pacific countries are vulnerable to transboundary crime. The security of the South Pacific, as almost never been associated with traditional threats, i.e threats originating from other countries or military attack. Countries in this region are rarely attracting the attention of major countries to carry out military incursion or make them as military targets. But in the context of wider security, the countries of the South Pacific are very vulnerable to be the main victims. There are two main factors facilitated the vulnerability: first is the limited capacity of the countries in the region when it had to change their laws in order to adapt to the international instruments. Second, the power vacuum that lead to the huge incentive of transboundary crime operated in the region, keeps many parties gain benefits from transboundary crime. Its remote location no longer a barrier, on the contrary, due to its isolated and small population combined with low level of economic, law, and order, making the Pacific islands more vulnerable to the operation of transnational criminal organizations.

Keywords: *South Pacific, transboundary crime, limited capacity, incentive*

1. Introduction

Transnational crime is a consequence of globalization characterized by the opening of national borders as a result of the flow of people, goods, services and information. As a global activity transnational crime does not only threatening state and human security but also brings huge profits and even grow as a global business. Because it is massively spread out, almost no area is untouched by the activities of this “deviant of globalization”, including the South Pacific. The dimension of this

new threat ranging widely from illegal trafficking of goods and human, terrorism, environmental degradation and climate change, money laundering, natural disasters, destruction of vegetation and food crisis, hazardous waste, demographic change, organized crime, disruption of social cohesion, law and order, poor governance, insurgency and internal crises, and other types of threats that are not from external military threats against the country. This kind of a new threat is commonly known as ‘non-traditional threats’. Criminal organizations take advantage of globalization to expand its footprint to all corners of the world. With the opening of the global economy, criminal organizations to build strength, technique and the relationship to avoid state control over their operations. Because the activities are transnational, some of these crimes pose threat to human security directly at the individual level in local, national, and regional levels. Transnational criminal organizations gains benefits from open global economy and revolution of communication technology. Countries often seem unable to resolve the problem themselves without the help of other actors. The criminal organizations are complex and, even many efforts have been undertaken.

2. Materials and Methods

One of the biggest obstacles in conducting research across national borders is with the limitations of observation, interviews or other data collection techniques. These methodological limitations have consequences in the real, i.e not obtaining primary data required for analysis purposes. But the opening of a methodological choice gives the researchers opportunity to freely determine alternatives. This research is done with the structure of a quantitative but employs qualitative analysis methodology. The limitation is not an issue since the advancement of

information technology can overcome the problem of distance. This research is descriptive and narrative, conducted through library research techniques, synthesis and analysis. The use of narrative is the biggest part of the method performed. Narrative described in this study is the results of a variety of library materials, whether it be books, print and electronic journal articles, electronic magazines, and other sources that can be traced back.

3. Results and Discussion

3.1 Theoretical approach

International relations perspective approach transnational crime from various points of view: realist, liberal-institutionalist, and constructivist. Realist perspective, according to White and Haines (1996, 14), viewed crime as a social phenomenon, due to the hierarchy in society that shows inequality: some people who have wealth and power are in the top layer, while the rest, who are the majority, are in the lower section. This inequality is one source of the crime. The realist approach looks at transnational crime as a result of the aggressive nature of man and the human desire to survive amidst competition for survival. The Realists also believe that transnational crime poses a serious threat to national security because this crime has ruled out the role of the state. Cross-border nature of the crime has ignored sovereignty, and therefore gave rise to a new view of the concept of security since security is no longer defined merely as "traditional security". The emergence of non-state actors has pushed the redefinition of non-traditional security concept. One shortcoming of neglect of realist perspective is on the rise of non-state actor power, and hence it is too narrow in analyzing transnational crime. In addition, this form of crime is only seen as a marginal threat to international security. The realist perspective does not give an adequate explanation of the operation of transnational crime because of the nature of this crime network is very flexible. Their networks are beyond nation-state and creating black market with the model of the informal economy.

Unlike the liberal perspective that recognizes the role of country as the most important actor, neo-liberal perspective recognizes non-state actors and their role in the international system (Keohane and Nye, 2000). Keohane and Nye offer a model of cooperation of various actors. The results are the spillover effect that creates global governance through norms, rules, processes and institutions and this governance overrides military solution (Keohane and Nye,

2000). Liberal institutionalist, on the other hand, looked at transboundary crime from the viewpoint of normative law that, whatever according to the law is a crime, its violation of human rights (White and Haines, 1996, 5). Liberal institutionalist perspective puts people in a geometric circle in harmony, hold the same values and equality between them. Crime is deviant behavior, or outside the circle. Thus they should be pulled back into the circle or stored outside the boundaries of the circle (White and Haines, 1996, 14). Liberal institutionalism emphasized the role of international organizations and the international community a central role in the world affairs. According to Hedley Bull (1977, 13), international community is a group of states, conscious of certain common interests and common values, form a society in the sense that they conceive themselves to be bound by a common set of rules in their relations with one another, and share in the working of common institutions. International community is based on the idea of cooperation between countries for the purpose and common interests. According to liberal institutionalists, international peace is created by cooperation in the form of 'community integrated'. This community is needed to harness economic growth and address the issues of regional and international security (Lamt, in Baylis and Smith, 2005, 213). Liberal institutionalism stressed the importance of institutions as a means to achieve peace and security. Cooperation among the various actors is necessary to overcome various problems in international system.

As noted earlier, transnational crime has never occupied a central place in the literature of international relations. When viewed from mainstream international relations perspective, transnational crime does not meet the core assumption in the theory of international relations. An analysis of transnational crime in international relations theory basically focuses away from the main theme of international relations. Transnational crime network functions as an independent entity and pursue their own economic interests. As suggested by Susan Strange (1996, 121), it is time for scholars of international relations "create" a new theory as a response to the emergence of transnational crime as a major threat to the world system.

If the realist perspective is unable to explain about transboundary crime, liberalism explains why countries choose to work together and create an instrument that will sustain global cooperation. Liberalism looked at the importance of coordination to create harmony to make sure each party making a rational calculation that led to national and international interests to work together. (Evans 1998,

33). In case of dispute, the juridical mechanism will work. Liberal institutionalist perspective emphasizes the importance of the social contract, in which law-abiding citizens in liberal democracies. However, this perspective fails to explain why certain groups of people are not willing to integrate into the system and enjoyed a legal loophole to seek personal gain. In conducting its activities, cross-border crime operate in the global level with the use of technology, liberalization of trade, and immigration that erode national sovereignty. Although countries are trying to create international institutions, which in the liberal view should be able to combat transnational crime, international system dominated by the nation-state was experiencing difficulty in combating this type of crime.

The discussion about the security of the South Pacific often been associated with attributes the region as “the arc of instability”. Like many other international criminal law conventions, the implementation of the UN Convention against Transnational Organised Crime by countries in the Pacific Islands, even if there are efforts, but very limited. Only a small number of countries in the region to adopt the Palermo Convention and there has been little effort to implement the provisions of the Convention into domestic law. For example, until July 23, 2009, only the Cook Islands, Kiribati, Micronesia, Nauru and Vanuatu are the parties signing of the Palermo Convention. France imposes the Palermo Convention in 2002 and ratified it also extends to the territories of France in the South Pacific. Signings of New Zealand in the Convention also extends to Niue, but not to Tokelau (Schloenhardt 2009).

Regional security issues in the Pacific are categorized in two forms, namely first-order and second-order (Firth 2003). First-order security issues are originating from within the region. Second-order cross-border such as drug trafficking, money laundering, and other forms of crime, come from outside, that has potential to destabilize small countries in the region. The issue of the first order shape and can be interrelated and influence in many factors. One of the interesting things revealed by Firth (2003) that the Pacific Islands Forum (PIF) has never been brought political issues into its sessions, such as the problem of separatist movements and attempts to overthrow the legitimate government. PIF has not had the courage to openly discuss regional security issues except to report the situation and progress in peacemaking. While there is no attempt to discuss the issue of secession movement in Bougainville, the war continues to disturb the security of Papua New Guinea. PIF's unwillingness

to discuss issues of politics and security in its sessions recalls the attitude of ASEAN. By taking refuge behind the principle of non-intervention and respect sovereignty of each country, regional organizations avoid discussing similar issues. As long as the problems taking place in domestic sphere, regional organization often behave as if nothing happened and thus it is not considered as the problem of insecurity of the region. In the case of South Pacific, in the end, New Zealand and Australia took initiatives as their foreign intermediary to the conflict in Bougainville and the Solomon Islands. To compare the experience of ASEAN with the South Pacific, Crocombe (2003) explains that, even if there are similar efforts with ASEAN has been done, the various regional initiatives to address the issues facing many obstacles.

As the main regional organization, PIF has been trying to formalize the various forms of security cooperation, but with a moderate degree of success. The first attempt was Honiara Accord 1992 which facilitates police cooperation. Partly because the Honiara Accord does not work well, Aitutaki Declaration was established in 1997. Again, because of the Aitutaki Declaration was not very successful, PIF established a new mechanism called Biketawa Declaration in 2000. The effectiveness of Biketawa Declaration continue to be tested for its implementation, which is not easy, because it requires wide consultation, non-intervention in the internal affairs of member states, and ensure nothing can be done without general consensus. Pacific Island countries are not yet ready to fully implement this agreement. On the other hand, Australia and New Zealand, as the initiator of the declaration urged the three Pacific countries for immediate full implementation. There is a wide gap between the two countries with the countries of the South Pacific. While the two countries have felt a detrimental impact of the cross-border crime on national security, the countries of the South Pacific look at it differently. Hence, they do not see the crime as urgent to be solved. Due to the lack of capability in applying these declarations, the ineffectiveness of those laws partly caused by the low willingness of the countries of the islands.

3.2 Limited Capacity of the South Pacific Countries

A reason why the South Pacific is vulnerable to the transboundary crime is due to its weakness and limited capacity. In general, Rolfe (2004, 6) indicated for a number of conditions that specifically can be a fertile ground for transnational crime: (a) Poverty in the South Pacific causing poor people ready to do anything to survive; (b) religious and

ethnic diversity in the South Pacific and the high level of animosity between the ease of opportunists to provoke sectarian activities; (c) South Pacific is not entirely separate from the Asia-Pacific region; lack of interest and attention on the South Pacific region it easier for people moving from and through the South Pacific than through other areas; (d) South Pacific do not have a good infrastructure, which allows detecting, observing and determining the terrorist threat or coordinate measures against them; (e) South Pacific in general have a weak government in political and administrative levels.

International and regional cooperation in the Pacific region is highly important for the prevention and eradication of transnational organized crime, although such cooperation was relatively late in this region. The application of international conventions raises significant challenges for the Pacific countries. One reason is the lack of these countries when it had to change their laws in order to adapt to the international instruments. This transformation requires financial support, material and human resources are great. This poses particular difficulties for countries in the Pacific. Many countries in the region do not have the resources to commit to these goals. However, the increase in transnational organized crime in the Pacific region continued to show some willingness to participate in security cooperation and international law enforcement activities. PIF has taken a leading role in establishing a regional framework to prevent and suppress transnational organized crime. PIF Secretariat has established itself as a center of cooperation and has produced a series of declarations relevant to combating transnational organized crime more effectively. Honiara Declaration on Law Enforcement Cooperation (Honiara Declaration), adopted by PIF in 1992, is the first regional effort to address some of the issues associated with transnational organized crime in the region. Honiara Declaration seeks to prevent and suppress violations by law enforcement cooperation, mutual legal assistance, extradition and various other measures.

South Pacific is located along the maritime corridor that is often used for trade by economic actors along the Pacific Rim. In recent years, the Pacific region has benefited from the economic opportunities arising from increased air and maritime mobility, an increasing number of tourists and an increase in digital connectivity. Improved connectivity is also exacerbated by the vulnerability of the Pacific. Illegal trade, particularly illegal drugs, marine products and wood products, human trafficking, environmental crime, arms trafficking (AFP 2015). In addition to political obstacles, geographical and

natural, in general, the statistics are not controlled and hard to believe, determine the difficulty of knowing the true extent of the threat of transnational crime in the Pacific region. Another important obstacle to effectively address transnational crime in the region include: limited human and technical resources; lack, or inconsistency in training and law enforcement capacity; at least inter-agency cooperation to share intelligence in the region and at the national level as well as the rampant corruption. In some cases, lack of responsibility in each agency to enforce, prosecute, maintain and disseminate notes about transnational crime also hinders the effective and efficient process of the law enforcement process. Some of the reports are summarized in the document PIF states that organized crime networks, particularly from Asian countries, is one of the most active groups in the Pacific region (PIF Secretariat, 2016).

Pacific Islands known as culturally, educational and socially diverse, and there are similarities in government capacity, corruption and law enforcement. Instability, corruption and lawlessness that often interfere with South Pacific countries a clear indication of the rule of law is weak. In recent years, there are measures to strengthen the rule of law in the Pacific with a variety of initiatives developed to address this goal. Efforts to strengthen the rule of law in the Pacific could be more successful if they focus on the particular difficulties experienced by the countries of the Pacific rather than taking action that vary but the goal is not clear (Henshaw 2007). When the rule of law is weak, it facilitates the cross-border crime (Keelty 2005). Transnational crime has its ground of operations in countries where rule of law are weak. Social and economic conditions of the weak rule of law allow the growing transnational crime. At the same time, the population of the country with a weak rule of law is often involved in transnational crime in an effort to express dissatisfaction with the internal conditions in their countries by obtaining economic benefits illegally. Internal conditions that are prone to human security in the South Pacific easily invite the arrival of the threat from external sources. The emergence of these issues triggered by domestic factors such as weak rule of law, lack of good governance, slow economic growth, social tensions, land issues, poverty, environmental degradation and hampered access to basic social services (Henshaw 2007).

Money laundering in the South Pacific, for example, cannot be separated from the small island states in the South Pacific to increase foreign exchange earnings. The increasing practice of illegal activity has led Western countries pressing them to work together to combat money laundering. During the

International Financial Action Network based in Paris since June in 2000, four Pacific island countries (the Cook Islands, Nauru, Niue and the Marshall Islands) are countries used as the center of attention for international money laundering (Seneviratne 2000). Money laundry goes to jurisdiction in a weak legal regulation thus, can take advantage from the weakness. In addition to money laundering, illicit trafficking of drugs, sex, guns and other phenomena associated with transnational organized crime are becoming increasingly widespread in the Pacific islands. Its remote location and separated by vast oceans no longer a barrier for transnational criminals; on the contrary, because it is isolated and its small population and the low level of economic growth, making the Pacific islands more vulnerable to the operation and exploitation of transnational criminal organizations. Its domestic law was not yet ready to confront the issues emerging transnational crime in the Pacific islands. Schloenhardt (2006) analyzes that these countries failed to reform the legal system since their independence, as well as law enforcement agencies and officers have not been trained and do not have the skills, tools, and knowledge to fight international crime. Even though some countries in the region have signed international agreements relating to transnational organized crime, there are still many obstacles in its implementation. The obstacles are including the difference between the existing law and its enforcement, the lack of adequate resources in investigative techniques, lack of coordination of law enforcement agencies at the national and supranational level, which is exacerbated by the high level of corruption and bribery.

As mentioned earlier, there is a reluctance within the organization PIF to discuss sensitive issues concerning internal conflict since PIF still impose conventional wisdom, respecting the sovereignty and not to get involved in the internal affairs of member countries of PIF. Even if it is not productive for PIF, this practice continues today. A diplomatic approach does not contribute to the solution of transnational crime in the region. Instead, PIF prefers to discuss second-order issues, such as protection from natural disasters, environmental degradation, and the 'disruption to national integrity and independence'. In addition to natural disasters, in 1997 PIF issued a declaration called Aitutaki Declaration on Regional Security Cooperation aimed at addressing transnational crime and the smuggling of illicit drugs, including money laundering. The declaration was made because the US Congress and OECD countries indicates that countries of the South Pacific has allowed criminal organizations like drug cartels US and Russian mafia keep their money in the banks

in the Cook Islands, Marshall Islands, Nauru and Niue. These countries declared to support money laundering (Firth 2003).

3.3 Incentive of Criminal Activity

Transnational crime is a dark side of globalization. With the opening of the global economy, criminal organizations to build strength, technique and the relationship to avoid state control over their operations. As an activity, transboundary crime promising huge incentive to perpetrators. A fundamental problem is the weakening role of the state. Often has been said that globalization has resulted in erosion of the role of the state. According to the Westphalian system, states has a number of attributes that are inherent like territory, population, international recognition, and most importantly, its sovereignty. Countries are sovereign, and sovereignty is final and absolute. The belief that globalization would lead the country as 'losers' has showed by many facts, such as the opening of the market, the high flows of immigration, advanced technological capabilities. Saskia Sassen (1998) and James Rosenau (1990) argues that globalization is a process that changes the essence of state sovereignty without actually eliminating the meaning of the state. Strange (1998) further claim that the international system is undergoing an important transformation that lead to the strengthening of non-state actors are able to regulate the world politics. Strange develop arguments in favor of strengthening the role of non-state. According to Sassen in *The Retreat of the State* (1996), there is a tendency of strengthening of non-state actors in quality and quantity that allows the growing role of these actors in international politics. The state power became more widespread in the world economy; power transferred from states to non-state actors. State lose their power into the market forces, including the black market. This new development signify the failure of international relations to the ability of the system to respond the emergence of transnational crime as a major threat to the world system (Strange, 1996, 121).

These criminal groups to challenge the authority and sovereignty to the extremes. The model of conventional international community which has been described by various approach in international relations: realist, neo-realists and neo-liberal international are considered obsolete by the changes in the world market. Market has directly erode the authority of the state. There is a symbiosis between the state and criminal groups of non-state, one of them by working with criminal groups as a means of survival. Cross-border crime has become a phenomenon of socio-political and economic change. Criminal activities has turned to become semi-legal

entrepreneurial companies, and they are often backed by government officials. Strange further explained that the proliferation of illegal markets have integrated organized crime at the global level to the transnational criminal networks. The result is a form of “transnational diplomacy” among “national mafia” based on “common interests” to exploit the illegal market. Weakened state authorities help to create “transnational anarchist society of the mafia who are all involved in activities that are considered by the government to be the wrong side of the law” (Strange, 1996, 119-121). The economic and political conditions in the South Pacific does not allow these countries to independently develop a strong state system. Weak superstructure in all countries of the South Pacific is the basis for non-functioning of the government's role in all dimensions. For the sake of survival, the countries in the South Pacific will use a variety of ways. Relying on foreign aid is not enough to support everyday life. Therefore, governments often seek alternative sources other financial support, including cooperating with the perpetrators of cross-border crime.

Incentive from transnational crime is another solutions to survive. Benefits from cross-border criminal activities are often not used to improve the economics of official or state capacity. The criminals who benefited from drug trafficking, for example, generally use the money for at least one of two things. First, the profit will be distributed to the shadow economy or underground economy (Haken 2011, 6). A huge advantage for a criminal group dramatically increases the potential for corruption which is done through a promise of material things. In addition, criminals also use the profits to fund public campaigns of the to-be elite candidate. In the case of the Pacific Islands region, opportunities for corruption by officials and politicians are very high, primarily due to the costs in maintaining political power who have by vote-buying activity (Ranmuthugala 2002). Pacific Island countries are also known as the area with the offshore banking system and a reputation as a safe haven for “dirty” activity. Financial services in countries such as Vanuatu, Nauru and Fiji which are blacklisted by the Financial Action Task Force (FATF) due to their support to the illegal financial activity. Financial institutions in Nauru are still questionable due to the fact that Nauru government were involved in a major internet hub for money laundering (Mark 2003).

Tax haven is an important component of organized crime and money laundering activities. They use tax asylum for money laundering as a result of illegal activities such as drug trafficking, tax evasion and

smuggling. The criminals take advantage of the facilities offered by the center and the financial protection of offshore banking outside their State of residence for laundering illicit profits they get. The existence of tax havens also showed their limited internal resources countries that establish such tax havens. These countries then compensate for these limitations by providing tax incentives to companies and financial institutions in an effort to invite companies and institutions to set up branches in their country (Ispas 2009, 58).

Global Financial Integrity report in 2015 showed large illicit financial flows (IFFS) of 82 developing countries in the world by using nine economic development indicators of GDP (trade, population, FDI, ODA + FDI, education expenses, medical expenses, income taxes and capital). Based on these reports, the countries of the South Pacific region are count as “the big ten” from eight indicators (except capital). Based on the ratio of illicit financial flows variable, Vanuatu was ranked 3rd out of 82 developing countries, followed by the Solomon Islands at rank 5th and Samoa on the 7th (Spanjers and Fross 2015) The rating indicates the significance of illicit financial flows from the Vanuatu economy. Illegal financial flow has contributed 35 percent of Vanuatu's GDP. In other words, GFI estimates that there are one out of three dollars out of the economy of Vanuatu are illegal. Vanuatu, Samoa and the Solomon Islands were also ranked in top 10 of illicit financial flow ratio to the total value of trade and health spending. Vanuatu has a dark financial flow, which is 67.6 percent (Spanjers dan Fross, 2015, 6). When divided by the total population, while this ratio is equivalent to the loss of 996 dollars per person in Vanuatu or nearly 200 dollars per year, this fact shows the significance of the corruption of local and foreign parties in poor and developing countries of South Pacific. Vanuatu and Samoa are also included in the top 10 in a variable population, income taxes and education spending.

6. Conclusions

South Pacific is surrounded by major markets and commodity of illicit activities. There are strong indications that the South Pacific increasingly targeted by transnational criminal groups because of their vulnerability to illicit activities caused by several factors, namely (a) the geographical location of the South Pacific which is located between the main source and destination of illicit commodities; (b) the jurisdiction of a broad and susceptible to be easily penetrated; (c) differences in governance and heterogeneity in the capacity of law enforcement in general in different countries / territories in the South

Pacific. This confirms the complexity inherent difficulties in detecting, monitoring, preventing and responding to transnational organized crime in the region. In this context, there is a tendency that transnational crime is increasing throughout the Pacific. This activity has detrimental impact on society, economic development and regional security. The absence of good governance and the rule of law provide an environment where transnational crime can thrive. Governments in countries like this are usually reluctant to suppress the activities of transnational criminal practices because they fear the emergence of disruptive effects and further increase instability in countries that had been frequently hit by political and social unrest. There is no single formula in global governance were accurately able to cope with this new type of crime. The malfunction of the Pacific Island Forum as a regional organization and the difficulty of implementation of the various laws that have been created to deal with the issue of transnational crime, is in fact the failure of global governance itself to response to the crime. It is both a major criticism to the perspective of international relations, both the realist and liberal perspectives. Realist perspective that is too focused on the role of the state has put aside non-state actors are in fact capable of being a threat to the state and human security as a whole. Liberal perspective is also unable to explain how international organizations and actors to cooperate in handling transnational crime. There is an empty space in explaining the emergence of this type of crime. New developments facilitated by accelerated globalization allows transnational crime require new approaches by involving of many actors and factors.

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