**Multilateral Resource Negotiations Between Weak and Powerful States: The Case of the
1987 United States-Pacific Island Fisheries Treaty**

by

Sōsefo Fietangata Havea

**A thesis submitted to Victoria University of Wellington
in fulfillment of the requirements for the degree of
Master of Arts
in
International Relations**

**Victoria University of Wellington
Wellington
New Zealand
2012**

Abstract

On April 2, 1987, the Treaty on Fisheries Between Governments of Certain Pacific Island States and the Government of the United States of America was signed. The signatories to the Fisheries were the 16 members of the South Pacific Forum and the United States of America. After six difficult years of negotiations, the Treaty permitted American fishing vessels to fish in Pacific Islands' waters in exchange for a substantial access fee.

This thesis identifies key aspects of that treaty and examines what it meant from both a theoretical and practical standpoint. How did a collection of small, comparatively weak Pacific states strike a satisfactory deal with the most powerful state on the planet? What did the agreement mean in terms of its political, legal and environmental consequences? As well as looking at the events and negotiations that led to the treaty, this thesis also attempts to discern the key political lessons that flow from this case that might be relevant for the future development of the Pacific island States in the key area of fisheries regulation.

The thesis argues that disputes between Pacific nations and the United States over tuna resources and the presence of the Soviet Union in the Pacific region were the two critical factors that led to the adoption of the Treaty. From the United States' perspective, the Treaty was seen (at the time) as the only viable option if it were to reconsolidate its long and prosperous position in the Pacific region. The US did not want the Soviet Union to capitalize on American fishing disputes with the Pacific islands, and it could not afford for the Soviet Union to establish a strong association with the Pacific islands. The Treaty therefore served three purposes for Washington: (i) it maintained its long friendship with the Pacific islands, (ii) it maintained its fisheries interests in the region, (iii) and it kept the Pacific communist-free. This fusion of US economic and strategic interests gave Pacific Island States a stronger hand in the negotiations than their size and power would have otherwise offered

Acknowledgements

Many people played a part in the completion of this project. I would like to acknowledge my supervisors, Associate Professor Roderic Alley, for his help at the beginning and Dr. David Capie for his tireless efforts throughout the final revisions. I would also like to acknowledge the staff of the New Zealand Ministry of Foreign Affairs and Trade, particularly Neil Robertson, who was extremely helpful in providing access to the files on the Treaty negotiations. I would also like to acknowledge the assistance of staff at the Parliament Library, the National Library and the New Zealand Archives in Wellington. Finally, I would like to specifically thank the following people for their support (in no particular order): Dr Kyriak, Dominic, Soane, Soanina, 'Anihelina, Christopher, Kolositi, Mikaele, Teresia and Diana. This project is dedicated to my late parents, Semisi Paea-He-Lotu and Finau Katalina Havea, who both passed away during the process of this project. Finally, to my long suffering wife, Diane, I offer my heartfelt thanks for her support through rough journey of personal and family tragedies.

Table of Contents

Title	i
Abstract	ii
Acknowledgements	iii
Table of Contents	iv-v
 Chapter One: Introduction	
Introduction	1-2
Origins of the Treaty	2-4
Salient Points of Interest	4-5
The Structure	5-6
Methodology	6-9
 Chapter Two: Historical Background of the Treaty	
Introduction	10
Regionalism in the South Pacific	10-18
Pacific Islands-United States Fishing Disputes	19-25
Fishermen's Protective Act	25-27
The Cold War in the South Pacific	27-39
The Treaty Negotiation Process	39-56
Conclusions	56-59
 Chapter Three: A Legal Analysis of the Treaty	
Introduction	60
The United Nations Convention on the Law of the Sea of 1982	60-66
The Concept of Sovereign Rights	66-76
The Position of the United States	76-81
Fisheries Conservation and Management Act	81-85
Access to the Treaty Area	86-94
Conclusions	94-96
 Chapter Four: The Political Implications of the Treaty	
Introduction	97-98
Flag State Responsibility	98-115
Compliance Powers	116-121
Conclusions	121-124
 Chapter Five: An Economic Assessment of the Treaty	
Introduction	125-133
Provisions of the Treaty	133
Article 2: Broader Cooperation	133-145
Access Fee and Fund Distribution	145-166
Conclusions	166-172
 Chapter Six: Conceptual Analysis of Key Issues	
Introduction	173-176

Regional Cooperation in Fisheries Conservation and Management	176-196
Traditional Fisheries Conservation Practice: An Alternative Option	196-198
International and Regional Fisheries Conservation Measures	198-213
Domestic and International Interactions	213-215
Trade-offs in the Treaty	215-219
Conclusions	219-224
 Chapter Seven: Conclusion	
Conclusion	225-229
The Future of the Treaty	229
 References	230-273

Chapter One

Introduction

In April 1987, a group of small Pacific island nations signed a fisheries treaty with the United States of America. For Pacific leaders, the treaty represented a significant achievement in terms of securing their resources and obtaining a financial arrangement that would help their countries develop. After years of often bitter dispute with the United States, it also marked a new chapter in positive diplomatic relations.

But the satisfaction of Pacific leaders raises questions for international relations scholars. How was this possible? How did a collection of tiny and weak micro-states negotiate a satisfactory resource sharing deal with the most powerful nation in history? Why didn't a richer, more powerful great power simply dictate terms, or at least get the much better end of the bargain? This thesis attempts to explore these questions through a detailed examination of the origins and development of the *Treaty of Fisheries between the Governments of Certain Pacific Island States and the Government of the United States of America* (hereafter The Treaty).¹

The Treaty was signed on 2 April 1987 between Australia, Cook Islands, Federated States of Micronesia (FSM), Fiji, Kiribati, Marshall Islands, Nauru, Niue, Palau, Papua New Guinea (PNG), New Zealand, Samoa, Solomon Islands, Tonga, Tuvalu and Vanuatu,² and the Government of the United States of America.³ It came into effect on June 15, 1988 and was valid for five years until its expiry on June 14, 1993. The original Treaty consisted of the

---

¹ "Treaty" otherwise acknowledged. See Tsamenyi, B.M. "The Treaty on Fisheries Between the Governments of Certain Pacific Island States and the Government of the United States of America: The Final Chapter in United States Tuna Policy", *Brooklyn Journal of International Law* 15 (1989); Gubon, F. "The South Pacific Multilateral Fisheries Treaty: Some Possible Implications for Fisheries Development, Management and Conversation in the Pacific Islands Region", *Melanesian Law Journal* 22 (1994); Bennion, T.H. *Treaty-making in the Tropical Pacific* (1988); Bilder, R.B. *Managing the Risks of International Agreement*, University of Wisconsin Press (1981); Blix, H. *Treaty-making Power*, Stevens, London (1960).

² "Pacific Island States" to the Treaty, otherwise acknowledged. See Tsamenyi, B.M. "The Treaty on Fisheries Between the Governments of Certain Pacific Island States and the Government of the United States of America, the U.S.A and Sovereignty Over Highly Migratory Species", *Marine Policy* 10(1) (1986).

³ <http://www.ffa.int/>.

principal Treaty and two Annexes. After the original Treaty expired, a further 10 years extension was agreed, effective from June 15, 1993 to June 14, 2003. Since then, the Treaty has been renewed again and is currently valid until 2013.⁴

While the Treaty has been written about and studied by academics since its adoption,⁵ there has been no comprehensive study linking its negotiation to the treaty's legal, political and economic outcomes. Providing such an analysis is the central purpose of this study. To that end, the thesis comprises four main parts. First, it offers a legal analysis examining the consistency (or otherwise) of certain provisions of the Treaty and the 1982 United Nations Convention on the Law of the Sea. These provisions were a key part of the treaty negotiations. Second, the thesis explores the political implications of the Treaty and what both parties gained from the agreement. Third, an analysis examines the financial and distributional components of the agreement, exploring how parties negotiated who got what and when and how they would get it. Finally, the thesis touches on environmental management and the conservation measures that came up in the treaty context. It seeks to analyze the key political lessons flowing from the experiences of the Pacific Island States and, as far as possible, to consider proposals for the future policy development of the Pacific Island States in the area of fisheries regulation.

The agreement broke new ground in treaty making, particular in terms of the content of Articles 3, 4, and 5, and Part 5 of Annex I. Article 3 provides terms and conditions to which American fishing vessels must adhere when conducting fishing activities in the areas allowed by the Treaty. Article 4 places responsibility on the United States to enforce the Treaty and to ensure its fishing vessels are fully observing its provisions. Part 5 (Enforcement) of Annex I provides a process for the American fishing vessels to follow, when they are required by an authorized officer of the Pacific Island States. A detailed analysis of these innovative provisions is also provided in the chapters that follow.

The Origins of the Treaty

---

⁴ <http://www.ffa.int/>.

⁵ See Tsamenyi, B.M. "The Treaty on Fisheries Between the Governments of Certain Pacific Island States and the Government of the United States of America: The Final Chapter in United States Tuna Policy", *Brooklyn Journal of International Law* 15 (1989); Gubon, F. "The South Pacific Multilateral Fisheries Treaty: Some

During the 1970s, the Pacific Island States' attitudes toward the US gradually but fundamentally changed. This was largely due to the US's refusal to recognize the Pacific Island States' sovereign rights over highly migratory species (HMS). Around this time, the Pacific Island States became aware that despite their generally good diplomatic relations with Washington, friendship was not enough to ensure the United States would respect their claims over important fisheries resources. Subsequently, Papua New Guinea (PNG) and the Solomon Islands directly confronted the US by arresting and seizing American registered fishing vessels. They did so on the grounds that these vessels were operating without a license within exclusive national economic zones (EEZs).

These disputes between the Pacific Island States and the United States over HMS occurred at the same time that the Soviet Union was beginning to show a greater interest in the Pacific region. Kiribati and Vanuatu reacted strongly against what they regarded as an unpopular and controversial United States fisheries policy; they considered inviting the Soviet Union into a fishing partnership that would potentially entail economic and (unspecified) security arrangements. This was a strategic move that gave these small island states much greater influence than their material power or size offered naturally.

United States' officials became increasingly worried about their deteriorating political relationship with the Pacific Island States and they sought to find a solution through the negotiation of a multilateral resource sharing arrangement. This treaty served three key US interests. First, it allowed the US to continue its lucrative fishing activities in the region. Second, it helped repair and re-establish their traditionally friendly relations with nations in the Pacific.⁶ Third, it prevented Moscow from capitalizing on American fishing disputes with the Pacific Island States. The agreement addressed immediate resource and diplomatic concerns, but it also served a broader strategic purpose in contributing to the containment of the Soviet Union.

The United States' proposal for a fisheries agreement with the Pacific Island States and the subsequent adoption of the Treaty showed that Washington was willing to recognize the sovereign rights of the Pacific Island States over HMS. How this recognition was dealt with

---

Possible Implications for Fisheries Development, Management and Conservation in the Pacific Islands Region", *Melanesian Law Journal* 22 (1994).

⁶ <http://www.state.gov/s/l/treaty/>.

by the Treaty is examined in the thesis's third chapter, along with the common practice followed by coastal States regarding sovereign rights over HMS as provided by the 1982 *United Nations Convention on the Law of the Sea* (1982 Convention).⁷

From the perspective of the Pacific Island signatories, the Treaty was significant as an important source of funds for economic development.⁸ It enabled them to exert a greater degree of control over fisheries than had been previously the case. The Treaty also represented an important expression of the Pacific Island States' sovereign rights over their EEZ.⁹

Salient Points of interest

The detailed examination of the Treaty provided here raises a number of substantive issues that, at the outset, are posed as significant questions. For example, the consistency (or otherwise) of the Treaty with the 1982 United Nations Law of the Sea Convention is examined. In particular, questions around the legal status of HMS with reference to the US fisheries policy are addressed. US policy does not recognize any form of jurisdiction over HMS within the EEZ, as is evident from the *Fishermen's Protective Act* 1954 (FPA) and the *Fisheries Conservation and Management Act* 1976 (FCMA).

Second, it is crucial for small Pacific states to co-operate in dealing with fisheries issues. The Treaty can therefore be viewed as a model for closer political and economic co-operation among Pacific Island States. Have they been able to achieve this objective? This thesis attempts to draw up some guidelines for Pacific Island States to refer to when they look to enter multilateral negotiations. More specifically, it underscores the ongoing importance of regional cooperation and regionalism in the Pacific.

The diplomatic and political implications of the Treaty in terms of relations between Pacific Island nations and the United States are also examined. Pacific Island - United States ties improved dramatically after the Treaty was signed and as more development assistance was directed to the region. With this in mind, the thesis will also examine the conclusion of the

---

⁷ Document A/CONF.62/121 – consists of 320 Articles and 9 Annexes.

⁸ Gillett, R.D. *Tuna: A Key Economic Resource in the Pacific Island*, Report prepared for the Asian Development Bank and South Forum Fisheries Agency (2001).

financial package in the Treaty. It analyzes how the distribution formula for the access fee was negotiated. Fisheries resources are a major potential source of economic development in the Pacific. Further extension of the Pacific Island States' control could enhance economic self-reliance, unlike the current situation where the Pacific Island States remain strongly dependent on foreign remittances, foreign aid, and other forms of financial and technical assistance. In closing, the thesis outlines how Pacific Island States might be able to secure maximum benefit from their fishing resources in a sustainable manner and briefly discusses some of the related environmental issues the region is facing.

The Structure

The thesis is organized into six chapters. Following this introduction, Chapter Two outlines the two key issues that directly (or otherwise) prompted the establishment of the Treaty: first, fishing disputes between the Pacific Island States and the US; and second, the growing interest of the Soviet Union in the South Pacific. The first section provides two examples of fishing disputes, namely those between the Solomon Islands and PNG on one hand and the US on the other. These presented a direct challenge to US fisheries operations and policy in the region. As I will show, they also provided a learning experience for the parties involved, especially for the US, as it became increasingly aware of the strength of Pacific concerns and the importance of interacting constructively with Pacific governments. The second section examines US concerns about the growing presence of the Soviet Union in the South Pacific. I argue that these twin overlapping issues were instrumental in leading the US to consider a multilateral treaty with the Pacific Island States.

Chapter Three is the first of four chapters providing a detailed examination of the Treaty's content and implications. It offers a legal analysis, particularly in relation to the consistency (or otherwise) of United States fisheries policy as it relates to international and regional fisheries instruments, and how the Treaty attempted to reconcile these differences. United States fisheries policy does not recognize Pacific Island States' sovereign rights over 200 EEZ and it is vital to understand how they negotiated this key issue. This also highlighted a future challenge for the Pacific Island States with reference to the EEZ regime—future deep-mining arrangement.

---

⁹ Preamble of the Treaty.

Chapter Four examines the political implications of the Treaty by addressing its most innovative aspects, including how it required the United States to fulfill certain obligations under its terms. The Treaty gave Washington the responsibility of ensuring that US fishing vessels observed the conditions and terms outlined by the Treaty. From an environmental conservation point of view, this was an effective and inexpensive way of policing and monitoring the American fishing fleet in the region, something that small island states with limited resources simply could not do.

Chapter Five offers a detailed discussion of the financial arrangements related to the Treaty access fee and its distributional formulae. It also explores how relevant provisions of the Treaty were negotiated by the Pacific Island States and the US—what was offered by whom during the negotiation process and how the parties came to understand the financial arrangements themselves.

Chapter Six examines the key provisions within the Treaty for dealing with environmental conservation and the management of the tuna resources in the region. It also looks at an indigenous environmental conservation framework and considers how it might be incorporated into a regional environmental conservation and management regime.

Finally, Chapter Seven closes the thesis by exploring some possible future outcomes of the Treaty and challenges that it may encounter. These include potential changes in the geopolitics of whole region, and the nature of future political relations between the Pacific Island States and the United States. The presence and growing interests of China, Japan and Taiwan in the South Pacific region will undoubtedly impact not only the relationships between Pacific Island States and the United States, but also the relationships among Pacific Island States themselves, and with Australia and New Zealand.

Methodology

A detailed single-case study like this presents both empirical and methodological challenges. From an empirical point of view, published sources on the Treaty are limited, and no thorough or detailed study of the Treaty currently exists. There has been no historical work on the negotiation process and little of the work on the Treaty outcomes is framed in terms of

the relevant political science literature. Few of the participants in the negotiations were available for interviews and none have left memoirs detailing their experiences. Accordingly, the analysis offered here draws heavily on documentary sources. Primary sources, including diplomatic cables, drafts of the Treaty and other correspondence were accessed from the National Archives of New Zealand. More recent—and in some cases still restricted—files were obtained from the New Zealand Ministry of Foreign Affairs and Trade (MFAT). Many of these have sources that have not been accessed before and their crucial scrutiny and use marks one of the major original contributions of this thesis. Secondary sources, drawing heavily from the literature on regionalism, came from the Central and Law libraries of Victoria University of Wellington, Wellington.

A second challenge with a thesis of this type is methodological. Single-case studies are frowned on by methodological purists in quantitative social science. Scholars argue that they are at risk of selection bias or the over generalization of results.¹⁰ The greater the number of observations, argue King, Keohane and Verba, the greater the analytic leverage over the research problem.¹¹ While acknowledging that these are valid points, this thesis draws on a single case for two reasons. First, from an empirical point of view, a single case study it permits a detailed scrutiny of the Pacific experience in a way that would not be possible in a multiple case study. By focusing on the Treaty negotiation experience and its outcomes, the thesis provides greater empirical rewards. I argue that the price paid in terms of the generalizability (or lack thereof) of the findings is worth paying for detailed analytic work on what is often a marginalized region of the world, the South Pacific.

Second, the analysis here relies on process-tracing to explore the intersection between strategic concerns (such as American concerns about the potential influence of the Soviet Union), economic incentives and the influence of lobby groups like the American Tunaboat Association (ATA). Although not framed explicitly in these terms, the analysis adopts within-case methods that have found increasing favour among qualitative social scientists.¹² Third, this case is arguably a “least likely” case when it comes to assessing the role of power in international negotiations. The power asymmetries between the Pacific nations and the United States were enormous. If power were the key determinant of the outcome of

---

¹⁰ See for example, Gary King, Robert Keohane and Sidney Verba, *Designing Social Inquiry: Scientific Inference in Qualitative Research* (Princeton University Press: Princeton, 1994) 208-212.

¹¹ Ibid 208.

¹² See for example, David Laitlin, “Disciplining Political Science” *American Political Science Review*, vol. 89, no. 2 (June 1995) 454-456.

negotiations, as realists would expect, then something less than a win-win result should have been expected. The thesis's close scrutiny of a "least likely" case therefore permits others to use it as a source for critical comparison with other cases in the wider literature, an approach endorsed by scholars such as Arend Lijphart and Peter Gourevitch.¹³

Theoretical work on negotiation is another key influence on the research here. Negotiation can be a long and laborious exercise and, in scholarly terms, there are still significant gaps in our understanding of the bargaining process.¹⁴ Understanding the complex management of the treaty negotiation process is vital to understanding the outcome of the process itself.¹⁵ In this case, interactions between local and international politics significantly influenced the negotiation process. The Pacific Island States' negotiation strategies were shaped not only by individual national interests, but also other Pacific countries' interests. This required compromises, even before engaging in negotiations with the United States. In the chapters that follow, I explore the strategies employed by the Pacific Island States and the United States and to try and discern a pattern from the whole negotiation process. For example, some negotiation theorists expect one party to start by making high demands, refusing all concessions, exaggerating its bottom line position and making threats.¹⁶ Is that what happened here? Why were particular strategies used with certain issues and at specific times by the various parties? The role of culture in negotiation is also addressed in order to examine the difficulties experienced by the parties involved, especially the Pacific Island States' representatives.¹⁷ As will become apparent, at times it seemed as if there were two different negotiations happening simultaneously. First, negotiations among the Pacific Island States themselves and second between Pacific nations and the United States.

The first set of negotiations involved three main groups: Micronesia, Melanesia and Polynesian states. Each group had its own interests, and within each group individual states

---

¹³ Arend Lijphart, *The Politics of Accommodation: Pluralism and Democracy in the Netherlands* (Berkeley: University of California Press, 1968); Peter Gourevitch, "The International System and Regime Formation: A Critical Review of Anderson and Wallerstein," *Comparative Politics*, vol. 10, no. 3 (April 1978) 419-438.

¹⁴ Gilligan, M.J. and Simonelli, N. "International Multilateral Agreement Negotiations", paper prepared for the 2006 Shambaugh Conference, "Building Synergies: Institutions and Cooperation in World Politics", October 12-14, 2006, University of Iowa (p.4).

¹⁵ Crump, L. and Zartman, William T., 2003 "Multilateral Negotiation and the Management of Complexity", *International Negotiation*, 8, 1-5.

¹⁶ Downie, Christian "Managing Complexity in International Negotiations: Is there a role for treaty secretariats", Regulatory Institutions Network, Australian National University (n.d). See also Odell, J. 2006 "Introduction", In Odell, J. (ed.) *Negotiating Trade: Developing Countries in the WTO and NAFTA*, Cambridge: Cambridge University Press; Odell, J. and Mena, A.O. 2004 *How to Negotiate Over Trade: A Summary of New Research for Developing Countries*, Geneva International Academic Network.

had differences ranging from socio-political, cultural and economic circumstances to foreign policy preferences. This was further complicated by the fact that in some cases, some countries from the same group had different degrees of association with foreign powers (particularly the United States and the Soviet Union) and with international organizations. Hence, a ‘United Nations’ negotiation was almost required *among* Pacific Island States before they could begin the second stage, putting forward collective demands to their American counterparts.

My interest in this Treaty can be traced back to my graduate years at The University of Auckland when I first heard about an agreement between small island nations and the mighty United States. Concerned about the future of the Pacific, its people and its resources I found myself increasingly moved by personal and professional convictions to study and learn from this negotiation process. As a Pacific Islander and a Tongan, I felt an increasing sense of obligation to assist in the call for the effective conservation, proper management and the sustainable development of the South Pacific islands’ fisheries resources. I hope that by providing a better understanding of one important international instrument, this thesis contributes to that end in some small way.

---

¹⁷ See for example the comments in Kimura, Hiroshi, “Russian Way of Negotiation”, (pp.63-89), in Berton, P., Kimura, H. and Zartman, I.W. (eds.) 1999 *International Negotiation*, New York: St. Martin’s Press.

Chapter Two

Historical Background of the Treaty

Introduction

This chapter discusses the key events that led to the conclusion of the Treaty on Fisheries between Pacific Island States and the United States. It explores why the treaty was deemed necessary through posing certain questions, such as: Why it was adopted? What sort of compromises were made by the parties? These questions are explored here in the context of two key issues: first, fishing disputes between the Pacific Island States and American fishers and second, the growing interest shown by the Soviet Union in the South Pacific. The United States (US) has one of the highest canned tuna consumptions per capita in the world and the tuna resources of the South Pacific were a reliable source that could not be dismissed lightly.¹⁸ As we will see, the US was also sufficiently worried about Moscow's ambitions and the risk of the Pacific Island States drifting beyond American influence that it suggested a treaty response. The US realized that resolving the fisheries dispute and establishing some form of resource arrangement with the Pacific Island States would ensure American fishing fleets had access to the region's tuna resources, while at the same time keeping Moscow out the region.

Regionalism in the South Pacific

South Pacific regional organizations are generally respected and supported by foreign governments and international agencies. They help create an international political environment upon which political and economic policy cooperation can be based.¹⁹

---

¹⁸ *The State of World Fisheries and Aquaculture*, FAO Fisheries Department, Food and Agriculture Organization of the United Nations, Rome (2000); *Estimated Per Capita Fish Consumption in the United States*, United States Environmental Protection Agency, Washington DC, August (2002).

¹⁹ See Fry, G.E. "The Politics of South Pacific Regional Cooperation", in Thakur, R. (ed.) *The South Pacific Problems and Prospects*, St. Martin, New York (1991); Hallux, A.C. and Osgood, R.E. "New Era of Ocean Politics", *Studies in International Affairs* 22 (1974); Hollick, A.L. and Robert, E.O. "New Era of Ocean Politics", *Studies in International Affairs*, No. 22 (1974); Hviding, E. "Fisheries and Coastal Resources: Knowledge and Development", in Burt, B. and Clerk, C. (eds.) *Environment and Development in the Pacific Islands*, The University of Papua New Guinea, Port Moresby (1997).

Historically, the Pacific Island States have generally been considered strong allies of the west, due to—amongst other things—the legacy of colonization and their continuing economic dependency.²⁰

Regionalism and regional organizations in the South Pacific serve a number of purposes, one of which is establishing the profile and relevance of regional states. Over time they have helped Pacific Island nations maintain and develop their political relationships with the United States and other foreign powers with a presence in the region.²¹ Regional modalities further highlight how Pacific Island States have cooperated in order to address and advance their shared interests. There are three regional organizations that deserve mention in this chapter: the South Pacific Commission (Commission); the Pacific Islands Forum (Forum); and the South Pacific Forum Fisheries Agency (FFA).

The concept of regionalism was introduced in the South Pacific by foreign powers to assist Pacific Island States' needs.²² The colonial powers introduced modern political systems based on their respective domestic models.²³ Even though Pacific Island States have gained independence, the colonial powers retain some influence over the politics of the region through foreign aid and other arrangements. Foreign aid and financial and technical arrangements have provided mechanisms that have helped to maintain external power influences in the region.

Regional organizations in the South Pacific vary in terms of affiliation and association, and according to their political status. At some point, most of the Pacific Island States have had some form of affiliation or association with colonial powers, including Australia, France, New Zealand, the United Kingdom and the United States. Some Pacific Island States maintain political ties with their former colonial rulers. New Zealand, for instance, has

---

²⁰ Kelly, C.R. "Law of the Sea: The Jurisdictional Dispute over Highly Migratory Species of Tuna", *Columbia Journal of Transnational Law* 26, Chicago (1988:509-510).

²¹ See Fry, G.E. "Regionalism and International Politics of the South Pacific", *Pacific Affairs* 54, University of British Columbia, British Columbia (1981); Alexander, L.M. "Regionalism and the Law of the Sea: The Case of Semi-enclosed Seas", *Ocean Development and International Law Review* 17(1), February (1987); Marshall, C.L. "Regional Implementation of Alternative Entry Control Policies and their Role in Fisheries Management", *Ocean Development and International Law* 5, Taylor & Francis, Philadelphia (1978); Carew-Reid, J. *Environment, Aid and Regionalism in the South Pacific*, (1989); Haas, M. *The Pacific Way: Regional Cooperation in the South Pacific*, Praeger, New York (1989).

²² Fry, G.E. "Regionalism and International Politics of the South Pacific", *Pacific Affairs*, University of British Columbia, Vol. 54, No.3, Autumn (1981:455-484).

²³ In particular, France, New Zealand, United Kingdom and United States.

constitutional obligations of free association with the Cook Islands and Niue and retains direct responsibility for Tokelau.

Modern regional organizations have emerged in the South Pacific and have replaced traditional and cultural alliances and groupings. In 1947, the South Pacific Commission (the Commission) was established as the first modern regional organization in the region;²⁴ it is located in Noumea, New Caledonia. This was formalized by the adoption of the Agreement Establishing the South Pacific Commission (SPC Agreement). In 1999, the South Pacific Commission was renamed the Secretariat of the Pacific Community (the Community). The SPC Agreement stated that, among other things, “the Commission shall be a consultative and advisory body to the participating Governments ... particularly in respect of agriculture (including animal husbandry), communications, transport, fisheries, forestry, industry, labour, marketing, production, trade and finance, public works, education, health, housing and social welfare.”²⁵

The same provision required the Commission to provide and facilitate research in technical, economic, scientific and social areas, to ensure cooperation and to ensure the coordination of research activities and bodies. The annual budget of the Commission was supported by Australia, France, New Zealand, United Kingdom and the US.²⁶ The Pacific Island States were for a lengthy period absent from the key budgetary allocation decisions of the Commission; this meant they had little say into the Commission’s affairs.²⁷

Interestingly, at first political issues were excluded from the Commission’s agenda – a fact that was regarded negatively by Pacific Island States. Their leaders suspected that this was a deliberate attempt by the metropolitan powers to sustain their presence in the region and prevent the push towards independence spreading across the South Pacific. Pacific leaders increasingly began to question the role of the Commission, asking whose interests it served.

---

²⁴ South Pacific Commission members including American Samoa, Australia, Cook Islands, Federate States of Micronesia, Fiji, France, French Polynesia, Guam, Marshall Islands, Netherlands, Nauru, New Caledonia, New Zealand, Niue, Northern Mariana Islands, Palau, Papua New Guinea, Pitcairn Islands, Samoa, Solomon Islands, Tokelau, Tonga, Tuvalu, United Kingdom, the United States of America, Vanuatu, Wallis & Futuna.

²⁵ Article IV (6) (a) of Agreement Establishing the South Pacific Commission.

²⁶ “Secretariat of the Pacific Community (SPC), 2003/12/09.

<http://www.mfa.gov.cn/eng/wjb/jg/gjs/gjzzyhy/2616/t5903.htm>; South Pacific Commission, Noumea (<http://www.spc.int/en/>).

²⁷ The remaining 10% of the SPC budget allocated to 22 island countries in the region; “Secretariat of the Pacific Community (SPC), 2003/12/09. <http://www.mfa.gov.cn/eng/wjb/jg/gjs/gjzzyhy/2616/t5903.htm> .

This stemmed in part from its failure to address political issues.²⁸ Pacific leaders began to rethink their options and increasingly sought to press their interests, either collectively or through small group activities. This often involved ties between states that identified as having a shared culture.

In 1965, Fiji, Tonga and Western Samoa founded the Pacific Islands Producers Association (Association), which was the region's first indigenous organization. Its main purpose was to secure a better price for banana exports to the New Zealand market.²⁹ This initiative was important in that it demonstrated the advantages of acting collectively to strengthen trading positions and other arrangements with metropolitan states.

In 1971, the South Pacific Forum was formed. Its founding members were Australia, the Cook Islands, Fiji, Kiribati, Marshall Islands, the Federated States of Micronesia, Nauru, New Zealand, Niue, Papua New Guinea, Samoa, Solomon Islands, Tonga, Tuvalu and Vanuatu (New Caledonia gained observer status in 1999). The organization aimed to promote the region's common interests and create policies that served its members. The South Pacific Bureau for Economic Development Co-operation (SPEC) was soon established as the Forum's Secretariat and was located in Suva, Fiji. The Forum's administrative arm subsequently became the Pacific Islands Forum Secretariat (PIFS), undertaking programmes to support and implement decisions made by the Forum.

Unlike the South Pacific Commission, the Forum openly discussed political issues, and was soon regarded as the most important regional organization in the South Pacific. Pacific Island States believed that the new organization sent a clear signal to the metropolitan powers that their presence in the region was unsustainable. The establishment of the Forum thus marked a shift for the Pacific Island States from control by foreign powers under the South Pacific Commission towards a more genuine independence as a region.

---

²⁸ See Cicin-Sain, B. and Knecht, R.W. "The Emergence of a Regional New Ocean Regime in the South Pacific", *Ecology Law Quarterly* 16(1), Berkeley Law School, Berkeley (1989:179); Cole, R.V. "Economic Constraints and Prospects: The Role of Regional Cooperation", in Henningham, S. (ed.) *South Pacific Security: Issues and Perspectives*, Australian National University, Canberra (1991).

²⁹ Cicin-Sain, B. and Knecht, R.W. "The Emergence of a Regional New Ocean Regime in the South Pacific", *Ecology Law Quarterly* 16(1) Berkeley Law School, Berkeley (1989:179). See also Neemia, U. *Cooperation and Conflict: Costs, Benefits and National Interests in Pacific Regional Cooperation*, University of the South Pacific, Suva (1986).

The establishment of the Forum led to greater interaction between Pacific Island States. It also helped address frictions in relations between the Pacific Island States and foreign powers—particularly the US. For example, it was here that the Forum States explicitly declared that membership would be restricted to countries that recognized their sovereign rights over fisheries resources within their EEZ regime.

This constituted a major and direct challenge to the US and its fisheries policy, which did not recognize any form of sovereign rights over HMS.³⁰ By contrast the EEZ regime was seen by the Forum as a major opportunity to secure economic benefits by claiming sovereign rights over resources within the 200 nautical mile EEZ. This substantial difference marked the beginning of a decade of complicated political and diplomatic negotiation between Forum States and the US.

At the eighth Forum meeting in Port Moresby, Papua New Guinea (August 29-31, 1977), the Forum decided that a proposed regional fishery agency would be open to all Forum countries, and to all countries that supported the sovereign rights of coastal States over the EEZ regime. The Fijian Prime Minister, Ratu Mara, initiated an attempt to establish a regional fisheries organization and cooperation among countries for the surveillance and exploitation of tuna resources in the region.³¹ It was further decided that consultation should continue among member countries over the principles and measures that would apply for the establishment of newly extended maritime boundaries.³² This would include some form of a consistent negotiating model employed in fishing arrangements to ensure that specific Forum national interests were met. This differed from the previous fishing arrangements that were predominantly decided by Deep Water Fishing Nations (DWFN).

However, before long major differences emerged between the Pacific Island States and the US. This occurred during the 1978 Forum Heads of Government meeting held in Niue which, among other things, considered the establishment of a regional fisheries organization.³³ The need for a regional fisheries organization arose, as the Pacific Island States started to claim

---

³⁰ The United States position over HMS is reflected on Fisheries Conservation and Management Act of 1976.

³¹ South Pacific Forum: Prime Minister's Report to Cabinet on 7th South Pacific Forum, Nauru, 26-28 July (1976: 2).

³² Eighth Forum Meeting, Port Moresby, PNG (29-31 August 1977).

³³ See Ashton, C. "Fraser Fishes in troubled South Pacific Waters", *The Bulletin*, October 3 (1978); Richardson, E.L. "The Politics of the Law of the Sea", *Ocean Development and International Law* 11 (1982); Kent, G.

200 nautical miles of exclusive economic jurisdiction under the *United Nations Conference on the Law of the Sea III* (UNCLOS III). Also evident was the need to establish an organization specifically dealing with fisheries issues on behalf of the Forum member states as well as American and DWFN fishing vessels' illegal fishing activities in Pacific Island States' waters.

From the Pacific Island States' perspective, the establishment of an EEZ regime would be meaningless if the DWFN—particularly the US—did not recognize their claims of sovereign rights over fisheries resources (and other resources) within their respective EEZs. A real and sustainable economic benefit for the region was at stake in controlling fisheries (particularly tuna exploitation) within these new and larger maritime boundaries. The economic significance of the EEZ regime for the Forum member States was highlighted by their firm stance in rejecting any opposition to the recognition of their sovereign rights over their EEZs. Forum member states also realized that the potential economic benefits of these newly claimed resources would only materialize if they had the power to regulate their exploitation. They also saw the EEZ regime as a potential major economic opportunity—one that was unlikely to recur in the region.

However at the 1978 Niue Forum meeting, the most sensitive issue discussed was the US delegation's demand that the US become a member of the proposed regional fisheries organization. This would prove almost impossible for the Pacific Island States to consider due to potential enormous economic benefits on offer. Forum countries were reluctant to give up the potential valuable resources that could make them economically independent for the first time. By contrast, the US sought membership in alignment with Article 64 of the UNCLOS III. Robust debates on the US membership issue saw Forum countries pushed into difficult situations. Not only did their individual relationships with the US vary along with very different trading relations, (for instance, Australia and New Zealand), but so did relationships among the Forum Pacific Island States (for instance, Polynesian and Melanesian). This was a defining moment for the Forum in testing its diplomatic and dialogue capabilities.

"Fisheries Politics in the South Pacific", *Ocean Yearbook* 2 (1980); Stevens, R. "Solomons Opposed to US in Fisheries Agency", *The New Pacific* 4(2), March-April, New Pacific Publications, Honolulu (1979).

Forum states were sharply divided over the US request. Fiji even threatened to pull out of the proposed organization should the US gain full membership.³⁴ The US argued that under international law, coastal states and other states fishing in the region should form regional organizations for the conservation and management of the fisheries resources therein. But at the same time, the US failed to recognize those same coastal states' sovereign rights over HMS within their EEZ. The US position was based on the Article 64 of UNCLOS III.

In the end, the Forum agreed that membership to the proposed organization would remain restricted to Forum state members; the possibility of US participation was rejected.³⁵ The Forum countries' reliance on migratory tuna to assist economic survival was reflected in the Preamble of the FFA Convention. This stated:

Recognizing their common interest in the conservation and optimum utilization of the living marine resources of the South Pacific region and in particular of the highly migratory species ... to promote regional co-ordination in respect of fisheries policies ... Concerned to secure the maximum benefits from the living marine resources of the region for their peoples and for the region as a whole and in particular the development countries ...

Rejection of US membership to the proposed regional fishery organization was disappointing for Washington, but for the Pacific Island States it reflected a determination to secure economic independence through the control and regulation of tuna resources (and mineral resources) within their newly extended EEZs.

The US responded by withholding funds previously promised to assist the proposed regional fisheries organization.³⁶ Fiji, PNG and the Solomon Islands retaliated by suggesting that they might set up their own sub-regional fisheries organization. The US then backed down regarding membership, as it did not want to see the formation of multiple sub-regional

---

³⁴ "Stirring Up the Pacific", *Asiaweek*, January 19, Asia Limited, Hong Kong (1979:35). Nauru, PNG, Solomon and Tonga supported Fiji, while, Australia, Cooks, New Zealand, Niue and Samoa supported the United States membership. See also "SPF: Fiji Threats to Pull Out", *Papua New Guinea Post Courier*, September 29, Port Moresby (1978:3).

³⁵ See Woodworth, D.C. "U.S. Tuna: A Proposal for Resource Management in the American Pacific Islands", *University of Hawaii Law Review* 10, Honolulu (1988:171); Gubon, F. "History and Role of the Forum Fisheries Agency", in Doullman, D.J. (ed.) *Tuna Issues and Perspectives in the Pacific Islands Region*, East-West Center, Honolulu (1987); Harrison, C.S. "Costs to the United States in Fisheries by not Joining the Law of the Sea Convention", in Van Dyke, J.M. (ed.) *Consensus and Confrontation: The United States and the Law of the Sea Convention*, University of Hawaii, Honolulu (1985).

fisheries organizations: PNG and Solomon Islands waters contained the most abundant and potentially lucrative tuna fishing grounds in the Pacific. US officials worried that new sub-regional systems might destabilize the Forum, which could in turn disadvantage its existing fishing fleet arrangements. A potential break-away-group comprised of Melanesian nations would further complicate the American stance in the region; some countries concerned were not regarded as particularly good friends of the US.

Why were Pacific Island States reluctant to accept America's membership to the proposed regional fisheries organization? Understanding the answer to this question requires an understanding of US fisheries policy and foreign policy more generally within the Pacific. It also necessitates an appreciation of the US image in the region. The Pacific Island States harboured suspicions that the US would use its dominance to manipulate the region's affairs to suit its own interests.³⁷ In addition, they were distressed by the US unwillingness to challenge France's nuclear testing in French Polynesia, as well as its inability to stop its vessels from fishing illegally in Pacific Island States' waters.³⁸ Pacific Island States feared that the US, like other DWFN, would unduly interfere with and over exploit the region's fisheries resources.³⁹ These attitudes signaled that, for the Islands' governments, the Pacific was no longer an 'American Lake'.

In 1979, the South Pacific Forum Fisheries Agency (FFA) was established under the umbrella of the Forum.⁴⁰ It was located in Honiara, Solomon Islands and was designed to deal specifically with all fisheries issues.⁴¹ The establishment of the Agency recognized the

---

³⁶ "U.S. to Hold Up Cash", *Papua New Guinea Post Courier*, October 13, Port Moresby (1979:4). See also "U.S. Rethinks on Fish Agency", *Papua New Guinea Post Courier*, October 13, Port Moresby (1979:4).

³⁷ Ashton, C. "Fraser Fishes in Troubled Sotuh Pacific Waters", *The Bulletin*, October 3 (1978).

³⁸ http://www.illegal-fishing.info/item_single.php?item_id=news&item_id=1583&approach_id=13.

³⁹ Van Dyke, J.M. and Heftel, S. "Tuna Management in the Pacific: An Analysis of the South Pacific Forum Fisheries Agency", *University of Hawaii Law Review* 3, Honolulu (1981:15). See also Kent, G. "South Pacific Fisheries Diplomacy", *The New Pacific*, January – February, New Pacific Publications, Honolulu (1980).

⁴⁰ The Convention on South Pacific Forum Fisheries Agency 1979.

⁴¹ See Aikman, C.C. "The South Pacific Forum Fisheries Agency", *Essays in International Law*, Twenty-fifth Anniversary Commemorative Volume, Asian-African Legal Consultative Committee Tara Art Press, New Delhi (1981); Bergin, A. "Fisheries and the South Pacific", *Asian Pacific Community* (1983); Clark, L. "UNCLOS and the Pacific Island States", *The Courier Africa-Caribbean-Pacific-European Community* 85, May-June, Commission of European Communities, Luxembourg (1984); Copes, P. "Tuna Fisheries Management in the Pacific Islands Region", in Doulman, D.J. (ed.) *Tuna Issues and Perspectives in the Pacific Island Region*, East-West Center, Honolulu (1987); Doulman, D.J. "Fisheries Management in the South Pacific: The Role of the Forum Fisheries Agency", in Thakur, R. (ed.) *The South Pacific*, St. Martin, New York (1991); Hawkins, B. "Fisheries: One for the Forum – One for Everybody", *Pacific Island Monthly*, July (1979); Bugota, F. "A Review of the Achievements of the Forum Fisheries Agency in its First Decade of Operations", in Herr, R. (ed.) *The Forum Fisheries Agency: Achievements, Challenges and Prospects*, University of the South Pacific, Suva (1990); Kearney, R.E. "The Law of the Sea and Regional Fisheries Policy", *Ocean Development and*

economic significance of member states' fisheries resources, and the need to control and regulate them collectively.⁴² In May of the same year at the 10th Forum meeting, the Agency Convention was adopted. This came into force on 10 July 1979. It stated that parties to the Convention would prioritize:

[c]o-operation for the conservation and optimum utilization of the highly migratory species of the region will require the establishment of additional international machinery to provide for co-operation between all coastal states in the region and all states involved in the harvesting of such resources.

This was important because effective conservation and management of HMS can be achieved only through regional and international co-operation.

As a regional fisheries agency, the FFA works well and weakens the almost absolute freedom of the DWFN fleets in the region. At the same time, it secures not only economic revenue from tuna resources, but also the long term sustainable development of tuna. The US's persistent demands to become a member of the proposed regional fisheries organization was to avoid any major constraints on its fishing fleet's fishing access to the region's tuna resources.

International Law Journal 5 (2)(3) (1978); Robertson, D. "The Impact of GATT and the WTO on the Marine Products of Forum Fishery Agency Members", *FFA Report* No. 95/70, Honiara (1995); Sutherland, W. and Tsamenyi, B.M. *Law and Politics in Regional Co-operation: A Case Study of Fisheries Co-operation in the South Pacific*, Pacific Law Press, Hobart (1992); Kearney, R.E. *A Regional Approach to Fisheries Management in the South Pacific Commission Area*, paper presented to the South Pacific Forum Meeting on the Law of the Sea, Suva, 13-14 October (1976); Kent, G. *The Politics of Pacific Island Fisheries*, Westview Press, Colorado (1980).

⁴² See Doulman, D.J. "Prospects and Directions in the Tuna Fishery", in Doulman, D.J. (ed.) *Tuna Issues and Perspectives in the Pacific Islands Region*, East-West Center, Honolulu (1987:312); Doulman, D.J. "In Pursuit of Fisheries Cooperation: The South Pacific Forum Fisheries Agency", *University of Hawaii Law Review* 10, Honolulu (1988); Doulman, D.J. "Fisheries Management and Co-operation in the South Pacific Region", *South Pacific Forum Fisheries Agency Report* 13, Honiara (1988); Gubon, F. "History and Role of the Forum Fisheries Agency", in Doulman, D.J. (ed.) *Tuna Issues and Perspectives in the Pacific Island Region*, East-West Center, Honolulu (1987); Herr, R. "Regional Cooperation in the 1990s: An Assessment", in Herr, R. (ed.) *The Forum Fisheries Agency: Achievements, Challenges and Prospects*, University of the South Pacific, Suva (1990); Herr, R. "Future Roles of Regional Organizations – Regionalism and Sub-regional Groupings", in Mediansky, F.A. (ed.) *Strategic Cooperation and Competition in the Pacific Islands*, Pennsylvania State University Press, Philadelphia (1995); Slade, N. "Forum Fisheries Agency and the Next Decade: The Legal Aspects", in Herr, R. (ed.) *The Forum Fisheries Agency: Achievements, Challenges and Prospects*, University of the South Pacific, Suva (1990); Waugh, G. "World Trend in the Demand and Supply of Tuna", Summary Paper, South Pacific Forum Fisheries Report No. 88/28, Honiara (1988); Wolfers, E.P. "Maritime Cooperation in the South Pacific", *Maritime Studies* 57(7), (1991); Anderson, D. "Developing Islands States Move to Protect Tuna", *Papua New Guinea Foreign Affairs Review* 2(1), April, Port Moresby (1982).

Pacific Island States-United States Fishing Disputes

As indicated, the US faced criticism in the Pacific for its consistent silence over France's nuclear testing and for its destabilizing fisheries policy.⁴³ In addition, US limitations over its bilateral aid, the inflexibility of its trade quotas and its market access restrictions were considered harmful to the American image in the region.

Among the reasons for the American purse seine fleet moving to the Pacific was the abundance of tuna stocks in Western and Central Pacific waters; the restructuring of the American tuna industry where major cannery operators were moving off-shores for tax advantages; cheap local; flexible industrial regulation; and availability of raw materials.⁴⁴ In addition, South American waters had started to become difficult to access for the US.⁴⁵ Tensions flared when Latin American coastal states began to unilaterally extend their sovereign rights from 200 to 400 nautical miles from their coasts in order to control and regulate their tuna resources.⁴⁶ Obviously this created problems for the US, since it did not recognize any sovereign rights over tuna beyond the 12 nautical mile territorial water limit.

The influential American Tunaboat Association (ATA) negotiated fishing agreements between foreign countries and American fishing vessels. This non-profit organization negotiated with foreign countries over matters regarding fishing agreements made on behalf of American tuna fleet and fisheries industries.⁴⁷ In representing American tuna fleets in negotiations and other fisheries matters, the ATA played a role similar to that of the South Pacific Fisheries Agency.

---

⁴³ See "US Reports Blames France, US for South Pacific Unrest", *Canberra Times*, November 12 Canberra (1985:1); Gardner, P. "Tuna Poaching and Nuclear Testing in the South Pacific", *Orbis*, Spring, University of Pennsylvania, Pennsylvania (1988); Larson, D.L. "The Reagan Administration and the Law of the Sea", *Ocean Development and International Law* 11, Taylor & Francis, Philadelphia (1982); "Piracy Feared as American Fail to Put up Tuna Cash", *The New Zealand Herald*, April 12 (1984); Mediansky, F.A. "The South Pacific Nuclear Free Zone", *Asia-Pacific Defence Forum*, HQ USPACOM (1986); Ness, P.V. and Stephenson, C.M. "A Nuclear-free South Pacific", *The Nations*, November 23 (1985); "U.S. Policy Sailing Turbulent Waters", *Papua New Guinea Foreign Affairs Report* 2(1), April, Port Moresby (1982); Malawer, S.S. "Reagan's Law and Foreign Policy, 1981-1987: The Reagan Corollary of International Law", *Harvard International Law Journal* 29 (1988).

⁴⁴ Campbell, H.F., Menz, K.M., Waugh, G. *Economics of Fishery Management in the Pacific Islands Region*, Proceedings of International Conference, Tasmania, 20-22 March (1989).

⁴⁵ Walter, R.J. *Peru and the United States, 1960-1975: How their Ambassadors Managed Relationships in a Turbulent Era*, Pennsylvania State University Press, Pennsylvania (2010); Dent, D.W. *U.S-Latin American Policymaking: A Reference Handbook*, Greenwood Press, Westport (1995).

⁴⁶ Marx, W. "The Eastern Tropical Pacific: Fishing for Cooperation", *Bulletin of the Atomic Scientists*, Science and Public Affairs, A Soviet Scientist's Manifesto, New Food Plan for India (1986:18-22).

⁴⁷ Cary, H.F. *American Tunaboat Association*, Department of Interior, Washington DC (1957)

In the fishing disputes between the Pacific Island States and American fishermen that helped to shape the Treaty negotiated between the Pacific Island States and the US, two major events stand out—the arrest of two American purse seine vessels, first the *Danica* by the PNG government in 1982, and second the *Jeannette Diana* by Solomon Island authorities in 1984. The *Danica* and the *Jeannette Diana* were arrested for illegal fishing within the 200 nautical mile exclusive economic zones of PNG and Solomon, respectively. Other, more minor disputes are also addressed, demonstrating how the American fishing fleet operated and the attitude of the US towards the Pacific Island States more generally.

Why did the American fishing fleet violate Pacific Island States' fisheries laws and regulations? In brief, because US fisheries policy did not recognize any national jurisdiction claimed over tuna resources beyond 12 nautical miles of territorial waters. In addition, American fishermen were fully aware that US fisheries policy would protect them against claims of illegal fishing activities elsewhere in the world. Yet the US government did not overtly take responsibility for the actions of its fishing vessels outside territorial waters. Hence, the possibility of a fishing dispute was substantial.⁴⁸ When this subsequently occurred, a significant deterioration in government to government relations followed.⁴⁹

In February 1982, the PNG Government seized the *Danica*, an American registered fishing vessel, for illegal fishing. The cost of this seizure, with its illegal catch, amounted to a sum \$US13 million.⁵⁰ The US responded with a trade embargo on any fish and fish products from

---

⁴⁸ See Jones, B. "Confrontation Threat in Pacific", *Canberra Times*, October 8, Canberra 1978; Knibb, D. "Pacific Islands are Drifting Away from West", *The Wall Street Journal*, December 30 (1985: 9); Aikman, C.C. "Island Nations of the South Pacific and Jurisdiction over Highly Migratory Species", *Victoria University of Wellington Law Review* 17(1), Wellington (1981); Carroz, J.E. and Savini, M.J. "The Practice of Coastal State Regarding Foreign Access to Fishery Resources", UN Document FAO Fisheries Report 293, Rome (1983); "It's Everyone's Tuna, Says Uncle Sam", *Asiaweek*, January 19 (1979); Joseph, J. and Klawe, W.L. "The Living Pelagic Resources of the Americas", *Ocean Development and International Law* 2(1), Taylor & Francis, Philadelphia (1974); Larson, D.L. "Reagan Rejection of the U.N. Convention", *Ocean Development and International Law* 14(1), Taylor & Francis, Philadelphia (1984).

⁴⁹ See Herr, R. "South Pacific Islands Question U.S. Friendship", *Far Eastern Economic Review*, January 16, Review Publication Co. Ltd, Hong Kong (1986); Doulman, D.J. "The Kiribati - Soviet Union Fishing Agreement", *Pacific Viewpoint* 28(1) May, Victoria University of Wellington (1987:27); Rasmussen, P. "The Tuna War: Fishery Jurisdiction in International Law", *University of Illinois Law Review* 16, Chicago (1981); "American Ocean Policy Adrift an Exclusive Economic Zone as an Alternative to the Law of the Sea Treaty", *University of Florida Law Review* 35, Miami (1983); Burke, W.T. "U.S. Fishery Management and the New Law of the Sea", *The American Journal of International Law* 76, Washington D.C. (1982); Janah, M. "US Disappoints Pacific Nations", *The Wall Street Journal*, August, New York (1991).

⁵⁰ See "Danica's Incident", *Pacific Islands Monthly*, May (1982); "How Embarrassing", *Islands Business*, December, Suva (1985:25).

PNG bound for American markets. In addition, PNG was warned by the US that unless the boat was released, foreign aid and other financial arrangements could be affected.

Eventually, the *Danica* was released after a temporary nine months access license of \$194,000 was agreed, the fine paid and the embargo lifted.⁵¹ As part of the arrangement, the *Danica* was sold back to its owner for \$US 267,000, which was just a fraction of its market value⁵² of \$US 10 million.⁵³

The *Danica* incident saw PNG forced to enter into an interim accord with the ATA in order for the US government to lift its trade embargo.⁵⁴ This interim license fee access was more generous than any other granted to a DWFN currently fishing in PNG waters.⁵⁵ The initial reaction by the Forum was to call for the US to amend its existing policy. A May 1984 South Pacific Forum Fisheries Committee meeting then directed the Agency's Director to write to the United States State Department, on behalf of the Pacific Island States, proposing a negotiated settlement over the *Danica*.⁵⁶ Following the *Danica* incident, the US Congress for the first time voiced its concern about the United States' relations with the Pacific Island States.⁵⁷

A second dispute of major relevance occurred on 20 June 1984, when the *Jeannette Diana*, an American vessel employing purse seiner catch netting, was arrested just 40 miles north of Santa Ysabel and charged by the Solomon government for fishing without a license in its waters.⁵⁸ Its 500 tonnes of fish (worth \$SBD 250,000) was confiscated.⁵⁹ The Solomon High

---

⁵¹ See Tsamenyi, B. "The South Pacific States, the USA and Sovereignty over Highly Migratory Species", *Marine Policy* 10(29) (1986); Coase, R.A. *Statement of Facts Concerning F.F.V [Foreign Fishing Vessel] Danica* presented to Rabaul District Court, Papua New Guinea, February 18 (1982).

⁵² Doulman, D.J. *Fishing For Tuna: The Operation of Distant-Water Fleets in the Pacific Islands Region*, East-West Center, Honolulu (1986:36).

⁵³ Richardson, J. "End of the Tuna War", *Islands Business*, February, Suva (1985:39).

⁵⁴ See Doulman, D.J. *Fishing For Tuna: The Operation of Distant-Water Fleets in the Pacific Islands Region*, East-West Center, Honolulu (1986); Doulman, D.J. and Wright, A. "Recent Developments in Papua New Guinea's Tuna Fishery", *Marine Fisheries Review* 45 (10) (1983); Doulman, DJ "Distant-Water Fleet Operations and Regional Fisheries Cooperation", in Doulman, D.J. (ed.) *The Development of the Tuna Industry in the Pacific Islands Region: An Analysis of Options*, East-West Center, Honolulu (1987:47).

⁵⁵ Gubon, F. "The South Pacific Multilateral Fisheries Treaty: Some Possible Implications for Fisheries Development, Management and Conservation in the Pacific Islands Region", *Melanesian Law Journal* 22, University of Papua New Guinea, Port Moresby (1994:5).

⁵⁶ www.spc.int/coastfish/reports/Bibliographies/Fish.../Kiribati_Biblio.pdf.

⁵⁷ Crawford, J. and Rothwell, D.R. (eds.) *The Law of the in the Asian Pacific Region: Developments and Prospects*, Martinus Nijhoff Publishers, Netherlands (1995).

⁵⁸ Tsamenyi, B.M. "The Jeannette Diana Dispute", *Ocean Development and International Law* 16, Taylor & Francis, Philadelphia (1986: 353-367). See also Richardson, J. "End of the Tuna War", *Islands Business*,

Court then fined the owners \$SBD 72,000.⁶⁰ The US again imposed a trade embargo on Solomon's fish and fish product exports to the US.⁶¹ This was a harsh penalty for the small Solomon Islands economy, given its \$SBD 12 million per annum export of fish and fish products to the US alone.⁶²

Despite the economic repercussions involved, the Solomon government decided to put the vessel up for sale at a reserved price of \$SBD 3.9 million.⁶³ The US then responded by warning potential buyers that the *Jeannette Diana* would become subject to seizure and forfeiture by the US. In turn, the Solomon government retaliated by banning fishing vessels owned by American citizens and began to consider inviting the Soviet Union to discuss fishing agreements to fish in its EEZ.⁶⁴

The Solomon Islands government sought support from its regional neighbours during the Fifteenth South Pacific Forum meeting, held in Funafuti, Tuvalu on August 27-28, 1984. They called for a ban on all American fishing vessels in Pacific Island States' ports and a withdrawal of all the licenses of American fishing vessels currently operating in the region. However this approach did not gain much support. Those in attendance did not want to inflame the situation any further and in the end only a general statement of concern about US fisheries policy was issued.⁶⁵

February (1985:39); Tsamenyi, B.M. "The South Pacific States, the USA and Sovereignty over Highly Migratory Species", *Marine Policy*, January (1986:29-39); Woodworth, D.C. "U.S: A Proposal for Resource Management in the American Pacific Islands", *University of Hawaii Law Review* 10, Honolulu (1988:158); Keith-Reid, R. "War on Tuna Pirates", *Islands Business*, August, Suva (1984); "The Tuna War: Fishery Jurisdiction in International Law", *University of Illinois Law Review* 16, Chicago (1981); "Tuna Flat rides out Recession", *Pacific Islands Monthly*, April 11-13 (1996:47); "US Policy Sailing Turbulent Waters", *Papua New Guinea Foreign Affairs Report* 2(1) April, Port Moresby (1982:9); Waugh, G. "Tuna Wars", *Pacific Islands Monthly* 46 June (1988); Hodge, W.C. (ed.) *Fisheries Cases Studies & Materials*, FFA, Honiara (1996); Dyke, J.M. (ed.) *Consensus and Confrontation: The United States and the Law of the Sea Convention* (1985).

⁵⁹ Tsamenyi, B.M. "The Jeannette Diana Dispute", *Ocean Development and International Law* 16, Taylor & Francis, Philadelphia (1986: 353-367).

⁶⁰ Richardson, J. "End of the Tuna War", *Islands Business*, February, Suva (1985:39).

⁶¹ See Kengalu, A.M. *Embargo: The Jeannette Diana Affair*, Robert Brown & Associates, Campbelltown (1988); Floyd, JM *Import Regulations in the United States: A Focus on Tuna Commodities From the Pacific Islands Region*, East-West Center, Honolulu (1985).

⁶² See Richardson, J. "Why that Ban was Lifted", *Islands Business*, April, Suva (1985:39).

⁶³ Kengalu, A.M. *Embargo: The Jeannette Diana Affair*, Robert Brown & Associates, Campbelltown (1988).

⁶⁴ Vanuatu signed a fishing agreement with the Soviet Union. See "Vanuatu Opens Port to Soviets in \$2 Million Tuna Deal", *The Canberra Age*, January 28, Canberra (1987). See also Woodworth, D.C. "U.S Tuna: A Proposal for Resource Management in the American Pacific Islands", *University of Hawaii Law Review* 10, Honolulu (1988:158-159); <http://classshares.student.usp.fj/MS205/MS205.Part3-Application-MLR.ppt>.

⁶⁵ Fifteenth South Pacific Forum Meeting, Funafuti, Tuvalu, 27-28 August (1984). The meeting issued concern about the United States' fisheries policy particularly not recognizing coastal States' sovereign rights over EEZ.

In February 1985, the Solomon government resold the *Jeanette Diana* to its owners for \$SBD 770,000—again, a fraction of its \$SBD 3.9 million price tag—but vowed the same treatment would be given in future.⁶⁶ In June 1985, the Solomon government protested to the US regarding the American fishing vessels *Lone Wolf* and *Bold Adventurer*, which were both spotted illegally fishing within Solomon Island waters.⁶⁷ The US responded by saying that it was not responsible for the actions of individual fishing vessels.⁶⁸ The Solomon government expressed its concern that such incidents were not unusual. The American tuna fleet, they claimed, was constantly poaching their local tuna (as well as that of other Pacific Island nations) and sending it for processing in canneries in American Samoa.

The embargo over the *Jeanette Diana* incident was not lifted for two months and only then following threats by Pacific leaders to boycott a third round of talks to discuss a multilateral fisheries treaty.⁶⁹ The US responded that the delay was because it took time to complete all relevant paper work before the embargo could be lifted.⁷⁰

These actions were interpreted negatively in the region. The delay was seen as typical of American tactical and strategic maneuvers where, by manipulating and dictating the situation, pressure was applied to the unity of the Pacific Island States. It could also have indicated that the US did not want to show its hand too readily, or to concede in ways that might reveal policy weakness. Interestingly, a lifting of the embargo was announced just before the third round of talks between the Pacific Island States and the American delegations to consider multilateral fisheries treaty started.⁷¹ The US, it seemed, now wanted to speed up the negotiations to avoid any further complications.

Other disputes were reported throughout the Pacific over the inability of the US to control its fishing fleet in the region. For instance, the master of the *Jeanette Diana*, previously arrested by the Solomon Island authorities, months later became the skipper of the *Carol Linder*. This American purse seiner ran aground within Kiribati waters but was then re-floated. In 1986, the *Priscilla M*, an American fishing vessel pulled into Pohnpei in the Federated States of

---

⁶⁶ <http://classshares.student.usp.fj/MS205/MS205.Part3-Application-MLR.ppt>.

⁶⁷ <http://classshares.student.usp.fj/MS205/MS205.Part3-Application-MLR.ppt>.

⁶⁸ <http://classshares.student.usp.fj/MS205/MS205.Part3-Application-MLR.ppt>.

⁶⁹ Richardson J. "Why that Ban was Lifted", *Island Business*, April, Suva (1985:39).

⁷⁰ Richardson, J. "End of the Tuna War", *Islands Business*, February, Suva (1985:39).

Micronesia (FSM) seeking medical attention for one of its crew.⁷² After inspecting the logbook, local authorities discovered evidence that the vessel had been illegally fishing in FSM waters and ordered it to pay \$US400, 000 in fines.⁷³

Moreover illegal operations by American vessels in the Pacific Island States' waters continued even after the Treaty was signed. In May 1987, the Kiribati government seized and fined the *Tradition*, an American fishing vessel, for operating without license.⁷⁴ In the process of arresting the *Tradition*, at least ten other illegal American vessels escaped.⁷⁵ The United States' reaction was muted; unlike previous incidents these events were not reported by the American news media.⁷⁶ A formal complaint lodged by the Kiribati government to the American Embassy in Suva over the *Tradition* received no response.⁷⁷ Later both the *Lone Wolf* and the *Bold Adventurer* were photographed fishing illegally in Solomon's waters.⁷⁸

These incidents further affected US-Pacific ties. Even when a Treaty has yet to be ratified, it is customary practice for parties that have signed it not to undermine the terms of that Treaty.⁷⁹ These incidents created strains between Washington and its Pacific counterparts. They also demonstrated the effectiveness and power of the US fisheries policy and its inflexible enforcement. Pacific Island States had to devise strategies to approach US fisheries policy to try to find productive and positive outcomes.

---

⁷¹ Gubon, F. "The South Pacific Multilateral Fisheries Treaty: Some Possible Implications for Fisheries Development, Management and Conservation in the Pacific Island Region", *Melanesian Law Journal* 22, University of Papua New Guinea, Port Moresby (1994:6).

⁷² See King, J. "Prescilla M Freed After Settlement", *Sunday News*, Guam, September (1986:3).

⁷³ <http://classshares.student.usp.fj/MS205/MS205.Part3-Application-MLR.ppt>.

⁷⁴ "American Tuna Crew Arrested", *West Hawaii Today*, May 5, Honolulu (1987:5). See also "Kiribati Seizes US Fishing Vessels", *Pacific Daily News*, Guam, May 6 (1987); Bataua, B.T. "Kiribati's Biggest Catch", *Pacific Islands Monthly* 58(7), July (1987:23); "Court Settles Tuna Case", *Pacific Daily News*, Guam, June 12 (1987:3); "Contempt for Tuna Accord", *Pacific Islands Monthly* 58(8) August (1987:5); "Kiribati Captures US Tuna Boat", *Pacific Islands Monthly* 58(6) April (1987:46); Woodworth, D.C. "U.S Tuna: A Proposal for Resource Management in the American Pacific Islands", *University of Hawaii Law Review* 10, Honolulu (1988:153).

⁷⁵ "American Tuna Crew Arrested", *West Hawaii Today*, May 5, Honolulu (1987:5).

⁷⁶ North, D.S. "US Reaction to Seize", *Pacific Islands Monthly*, July (1987).

⁷⁷ "Kiribati Seizes US Fishing Vessels", *Pacific Daily News*, Guam, May 6 (1987:3).

⁷⁸ <http://classshares.student.usp.fj/MS205/MS205.Part3-Application-MLR.ppt>.

⁷⁹ See Stoljar, S. "Keeping Promises: The Moral and Legal Obligation", *Legal Studies* 8 (1988); Merrills, J.G. "Morality and the International Legal Order", *Modern Law Review* 31, London (1968); Nahlik, SE "The Grounds of Invalidity and Termination of Treaties", *American Journal of International Law* 65, Washington D.C. (1971); Rosenne, S. *Breach of Treaty*, Grodus, Cambridge (1985); Sinclair, I. *The Vienna Convention on the Law of the Treaties*, 2nd edition, Manchester University Press, Manchester (1984); Smith, J.C. *Legal Obligation*, Athlone Press, London (1976); Smith, R.W. *State Responsibility and the Marine Environment*,

The Fishermen's Protective Act

In the 1940s, the US Congress was pressured by ATA lobbying groups for American fishermen to fish anywhere they wish.⁸⁰ The American purse seine fleet started fishing for tuna in the South Pacific in the 1970s and negotiations for fishing agreements with Pacific Island States were carried out by the American Tunaboat Association (ATA) on behalf of US fishers.

The Fishermen's Protective Act (FPA) was controversial legislation in that it encouraged American fishermen to fish anywhere deemed legal by the US fisheries policy. This directly contradicted other coastal states' fisheries policies. Under the FPA, the US government could compensate the losses and damages incurred by vessels prosecuted and fined for illegal fishing in foreign waters. This was seen as an American government subsidy for tuna fishing boat owners and secured a constant flow of tuna to canneries.

However, the FPA was purposely designed and adopted as a response at the time to certain South American coastal States who had unilaterally extended their national jurisdictions beyond 12 nautical miles territorial waters from their coasts. As a result, the American government intervened to adopt the *Fishermen's Protective Act* (FPA), primarily to protect the interests of American fishermen. This intervention demonstrated the strength of the American resolve to gain access at any price to tuna resources able to serve market and commercial interests.

The FPA was adopted by the United States Congress on August 27, 1954, and protected the rights of US registered fishing vessels both on the high seas and on seas where the US did not recognize the operation of any territorial jurisdiction.⁸¹ The US did not recognize jurisdiction beyond 12 nautical miles territorial sea; thus they did not recognize the Latin American coastal States' then newly declared 200 nautical miles maritime extensions. The FPA formalized this refusal to recognize any jurisdictional claim extending beyond the 12 nautical miles territorial seas. The FPA was seen as a solution to US fears that such claims could critically affect its tuna industry and associated domestic interests.

Dordrecht, Boston (1988); Paasivirta, E. *Participation of States in International Contracts*, Lakimeisluton Kustannus, Helsinki (1990).

⁸⁰ See Kolb, K.H. "Congress and the Ocean Policy Process", *Ocean Development and International Law* (1975); "Stirring Up the Pacific", *Asiaweek*, January 19 (1979:36).

⁸¹

The FPA was also designed to protect American fishermen fishing in areas beyond 12 nautical miles territorial sea of foreign countries. The US regarded these areas as high seas in the event of fishing for HMS. The extension of the US maritime boundary was also believed to have resulted from pressure by ATA lobbying groups.

Under the FPA, the US government could compensate loss and damage incurred by American fishing vessels in the event of their arrest or seizure by foreign countries for illegal fishing.⁸² The amount would be paid by the Secretary of Treasury following verification by the Secretary of State. The amount concerned was liable for deduction from the foreign assistance granted by the US to any country concerned, although this was not mandatory.⁸³ Such compensation arrangements did not discourage illegal fishing operations in disputed waters.⁸⁴

As Meron notes:

The idea of the US Government's compensating US flag vessels operating off the coasts of foreign countries arose out of the desire of that government to encourage owners of such vessels (and particularly fishing vessels) to continue to operate in waters considered by the United States to be high seas, but regarded by the countries concerned (particularly certain Latin American countries) as territorial waters or as fishing zones. This has brought about the development of government programmes of compensation and insurance of the US fishing vessels for losses to the fishing industry resulting from seizures, penalties, and confiscation by the coastal states, acts which in the view of the United States amounted to violations of international law.⁸⁵

The US government compensating its fishermen for fishing illegally in another country's national jurisdiction could be construed as encouraging such activities. American fishing

---

⁸² See Meron, T. "The Fishermen's Protective Act: A Case Study in Contemporary Legal Strategy of the United States", *The American Journal of International Law* 69 (1975:290).

⁸³ McLean, W.O. and Sucharitkul, S. "Fisheries Management and Development in the EEZ: The North, South, and Southwest Pacific Experience", *Notre Dame Law Review* 63:492 (1988:526). See also Kelly, C.R. "Law of the Sea: The Jurisdictional Dispute over Highly Migratory Species of Tuna" *Columbia Journal of Transnational Law* 26 (1988:499).

⁸⁴ See Kelly, C.R. "Law of the Sea: The Jurisdictional Dispute over Highly Migratory Species of Tuna", *Columbia Journal of Transnational Law* 26 (1988:499).

⁸⁵ Meron, T. "The Fishermen's Protective Act: A Case Study in Contemporary Legal Strategy of the United States", *The American Journal of International Law* 69 (1975:290).

vessels were well equipped with the latest technologies—many more advanced than those of the patrol boats of coastal States. A willingness to compensate American fishers for their losses incurred, if caught, was not legal under international law.

For Meron,

The operation of the principle of subrogation, and, in the case of the Fishermen's Protective Act, the statutory obligation of the US Government to take some action in order to collect certain claims have the potential of automatically elevating cases of injuries to nationals abroad, normally handled through the process of diplomatic protection, to cases of direct international confrontation. There is however no evidence to suggest that the Fishermen's Protective Act has had such an effect. The provision regarding deduction from foreign aid could potentially exacerbate, but this provision is now discretionary, not mandatory.⁸⁶

American fishers were significant in that they acted as agents of the US government in protesting against the legality of maritime jurisdictional extension.⁸⁷ Because it encouraged American fishers to operate without licenses in foreign jurisdictions, the relevant Act continued to cause confrontations between coastal States and the US. The US appeared to feel it was above international law, free to interpret the rule of law in ways that it suited its policy. The only practical solution was to amend the FPA, leaving the US to take full responsibility for its fishing vessels, regardless of their non-recognition of the sovereign rights exercised over the 200 nautical miles EEZ.

The Cold War in the South Pacific

These disputes about resources unfolded against a backdrop of growing superpower tensions. Toward the end of 1970s, the political and ideological rivalry between the US and the Soviet Union took center stage in the South Pacific. Historically, Soviet interests in the South Pacific had been largely commercial and scientific.⁸⁸ Crocombe argues that,

---

⁸⁶ Meron, T. "The Fishermen's Protective Act: A Case Study in Contemporary Legal Strategy of the United States", *The American Journal of International Law* 69 (1974:307).

⁸⁷ Rasmuseen, N.P. "The Tuna War: Fishery Jurisdiction in International Law", *University of Illinois Law Review*, Illinois (1981:762).

⁸⁸ See Tumarkin, D. "USSR: The Unknown Northern Neighbour", in Crocombe, R and Ali, A. (eds.) *Foreign Forces in Pacific Politics*, University of the South Pacific, Suva (1993).

After the Islands nations became independent, Russia [...] attempted a presence in the Islands, as it was involved in a global competition with the USA and its allies. It had a rare experience – Islands governments declined its offers to lever even more from its competitors, as the USA and its allies would pay a high price to block Russian involvement. Tonga implied in the mid 1970s that it was about to accept Russian aid, but it was merely a ploy to persuade the West and Japan to give more – which they did.⁸⁹

Washington's decision to open the Treaty talks was basically promoted by concern over the fishing incidents between PNG and the US and Solomons and the US in an attempt to protect local livelihoods. These had led to anti-American feelings at a time that Soviet diplomatic activity stepped up in the region.⁹⁰

Crossett states,

Indonesia's Foreign Minister says Moscow's efforts to extend its influence into the South Pacific may have been set back by the Reagan Administration's decision to ease a conflict with island nations over fishing rights by negotiation a treaty on the issue ... said in an interview ... that the American action should be regarded as only the first step in a Western campaign to insure the friendship and stability of the region.⁹¹

Fiji and the Soviet Union agreed to establish a diplomatic relationship a few years after Fiji's independence. The Soviet also agreed to establish relations with Tonga in October 1975. In April of the following year, Soviet Ambassador Mr. Selanior presented his credentials to the King of Tonga.⁹² On 19 May 1976, Papua New Guinea's Foreign Minister, Sir Maori Kiki, visited Moscow and in July of the same year the Samoan Foreign Minister visited Moscow.⁹³ Nauru was the only sovereign State in the region that did not express any interest in the

---

⁸⁹ Crocombe, R., *Asia in the Pacific Islands Replacing the West*, IPS Publications, University of the South Pacific, Suva (2007:269).

⁹⁰ Crossette, B. "U.S. Fishing Pact With Pacific Islands Praised", The New York Times, Tuesday, January 7, (1987:1). <http://query.nytimes.com/gst/fullpage.html?res=9B0BEE3DF1630F934A35752C0A96...>

⁹¹ Crossette, B. "U.S. Fishing Pact With Pacific Islands Praised", The New York Times, Tuesday, January 7, 1987:1. <http://query.nytimes.com/gst/fullpage.html?res=9B0BEE3DF1630F934A35752C0A96>

⁹² Segal, G. *The Soviet Union and the Pacific*, Unwin Hayman Ltd, London (1970); Millar, T.B. (ed.) *International Security in the Southeast Asian and Southwest Pacific Region*, University of Queensland Press, Queensland (1983); Fletcher, M. *Tonga" Your Passport to a Polynesian Paradise*, Lonely Planet Publications Pty Ltd, Fortscray, Victoria (1990).

⁹³ *Soviet and Chinese Activities in the South Pacific Island Area Report*, External Intelligence Bureau, Wellington, 16 July (1976: 2).

Soviet Union, which may reflect that economic interests were key issues for the other Pacific Island States. At the same time, the Soviet Union raised the issue of having a fishing agreement with other countries in the region.

In the late 1980s, it was estimated that the Soviet Union had some 3,500 fishing vessels, making it the biggest fishing fleet in the world with 6.5 million dead-weight tons.⁹⁴ These vessels were owned and operated by the Soviet government and, it was argued by various quarters, equipped with intelligence gathering devices that could monitor American and its allies' naval fleet movements. It was assumed that Soviet fishing activity in the Pacific was a cover to help counter the political and diplomatic influence of US and the West in the region as whole. As Crocombe described it,

In 1985, in another surge of fear of Russian involvement, Australia increased its aid by 400%, in return for the Islands governments not dealing with Russia. Islands governments' main interest in the USSR was to offset US hegemony. The USA refused to recognize Islands nations rights to tuna in their EEZs (while defending tuna in the US EEZ), but changed course when Islands nations began leasing fishing rights to the USSR. Japan doubled its aid, gave to the Forum for the first time, and gave UNDP a development fund for the Islands. That was a response to US pressure, not to needs in the Islands. New Zealand, Australia, Britain, Japan and Korea set up a Trust Fund for Tuvalu in 1987 in return for Tuvalu not leasing fishing right to Russians.⁹⁵

The Soviet Union seemed determined to establish diplomatic missions in the Pacific; something highlighted by the establishment of a South Pacific branch in the Foreign Ministry in Moscow.⁹⁶ This was the foundation for reinserting the Cold War and the most powerful

---

⁹⁴ Kim, Byung Ki., "Moscow's South Pacific Fishing Fleet Is Much More Than It Seems", The Heritage Foundation, Washington DC (1988).

⁹⁵ Crocombe, R., *Asia in the Pacific Islands Replacing the West*, IPS Publications, University of the South Pacific, Suva (2007:2269).

⁹⁶ See Boobbyer, P.C. "Soviet Perceptions of the South Pacific in the 1980s", *Asian Survey*, viii, No.5, May, University of California, Berkeley (1988:573-593); Breshauer, G.W. "Ideology and Learning in Soviet Third World Policy", *World Politics*, Volume XXXVI, No.5, Princeton University, Princeton, April (1987:429-448); Dibb, P. "Soviet Strategy Towards Australia and New Zealand and the South-West Pacific", *Australian Outlook*, University of Queensland Press, Queensland, August (1985); "USSR Discovers Strategic Value of Pacific Islands", *UNISIS Wireless File EPS* 140910, September 10 (1986); Young, P.Y. "Gorbachev's Pacific Ambitions: The Soviets are Here to Stay", *Pacific Islands Monthly* 58(11), November (1987); Zamostry, T.S. "Moscow and the Third World: Recent Trends in Soviet Thinking", *Soviet Studies*, Volume xxxvi, No.2, April, Glasgow University, Glasgow (1984); Segal, G. *The Soviet Union and the Pacific*, Unwin Hyman, Boston (1990); Starke, J.G. *The ANZUS Treaty Alliance*, Melbourne University Press, Melbourne (1965); Brown, G. *The ANZUS Alliance: The Case Against*, Australian National University, Canberra (1987); Gill, G. "Soviet

countries of the world into the Pacific through a more aggressive posture than previously. The US did not take chances when the Soviets shifted their interest to the Pacific during the Cold War. The Soviet Union had established some military servicing facilities in Cam Ranh Bay, a former American facility in Vietnam that had accommodated ships of the US Pacific fleet.⁹⁷ The South Pacific could thus be seen as a last frontier of global competition between the two superpowers.⁹⁸ The two countries' military bases in Asia were becoming more visible and active, which also raised anxiety in the region. Others saw this as an opportunity to take advantage of major power ideological rivalry.

Financial and technical assistance started to flow into the region, directly from the US and its allies, as well as from Australia, New Zealand and international and regional organizations. This reinforced the alliance and support provided by the US and its Pacific allies in the region during WW II. Japan had been replaced by the Soviet Union as a threat—although an ideological rather than a physical one.

In the 1980s, the Reagan administration launched a crusade against communism in the South Pacific.⁹⁹ Strategies developed by the US to counter the Soviet threat included continuing close policy coordination with Japan and developing political relations with China.¹⁰⁰ To the south, the US continued to rely on Australia to help protect its regional interests and monitor the Pacific Island States.¹⁰¹

Interests in the Pacific", in Ravenhill, J. (ed.) *No Longer an American Lake?*, Allen & Unwin, Sydney (1989); Dorrance, J.C., et al "The Soviet Union and the Pacific Islands", *Asian Survey* 30(9), University of California Press, Berkeley, September (1990); Hyde-Price, A *The USSR and the West: A Medium-term Strategy*, Fabian Society, London (1991).

⁹⁷ See Thakur, R. and Thakur, C.A. (eds.) *The Soviet Union as an Asian Pacific Power* (1987); Keith-Reid, R. "The Talks Shuffle On", *Islands Business*, January (1985:30); Henningham, S and Ball, D. (eds.) *South Pacific Security: Issues and Perspectives*, Australian National University, Canberra (1991).

⁹⁸ See Dorrance, J.C. et al *The South Pacific Emerging Security Issues and US Policy*, Brassey's, Washington (1990); Larson, D.L. "Security Issues and the Law of the Sea: A General Framework", *American Journal of International Law* 15, Washington DC (1985).

⁹⁹ Howard, M.C. *The Cold War and Political Alignment in the South Pacific*, Simon Fraser University, Vancouver (1991:18). See also Howard, M.C. "Myth of the Soviet Menace in the South Pacific", *Economic and Political Weekly* 21(7), Mumbai (1986); "Sharks Among Tuna", *Pacific Islands Monthly*, June (1988); "US eyes Soviet's Pacific Role", *The Evening Post*, March 27, Wellington (1986); Seabury, P. *America's Stake in the Pacific*, Taylor & Francis group, Washington (1981).

¹⁰⁰ Zang, M. *Major Powers at a Crossroads: Economic Interdependence and an Asia Pacific Security Community*, Lynne Rienner Publishers, Boulder (1995:96). See also Stephen, J.J. and Chichkanov, V.P. (eds.) *Soviet-American Horizons on the Pacific*, University of Hawaii Press, Honolulu (1986); Pugh, M.C. *The ANZUS Crisis: Nuclear Visiting and Deterrence*, Cambridge University Press, Cambridge (1989).

¹⁰¹ See Kelly, C.R. "Law of the Sea: The Jurisdictional Dispute over Highly Migratory Species of Tuna", *Columbia Journal of Transnational Law* 26 (1988:509); Miles, E.L. "US Security Interests in a Post-Cold War ...", *Columbia Journal of Transnational Law* 36 (1997); Morris, M.A. "Have U.S. Security Interests Really Been Scarified?: A Reply to Admiral Hill", *Ocean Development and International Law* 4(4) (1977); North, D.S.

The growing trade union movements in the South Pacific benefited from the Soviet position in the region. The pursuit of fishing arrangements was another feature of the competition for political domination between Soviet Union and the US and its allies.¹⁰² The Soviet Union established contacts with trade union elements in Fiji, providing aid and advice for trade union seminars and often sending trade union delegations in an attempt to increase the Russian influence in the union movement.¹⁰³ The human rights movement gained momentum and began to affect the thinking of the ordinary people in the region.¹⁰⁴ However, there were no political communist parties in the region and no media propaganda regarding Soviet influence or presence.

These movements were labeled by Western states as communist movements designed to undermine the freedom of the people in the region. This was designed to scare the Pacific Island States off communism. At the same time, unionism has benefited ordinary workers throughout the Western world through the promotion of deregulation and better conditions for workers. Ironically, the Soviet Union pushed and supported trade unions and human rights movements that did not exist in the Soviet Union itself. This demonstrates how international politics and diplomacy force countries to operate in such a way as to take advantage of or capitalize on any circumstances that undermine their rivals.¹⁰⁵

The anti-nuclear sentiment in the region weakened some Western strategic interests, particularly those of the United States.¹⁰⁶ The nuclear issue was a major problem for the United States because it seemed to give an upper hand to the Soviet Union. France's

---

"Pacific Vulnerable to Soviets, But only if US errs", *Pacific Islands Monthly*, February (1986); Segal, G. "The Soviet Union and the Pacific", in Drysdale, P. *The Soviet and the Pacific Challenge*, Australian National University, Canberra (1991); Sulikowski, T. "Soviet Union Policy", *Ocean Development and International Law* 3(1) (1975), Bello, W.F. *People and Power in the Pacific: The Struggle for the Post-Cold War Order*, Pluto Press, London (1992).

¹⁰² "Uproar Over Soviets", *Islands Business*, Volume II, No.9, September (1985); Ruble, B. *Soviet Trade Unions: Their Development in the 1970s*, Cambridge University Press, Cambridge (1981).

¹⁰³ Lal, Brij K. and Fortune, K. (eds.) *The Pacific Islands: An Encyclopedia*, University of Hawaii, Honolulu (2000); Soviet and Chinese Activities in the South Pacific Island Area Report, External Intelligence Bureau, Wellington, 16 July (1976:2); Kulagin, V. "Russia and Cooperation in the Asia-Pacific", *Australian Journal of International Affairs*, 14-65-332X, Volume 48, issue 1, Canberra (1994: 75-86).

¹⁰⁴ Soviet and Chinese Activities in the South Pacific Island Area Report, External Intelligence Bureau, Wellington, 16 July (1976:2).

¹⁰⁵ Sheeran, P. *Literature and International Relations: Stories in the Art of Diplomacy*, Ashgate Publishing Limited, Hampshire (2007).

¹⁰⁶ Wittner, L.S. "Nuclear disarmament Activities in Asia and the Pacific", *1971-1996 The Asia-Pacific Journal*, Tokyo, Vol. 25-5-09 (2009).

continued nuclear weapons testing and the persistent silence of the United States over these activities frustrated the Pacific Island States.¹⁰⁷

Frustration with and distrust of the US facilitated the adoption of the South Pacific nuclear weapons free zone Treaty. This was a regional and international measure taken to protect the region from the harmful effects of nuclear weapons and radioactive materials. The nuclear-free issue deepened the concerns of the Pacific Island States that their interests were being deliberately ignored; they were regarded as unimportant in the context of key international political and trade deliberations. US allies were also part of the problem from a Pacific Island States' perspective. For instance, Japan's proposal to dump nuclear waste on Ogasawara Island met no resistance from Western allies. This lack of opposition annoyed the Pacific Island States.

However, policies designed to make the South Pacific nuclear free were of major concern to the US. At the same time, it interpreted growing Soviet interest in this region as an attempt by the Soviet Union to sustain their ideological rivalry and global competition with the US in the South Pacific. The Soviet Union supported the nuclear-free policy.¹⁰⁸

This support was designed to encourage the Pacific Island States to ban American nuclear armed vessels from the region, which would undoubtedly disrupt United States military capability and mobility.¹⁰⁹ Denying port access to American nuclear vessels would further Soviet interests, as it would allow them to push to establish resident diplomatic missions.¹¹⁰

In 1986, Edward Shevardnadze, the Soviet Foreign Minister, was on an official tour of the Pacific and assured the Pacific Island States that the Soviet Union respect the Pacific nuclear-

---

¹⁰⁷ Lal, B.V. and Fortune, K. (eds.) *The Pacific Islands: An Encyclopedia*, University of Hawaii Press, Honolulu (2000).

¹⁰⁸ Pitt, D. and Thomson, G. (eds.) *Nuclear-Free Zones*, Groom Helm, New York (1987); Smith, R.H. *The Nuclear Free and Independent Pacific Movement After Murruroa*, I.B. Tauria & Co Ltd, London (1997); Clements, K.P. "New Zealand's Antinuclear Stand", *Bulletin of Atomic Scientists*, vol.43, No.2, Chicago, March (1987).

¹⁰⁹ See Power, P.F. "The South Pacific Nuclear-Weapon-Free Zone", *Pacific Affairs* 2 (1986); Sulikowski, T. "Soviet Union Policy", *Ocean Development and International Law* 3(1) (1975); McIntosh, M *Arms Across the Pacific Security and Trade Issues Across the Pacific*, Printer, London (1987); Hayes, P., et al *American Lake: Nuclear Peril in the Pacific*, Penguin Books, New York (1986).

¹¹⁰ There are non-resident missions in some Pacific islands. See Kiste, R.C. and Herr, R.A. "The Potential for Soviet Penetration of the South Pacific Islands: An Assessment", research paper for United States Department of State, December (1984).

free policy and ratify the protocols of the South Pacific Nuclear Free Zone Treaty.¹¹¹ Mr. Shevardnadze also challenged other nuclear weapons powers to follow suit. New Zealand welcomed this position and supported the Soviet response. Theoretically, it seems that the Soviet Union propaganda was mainly aimed to undermine the position of the US and its allies in the region; it also aimed to destroy the ANZUS treaty—New Zealand was a member of ANZUS and had taken a stance against nuclear vessels.

In the New Zealand Ministry of Foreign Affairs' brief of the Prime Minister regarding the growing Soviet interest in the South Pacific, he was cautioned that,

... there is no way the Soviet Union is completely shut out from the region and they have legitimate reason to be here just like everybody else. From a practical point of view, it is important for the region as whole to deal with the Russians collectively and ensure their activities should be in the region's interests. Such an approach would reflect to the Forum that New Zealand is not over-reacting, but dealing with the issue rationally and professionally. Yet the New Zealand approach to the Russians is subtle, but it indicated to the rest of the Pacific Island States that the presence of the Soviet Union in the region is not a laughing matter either.¹¹²

The Soviet Union's attempt to build relationship with the newly independent Pacific Island States can be viewed as a normal development in the world of diplomacy and international relations, as well as being a part of the struggle between powerful nations. This diplomatic development in the region was very noticeable and garnered a quick reaction from the Pacific Island States. The Soviet approach involved establishing a fishing agreement and fishing bases in the region. It is suspected that the Soviet Union's intention was very much fishing and diplomatic in nature; it is unlikely that they wished to have a military base in the region.¹¹³

---

¹¹¹ Coffey, J.W. :New Thinking or New Tactics in Soviet Foreign Policy, in Fleron, F.J.jr., Hoffmann, E.P. and Laird, R.R. (eds.) *Soviet Foreign Policy, 1917-1991: Classic and Contemporary Issues*, Transaction Publishers, New Brunswick, New Jersey (1991); Zagoria, D.S. "The Changing Role of the Soviet Union in the Pacific", in Fleron, F.J.jr., Hoffmann, E.D. and Laird, R.F. (eds.) *Contemporary Issues in Soviet Foreign Policy: From Brezhnev to Gorbachev*, Transactional Publishers, New Jersey (2009); Protocols to the South Pacific Nuclear Free Zone were adopted by the South Pacific Forum, 8 August 1986 and the South Pacific Nuclear Free Zone Treaty was entered into force following the deposit of the eighth instrument 11 December 1986 – Fiji is the depositary for the Treaty (<http://www.iaea.org/Publications/Documents/Infcircs/Others/inf331a1.shtml>).

¹¹² Ministry of Foreign Affairs- Brief to the Prime Minister on South Pacific Forum, 26-28 July 1976, Nauru (Wellington, 19 July:1).

¹¹³ Carpenter, T.G. (ed.) *Collective Defense or Strategic Independence: Alternative Strategies for the Future*, Cato Institute, Canada (1989).

The timing of the Russian interest in the South Pacific coincided with the Pacific Island States' establishment of the EEZ regime. That is, the Soviet interest (and that of other DWFN) in fishing in the South Pacific region was linked to the forthcoming extension of coastal sovereign rights to 200 nautical miles. This provided an economic opportunity from the Soviet Union's perspective; fishing bases for its fishing fleet (supplies) would maximize these potential economic benefits.

New Zealand was very pragmatic in its approach to the Russian issue and it was influenced by the United States and allies. It carefully watched the Russian activities and New Zealand officials privately argued that any unwelcome tendencies would need to be dealt with accordingly.¹¹⁴ In practice, New Zealand police sought to contain the spread of Soviet influence and to discourage Pacific states from providing on-shore facilities, regardless of their ostensible purposes.¹¹⁵ It was feared that a prominent Russian presence in the region would not only would bring about major change to the geopolitical characteristics of the region, but it would also create complex challenges for the Pacific Island States in the long term.

New Zealand Prime Minister Robert Muldoon argued that a Soviet presence cost the Pacific Island States that permitted it and that it was against the interests of the region as a whole.¹¹⁶ On the other hand, his Samoan counterpart was of the firm belief that Russian aid would improve the living standards of Samoan people and was welcome given that traditional aid sources were not expanding as hoped.¹¹⁷ As a result, Muldoon proposed that New Zealand should provide more aid and also urged Australia to do more than it had in the past.

This discussion raises two points: First, it demonstrates that the Pacific Island States relied heavily on foreign aid. Second, it shows that the Soviet Union was seen by the Pacific Island States as major player in the region and an actor that could stimulate other traditional donors. It also suggests that New Zealand (and Australia) struggled to comprehend the Pacific Island States desperation for any form of assistance and vulnerability to new relationships with potential donors.

---

¹¹⁴ *Soviet Union in the South Pacific*, paper by Ministry of Foreign Affairs, Wellington, 19 July (1976: 3).

¹¹⁵ *Soviet Union in the South Pacific*, paper by Ministry of Foreign Affairs, Wellington, 19 July (1976: 3).

¹¹⁶ *South Pacific Forum: Prime Minister's Report to Cabinet on 7th South Pacific Forum*, Nauru, 26-28 July, (Muldoon) (1976:1).

Another issue attracting Soviet fishing interest to the region was that its enormous fishing fleet needed new profitable fishing grounds. In 1967, the Soviet Union possessed the world's largest national fishing fleet and fishing related vessels and 25% of these were involved in high-seas fisheries. 99% of the living resources exploited on a commercial basis are confined to the 200 EEZ.¹¹⁸

Kiribati was the first Pacific Island State to formalize fishing relations with the Soviet Union as a result of the US failure to agree to a 1983 fishing agreement with other Pacific Island States. It helped that the Soviet offer was also much higher than the ATA licensing fee.¹¹⁹ The Kiribati-Soviet fishing agreement of October 1985 is a classic example of how local, regional and international factors interacted to shape fisheries policy.

The rationale behind the agreement was economic in nature. Since its independence in 1979, Kiribati had heavily relied on its former colonial master, the United Kingdom, for financial grants. Initially, Kiribati was criticized for the fishing deal with the Soviet Union. Teiwaki argues that the US, New Zealand, Australia and Fiji have commercial and fishing relations with the Russians and that their being critical of Kiribati-Soviet fishing arrangements is hypocritical and cynical; if it was good for those countries, it would be good for Kiribati.¹²⁰ Kiribati was not exceptional when it came to a need for foreign currency and it was offered a much better deal by the Soviets than it had been in any previous fishing arrangements. The Kiribati-Soviet fishing agreement was signed with an annual price of tag of \$US 1.5 million..¹²¹ Previously, Kiribati had a fishing arrangement with the American Tunaboat

---

¹¹⁷ South Pacific Forum: Prime Minister's Report to Cabinet on 7th South Pacific Forum, Nauru, 26-28 July (Muldoon) (1976:2).

¹¹⁸ Franchx, Erik, "New Soviet Fishery Regulations Concerning the EEZ" (An Appraisal), Butterworth & Co. (publishers) Ltd, London (1987: 126).

¹¹⁹ Teiwaki, Roniti "Access Agreements in the South Pacific: Kiribati and the Distant Water Fishing Nations 1979-1986", 1987 Butterworth & Co. (publisher) Ltd, London (1987: 280).

¹²⁰ Teiwaki, R. "Access Agreements in the South Pacific: Kiribati and the Distant Water Fishing Nations 1979-1986", 1987 Butterworth & Co. (publishers) Ltd, London (1987: 282).

¹²¹ This is ten percent of Kiribati's annual budget. See "Uproar over Soviet", *Islands Business*, Volume II, No. 9 (1985:19); "Soviets Hook a Deal", *Island Business* 13, January (1987); Black, C.E. "Soviet Fishing Agreement with Developing Countries: Benefit or Burden?" *Marine Policy* 163 June (1983); Doulman, D.J. *Some Aspects and Issues Concerning the Kiribati/Soviet Union Fishing Agreement*, Pacific Island Development Program 8, East-West Center, Honolulu (1986); "Fisheries: Not the Russian Alone ...", *Pacific Islands Monthly*, May 16 (1985); Fukuama, F. "Patterns of Soviet Third World Policy", *Problems of Communism*, Volume xxxvi, No. 5, September-October (1987); "The Soviet Deal Folds", *Island Business* 12, Suva, November (1986); Knibb, D.G. "The Soviet Big Fish", *The Wall Street Journal*, January 26, New York (1987); Hegarty, D. "The Soviet Union in the South Pacific in the 1990s", in Babbage, R. *The Soviet Union in the South Pacific in the 1990s*, Pergamon Press, Oxford (1989).

Association (ATA) at a cost of US\$200,000 for a period of 12 months.¹²² Not surprisingly Kiribati accepted the highest bidder.

Following the Kiribati deal, the Soviet Union also approached other Pacific Island States including Fiji, Papua New Guinea, Tuvalu and Vanuatu,¹²³ with offers ranging from fishing arrangements to port access and airline landing rights. Again, these initiatives were of concern to the United States.

During the Kiribati fishing negotiations, some Pacific Island States raised concerns, although the Kiribati government insisted that this was a purely commercial operation, forecasting at least a \$US1 million access fee.¹²⁴ But influencing this fishing accord was previous US conduct, including the poor reputation of its fishermen and America's refusal to renew its fishing agreement with the ATA.¹²⁵

Kiribati (as well as other Pacific Island States dealing with the ATA) had become increasingly disappointed and frustrated with the poor reputation of American fishers, which led to the non-renewal of existing fishing accords.¹²⁶ If American fishers were unpopular in Pacific Island States' waters, why had the US not done anything about this problem? The US had not intervened to take over from the ATA as negotiator on behalf of the American tuna fleet to renew the fishing agreement. By not renewing the fishing accord, the US forced Kiribati (and some other Pacific countries) to look elsewhere.

Under the Kiribati-Soviet agreement, port access was banned, except in an emergency.¹²⁷ The Soviet Union recognized Kiribati's sovereign rights over fisheries resources within its national jurisdiction, as well as fishing activities conducted outside the 12 nautical miles

---

¹²² Neher, P.A., Arnason, R. and Mollett, N. (eds.) *Rights Based Fishing*, NATO ASI Series, Kluwer Academic Publishers, The Netherlands (1989).

¹²³ See "Fisheries: Not the Russian Alone ..." *Pacific Islands Monthly* 16, May (1985); "Vanuatu Opens Port to Soviets in \$2 M Tuna Deal", *The Canberra Age*, January 28, Canberra (1987).

¹²⁴ Doulman, D.J. "The Kiribati-Soviet Union Fishing Agreement", *Pacific Viewpoint* 28(1) (1987:26); Teiwaki, R. "Access Agreements in the South Pacific: Kiribati and the Distant Water Fishing Nations", *Marine Policy* 11 (1987).

¹²⁵ See Doulman, D.J. "The Kiribati-Soviet Union Fishing Agreement", *Pacific Viewpoint* 28(1) (1987:26); Teiwaki, R. "Access Agreements in the South Pacific: Kiribati and the Distant Water Fishing Nations", *Marine Policy* 11 (1987).

¹²⁶ Narokobi, C.S.N. "The Law of the Sea and the South Pacific", *Ambio*, Vol. 13, No. 5/6, The South Pacific (1984:372-376); Bryant-Tokalau, J. and Fraser, I. (eds.) *Redefining the Pacific? Regionalism Past, Present and Future*, Ashgate Publishing Limited, England (2006).

territorial limit. This was a major blow for the US given its policy of not recognizing any coastal States' claim of sovereign right over HMS tuna within their EEZ. The US was now alone in its position. At the same time, Soviet support had started to gain momentum in some quarters of the Pacific community.¹²⁸ Additionally, the Soviet Union took full responsibility for the actions of its fishing vessels and their crews.¹²⁹ Ultimately, the US had underestimated the capacity of the Kiribati government to negotiate independently.

Not surprisingly, the US suspected that the Soviet Union's interests in the region included far more than just fishing.¹³⁰ Washington believed that Russian fishing vessels were equipped with intelligence gathering equipment used to monitor US military activities throughout the region.¹³¹ The American military were concerned about a Soviet presence in Micronesia and the region as a whole.¹³² Kelly pointed out that their activities could include:

... surveillance of U.S. military activities on Kwajalein, the enhancement of Soviet space and satellite operations, and of Soviet military communications capabilities; the potential establishment of support facilities for deep-seabed mining activities; and the attainment of air access and landing rights.¹³³

The access fee paid by the Soviet Union was generous in comparison to any pre-existing fishing arrangement in the region. However the Soviet-Kiribati agreement was not renewed due to a \$US13 million being lost in operational costs.¹³⁴ Those losses raised issues as to the professional capability of Soviet fishing operations. At any rate, the agreement did not deliver for the Soviet Union either economically or politically. Overall, it was a failure.

---

¹²⁷ Anderson, L. "U.S. in Port Moresby Talk", *Pacific Islands Monthly*, May (1985:16). See also "Uproar over Soviets", *Islands Business*, Volume II, No.9, September (1985:19).

¹²⁸ Kulagin, V. "Russia and Cooperation in the Asia-Pacific", *Australian Journal of International Affairs*, 1465-332X, Volume 48, issue 1, Canberra (1994:75-86); Lal, B.K. and Fortune, K. (eds.) *The Pacific Islands: An Encyclopaedia*, University of Hawaii, Honolulu (2000).

¹²⁹ Doulman, D.J. and Terawasi, P. "The South Pacific Regional Register of Foreign Fishing Vessels", *Marine Policy*, July (1990: 324-332).

¹³⁰ "U.S. Eyes Soviet's Pacific Role", *The Evening Post*, March 27, Wellington (1986).

¹³¹ "U.S. Eyes Soviet's Pacific Role", *The Evening Post*, March 27, Wellington (1986).

¹³² "U.S. Eyes Soviet's Pacific Role", *The Evening Post*, March 27, Wellington (1986).

¹³³ Kelly, C.R. "Law of the Sea: The Jurisdictional Dispute over Highly Migratory Species of Tuna", *Columbia Journal of Transnational Law* 26 (1988: 510); Cicin-Sain, B. and Knecht, R.W. "The Emergence of a Regional Ocean Regime in the South Pacific", *Ecology Law Quarterly* 16(1) (1989).

¹³⁴ Hegarty, D. "The Soviet Union in the South Pacific in the 1990s", in Babbage, R *The Soviet Union in the South Pacific in the 1990s*, Pergamon Press, Oxford (1989:124-125).

There may have been intelligence or military benefits for the Soviet Union in instigating the fishing arrangement. It would not have been wise for them to take such an uncalculated risk otherwise. Whatever Moscow's motives, the US launched a counter attack to reclaim its political superiority in the region through the adoption of the 1987 Treaty.

Another issue that arose as a result of the inconsistency of the Soviet fishing arrangement was that fish species taken in the Pacific did not necessarily end up in Moscow, but were instead sold to Asia and some South American countries. It seemed economically more viable to sell catch to countries other than the Soviet Union. This supports the argument stated above that the Soviet military activities were predominantly behind fishing agreements and the geographical positions of the parties to the Soviet fishing arrangements were of significance in terms of monitoring US navy movements.¹³⁵

During a June 1986 visit by the United States Secretary of State George Shultz, Palau warned that the growing Soviet presence in the region was now everyone's problem. However, followed the Shultz visit, the United States Agency for International Development (USAID) was directed to produce a fisheries aid programme for the region with \$US6.5 million promptly earmarked for spending over a period of four years.¹³⁶ This was the largest aid package for the Pacific community ever recorded in the history of US aid programmes in the region. It could be seen as an act of desperation, designed to keep the Pacific communist-free.

The ideological rivalry between the US and the Soviet Union reached a critical point when the two powerful states visited the Pacific region to win support. This was unprecedented. It suggested that Pacific was not only an important source of tuna, but also a region with significant political, diplomatic and military advantages.¹³⁷

---

¹³⁵ Friedman, H.M. *Creating an American Lake: United States Imperialism and Strategic Security in the Pacific Basin 1945-1947*, Greenwood Press, Westport (2001).

¹³⁶ Kempster, N. "Shultz Shows the Flag on small, Vital Pacific Isles", *Los Angeles Times*, Los Angeles, 29 June (1986); Azizian, R. "Russia and the Asia-Pacific: Trends, Threats and Common Threads", www.apcss.org/.../RussiaAmSec/Russia-America-Security.pdf.

¹³⁷ Barclay, K. and Cartwright, I. *Capturing Wealth from Tuna: Case Studies from the Pacific*, Asia Pacific Press, Canberra (2007).

Generally, the growing interest of the Soviet Union in the South Pacific brought the region some economic benefits, either directly or indirectly.¹³⁸ The Soviet card was played by a number of Pacific Island States in order to boost aid receipts from the west.

A widely held belief among the Pacific Island States was that the US was more worried about its policy and interests in the Pacific than it was about Pacific islanders. This reflected regional discontent with American fisheries policy and the behavior of American fishermen. The Pacific Island States were also suspicious of American attempts to dictate the tuna price by discouraging fishing arrangements with the Soviet Union, whose fishing agreements were more generous than any other DWFN offers.

The Treaty Negotiation Process

Having outlined the two main factors that gave rise to the idea of the treaty, it is now important to explore the negotiation process. The idea of a multilateral fisheries agreement with the United States first emerged at the 1982 South Pacific Forum Fisheries Agency meeting, where options designed to prevent disputes, such as that involving the *Danica* incident, were considered. That meeting directed the Agency Secretariat to formulate a collective approach and common position among member States.¹³⁹ At the same time, PNG indicated its interest in negotiating a government-to-government fishing arrangement with the US after the expiry of the nine month interim agreement reached following the *Danica* incident. This was the first indication of a government-to-government fishing agreement being reached.

At the beginning of 1983, an American team from the American State Department had visited PNG to discuss the possibility of a government-to-government fishing agreement.¹⁴⁰ The American team then proceeded to the Solomon Islands with the intention of enlisting support,

---

¹³⁸ Lal, Brij K. and Fortune, K. (eds.) *The Pacific Islands: An Encyclopedia*, University of Hawaii, Honolulu (2000).

¹³⁹ Tsamenyi, B.M. "The South Pacific States, the U.S.A. and Sovereignty over Highly Migratory Species", *Marine Policy* 10(1) January (1986:39).

¹⁴⁰ Gubon, F. "The Southwest Pacific Multilateral Fisheries Treaty: Some Possible Implications for Fisheries Development, Management and Conservation in the Pacific Island Region", *Melanesian Law Review* 22, Papua New Guinea University Press, Port Moresby (1994:8-9).

but the Solomons refused.¹⁴¹ PNG then asked the FFA to publicize a call for any Pacific Island States interested to consider joining a multilateral fishing treaty with the US.

At this stage, the US seemed to want a multilateral fishing arrangement with all the Pacific Island States, but they did not want to initiate such an agreement. To do so could have affected its bargaining influence in any subsequent negotiation process. Hence, PNG was instructed by the US to recruit other interested Pacific Island States for inclusion in the proposed fishing agreement. The US was seeking an intergovernmental multilateral agreement covering as many Pacific Island States as possible.

By late 1983, the interested States included Australia, New Zealand, PNG, Solomons, Kiribati and Tuvalu. They attended a meeting at which they agreed to the request of the Agency Secretariat to prepare relevant background papers for distribution prior to the 9th Forum Fisheries Committee meeting.¹⁴² It was agreed that the Agency should inform the American government and other Pacific Island States about the need to discuss a possible multilateral fisheries arrangement. The Agency would organize the date and venue for relevant negotiations with the US. This was the first indication that a multilateral fisheries agreement between the Pacific Island States and the US government was now a distinct possibility.

US intervention in the negotiation of a multilateral fisheries treaty was designed to prevent the ATA from dominating its South Pacific fisheries policy. Clearly the ATA's poor record and unpopularity, accumulated over the *Danica* and *Jeanette Diana* incidents, helped end its dominance over US fisheries policy towards the Pacific Island States.

In September 1982, the first formal meeting between the Agency and the American delegation to discuss the multilateral treaty took place in Suva.¹⁴³ The American delegation openly indicated that a commitment by the US to a multilateral treaty would include the

---

¹⁴¹ Gubon, F. "The Southwest Pacific Multilateral Fisheries Treaty: Some Possible Implications for Fisheries Development, Management and Conservation in the Pacific Island Region", *Melanesian Law Review* 22, Papua New Guinea University Press, Port Moresby (1994:8-9).

¹⁴² Gubon, F. "The Southwest Pacific Multilateral Fisheries Treaty: Some Possible Implications for Fisheries Development, Management and Conservation in the Pacific Islands Region", *Melanesian Law Review* 22, Papua New Guinea University Press, Port Moresby (1994:9-10).

¹⁴³ Gubon, F. "The Southwest Pacific Multilateral Fisheries Treaty: Some Possible Implications for Fisheries Development, Management and Conservation in the Pacific Islands Region", *Melanesian Law Review* 22, Papua New Guinea University Press, Port Moresby (1994:10).

payment of access fees and would override the sovereign rights and embargo provisions of existing US fisheries policy. In addition, the Americans acknowledged their desire to rebuild friendship ties in the region by officially accepting responsibility for American fishing vessels. The direct involvement of the US government would help to ensure that the proposed multilateral agreement would not have problems in gaining ratification by the US Congress.

An October 1985 meeting between the Agency and American delegations was complicated by the Kiribati-Soviet fishing accord, which put pressure on the United States. Added efforts exerted by the US, including that by Senior Counselor Derwinski (who was especially sent to facilitate the negotiation process), were intended to prevent any further fishing agreements with the Soviet Union and avoid further embarrassment for the US.

Theoretically, the negotiation would not have taken too long if the United States had started off by negotiating with the Nauru Group¹⁴⁴ before everyone else. The rationale behind this argument was that the Nauru Group had the richest tuna fishing grounds in the entire Pacific Ocean.¹⁴⁵ Also the Nauru Group had a reputation of working together effectively and efficiently compared to other sub-regional or regional organizations in the region.¹⁴⁶

Negotiation is a process of bringing together different positions and interests to negotiate and trade-off and to produce a compromise outcome that all parties can agree to. Ikle defines negotiation as “a process in which explicit proposals are put forward ostensibly for the purpose of reaching agreement on an exchange or on the realization of a common interest where conflicting interests are present.”¹⁴⁷ It may seem that, at the onset of the Treaty negotiation, the Pacific Island States had the upper hand in terms of bargaining power. This is based on two main issues. First, the US were fully aware of the degree of unease within the Pacific Island States camp caused by the fishing disputes with PNG and Solomons. Second, the US needed to secure access to the region’s tuna resources. At the same time, the Pacific Island States really need a better price for their tuna resources. Hence, they were on equal

---

¹⁴⁴ PNG, Tuvalu, Kiribati, Nauru, Solomon Islands, Palau, FSM and Marshall Islands. According to Transform Aqorau, these eight (8) countries control some 60% of the global tuna supply, “New Pacific fisheries chief strengthens Nauru group”, <http://www.radioaustralia.net.au/pacbeat/stories/201002/s2809875.htm>).

¹⁴⁵ PNG, Tuvalu, Kiribati, Nauru, Solomon Islands, Palau, FSM and Marshall Islands. According to Transform Aqorau, these eight (8) countries control some 60% of the global tuna supply, “New Pacific fisheries chief strengthens Nauru group”, <http://www.radioaustralia.net.au/pacbeat/stories/201002/s2809875.htm>).

¹⁴⁶

¹⁴⁷ Ikle, F.C. *How Nations Negotiate*, Harper & Row Publishers, New York (1964:3).

bargaining footing, where Pacific Island States had the biggest tuna resources in the region and the US had the biggest tuna market.¹⁴⁸

Hopmann states that, “negotiations are one of the most important levers used by states to achieve their foreign policy objectives. Thus, an analysis of the bureaucratic politics approach to negotiations is inseparable from the bureaucratic politics framework for the analysis mechanism to resolve common and international problems.”¹⁴⁹ This was very much the case for the US foreign policy, particularly fisheries policy regarding HMS, as it sought to bring an end to fishing disputes with the Pacific Island States. Negotiation itself was seen not just as a mechanism to resolve common and international problems¹⁵⁰, but also as the best tool available to resolve conflicts and tensions and benefits all the parties involved.¹⁵¹

Negotiations are a way for parties to trade off and compromise their interests.¹⁵² Odell argues that the negotiation process is a sequence of actions where two or more States exchange and compromise demands and proposals, with each expecting a fair result in the form of a treaty.¹⁵³ The outcome of the negotiation process can be a balanced compromise between the parties’ interests. In many cases, the negotiation process can be delayed and further complicated by the complex combination of local politics, international diplomacy and other exogenous factors.¹⁵⁴

Negotiations between weak and strong states always challenge the parties to recognize their differences and how these may affect the negotiation processes.¹⁵⁵ For the Pacific Island

---

¹⁴⁸ Herrick, S.F.jr. Rader, B. and Squeres, D. “Access Fees and Economic Benefits in the Western Pacific United State Purse Seine Tuna Fishery”, *Marine Policy*, Volume 21, Issue 1, January (1997:83—96).

¹⁴⁹ Hopmann, P.T. *The Negotiation Process and the Resolution of International Conflicts*, University of South Carolina Press, Columbia (1996:158-159).

¹⁵⁰ Hopmann, P.T. *The Negotiation Process and the Resolution of International Conflicts*, University of South Carolina Press, Columbia (1996:4).

¹⁵¹ Hopmann, P.T. *The Negotiation Process and the Resolution of International Conflicts*, University of South Carolina Press, Columbia (1996:24).

¹⁵² See Singh, J.P. “The Evolution of National Interests: New Issues and North-South Negotiations During the Uruguay Round”, in Odell, J. (ed.) *Negotiating Trade: Developing Countries in the WTO and NAFTA*, Cambridge University Press, Cambridge (2006).

¹⁵³ Odell, J. “Introduction”, in Odell, J. (ed.) *Negotiating Trade: Developing Countries in the WTO and NAFTA*, Cambridge University Press, Cambridge (2006).

¹⁵⁴ Odell, J. “Introduction”, in Odell, J. (ed.) *Negotiating Trade: Developing Countries in the WTO and NAFTA*, Cambridge University Press, Cambridge (2006).

¹⁵⁵ Drahos, Peter, “When the Weak Bargain with the Strong: Negotiations in the World Trade Organization”, *International Negotiation* 8, New York (2003:94). See also, Zartman, I. William “Conclusions: Importance of North-South Negotiations”, in Zartman, I.W. (ed.), *Positive Sum: Improving North-South Negotiations*, Transaction Book, New Jersey (1987).

States to come as a single entity to the Treaty negotiation would increase their bargaining power. The global hierarchy of parties in terms of military capability and economic position also influences the international negotiation process. The Pacific Island States may not have a large military capability and economic capacity, but they have tuna resources and this gives them bargaining leverage to negotiate with the powerful US.

The timeline and duration of negotiations, in most cases, is determined by the degree of flexibility and seriousness of the issues discussed and the willingness and commitment of the parties to cooperate regardless of their individual positions.¹⁵⁶ National interests are the basic foundation for international negotiation process and progress is determined by parties' willingness to prioritize their interests and discuss options with the other party.

Hopmann asserts that,

... all states are guided in their negotiating behaviour by some overriding notion of the national interests, all are also divided internally to a greater or lesser degree by different interpretations of the national interests or other ideological guide posts, different political interests on the domestic scene, and conflicts of bureaucratic interest among the agents who must formulate specific negotiating positions and carry out the actual task of negotiating with other countries.¹⁵⁷

From the outset the negotiations were expected to be challenging, primarily because of the asymmetry between the Pacific Island nations and the US and the Pacific Island States regarding the two key issues. First, there was the matter of the economic benefits that would be generated from any agreement; and second, the issue of access to the US marine technologies.¹⁵⁸

Constant communication and information sharing is a vital component to the negotiation process, from the initial exchanging of papers to the finalizing of the agreement. Susskind et al. argued that,

---

¹⁵⁶ Raiffa, H. *The Art and Science of Negotiation: How to Resolve Conflicts and Get the Best out of Bargaining*, President and Fellows of Harvard College, Harvard (1982).

¹⁵⁷ Hopmann, P.T. *The Negotiation Process and the Resolution of International Conflict*, University of South Carolina Press, Columbia (1996:155).

¹⁵⁸ Prechel, H. *Politics and Globalization*, The Boulevard, Oxford (2007).

... negotiation includes cooperation and competition, common and conflicting interests, is nothing new. In fact, it is typically understood that these elements are both present and can be disentangled ... A deeper analysis shows that the competitive and cooperative elements are inextricable entwined. In practice, they cannot be separated. This bonding is fundamentally important to the analysis, structuring, and conduct of negotiation ... There is a central, inescapable tension between cooperative moves to create value jointly and strategic choice. Analysts must come to grips with it; negotiators must manage it. Neither denial nor discomfort will make it disappear.¹⁵⁹

The Pacific Island States believed that they had the upper hand in the negotiations and felt that the US would not be too difficult to negotiate with.¹⁶⁰ It is always difficult to know which bargaining issues are discussed during the negotiation because of the strict no-access policies that exist for outsiders.

International negotiations became easier in some ways due to the changes to geopolitical arrangements around the world after the Cold War and the collapse of the Soviet Union. Negotiation predominantly became more economic in orientation.¹⁶¹ The negotiations between the Pacific Island States and the US over their Treaty towards the end of the Cold War was no exception to any other international negotiation in terms of process involved. The only difference was the fact that the negotiation comprised of 16 Pacific Island States¹⁶² on one side and the US as one state on the other.

Negotiation can be a tricky exercise in terms of levels of concession and the desire of both parties for successful outcome. The negotiation process can be challenging and time consuming because of the political complexity of the parties involved and their individual circumstances. The Pacific Island parties were comprised of different cultures, something that was in itself challenging. For them to negotiate with the US, which had its own interests and negotiating style, was another challenge.

---

¹⁵⁹ Susskind, L.E. *Environmental Diplomacy*, Oxford University Press, New York (1994:227).

¹⁶⁰ Herrick, S.F.jr., Rader, B. and Suenes, D. "Access Fees and Economic Benefits in the Western Pacific United State Purse Seine Tuna Fishery", *Marine Policy*, Volume 21, Issue 1, January (1997:83-96).

¹⁶¹ Hopmann, P.T. *The Negotiation Process and the Resolution of International Conflicts*, University of South Carolina Press, Columbia (1996:3).

¹⁶² Pacific Island States also refers to FFA as the negotiating team, otherwise indicated.

Negotiations between weak and strong States will always be mismatched and other influencing factors such as foreign aid tend to be influential depending on the degree of difficulty involved in reaching a compromise. The US had different degrees of political relations with different Pacific Island States; these made it very challenging to have a collective response. Obviously, the Pacific Island States with close ties to Washington wanted to see the negotiation conducted in a favorable manner. The assumption is that the strong nations can do what they like and the weak nations suffer accordingly.¹⁶³ However, here Treaty negotiation process indicated that the US did not dictate how the negotiation process was conducted and that there was an equal exchange of concessions between the two parties.

Both parties shared some common basic interests, which really helped the Treaty negotiation process. To a certain extent, the Pacific Island States and the US each knew the others' bottom line issues and how far each would compromise.

The Treaty negotiation was no exception to any multilateral treaty negotiation. It was determined by underpinning factors that included local political situations and international relations on one hand, and the political relations between the potential treaty partners on the other. Powerful companies and lobby groups were influential in the international treaty negotiation process—not only shaping the outcome of the treaty, but also formulating the foreign policy.

A high level American delegation visited Wellington in 1976 and indicated that the US is no longer in a position to allow multinational companies to determine its foreign policy.¹⁶⁴ This shift indicated that the US was attempting to maintain its reputation in the South Pacific, particularly with regards to American fishing practices.

The negotiation flowed smoothly in the early stages as the US made major concessions. For instance, the US agreed to take responsibility for enforcing the terms and conditions of the Treaty on its fishing fleet and the relevant national laws of the Pacific Island States; they also agreed to ensure there were no fishing activities in the closed area under the Treaty.

---

¹⁶³ Thucydides, *The Peloponnesian War*, Random House, New York (1951:331).

¹⁶⁴ Notes of Division Heads Meeting, 3 April, Ministry of Foreign Affairs, Wellington (1976: 5)

The FFA (as one party to the Treaty) really helped to minimize the degree of complexity involved in negotiating with the US. It would have been more difficult if the Pacific Island States individually negotiated with the US—it may have even been impossible for a treaty to materialize. The other advantage of the Pacific Island States negotiating as group was that it was less expensive to work collectively, which increased their bargaining power.

The Pacific Island States' delegation may have held a position of strength at the negotiation table, but the US team would have matched their experience and expertise. Voting by consensus was also another advantage for the Pacific Island States, because the US had to take into consideration that they were dealing with 16 different countries.

Both the Pacific Island States and the US sought advice during the negotiation regarding specific, relevant issues to ensure they maintained their interests at large. Finding common interests that represented and reflected the whole region would have been a challenge for the FFA delegation. As a single entity representing the Pacific Island States in the Treaty negotiation with the US, the FFA increased its bargaining power when dealing with one country with one market.

The US has other institutions that may have influenced the negotiation due to financial and technical arrangements.¹⁶⁵ This was due to the fact that the US hosts a wide range of organizations and institutions and influences in almost everything that Pacific Island States may have related to in general.

The bottom line goal for both the Pacific Island States and the U S was to achieve economic benefits and an excellent political relationship.¹⁶⁶ These two issues are inseparable (economics/tuna resources on one hand and the politics/control of tuna exploitation on the other). The US interests in this context provided its international institutions with directions

---

¹⁶⁵ O'Halloran, S. *Politics, Process and American Trade Policy*, University of Michigan Press, Michigan (1994).

¹⁶⁶ Milner, H.V. *Interests, Institutions and Information: Domestic Politics and International Relations*, Princeton University Press, New Jersey; Keohane, R.O. and Malner, H.V. (eds.) *Internationalization and Domestic Politics*, University of Cambridge, Cambridge (1996).

in terms of where the negotiation should have been headed in terms of what could be negotiated.¹⁶⁷

The FFA team deemed that New Zealand and Australia should take the leadership role given the complex economic and political agenda.¹⁶⁸ The team seemed to be divided into two invisible groups, New Zealand, Australia and others on one hand, and the rest of the Pacific Island States on the other.¹⁶⁹ This was an advantage and disadvantage for both groups and for the whole negotiation process as a whole. This kind of leadership role is the reality of politics and diplomacy in the region, where New Zealand and Australia play a very significant role.¹⁷⁰ The Pacific Island States commonly go with the flow in order to avoid political and economic fallout. The Pacific Island States basically rely on New Zealand for advice.¹⁷¹ In this context, their leadership really helped the negotiation process, as did the way key issues were negotiated (not only within the FFA team, but also with the American delegation).

The US also seemed to prefer dealing with Forum States as a unit or one entity, rather than individual States.¹⁷² This made it easier to achieve its bottom line. That is, it was easier to achieve common ground with the Pacific Island States under the direction and guidance of the FFA, than it would have been trying to find common grounds through negotiations with individual States.¹⁷³ Negotiation in a big group would have been very complicated due to the fact that the individual states do not share the same institutional processes of integration and that they have different socio-economic interests.¹⁷⁴

The Pacific Island States' delegation may have seemed smooth on the surface, however certain subtle but challenging differences lay underneath their generic stance on certain

---

¹⁶⁷ Hey, E. *The Regime for the Exploitation of Transboundary Marine Fisheries Resources*, Martinus Nijhoff Publishers, The Netherlands (1989).

¹⁶⁸ Andrews, R.N.L. *Managing the Environment, Managing Ourselves: A History of American Environmental Policy*, Yale University Press, London (1989).

¹⁶⁹ Denron, D., Meleisea, M., Firth, S., Linnekin, J. and Nero, K., *The Cambridge History of the Pacific Islanders*, Cambridge University Press, Cambridge (1997).

¹⁷⁰ Babkina, A.M. (ed.) *Trade in the Asian Pacific Region*, Nova Science Publishers, Inc., New York (1996).

¹⁷¹ Levi, W. *American-Australian Relations*, University of Minnesota, Minneapolis (1947); Donnini, Lt. col., *F.P. ANZUS in Revision: Changing Degree Features of Australia and New Zealand in the Mid-1980s*, Air University press, Washington DC (1991).

¹⁷² Mara, The Right Honorable Ratu Sir Kamasese, *The Pacific Way: Memoir*, University of Hawaii Press, Honolulu (1997).

¹⁷³ Neemia, U.F. *Cooperation and Conflict: Costs, Benefits and National Interests in Pacific Regional Cooperation*, University of the South Pacific, Suva (1986).

¹⁷⁴ Dorrance, J.C. *The United States and the Pacific Islands*, Praeger, New York (1992).

issues.¹⁷⁵ The situation was challenging and competitive and political tensions were created in bringing about a collective position.

The advantage for the Pacific Island States was the fact that individuals had the freedom to highlight specific issues.¹⁷⁶ There was also an opportunity for the each to voice and clearly outline issues of concern for others and how important these issues would be in the negotiation process. On the other hand, the US would decide how far it would go beyond its targeted bottom line.¹⁷⁷ A multilateral treaty negotiation process can be very competitive and can create great conflict; at times, it can be impossible to bring about a common stance.¹⁷⁸ Fortunately, this Treaty negotiation process was facilitated by the good will of both sides and the timing of when certain issues were put forward—and also how both parties dealt with these.

The other challenging aspect of this fisheries Treaty negotiation was the fact that the Pacific Island States had had a similar experience in previous individual and group negotiations.¹⁷⁹ The Treaty can be seen as a reference point for future fishing arrangements—one from which lessons can be learnt in the future. The nature of the Treaty and its negotiation process were different from any other form of diplomatic arrangement with any Pacific Island States and the US.¹⁸⁰

The other issue arising from the negotiation among the Pacific Island States themselves was a lack of secrecy; the negotiation prioritized accountability and transparency, particularly with regards to the issues that would impact the region as a whole.

---

¹⁷⁵ Wang, J.C.F. *Handbook on Ocean Politics and Law*, Greenwood Press, Westport (1992); Fortaubert, A.C. de, Downes, D.R. and Agardy, J.S. *Biodiversity in the Seas: Implementing the Convention on Biodiversity in Marine and Coastal Habitats, International View for Conservation of Nature and Natural Resources and Center for International Environmental Law*, Washington DC (1996).

¹⁷⁶ Doulman, D.J. (ed.) *Tuna Issues and Perspectives in the Pacific Island Region*, East-West Center, Honolulu (1987).

¹⁷⁷ Doulman, D.J. (ed.) *Tuna Issues and Perspectives in the Pacific Island Region*, East-West Center, Honolulu (1987).

¹⁷⁸ Zartman, I.W. "Introduction: Toward the Resolution of International Conflicts", in Zartman, I.W. (ed.) *Peacemaking in International Conflict: Methods and Techniques*, United States Institute of Peace, Washington DC (2007).

¹⁷⁹ Various individual Pacific Island States had fishing arrangements with individual DWFN and group one as well, for instance, the Nauru Group.

¹⁸⁰ Flendo, A. "US Tuna Fleet Ventures in the Pacific Islands", in Doulman, D.J. (ed.) *Tuna Issues and Perspectives in the South Pacific Region*, East-West Center, Honolulu (1987: 93-104); Herrick, S.F. and Koplin, S. "US Tuna Trade Summary", *Marine Fisheries Review*, Vol. 46 No.14 (1984:28-37).

Even though the negotiations moved from one issue to another, it seemed that Australia, New Zealand and the US had some sort of ‘pre-cooperative’ understanding in terms of some key issues.¹⁸¹ This is quite common practice when allied countries at the negotiation table have similar positions and wish to maintain their international and regional socio-economic and political relationships.¹⁸² An example of these interests is the ANZUS treaty.

It was believed that the party submitting the initial proposal for the Treaty would play an important role in setting the agenda for the negotiation process; after this bargaining and counter-offering could start.¹⁸³ This actor would also be acknowledging that they really needed the Treaty to happen. Other potential parties would then have the opportunity to identify the scope and depth of the proposal, which would be a reflection of the actor’s concerns.¹⁸⁴ In this case, this actor was a major power—the US. For a super power to initiate a multilateral treaty negotiation process is not an unusual exercise, because powerful actors become more powerful (politically and economically) as a result of cooperation.¹⁸⁵ Also they see cooperation as an opportunity to push their interests further (they only push something of great interest to them). In hegemonic stability theory the structures of the international system are hierarchical in essence and dominant actors control the rules for others to follow.¹⁸⁶

The nature of international multilateral negotiation is that parties want to know the positions of the other parties involved and to identify realistic avenue(s) that could be used as leverage for the negotiation.¹⁸⁷ Counter-offers are expected and are part of the whole process. Avoiding major conflict is the best approach. Within this Treaty negotiation both the Pacific

---

¹⁸¹ Donnini, Lt. Col., F.P. *ANZZUS in Revision: Changing Defence Features of Australia and New Zealand in the Mid-1980s*, Air University Press, Washington DC (1991).

¹⁸² Spange, M.L. and Isenhardt, M.W. *Negotiation: Communication for Diverse Settings*, Sage Publications, Inc., London (2003).

¹⁸³ Crawford, J. (ed.) *The Law of the Sea in the Asia Pacific Region: Developments and Prospects*, Martinus Nijhoff Publishers, The Netherlands (1995); Axline, W.A. (ed.) *The Political Economy of Regional Cooperation: A Comparative Case Studies*, Printer Publishers, New York (1994); Johnson, D.M. and Valencia, M.J. *Pacific Ocean Boundary Problems: Status and Solutions*, Martinus Nijhoff Publishers, The Netherlands (1994).

¹⁸⁴ Zartman, I.W. “Negotiation: Theory and Reality”, in Bendahmane, D.B. and McDonald, J.W. jr. *International Negotiation: Art and Science*, Report of a Conference on International Negotiation, Center for the Study of Foreign Affairs, Washington, June 9-10 (1983).

¹⁸⁵ Pugh, M.C. and Williams, P. “Introduction – the debate on decline”, in Pugh, M.C. and Williams, P. (eds.) in *Superpower Politics: Change in the United States and the Soviet Union*, Manchester University Press, Manchester (1909).

¹⁸⁶ Guzzine, S. *Realism in international Relations and International Political Economy: The Continuing Story of a Death Foretold*, Routledge, London (1998); Hobbson, J.M. *The Wealth of States: A Comparative Sociology of International Economic and Political Change*, University of Cambridge Press, Cambridge (1997).

¹⁸⁷ Oxman, B.H., Caron, D.C. and Buder, C.L.O. (eds.) *Law of the Sea: U.S. Policy Dilemma*, Institute for Contemporary Studies, San Francisco (1983).

Island States and the US consistently avoided major disagreements that would delay and create obstacles to the negotiation process.

During the negotiation process, the US deliberately avoided using threats. Hopmann argues that, “agreements that are essentially one-sided cannot endure indefinitely. This is due to the fact that parties that have been coerced into accepting agreements that do not serve their interest will invariably resent those agreements and the parties that imposed them.”¹⁸⁸ The US desperately tried to avoid creating any negative feelings during the negotiation that could cause tension and jeopardize their access to the region’s tuna resources.

At the Forum meeting, the discussion of a regional fishery organization was the main agenda.¹⁸⁹ The US threatened to suspend the funds earmarked for the organization discussed, if its membership was rejected.¹⁹⁰ Fiji responded by saying that if US membership was accepted, then it would withdraw from the proposed regional organization.¹⁹¹ The US membership was rejected and the threat was played down.¹⁹² This was a major victory for the Pacific Island States in terms of keeping the most powerful country in the world out of the region’s fisheries organization. The US would be very influential in the regional organization and its advanced fishing technologies would cause environmental concern for the tuna resources of the region.¹⁹³ This refusal and the exclusion of any DWFN from the FFA demonstrated the ability of the Pacific Island States to negotiate with powerful countries.¹⁹⁴ This was an important lesson learnt from the Pacific Island States’ perspective—they increased their bargaining power and positioned themselves better during the Treaty negotiation process by avoiding any negative elements that could have arisen.¹⁹⁵

---

¹⁸⁸ Hopmann, P.T. *The Negotiation Process and the Resolution of International Conflict*, University of South Carolina Press, Columbia (1996:27).

¹⁸⁹ Boer, B., Ramsay, R., Rothwell, D. *Environmental Law in the Asia Pacific*, Kluwer Law International Ltd, London (1998).

¹⁹⁰ Crawford, J. (ed.) *The Law of the Sea in the Asian Pacific Region: Developments and Prospects*, Martinus Nijhoff Publishers, The Netherlands (1995); Dallek, R. *The American Style of Foreign Policy: Cultural Politics and Foreign Affairs*, Alfred & Kempt, New York (2008).

¹⁹¹ Palmer, N.D. *Westward Watch: The United States and the Changing Western Pacific*, International Defense Publishers, New York (1987), <http://www.spc.int/coastfish/countries/fiji/fiji.c.ffa.html>.

¹⁹² Crawford J. (ed.) *The Law of the Sea in the Asian Pacific Region: Developments and Prospects*, Martinus Nijhoff Publishers, The Netherlands (1995).

¹⁹³ Smith, A.R., and Valdenmarsen, J.W. *Papers presented at the Expert Consultation on Sustainable Fishing*, FAO Fisheries Report No. 588, Supplement, FAO, Rome (2000).

¹⁹⁴ “Food Security and Climate Change in the South Pacific”, *Pacific Ecologist*, Writer – 36 (2007), www.pacificecologist.org/archive/.../food-security-climate-change.pdf.

¹⁹⁵ Bryant-Takelau, J. and Fraser, I. *Redefining the Pacific*, A World Bank Country Study, Pacific Island Economies: Building a Resilient Economic Base for the Twenty-First Century, The World Bank, Washington DC (1996); Maidment, R. and Mackerras, C. *Culture and Society in Asian-Pacific*, Routledge, London (1998).

The FFA States were facing complex scenarios in terms of the existence of individualistic socio-political, cultural, national and tribal affiliations; it was difficult to bring about significant consensus.¹⁹⁶ For any decision to be effective, effective processes and operations are required at all levels of the community. On the other hand, the US government did not have any tribal and cultural complications when it came to its international treaty negotiation process. Hence, the American delegation's major challenge was to ensure that American interests were maintained national and internationally.

The negotiation process was also an opportunity for the Pacific Island States to discuss their major differences, not only regarding fishery issues, but also in other areas and to attempt to resolve them.¹⁹⁷ The negotiation process was carried out in good faith, which led to a positive result.

The national and international affairs of the Pacific Island States and the US also influenced the establishment of their objectives and during the negotiation.¹⁹⁸ They influenced the shaping up of offers and counter-offers and how far certain issues would go. A negotiation process allows one party to convince others that their offer is better than any possible counter-offer. The nature of the relations between the Pacific Island States and the US determined the outcome of the Treaty negotiation.

During the Treaty negotiation the emphasis was very much on substance and content; new issues were carefully timed.¹⁹⁹ It is also suspected that there were other issues involved directly (or otherwise) in the negotiation process—for instance, the nuclear testing in the Pacific. Hopmann argued that, “it has not yet identified any clear and unambiguous criteria for determining precisely when flexibility or fairness, reciprocity or unconditional constructive behavior, are like to be more appropriate in producing mutually beneficial and

---

¹⁹⁶ Bryant-Takelau, J. and Fraser, I. *Redefining the Pacific*, A World Bank Country Study, Pacific Island Economies: Building a Resilient Economic Base for the Twenty-First Century, the World Bank, Washington DC (1996); Maidment, R. and Mackerras, C. *Culture and Society in Asian-Pacific*, Routledge, London (1998).

¹⁹⁷ Crawford, J. (ed.) *The Law of the Sea in the Asian Pacific Region: Developments and Prospects*, Martinus Nijhoff Publishers, The Netherlands (1995).

¹⁹⁸ Breslin, J.W. and Rubin, J.Z. *Negotiation Theory and Practice*, Harvard Law School, Harvard (1991).

¹⁹⁹ An example of this was the discussion over the Preamble of the Treaty was constantly delayed for numerous times, until both parties sorted out other related issues.

relatively optimal outcomes”.²⁰⁰ At the same time, it may seem that the Pacific Island States had a strong bargaining position that they did not use aggressively.

Compromise is always necessary as a by-product of trading and exchanging concessions between parties for the fair and honest progress of the negotiation. That is, progress is made when two parties move away from their original positions as a result of balanced exchanges. During the Treaty negotiation process, there were no major unrealistic demands made. These not only slow down the process, but they are a waste of time and are self-defeating—demands of this type would have changed the whole negotiation process.

Both parties had long term interests in the economics of the tuna resources in the region and wanted to make an agreement that would not only serve their interests, but that would also be worth it. As Hopmann put forward, “an agreement is worth preserving only if it serves the long-term interests ... specific agreements be based upon mutual interests, but there must help to create a mutually beneficial relationship among parties that will assure their long-term adherence.”²⁰¹

The basic understanding between and common interests of the Pacific Island States and the US served as leverage during the negotiation process; realistic and generous concessions and trade-offs were made as a result. Otherwise, they would go through a trial and error negotiation process that may not expect to be fair and achieve best interests for both sides.

During the Treaty negotiation, each party negotiated their willingness and commitment to cooperating with the other based on the seriousness of the issues and their degree of flexibility.²⁰² The Pacific Island States were faced with complex challenges in terms of their complex political and cultural affiliations on one hand and their socio-political relationships on the other. In this context, a ‘middle ground’ position was needed to serve as a compromise; this was found with the strong support of New Zealand and Australia.²⁰³ The bilateral and multilateral arrangements between Australia, New Zealand and the US (one

---

²⁰⁰ Hopmann, P.T. *The Negotiation Process and the Resolution of International Conflict*, University of South Carolina Press, Columbia (1996:194).

²⁰¹ Hopmann, P.T. *The Negotiation Process and the Resolution of International Conflict*, University of South Carolina Press, Columbia (1996:27).

²⁰² Scarr, D. *A History of the Pacific Islands: Passage Through Tropical Time*, Curzon Press, Surrey (2001).

²⁰³ *U.S. Policy Toward South Pacific Island Nations, Including Australia and New Zealand*, Committee on Foreign Affairs, U.S. Government Printing Office, Washington (2007).

example of this being the ANZUS Treaty) may have been influential during the negotiation.²⁰⁴

The weak economic and political capabilities of the Pacific Island States in a global context seemingly put them at a disadvantage during the Treaty negotiation. It is quite natural in a multilateral treaty negotiation for a party's global position to be used as a bargaining tool.²⁰⁵ However, the Pacific Island States and the US were on equal footing in the negotiation process due the benefits they would each obtain from the Treaty. That is, both parties would benefit economically from the region's fisheries as whole. It is always challenging to establish a collective agreement in a multilateral international treaty due to varying socio-economic and cultural advantages and disadvantages. As one group, the Pacific Island States had an advantage in terms of concession negotiation—the US potentially had less room to maneuver. Drahos argues that “developing countries need groups that encourage communication among themselves, especially in the hard bargaining stages ... Better communication among developing countries is the basis for making calculative trust more robust and allows for the possibility of forming some level of social identity trust.”²⁰⁶ In this context, the Pacific Island States came together as a group to give themselves more political weight in the Treaty negotiation.

The Pacific Island States' advantage at the beginning of the negotiation process lay in that there were lots of fishing arrangements existing in parallel—this increased their bargaining power. Previously, when the Pacific Island States were dealing with the American Tunaboat Association (ATA), their bargaining power was weak simply because there was no competition at all. The Pacific Island States had had disappointing past experiences when negotiating with powerful countries or organizations, regardless of the issue—often feeling bullied and dictated to.

---

²⁰⁴ ANZUS Treaty

²⁰⁵ Drahos, P. “When the Weak Bargain with the Strong: Negotiations in the World Trade Organization”, *International Negotiation* 8, New York (2003:79).

²⁰⁶ Drahos, P. “When the Weak Bargain with the Strong: Negotiations in the World Trade Organization”, *International Negotiation* 8, New York (2003:79).

Major concessions by powerful States forced by unexpected major international political developments would increase weak countries' leverage.²⁰⁷ Developing countries can, by chance, benefit from major political developments. The Soviet fishing interest in the South Pacific contributed to the Pacific Island States' bargaining power, which led to successful negotiation.²⁰⁸ Another unexpected advantage for the Pacific Island States came in the form of the length of the negotiation—this resulted in more balanced concessions.

Negotiation is often characterized by key issues rarely mentioned early on,²⁰⁹ because they are very difficult to negotiate. The general pattern of negotiating major issues toward the end of the negotiation may have to do with both parties wanting a chance to gain an understanding of the other's basic position. Access fee payments proved a difficult issue for the two sides to compromise on. Frustration over this issue in particular, and the treaty negotiations more generally, led the American delegation to hint that, should the talks fail, an interim agreement with the Micronesian islands would then be an option. This highlighted American concerns regarding Soviet influence over Micronesia and its military facilities.

The Pacific Island States in some cases, especially negotiation with organizations are more favourable for the terms and conditions, but with the US, they took a totally different approach altogether. The Pacific Island States became responsive to any tough stance by the US, including the threat of pulling out from the negotiation—something the US was not keen on in reality. Inequality of bargaining power could be challenging for both parties and would undermine the level of good will and fair outcome. The Treaty established a deep, basic understanding between the two parties in terms of how issues would be negotiated. Hence, they were no major problems encountered during the negotiation process.

---

²⁰⁷ Druckman, D. "Social Psychology and International Negotiations: Processes and Influences", in Kidd, R.F. and Saks, M.J. (eds.) *Advances in Applied Social Psychology*, Vol.2, Lawrence Erlbaum Associates, Inc., Hillsdale (1983).

²⁰⁸ London, K. (ed.) *The Soviet Union World Politics*, Westview Press, Inc., Colorado (1980).

²⁰⁹ Spoelstra, M. and Pienaar, W. *Theories, Strategies & Skills*, 2nd ed., Juta & Co, Ltd, Lansdown (1996).

The Pacific Island States would learn from this exercise and put it to good use in future negotiations at both regional and international levels.²¹⁰ They realized how significant it was for them to conduct trade negotiation or any regional or international arrangement as a unit, rather than individually. Weaker States were better able to negotiate a 'fair deal' if they co-operated in forming an organization to represent common interests. This is due in most cases to the inequality of bargaining power between the Pacific Island States and the US in particular, and also between developing and developed countries at large.

From a US perspective, a regional fisheries agreement with all the Pacific Island States would provide unlimited access to the region's tuna resources, while also denying Soviet influence. A compromise position was reached over the issue of sovereign rights that would alleviate fishing tensions. However, these objectives could not have been achieved using the bilateral fishing arrangements commonly practiced by the American tuna fleet. Even though reaching a multilateral arrangement involved time-consuming and difficult negotiations, this would prove more effective into the longer term.

In October 1986, both delegations reached an agreement comprising a \$US60 million payment over a five year period.²¹¹ This access fee package included a cash payment, an industry fee and charges for other services. After the agreement was reached, a White House press release summarized it in the terms below.

On October 2, 1986, negotiators from the U.S. and 16 Pacific island nations reached agreement on a regional fisheries treaty that will give American tuna vessels access to some 10 million square miles of rich fishing grounds in the South Pacific Ocean. The agreement provides first and fair compensation to the islands for the resource, and offers the parties to the Treaty a substantial development assistance package that will continue the long tradition of close and productive relations between the U.S. and the island states.²¹²

---

²¹⁰ Crawford J. (ed.) *The Law of the Sea in the Asian Pacific Region: Developments and Prospects*, Martinus Nijhoff Publishers, The Netherlands (1995).

²¹¹ See Knibb, D.G., "Nothing Fishy About New Treaty", *Oceans* 20, July-August (1987); "U.S. is Offering 11 Pacific Nations 5.5 Million for Tuna Fishing Rights", *International Herald Tribune* 28-29, June (1986).

²¹² White House 1986, Quotation from Van Dyke, J.M. and Nicol, C., "U.S. Tuna Policy: A Reluctant Acceptance of the International Norm", in Doulman, D.J. (ed.) *Tuna Issues and Perspectives of the Pacific Islands Region*, East-West Center, Honolulu (1987:121-122). See also Kelly, C.R., "Law of the Sea: The Jurisdictional Dispute over Highly Migratory Species of Tuna", *Columbia Journal of Transnational Law* 26 (1988:500); "Forum Changes Tack on Fishing Talks", *Pacific Islands Monthly* 53, September (1986:21, 35); "Haggling Fish Deal unique, Says U.S.", *The Dominion*, October 24, Wellington (1986); "Haggling Over the Price of Fish", *Island Business* 12, Suva, August (1986:10-15); "International Agreements – Treaty on Fishing

Conclusion

The Treaty was primarily designed to resolve the disputes between the Pacific Island States and the US. The US sought to improve its political and diplomatic relations with Pacific Island States.

However, as we have seen, the former Soviet Union's fishing agreements with the Pacific Island States (and their own fishing disputes with the Pacific Island States) were of major concern to the US government. The growth of Soviet fishing interests in the South Pacific had injected Cold War considerations into the region. However US Pacific policies reduced the capacity of the Soviet Union to establish a credible presence in the Pacific Island States.²¹³ This saw the establishment of American non-resident diplomatic relations within a number of Pacific Island States, following approaches by the Soviet Union. The decline of Moscow's influence as the Cold War ended, and the eventual collapse of the Soviet Union, also signaled changes for America's future position in the region.²¹⁴

American allies and friends in the South Pacific stressed the consequences that the US might face should existing tensions with the Pacific Island States over fisheries remain unresolved.²¹⁵ The 1986 Treaty aimed to resolve key differences through concessions,²¹⁶

Between Governments of Certain Pacific Island States and the Government of the United States of America", *Harvard International Law Journal* 29 (192) (1988).

²¹³ McIntosh, M., *Arms Across the Pacific: Security and Trade Issues Across the Pacific*, Printer, London (1987:43).

²¹⁴ See Howard, M.C., *The Cold War and Political Alignment in the South Pacific* (1991:33-34); Hegarty, D., "The Soviet Union in the South Pacific in the 1990s", in Babbage, R., *The Soviet Union in the South Pacific in the 1990s*, Pergamon Press, Oxford (1989:121); McIntosh, M., *Arms Across the Pacific: Security and Trade Issues Across the Pacific*, Printer, London (1987).

²¹⁵ Aikman, C.C., "Island Nations of the South Pacific and Jurisdiction over Highly Migratory Species", *Victoria University of Wellington Law Review* 17, Wellington (1987). See also Woodworth, D.C., "U.S. Tuna: A Proposal for Resource Management in the American Pacific Islands", *University of Hawaii Law Review* 10, Honolulu (1988:174); Van Dyke, J.M. and Nicol, C., "U.S. Tuna Policy: A Reluctant Acceptance of the International Norm", in Doullman, D.J. (ed.) *Tuna Issues and Perspectives in the Pacific Islands Region*, East-West Center, Honolulu (1987); Meron, T., "The Fishermen's Protective Act: A Case Study in Contemporary Legal Strategy of the United States", *American Journal of International Law* (1975:290); "U.S. Chorus Grows from New Policy", *Pacific Islands Monthly*, March 27 (1986).

²¹⁶ Gubon, F., "The Southwest Pacific Multilateral Fisheries Treaty: Some Possible Implications for Fisheries Development, Management and Conservation in the Pacific Islands Region", *Melanesian Law Journal* 22, Papua New Guinea University Press, Port Moresby (1994:1). See also Lenhart, B.M., "International Agreements", *Harvard International Law Journal* 29 (1988:192); Waugh, G., "Tuna Wars", *Pacific Islands Monthly* 59(6), June (1988:47); Woodworth, D.C. "U.S. Tuna: A Proposal for Resource Management in the American Pacific Islands", *University of Hawaii Law Review* 10, Honolulu (1988:159); "Tuna Deal Pay Out

while offering to minimize illegal American fishing operations in the region. However that achieved very little so long as the ATA treated the Treaty with contempt.²¹⁷ This was not surprising: throughout the treaty negotiations, the US delegation had been pressured by American fisheries industry groups determined not to include the sovereign rights issue over tuna in the Treaty.

The negotiation process ultimately provided the Forum Fisheries Agency with the training and experience required to negotiate future fisheries arrangements with DWFN. The Treaty was a significant goodwill gesture on the part of the US government under the Reagan administration, in its acknowledgement of the interests of the Pacific Island States.

On June 18, 1987, President Ronald Reagan wrote to the United States Senate about the Treaty, stating that:

I transmit herewith, for the advice and consent of the Senate to ratification, the Treaty on Fisheries Between the Governments of Certain Pacific Island States and the Government of the United States of America, with annexes and agreed statement, which has been signed by the United States and twelve Pacific Island states.²¹⁸

On November 6, 1987,²¹⁹ the US Senate approved the Treaty with a 89-0 vote,²²⁰ subsequently ratifying it on December 20, 1987. This was a satisfactory outcome, as will be highlighted in Chapters 3, 4 and 5 in terms of the issues negotiated. It benefited both the US and its longer term fisheries interests in the South Pacific and the Pacific Island States as well.

The formula of the Treaty itself was appealing to both the Pacific Island States and the US parties, which may have to do with how the negotiation was carried out. Also the Pacific

---

May Be Higher Than Expected”, *Pacific Islands Monthly* 58, February (1987); “U.S. Close Deal on Islands’ Rights”, *Pacific Islands Monthly* 57, January 19 (1986).

²¹⁷ “Contempt for the Tuna Accord”, *Pacific Islands Monthly*, August (1987).

²¹⁸ Letter of Transmittal.

²¹⁹ Gubon, F., “The Southwest Pacific Multilateral Fisheries Treaty: Some Possible Implications for Fisheries Development, Management and Conservation in the Pacific islands Region”, *Melanesian Law Journal* 22, Papua New Guinea University Press, Port Moresby (1994:1). See also North, D.S., “Tuna Bill Passed: The Controversial US Fishing Treaty Gets the Go-ahead”, *Pacific Islands Monthly*, July (1988); “Pacific Fish Deal Unique, Says US”, *The Dominion*, October 24, Wellington (1986).

²²⁰ North, D.S., “Treaty Snagged”, *Pacific Islands Monthly* 59(6) June (1988:48); “Tuna Bill Passed”, *Pacific Islands Monthly*, July (1988). See also “U.S – Pacific Fishing Pact Herald Change”, *The Dominion*, April 9, Wellington (1987).

communities do have relatively good relations with the American people and that helped for the negotiation process. For instance, there are significant Pacific Island States' communities throughout the US. However, it was the common interests of both parties that brought them together to the negotiation table.²²¹

Individual government governing styles would also affect their approach from issue to issue and the different degrees of debate and discussion.²²² The Treaty seemed to be based on mutual agreements, with both parties' interests fairly compromised. The outcome of the negotiation process would also be influenced by the capabilities of the experts from both parties involved in the process. The Treaty itself can also be seen as a means for the Pacific Island States and the US to sustain a long term political and economic relationships.

Reciprocity and bargaining have similar capacities to resolve disputes during negotiation process; both seek to establish a compromise stance for parties involved.²²³ It may seem that trade-offs between the Pacific Island States and the US were fair with reference to what was achieved by both sides. Hopmann argued that the "principle required for this process to work effectively is that all group members must defer judgment about ideas and about the individuals who suggest ideas; ideas should not be criticized at the outset of the process, and individuals should feel free to suggest any ideas, no matter how crazy they may at first appear, without fearing that either they or their ideas will be criticized."²²⁴ The fact that both parties went in open minded and listened to each other's proposals and views also helped the negotiation process.

The US had a reality check during the negotiation of its fisheries policy and fishing disputes. As Crossett stated that,

For decades, Congress protected the tuna boat owners by enacting measures retaliating against governments that seized American fishing boats. But when the Pacific treaty was concluded in Tonga in October, American negotiators were optimistic that it would meet no

---

²²¹ Ikle, F.C. *How Nations Negotiate*, Harper & Row Publishers, New York (1964:2).

²²² Starky, B., Boyer, M.A. and Wilkenfield, J. *Negotiation a Complex World: An Introduction Negotiation*, Rowman & Littlefield Publishers, INC., Lanham (2005).

²²³ Hopmann, P.T. *The Negotiation Process and the Resolution of International Conflict*, University of South Carolina, Columbia (1996:190).

²²⁴ Hopmann, P.T. *The Negotiation Process and the Resolution of International Conflict*, University of South Carolina, Columbia (1996:192).

major resistance in Congress because the tuna industry was represented on the negotiation team.²²⁵

The US needed to secure access to the Pacific Island States' tuna resources and in order to do this it needed the Treaty to be comprehensive. It also needed to restore its relationship with the Pacific Island States, which had been tarnished by the ATA fishing practices in the region. The Treaty also blocked the former Soviet Union from having permanent access to the region's tuna resources and establishing military base.

---

²²⁵ Crossette, B. "U.S. Fishing Pact with Pacific Islands Praised", *The New York Times*, Tuesday, January 7, (1987:1). <http://query.nytimes.com/gst/fullpage.html?res=9B0BEE3DF1630F934A35752C0A96...>

Chapter Three

A Legal Analysis of the Fisheries Treaty

Introduction

The previous chapter outlined the historical background of the Treaty and the causes of the fishing disputes that occurred between the Pacific Island States and the US. These disputes arose primarily because US fisheries policy did not recognize Pacific Island States' sovereign rights over highly migratory species (HMS).²²⁶ By contrast, the Pacific Island States claimed sovereign rights over living resources (including HMS) present within their national jurisdictions. As result, the Treaty was deliberately designed to resolve not just fishing disputes, but to help facilitate a compromise between the different positions on the sovereign rights issue.

This chapter analyzes the concept of sovereign rights under the *United Nations Convention on the Law of the Sea* 1982 (1982 Convention), not only with regard to its consistency (or otherwise) with the Treaty, but also taking into account the contrasting positions of Pacific Island States and the US. It discusses the access provision of the Treaty in relation to how both parties negotiated and settled. It also addresses the manner in which the Treaty was used to actually manage these different positions and other national, regional and international legal issues related to the Treaty itself.

The United Nations Convention on the Law of the Sea 1982

Under the 1982 Convention, the Pacific Island States have the discretion to determine an allowable catch as best satisfies their interests. The law of the sea had been among the most debated and deliberated of treaty conventions in the history of international law.²²⁷ Different influences on the international law of the sea include the practice of Coastal States, the

---

²²⁶ HMS defines by listing of species in the Annex I of the 1982 Convention including 12 billfish species, two tuna-like species, four species of sauries, promfrets, dolphin fish, oceanic sharks and cetaceans. See Deese, D.A. *The New Politics of American Foreign Policy*, St. Martin, New York (1994).

unilateral extension of maritime boundaries, the related development and improvement of marine technology and the growing demand for fisheries (tuna) in world markets.²²⁸ These were all key factors. They presented difficult choices for the future development of the law of the sea and were as much political and economic as they were legal in orientation. That is, coastal States wanted to expand their national jurisdiction over their coasts so they could politically control the economics of marine resources and other minerals therein.²²⁹ International law, then, emerges as a legal means allowing countries to control and regulate exploration and exploitation, and to develop marine resources for the benefit of all parties concerned, while also conserving and managing the natural environment.²³⁰

The *United Nations Conferences on the Law of the Sea* (UNCLOS I²³¹, II²³² & III²³³) was an arena in which the international community discussed and then negotiated law of the sea outcomes. Of significance here was a rapid growth in the number of fishing disputes between coastal States and distant-water fishing nations (DWFN).²³⁴ These provided an opportunity for the international community to come together to try and develop a set of common rules and norms. Having these rules in place helps to avoid future disputes between states, however developing them can prove time consuming and expensive due to countries' different socio-

---

²²⁸ Degan, V.D. *Sources of International Law*, Kluwer Law International, The Netherlands (1997); van Hoff, G.J.H. *Rethinking the Sources of International Law*, Kluwer Law and Taxation Publishers, The Netherlands (1983)

²²⁹ Stopford, M. *Maritime Economics*, Allen & Urwin, Oxon (3rd ed.) (1997)

²³⁰ Rao, P.K. *International Environmental Law and Economics*, Blackwell Publishers Inc., Massachusetts (2002).

²³¹ From 24 February until 29 April 1958 (Burke, W.T. "Some Elements on the 1958 Conventions", *Proceedings of the American Society of International Law* (1959:197-206).

²³² From 17 March until 26 April 1969 (Hey, E. *The Regime for the Exploitation of Transboundary Marine Fisheries Resources: The United Nations Law of the Sea Convention Cooperation between States*, Martinus Nijhoff Publishers, Dordrecht (1989:7).

²³³ From 1973 to 1982 (Official Records of the Third United Nations Conference on the Law of the Sea, Volumes IXVII, 1974-1982).

²³⁴ The UNCLOS I started in 1958 followed by the UNCLOS II in 1968 and finally the UNCLOS III in 1974. These negotiations culminated in the United Nations Convention on the Law of the Sea in 1982. See also Anand, R.P. "The Politics of a New Legal Order for Fisheries", *Ocean Development and International Law* (1982); Anderson, D.H. "The Implications of the Entry into Force of the UN Convention on the Law of the Sea", *International and Comparative Law Quarterly* 44 (1995); Van Dyke, J.M. and Brooks, R.A. "Uninhabited Islands: Their Impact on the Ownership of the Oceans' Resources", *Ocean Development and International Law* 12 (2-3) (1983:280); Lawson, R. "Fisheries Economics in the South Pacific Region", in Herr, R. (ed.) *The Forum Fisheries Agency: Achievements, Challenges and Prospects*, University of the South Pacific, Suva (1990:180); Castaneda, J. "Negotiations on the EEZ at the Third United Nations Conference on the Law of the Sea", *Essays* (1984); Oxon, B.H. "The Two Conferences", in Oxman, B.H., Caron, D.D. and Buder, C.L.O. (eds.) *The Two Conferences in Law of the Sea: US Policy Dilemma*, Institute for Contemporary Studies, San Francisco (1983); Padelford, N.J. *Public Policy for the Seas*, M.I.T. Press, Manhattan (1970); Oda, S. "Fisheries Under the United Nations Conference on the Law of the Sea", *American Journal of International Law* 72 (1978); Oxman, P. and Grant, C. "The Third United Nations Conference on the Law of the Sea: The 1977 New York Sessions", *American Journal of International Law* 72 (1978).

political and economic circumstances. Therefore, establishing a set of rules collectively agreed upon by the international community is an inherently difficult task.

Throughout the UNCLOS III negotiations, rights over highly migratory species were controversial.²³⁵ The subsequent adoption of the *United Nations Convention on the Law of the Sea* of 1982 (1982 Convention) went some way towards resolving these disputed issues.²³⁶

In attempting to resolve major law of the sea issues,²³⁷ the 1982 Convention brought a completely new perspective to the issue of coastal States' control over marine resources. More ocean space was coming under national jurisdiction than previously, with a consequent need for greater cooperation among fishing nations.²³⁸ Under the 1982 Convention, coastal States could now claim some 35 per cent of the ocean surface through exclusive economic zone (EEZ) provisions, and some 95 per cent of marine resources therein under commercial

---

²³⁵ See Bergin, A. "Ownership and Control Over Marine Living Resources", paper presented to PIPSA Conference, December 1993, Cook Islands (1993); Charney, J.I. "The Exclusive Economic Zone and Public International Law", *Ocean Development and International Law* 5 (1985); Fleischer, C.A. "The Rights to a 200-mile Exclusive Economic Zone or a Special Fishery Zone", *San Diego Law Review* 14 (1977); Kavoyor, F. "Exclusive Zone and Its Legal Status", *International Affairs* (1979); Keen, E.A. "Common Property in Fisheries: Is Sole Ownership an Option?", *Marine Policy* 7 (1983); Kwiatkowska, B. "Exclusive Economic Zone – General Evaluation", *Essays* (1984).

²³⁶ See Extavour, W.C. *The Exclusive Economic Zone: A Study of Evolution and Progressive Development of the International Law of the Sea*, Institute universitaire de haute études internationales, Geneva (1979); Attard, D.J. *The Exclusive Economic Zone in International Law*, Oxford University Press, Oxford (1987); Balton, D. "Strengthen the Law of the Sea: The New Agreement", *Ocean Development and International Law* 27 (1996); Burke, W.T. "Extended Fisheries Jurisdiction and the New Law of the Sea", in Rothschild, B. (ed.) *Global Fisheries Perspectives for the 1980s*, Springer-Verlag, Berlin (1983); Hey, E. *The Regime for the Exploitation of Transboundary Marine Fisheries Resources*, Martinus Nijhoff, Boston (1989); Hull, E.W. *The International Law of the Sea: A Case for a Customary Approach*, University of Rhode Island, New York (1978); Burke, W.T., Legatski, R. and Woodhead, W.W. *National and International Law Enforcement in the Ocean*, University of Washington Press, Washington (1975); Akehurst, M.A. *Modern Introduction to International Law*, Allen & Urwin, London (1988); d'Amato, A. *The Concept of Custom in International Law*, Cornell University Press, Cornell (1987); Black, C.E. and Falk, R.A. (eds.) *The Future of the International Legal Order*, Princeton University Press, Princeton (1972); MacRae, L.M. "Customary International Law and the United Nations Law of the Sea Treaty", *California Western International Law Journal* 4 (1986); Loftas, T. "FAO's EEZ Programme – Assisting a New Era in Fisheries", *Marine Policy* 5 (1981); Wilkman, P.M. "UNCLOS and the Redistribution of Ocean Wealth", *Journal of World Trade Law* 16(27) (1982).

²³⁷ The 1982 Convention came into force on November 14, 1994 after the deposit of the 60th instrument of ratification, and open for all States including self-governing, for instance, Cook Islands and Niue Island. See Orrego-Vicina, F. *The Exclusive Economic Zone: Regime and Legal Nature Under International Law*, Cambridge University Press, Cambridge (1987).

²³⁸ See Wolfer, E.P. "The Law of the Sea in the South Pacific", in Crawford, J. and Rothwell, D.R. (eds.) *The Law of the Sea in the Asian Pacific Region*, Martinus Nijhoff, Boston (1995: 42); Oda, S. *International Law of the Resources of the Sea*, Sijthoff & Noordhoff, New York (1970); Dahmani, M. *The Fisheries Regime of the Exclusive Economic Zone*, Kluwer Academic Publishers, The Netherlands (1987).

exploitation.²³⁹ This was a huge development for the law of the sea, bringing with it the possibility of major economic benefits for coastal States, but also possibly detrimental effects to marine resources and environments.

The advancement of marine technologies that allowed more extensive exploitation was seen by coastal States as a direct threat to their adjacent resources and, therefore, made effective control over those resources necessary.²⁴⁰ Dahmani argues that the “Exclusive Economic Zone is a reflection of their aspirations to economic development, not an action of economic warfare in this context of the developing world’s strategy of development that one should look for the motivations and objectives of its international ocean policy.”²⁴¹

The push for control of off-shore fisheries resources was very much economic in essence, particularly for the developing coastal States. However, in order to generate revenue from these resources, first and foremost they needed to legally claim and control the exploitation, management and exploitation process. This led to coastal States extending their jurisdictional boundaries. Dahmani states that the:

... extension of national jurisdiction to extensive areas of the high seas adjacent to their coasts, in order to exclude or control foreign fishermen, mainly from the developed countries, well before the Third United Nations Conference on the Law of the Sea started reformulating the rules and structures of the law of the sea. The rationale for such action derives from the desire to guarantee that the resources of the adjacent sea areas are part of the coastal state’s national resources. In this respect, sovereignty over adjacent sea resources was conceived as being indispensable for the development of the new states of the developing world. This link between sovereignty and economic development, it must be mentioned, counted for much of their extremism voiced at the law of the sea negotiations ... EEZ concept, as far as the fishery resources are concerned, and cannot be expected to redress this balance to a great extent. In reality the main beneficiaries are the rich and developed states like the USA, Australia, Canada, Japan, the USSR, New Zealand, Indonesia, Mexico, Brazil, Norway and Chile.²⁴²

---

²³⁹ Burke, W.T. “Extended Fisheries Jurisdiction and the New Law of the Sea”, in Rothschild, B. (ed.) *Global Fisheries Perspectives for the 1980s*, Springer-Verlag, Berlin (1983)

²⁴⁰ Dahmani, Martin, *The Fisheries Regime of the Exclusive Economic Zone*, Martinus Nijhoff Publishers, The Netherlands (1987).

²⁴¹ Dahmani, Martin, *The Fisheries Regime of the Exclusive Economic Zone*, Martinus Nijhoff Publishers, The Netherlands (1987:15).

²⁴² Dahmani, M. *The Fisheries Regime of the Exclusive Economic Zone*, Martinus Nijhoff Publishers, The Netherlands (1987:23).

At the UNCLOS III, Pacific Island States highlighted the special needs of their region,²⁴³ including support for the EEZ regime, as a significant component of the new law of the sea.²⁴⁴ Certain provisions of the 1982 Convention (such as Part IV, Part V and Part VIII) reflected the legitimate interests of the South Pacific Forum States.²⁴⁵

The EEZ regime was seen as a compromise between countries with different interests in relation to the exploration, exploitation and management of resources. Dahmani argues that:

The Exclusive Economic Zone was introduced as a compromise to accommodate the interests of states claiming a territorial sea of more than 12 miles. Such claims were often motivated by economic considerations, so it was hoped to find a compromise solution by providing an Economic Zone beyond a territorial sea of 12 miles which seemed to be generally acceptable.²⁴⁶

The EEZ concept also provided conservation measures that all States in question as their responsibilities toward resources within.

---

²⁴³ See Munro, G.R. "The Pacific Islands, the Law of the Sea and Pacific Tropical Tuna", in Campbell, H., Menz, K., and Waugh, G. (eds.) *Economics of Fishery Management in the Pacific Islands Region*, University of Tasmania Press, Hobart (1989).

²⁴⁴ Aikman, C.C. "The South Pacific Forum Fisheries Agency", *Essays in International Law*, Twenty-fifth Anniversary Commemorative Volume, Asian-African Legal Consultative Committee Tara Art Press, New Delhi (1981:88); Clark, L. "UNCLOS and the Pacific Island States", *The Courier Africa-Caribbean Pacific European Community* 85, May-June (1984); Pohl, G. *Exclusive Economic Zone*, (1984); Morell, J.B. *The Law of the Sea: A Historical Analysis of the 1982 Treaty and its Rejection by the United States*, McFarland, Jefferson (1992); Knight, G. and Chiu, H. *The International Law of the Sea: Cases, Documents and Readings*, Elsevier Applied Science, London (1991); Lay, S., Churchill, R. and Nordquist, M. *New Directions in the Law of the Sea*, 1981 Ocean Publications, New York (1973); Janis, M.W. *Sea Power and the Law of the Sea*, Aspen Publishers, New York (1976); MaRae, D.M. and Munro, G.R. "Coastal State Rights Within the 200-mile Exclusive Economic Zone", in Neher, P., Arnason, R., and Mollet, N. (eds.) *Rights Based Fishing*, NATO ASI Series (Series E: Applied Sciences – Vol.169), Kluwer Academic Publisher, The Netherlands (1989); Nelson, L.D.M. "The Emergence New Law of the Sea", *Marine Law Review* 42 (1979); Schreiber, A.A. "The Exclusive Economic Zone: Its Legal Nature and the Problem of Military Uses", in Vicuna, F.O. (ed.) *The Exclusive Economic Zone: A Latin American Perspective*, Westview Press, New York (1984); Scorazzi, T. "Coastal State Practice in the Exclusive Economic Zone: The Right of Foreign States to Use this Zone", in Smith, B.D. *State Responsibility and the Marine Environment: The Rules of Decision*, Clarendon Press, Gloucestershire (1988); Simmond, K.R. "The Law of the Sea", *The International Lawyer* 24 (1990); Sohn, L.B. "The Law of the Sea: Customary International Law Developments", *American University Law Review* 34 (1985); Wooster, W.S. "Scientific Aspects of Maritime Sovereignty Claims", *Ocean Development and International Law* 1 (1973); Fleischer, C.A. "The Rights to a 200-mile Exclusive Economic Zone or a Special Fishery Zone", *San Diego Law Review* 14 (1977).

²⁴⁵ See Burke, W.T. "The Law of the Sea Convention Provisions on Conditions of Access to Fisheries Subject to National Jurisdiction", *Oregon Law Reviews* 63 (1984); Park, C. (ed.) *Law of the Sea in 1980s*, M.I.T. Press, Manhattan (1980); Sutherland, W.N. "Fisheries Management and Coastal States Jurisdiction in the South Pacific", *International Journal of Coastal and Estuarine Law* 1 (1986); Wolfers, E.P. "Law of the Sea in the South Pacific", in Crawford, J. and Rothwell, D.R. (eds.) *The Law of the Sea in the Asia Pacific Region*, Martinus Nijhoff Publishers, The Netherlands (1995).

²⁴⁶ Dahmani, Martin, *The Fisheries Regime of the Exclusive Economic Zone*, Martinus Nijhoff Publishers, The Netherlands (1987:18).

In 1977, and in anticipation of the conclusion of the 1982 Convention, Forum member States agreed to declare 200 nautical miles EEZ no later than March 31, 1978.²⁴⁷ This meant that some six million square miles of waters would come under the new form of jurisdiction.²⁴⁸ In that year, 27 coastal States worldwide had claimed 200 nautical miles EEZ and fishing zones.²⁴⁹

In 1979, the Forum member States adopted the *South Pacific Forum Fisheries Agency Convention* (FFA Convention) and declared sovereign rights over all living resources within their newly established 200 nautical miles national jurisdiction.²⁵⁰ The Forum's goal in

---

²⁴⁷ See Broder, S. and Van Dyke, J. "Ocean Boundaries in the South Pacific", *University of Hawaii Law Review* 4(1), Honolulu (1982); Boer, B. "Environmental Law and the South Pacific Law: Law of the Seas Issues", in Crawford, J. and Rothwell, D.R. (eds.) *The Law of the Sea in the Asian Pacific Region*, Martinus Nijhoff Publishers, The Netherlands (1995); Carter, J. "The Forum Speaks, and Faraway Countries Listen and Worry", *Pacific Islands Monthly*, October (1977); Carroz, J.E. and Savini, M.J. "The New International Law of Fisheries Emerging from Bilateral Agreements", *Marine Policy* 4 (1979); *New Zealand Foreign Affairs Review* 34(2), July-September, Wellington (1984:38); Dabb, G. "The law of the Sea in the South Pacific", Carter, J. (ed.) *Pacific Islands Yearbook* 21 (1981); Bowett, D.W. *The Legal Regime of Islands in International Law*, Ocean Publication, New York (1979); Buchholz, H.J. *Law of the Sea Zones in the Pacific Ocean*, Institute of Southeast Asian Studies, Singapore (1987).

²⁴⁸ See Doulman, D.J. *Fishing For Tuna: The Operation of Distant-Water Fleets in the Pacific Islands Region*, East-West Center, Honolulu (1986:1); Robb, D.H. "Foreign Fishing Access Refines in the Pacific Basin", in Gopalakrishnan, C. *The Emerging Marine Economy of the Pacific*, Butterworths, Belrose/NSW (1984:107). See also Van Dyke, J.M. and Heftel, S. "Tuna Management in the Pacific: An Analysis of the South Pacific Forum Fisheries Agency", *University of Hawaii Law Review* 3, Honolulu (1981); *Summary of Proceedings of the Seventh Meeting of the South Pacific Forum*, Suva (1976); *Report of the Eighth Meeting of the South Pacific Forum*, Suva (1977); Doulman, D.J. "Distant-Water Fleet Operations and Regional Fisheries Cooperation", in Doulman, D.J. (ed.) *The Development of the Tuna Industries in the Pacific Islands Region: An Analysis of Options*, East-West Center, Honolulu (1987); Carroz, J.E. "Institutional Aspects of Fishery Management Under the New Regime of the Oceans", *San Diego Law Review* 21(3), San Francisco (1984:513); Burke, W.T. "National Legislation on Ocean Authority Zones and the Contemporary Law of the Sea", *Ocean Development and International Law* 9 (1981); Copes, P. "The Impacts of UNCLOS III on Management of the World's Fisheries", *Marine Policy* 5 (1981); Symmons, C.R. *The Maritime Zones of Islands in International Law: Developments in International Law*, Martinus Nijhoff, Boston (1979); Lee, R.S. "The New Law of the Sea and the Pacific Basin", *Ocean Development and International Law Journal* (1982); "Islands State their Claim to the Sea's Riches", *Pacific Islands Monthly*, December (1976).

²⁴⁹ Angola, Bangladesh, Benin, Canada, Chile, Comoros, Costa Rica, Cuba, Denmark (plus Greenland), Federal Republic of Germany, France, Guatemala, Iceland, India, Ireland, Maldives, Mexico, Mozambique, Nicaragua, Norway, Pakistan, Portugal, Senegal, Sri Lanka, United Kingdom, United States and USSR. See Hollick, A.L. "Origins of 200-Mile Offshore Zones", *American Journal of International Law* 71 (1977:494); Van Dyke, J.M. and Heftel, S. "Tuna Management in the Pacific: An Analysis of the South Pacific Forum Fisheries Agency", *University of Hawaii Law Review* 3, Honolulu (1981:3); Kearney, R. *The Law of the Sea and Regional Fisheries Policy*, Taylor & Francis, London (1977); Doulman, D.J. "Distant-water Fleet Operations and Regional Fishing Cooperation", in Doulman, D.J. (ed.) *The Development of the Tuna Industry in the Pacific Islands Region: An Analysis of Options*, East-West Center, Honolulu (1987:33-52); Marcus, G.E. "Preemption in the Fisheries and the UN Law of the Sea Treaty", *Dickinson Journal of International Law* 4 (1986); Moore, G. *Coastal State Requirements for Foreign Fishing*, Food and Agriculture Organization of the United Nation (FAO), Rome (1993).

²⁵⁰ See Sutherland, W.M. "Management, Conservation and Cooperation in EEZ Fishing: The Law of the Sea Convention and the South Pacific Forum Fisheries Agency", *Ocean development and International Law* 18 (1980).

requiring such a declaration was to bring marine resources and natural resources under their control for both exploitation and development. Therefore, in order to control their potential resources, the Pacific Island States were required to legally claim sovereign rights over their newly established national jurisdictions.

The EEZ gave both coastal and non-coastal States some sense of responsibility for resources within and beyond through cooperation to benefit all parties. Dahmani argues that:

... the issue involved in the EEZ is not one of excluding the developed states from access to the fishery resources of the seas, but one of giving to all states, developed as well as developing, real access to these resources. In other words, changing the existing situation in which the great powers manage the seas, to a situation in which an important share may go to developing states. The EEZ will not make all states equal, but it would allow developing states to gain control over whatever resources they might have within the areas adjacent to their coasts that were previously subject to the freedom of fishing. The real beneficiaries of these resources were the developed states.²⁵¹

That is, the EEZ regime seemed a ‘calculated move’ for the international community in order to create a common position for all States’ interests, especially the socio-political and economic ones. Even though the coastal States initially pushed the concept, in the end it brought about a compromise stance on behalf of all States as a result of difficult negotiations.

The Concept of Sovereign Rights

New Zealand indicated to the Pacific Island States that unilateral action on the issue of 200 EEZ was preferred and ultimately more advantageous than multilateral action.²⁵² Again, New Zealand took charge in its advisory role for the Pacific Island States and was more active than any of the other countries. “... the New Zealand delegation will be pleased to assist you in any way it can, we are very happy to have you here ...”²⁵³

---

²⁵¹ Dahmani, M. *The Fisheries Regime of the Exclusive Economic Zone*, Martinus Nijhoff Publishers, The Netherlands (1987:23).

²⁵² Ministry of Foreign Affairs, Paper by Cabinet Economic Committee, 13 July (1976:6).

²⁵³ Opening speech by David McDowell, Assistant Secretary of the New Zealand Ministry of Foreign Affairs, Seventh Meeting of Member States to Consider a Fisheries Treaty with the United States, 10-21 June 1985, Wellington, New Zealand.

The brief for the New Zealand delegation to the Suva meeting in October 1976 indicated that it should be made known to the international community—particularly the DWFN—that the Forum and its members were preparing to take advantage of the EEZ in a serious and coordinated way, and the willingness to work cooperatively with other interested institutions and countries.²⁵⁴

The New Zealand delegation sought to press ahead. It wanted to avoid any unnecessary complications and focus on practical cooperation by:

... keeping clear of any extensive debate about whether or not there should be unilateral declaration of a 200 mile zone. Each Forum country has the right to take such a decision at the time of its own choosing. But it is also the responsibility of each member to take account of the consequences that such a decision could have for others in the region. It would be useful to have the Forum reaffirm this principle and, if possible, the more positive notion that there is value in coordinated regional action within the region.²⁵⁵

The close relationship between New Zealand and the Pacific Island States became even closer as a result of the Law of the Sea developments, especially the 200 EEZ. New Zealand (not Australia) expected to take the leadership role, because it had similar issues to the Pacific Island States with the EEZ.²⁵⁶

In a memo, the New Zealand Prime Minister Robert Muldoon insisted to Cabinet that the Declaration of 200 EEZ was the single most important topic the Forum dealing with and all the members had exactly the same level of interest in the issue.²⁵⁷ The Prime Minister, reassured by the sense of common purpose among Forum members in obtaining the new Law of the Sea Convention and protecting the region's special interests, "made the point which others endorsed that we need not feel undue pessimism about the slow pace of the Conference in New York. The issues were complex. They were also of such importance to us

---

²⁵⁴ Ministry of Foreign Affairs, Wellington, 7 October 1976, A Brief written for New Zealand Delegations, for the Forum meeting on the Law of the Sea meeting in Suva, 12-14 October (1976:4).

²⁵⁵ Ministry of Foreign Affairs, Wellington, 7 October 1976, A Brief written for New Zealand Delegations, for the Forum meeting on the Law of the Sea meeting in Suva, 12-14 October (1976:4).

²⁵⁶ *New Zealand Foreign Affairs Review*, New Zealand Ministry of Foreign Affairs, Volume 5 (1985)

²⁵⁷ Memorandum for Cabinet by Prime Minister, Office of the Prime Minister, Wellington, 15 October (1976:1).

that we would do our best to move cautiously and concentrate on having the negotiations advance our interests.”²⁵⁸

At the Forum meeting in Suva on 13-14 October 1976, key issues were discussed and agreements made to secure the adoption of the new and comprehensive Conference on the Law of the Sea and their sovereign rights over resources in their 200 mile exclusive economic zones.²⁵⁹ The Forum should also ensure that the Law of the Sea provides maximum benefits to the people of the region and declare their intentions to establish the EEZ regime after consulting with one another and to harmonize fisheries policies in the region. Also aimed to adopt a more collective approach in their negotiations with DWFN. It was also decided, in principle, to establish a regional fisheries organization to promote the conservation and rational utilization of the fish stocks of the region. Two tasks were given to the SPEC— firstly, to consult with the Secretary-General of the SPC and prepare proposals for the establishment of a regional fisheries organization (to be considered during the meeting). Secondly, to look at ways to co-operate in the surveillance and policing of DWFN fishing vessels and their activities in the region.

The major problem associated with the establishment of 200 EEZ and shared by all Forum States was the surveillance and policing of the DWFN fishing fleets conducting fishing activities in the region. The cooperation of all the countries involved in fishing in the region was essential for the conservation and management of the fisheries in the region.

Mr. David McDonald, Assistant Secretary of the New Zealand Ministry of Foreign Affairs, addressed the Forum leaders at the opening of the seventh meeting (Wellington, New Zealand, New Zealand, 10-21 June 1976), encouraging them to consider a fisheries treaty with the United States. He reminded those present that, “Our sovereignty is now assured, however, by the Law of the Sea Convention and by international recognition, and we need have no such fears. Moreover, what the Americans are proposing to do through these negotiations is pay fees to fish in our waters. That is inescapable, however it is dressed up. It is consistent with our position on sovereign rights and totally inconsistent with theirs.”²⁶⁰

---

²⁵⁸ Memorandum for Cabinet by Prime Minister, Office of the Prime Minister, Wellington, 15 October (1976:2).

²⁵⁹ *South Pacific Forum Meeting*, 13-14, October, Suva, New Zealand Foreign Affairs Review (1977).

Part V of the 1982 Convention outlined specific legal regime of the EEZ and the rights, duties and jurisdiction of the coastal States to exercise and are specifically dictated in Articles 55 and 56. Dahmani argues that, Articles 55 and 56, seems to suggest that the EEZ exists ipso facto ... Thus reading the two articles together, one may draw the conclusion that the Convention will eventually claim an EEZ or that the Convention casts an obligation upon states to claim an EEZ. However, both interpretations would seem unreasonable for the following reasons. First, there is no reason for the Convention to place an obligation upon the coastal state to establish an EEZ, if that state does not wish to have such zone. Secondly, Article 57 provides that the EEZ shall not extend beyond 200 nautical miles from the baselines from which the territorial sea is measured. This leaves the discretion to the coastal state to decide the breadth of its EEZ from 1 mile up to 200 miles, whatever breadth it thinks best suits its needs and interests. It would seem, therefore, unreasonable to say that the coastal state may choose any breadth up to 200 miles and at the same time say that it cannot decide to have no zone at all. Moreover, the EEZ would have no real meaning in practice unless the coastal state is prepared to exercise its rights and implement its laws and regulations in the zone. Thirdly, while in the case of the continental shelf, the Convention expressly provides that the coastal state's rights do not depend on occupation or proclamation, there is no such provision in Part V, The Exclusive Economic Zone. This is because, in the case of the continental shelf, the sovereign rights of the coastal state flow from its sovereignty over the land.²⁶¹

The adoption of EEZ regimes by the Pacific Island States could be perceived as means of exercising sovereign rights over fisheries resources within individual 200 nautical mile zones and any profits to be made from these.²⁶² A legal order was being created that permitted claims to sovereign rights in order to control and regulate the exploitation of fisheries resources.

---

²⁶⁰ South Pacific Forum Fisheries Agency, Seventh Meeting of Member States to Consider a Fisheries Treaty with the United States, 10-21 June 1985, Wellington, New Zealand, Attachment B:p.2.

²⁶¹ Dahmani, M. *The Fisheries Regime of the Exclusive Economic Zone*, Martinus Nijhoff Publishers, The Netherlands (1987:35).

²⁶² See Broder, S and Van Dyke, J. "Ocean Boundaries in the South Pacific", *University of Hawaii Law Review* 4(1), Honolulu (1982: 1-59); Kearney, R.E. "The Tuna Resource Base of the Pacific", in Campbell, H., Menz, K. and Waugh, G. (eds.) *Economics of Fishery Management in the Pacific Islands Region*, University of Tasmania Press, Hobart (1989: 37-41); Robb, D.H. "Foreign Fishing Access Regimes in the Pacific Basin", in Gopalakrishnan, C. *The Emerging Marine Economy of the Pacific*, Butterworths, London (1984); Lowe, A.V. "Reflections on the Waters Changing Conceptions of Property Rights in the Law of the Sea", *International Journal of Estuarine and Coastal Law* 1(1) (1986:10); Burke, W.T. "The Law of the Sea Convention and Fishing Practices of Non-signatories, with Special Reference to the United States", in Van Dyke, J.M. (ed.) *Consensus and Confrontation: The United States and the Law of the Sea Convention*, University of Hawaii, Honolulu (1985); Sutherland, W.M. "Coastal State Co-operation in Fisheries: Emerge Regional Custom in the

The EEZ regime contains an integral body of rules governing the rights, duties, obligations, and responsibilities of coastal States and other States.²⁶³ Those rules cannot operate effectively without the cooperation of all the States concerned.²⁶⁴ That is, these rights are not absolute—the obligations and duties of coastal States are shared with other States.²⁶⁵

Dixon argues that,

The coastal state has ... sovereign rights over all the natural resources ... up to 200 miles. The EEZ provides the coastal state with an exclusive share of the wealth of the sea and it is not surprising that it has found favour with so many states. What coastal states do not have is 'sovereignty', as witnessed by the preservation in the LOS legal regime of other states' dominium over the EEZ. Consequently, it has only those rights given by the Convention and cannot interfere with commercial activity by other states in the EEZ unless such activity directly challenges the coastal state's sovereign rights.²⁶⁶

Coastal states cannot claim sovereignty over the waters in the EEZ. Their rights are limited. For example, they must conserve resources (Article 61), they must determine the allowable catch of resources and they must give access to other states if they do not have the capacity to meet this catch allowance themselves (Article 62(2)).

South Pacific", *International Journal of Estuarine and Coastal Law* 1(1) (1986); Tsamenyi, B.M. "The Exercise of Coastal State Jurisdiction over EEZ Fisheries Resources: The South Pacific", *Ambio* 17(4) (1988).

²⁶³ See Munro, G.R. "The Management of Shared Fishery Resources Under Extended Jurisdiction", *Marine Resource Economic* 3 (1987); Morehouse, W. "Loopholes in 200-mile Limit", *Honolulu Advertiser*, June 11, Honolulu (1977); Mizukami, C. "Management of Highly Migratory Species and Fisheries Relations Between Japan and South Pacific States", *University of British Columbia Law Review* 24(1), British Columbia (1990); Phillips, J.C. "The Exclusive Economic Zone as a Concept in International Law", *International and Comparative Law Quarterly* 26 (1977); Pollard, D.E. "The Exclusive Economic Zone: The Elusive Consensus", *San Diego Law Review* 12 (1975); Swan, J. "Foreign Fishing: The Legal Regime in Small Jurisdictions", Record of the Meeting of the Law Officers of small Commonwealth Jurisdictions, Bermuda (1988); Blake, G.H. (ed.) *Maritime Boundaries and Ocean Resources*, Barnes & Noble Books, New Jersey (1987); Attard, D.J. *The Exclusive Economic Zone in International Law*, Oxford University Press, Oxford (1987); Charney, J.I. and Lewis, M.A. (eds.) *International Maritime Boundaries*, Martinus Nijhoff, Boston (1993); Churchill, R.R. and Lowe, A.W. *The Law of the Sea*, Manchester University Press, Manchester (1988); Clingan, T. (ed.) *The Law of the Sea: What Lies Ahead?*, University of Hawaii Press, Honolulu (1988); O'Connell, D. *International Law of Resources of the Sea*, University of Hawaii Press, Honolulu (1979); Grolin, J. "The Future of the Law of the Sea: Consequences of a Non-treaty or Non-universal Treaty Situation", *Ocean Development and International Law* 13 (1983); Gulland, J. "Some Problems of the Management of Shared Stocks", FAO Fisheries Technical Paper No. 206, UN. Doc. FIRM/T206 (En), Rome (1980); Young, O.R. "Fishing by Permit: Restricted Common Property in Practice", *Ocean Development and International Law* (1980); The Question of Sovereign Rights Relative to Tuna", *Ocean Science News* 25, No. 23, June 13 (1983); Rawa, P. "Legal Regime of Marine Fisheries", *Indian Journal of International Law* 222 (1982); Raz, J. "Legal Rights", *Oxford Journal of Legal Studies* 4, Oxford (1984).

²⁶⁴ McLean, W.O. and Sucharitkul, S. "Fisheries Management and Development in the EEZ: The North, South and Southwest Pacific Experience", *Notre Dame Law Review* 63 (1988:495).

²⁶⁵ Brown, E.D. *The International Law of the Sea*, Dartmouth, New York (1994:220). See also Sutherland, W.M. "Policy, Law and Management in the Pacific Island Fisheries", in Couper, A.D. (ed.) *Development and Social Change in the Pacific Islands*, Routledge, Oxford (1989); Swan, J. "Tuna Management in the South Pacific", Clingan, T.A. (ed.) *The Law of the Sea: What Lies Ahead*, University of Hawaii, Honolulu (1988).

The Agency Convention provided a collective instrument binding Pacific Island States to secure their fisheries resources, including HMS, and ensuring sovereign rights over their fisheries resources. Article III (1) of this Convention stated that:

The parties to this Convention recognize that the coastal state has sovereign rights, for the purpose of exploring and exploiting, conserving and managing the living marine resources, including highly migratory species, within its exclusive economic zone or fishing zone which may extend 200 nautical miles from the baseline from which the breadth of its territorial sea is measured.

This Article undoubtedly established the Forum member States' stance on sovereign rights in relation to living resources within the EEZ. It was also consistent with the 1982 Convention.²⁶⁷

However, it is important to note that the Agency Convention was primarily restricted to a protection of sovereign rights over fisheries resources, with non-living resources excluded. This latter exclusion was a shortcoming of the Agency Convention, because sovereign rights over EEZ locations do include non-living resources. Thus Article 56(1) (a) of the 1982 Convention indicates that a coastal State has:

... sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources, whether living or non-living, of the waters superjacent to the sea-bed and of the sea-bed and its subsoil, and with regard to other activities for the economic exploitation and exploration of the zone, such as the production of energy from water, currents and winds.

This Article supported the Pacific Islands States' claims of sovereign rights over marine resources within the EEZ subject to the limitations of a coastal State's due regard to the rights and duties of other States. Article 56(2) of the Law of the Sea Convention states that:

In exercising its rights and performing its duties under this Convention in the exclusive economic zone, the coastal State shall have due regard to the rights and duties of other States and shall act in a manner compatible with the provisions of this Convention.

---

²⁶⁶ Dixon, M. *Textbook in International Law*, Oxford University Press, Oxford, 6th edition (2007:215).

²⁶⁷ See Burke, W.T. "Highly Migratory Species in the New Law of the Sea", *Ocean Development and International Law* 14 (1984); Joseph, J. "The Management of Highly Migratory Species: Some Important Concepts", *Marine Policy* 1(4)(1977).

In Article 62 of the 1982 Convention, it is further stipulated that the coastal State's sovereign rights are subject to certain limitations. Article 62(2) states that:

The coastal State shall determine its capacity to harvest the living resources of the exclusive economic zone. Where the coastal State does not have the capacity to harvest the entire allowable catch, it shall, through agreements or other arrangements and pursuant to the terms, conditions, laws and regulations referred to in paragraph 4, give other States access to the surplus of the allowable catch, having particular regard to the provisions of articles 69 and 70, especially in relation to the developing States mentioned therein.

While this Article reaffirmed the sovereign right of coastal States to determine the capacity of an allowable catch, it limited that sovereign right by permitting any surplus of allowable catch to be allocated to other States.

Coastal States do have responsibilities to ensure living resources within their respective EEZ are exploited sustainably and are not endangered. Article 62 states that the coastal States shall take into account all relevant factors include the significance of the living resources of the area to the economy of the coastal State concerned and its other national interests. It may also indicate that the coastal State is not legally bound by the relevant factors indicated and also no distributing system on how the surplus is allocated to interested States. It also provides coastal States with power to determine harvesting capacity. That is, the coastal States shall determine how much allowable catch can be given to other States. The 1982 Convention does not provide guidelines on how harvesting capacity should be determined and it is solely up to the coastal States to do so. The surplus can be used by coastal States to their advantage through negotiation for things like technologies and other technical and financial resources.

Fisher and Ury argue that the negotiations dealt with realities that are hard to change; they argue that such realities should be protected and if trade-offs are required they should be kept to an absolute minimum.²⁶⁸ For the Pacific Island States, the sovereign rights regime over HMS within their respective EEZs was a non-negotiable issue, even before the idea of having a fishing arrangement with the United States was raised. This reflects on the seriousness of

---

²⁶⁸ Fisher, G. and Ury, W. *Getting to Yes: Negotiating Agreement Without Giving-In*, 2nd edition, Penguin, New York (1991:97).

the Forum by meetings on a regular basis specifically aimed to discuss the EEZ regime during the UNCLOS III negotiation.

The Pacific Island States needed to secure full control of the tuna resources within their EEZ in order to make financial gains. The US knew that the concept of sovereign rights would be a very difficult one to negotiate and had to seriously reconsider its position.

The US did well at the beginning of the Treaty negotiation by deliberately leaving the issue of sovereign rights out of the negotiation, however tension did build between the Pacific Island States and the US over this issue. The Pacific Island States were also cautious and agreed to the US suggestion that the Preamble be discussed at a later stage. The outcome (and even the negotiation process) of the Treaty would have been different, if the sovereign rights issue had been negotiated at the beginning, because it was the most difficult issue. At the same time, the US did not try to change the Pacific Island States' view on the sovereign right issue, not only to avoid further tension, but also had the sense that Pacific Island States would be convinced to change their position on the issue at all, so as the US. As a result, the Pacific Island States' sovereign rights were acknowledged in the Treaty; giving in on this issue would be regarded as a major compromise.

In this context, the sovereign right issue as a very important one and Pacific Island States and the US agreed on ambiguous terms and general principles. Because of the seriousness of the issue, further debate would not have helped to settle their differences. Smooth negotiation was needed to achieve a fair and balanced outcome. The Treaty was necessary for both parties to bridge their major differences, particularly on the sovereign rights issue as it related to tuna resources within the EEZ. It would also benefit both parties. The Pacific Island States need to secure control of the exploitation of tuna within their national jurisdictions and the Treaty would be an ideal mechanism. On the other hand, the US also needed the Treaty to secure its access to the region's tuna resources. Both parties got a little less than they originally wanted out of the Treaty.

The first obstacle for both parties was the Preamble of the Treaty. This was vital for both parties in terms of outlining the basic objectives of what the Treaty would be all about. Both parties came at the issue of sovereign rights head on. The Pacific Island States' delegation

was up front about their desire for recognition of the Pacific Island States' sovereign rights for the purpose of exploring, exploiting, conserving and managing the natural resources of the waters in their exclusive economic zones, and jurisdiction with regard to marine scientific research within their said zones under the concept of EEZ stated in the international laws. However, Pacific Island States subsequently agreed to these falling under Acknowledgement rather than under Recognition.

The most important aspects of this Acknowledgement for the Pacific Island States were the power and control of their resources within their EEZ and their economics. 'Recalling' the rational management of fisheries resources highlighted the economic component of the Treaty—the Pacific Island States saw this arrangement as beneficial. This was a very sticky issue with the US however, because they do not recognize sovereign rights over the EEZ and during this negotiation was no exception. This is reflected in their proposal that the recognition of Pacific Island States' sovereign rights over their EEZ should be deleted from the Preamble. This was a direct blow to the Pacific Island States' potential to control and manage their fisheries resources post declaring their 200 n.m. EEZ. Without the Pacific Island States having sovereign rights over the fisheries resources within their EEZ, there would be no point in having any form of fishing arrangement with the US.

Also, for a fishing arrangement of this capacity to be addressed in only one paragraph in the Preamble would be unacceptable by any international standard. The Pacific Island States should be credited for being persistent throughout the negotiation, not only in pushing for two paragraphs to be discussed further, but also for considering further discussion on a more efficient approach to covering the many of the original objectives of the intended agreement. This led to the acceptance of a further two paragraphs (bearing in mind that there are species that can be found within and outside the region) designed to maximize benefits from the development of the Pacific Island States parties' fisheries resources within their EEZ. However, the Preamble does not specifically indicate that the benefits should be economic and/or technical in nature. A Preamble that does not cover the intent of the fishing arrangement is better off not existing at all. The US was probably to blame due to its reluctance to compromise over Pacific Island States' sovereign rights within their respective EEZ.

A reading of the Preamble of the Treaty gives a sense of the Pacific Island States parties' sovereign rights over the fisheries resources within their EEZ. This states that,

Acknowledging that in accordance with international law, coastal States have sovereign rights for the purposes of exploring and exploiting, conserving and managing the fisheries resources of their exclusive economic zones or fisheries zones.

However, the sovereign rights this describes are those of a custodian rather than that of a proprietor exercising exclusive control over the resources concerned. The term "exclusive" in the exclusive economic zone regime of 1982 Convention is not absolute, causing there to be some inaccuracy in this term's application and interpretation.

The wording of the treaty Preamble reflects the US agreement to recognize the Pacific Island States parties' sovereign rights over living resources within their national jurisdictions. The relevant wording did not specifically include HMS, meaning that the interpretation made by both parties could differ and thus it could be seen as a "win-win" for both parties. From the Pacific Island States' perspective, it did include HMS because it clearly stated 'fisheries resources'. On the other hand, the US was free to argue that HMS was not included because Washington did not recognize any national jurisdictional claims over HMS.

The Treaty and the Agency Convention thus shared common shortcomings in that they did not specifically include non-living resources. It was suspected that this issue was among the trade-offs made by the parties during the Treaty negotiation process. That process was restricted to living resources, avoiding the complication of including non-living resource issues. The US originally refused to sign the 1982 Convention; one reason for this was that it did not want to give coastal states' sovereign rights over 200 nautical miles, or the establishment of a deep-sea mining authority. The South Pacific Treaty negotiation would have been longer and more difficult had the non-living issue been included in negotiations.²⁶⁹

The Position of the United States

---

²⁶⁹ Generally, see Jones, W.B. "The International Sea-Bed Authority Without U.S. Participation", *Ocean Development and International Law* 12(3-4) (1983).

When the Reagan administration took office in early 1981, the Department of States announced that a negotiation review of the law of the sea treaty was needed. Washington was not happy with the direction of the negotiation and vowed not only to revisit the negotiation, but also improve on it. As Caron puts it,

The president stated that the U.S. would return to the negotiations and work with other countries to achieve an acceptable treaty. The president's statement went on to outline six objectives that the U.S. delegation would seek in the eleventh session, objectives generally addressing the precedents described above. Although changes to the draft convention were agreed to at the eleventh session, the United States concluded that it would not join in the general adoption of the text.²⁷⁰

The progress and development of the negotiation were slow and difficult due to major differences between the two main groups, the developed countries on one hand, and the developing countries on the other. Pardo argues that, There were two general points of view that emerged in the review process. The first was advocated by the deputy assistant secretary of state for ocean and fisheries affairs, the most senior official responsible for the day-to-day conduct of the review. In essence, this point of view held that the treaty was flawed because it created adverse precedents for other negotiations on economic issues between developed and developing nations (the North South dialogue); subjugated American industry to an international regulatory and management system; and was incompatible with President Reagan's apparent desire to return the United States to a period of power and influence in world affairs in which its policies would simply be enunciated rather than sold to others through a process of diplomacy and negotiation.²⁷¹

It seemed that the new Administration's foreign policy was very much based on defense and the Soviet Union.

The official opening of the Law of the Sea treaty took place in Jamaica. The majority of the signatories were developing States, in addition to the US. Some European countries did not sign the treaty due to concerns over the provisions relating to the deep seabed mining.²⁷²

---

²⁷⁰ Caron, D.D. "Reconciling Domestic Principles and International Cooperation", in Oxman, B.H., Caron, D.D. and Buder, C.O. (eds.), *Law of the Sea: U.S. Policy Dilemma*, Institute for Contemporary Studies, California (1983:7).

²⁷¹ Pardo, A. "An Opportunity Lost", in Oxman, B.H., Caron, D.D. and Buder, C.O. (eds.), *Law of the Sea: U.S. Policy Dilemma*, Institute for Contemporary Studies, California (1983:30).

²⁷² Caron, D.D. "Reconciling Domestic Principles and International Cooperation", in Oxman, B.H., Caron, D.D. and Buder, C.O. (eds.), *Law of the Sea: U.S. Policy Dilemma*, Institute for Contemporary Studies, California (1983:7).

The US was not willing to make exceptions on this issue and therefore the Reagan Administration did not have any room to maneuver (regarding the exclusion of the mineral resources and the fisheries resources (HMS)). Caron argues that,

The United States did not sign the Law of the Sea Convention because the treaty was perceived as a threat to basic principles of Western economic and political philosophy. Tragically, the treaty could not simply be renegotiated, because the concerns of the United States went to the basic premises upon which years of compromise and negotiation had been built. Whether the U.S. negotiators had gained a treaty satisfying the immediate and direct American interests in fisheries or commercial and military navigation was not the decisive question for the Reagan administration. Rather, the symbolic and long-term implications of the precedents set by the treaty were the major forces shaping U.S. policy. These concerns will dominate American policy toward the law of the sea for many years to come.²⁷³

For although the US was not happy with the outcome of the Convention, that did not mean that the US was disadvantaged in any way. Caron argues that the,

American rejection of the Law of the Sea Convention has grave implications that should not be easily discounted. The treaty contains innovative provisions long sought by the U.S. for compulsory international settlement of disputes. It also, through its promotion of common expectations as to the rights of nations, offers the possibility of reducing needless conflicts and tensions at sea. The decision nonetheless to reject the treaty flowed from the perception that it was contrary to basic American beliefs. That such a fundamental disagreement could exist after the most extensive negotiations in history suggests more than a mere failure of the conference. It suggests institutional problems in the formation of American policy and an underlying division of opinion within the United States as to the most appropriate policy. Most significantly, such a fundamental disagreement suggests a tremendous rift in the international community itself in the area of international economic relations.²⁷⁴

Pardo argues that the 1982 Convention's "major concern must be whether the present convention adequately serves the functions that all international law must serve, i.e., (a)

---

²⁷³ Caron, D.D. "Reconciling Domestic Principles and International Cooperation", in Oxman, B.H., Caron, D.D. and Buderer, C.O. (eds.), *Law of the Sea: U.S. Policy Dilemma*, Institute for Contemporary Studies, California (1983:8).

²⁷⁴ Caron, D.D. "Reconciling Domestic Principles and International Cooperation", in Oxman, B.H., Caron, D.D. and Buderer, C.O. (eds.), *Law of the Sea: U.S. Policy Dilemma*, Institute for Contemporary Studies, California (1983:9-10).

accommodation of interests, (b) prevention of conflict, (c) predictability, and (d) promotion of common or community objectives.”²⁷⁵

The law of the sea regime was arguably one of the most time consuming and expansive exercises under the UN law of the sea. This was mainly due to vast differences in the issues important to and socio-political and economic circumstances of the members of the UN with reference to natural resources. Pardo asserts that:

Article 74 on the delimitation of the exclusive economic zone between states with opposite or adjacent coasts is another example of a formula designed to satisfy the requirements of states with diametrically opposed views. A further example is the phrase “exclusively for peaceful purposes,” which recurs with a certain frequency in the convention. The meaning of the phrase is nowhere defined, but the words convey the vague, misleading, but useful impression that somehow the ongoing intensive militarization of ocean space is being reversed. Those states that wish strictly to limit the military uses of ocean space can claim that the arms race in the seas has been significantly limited, while those states that consider extensive military use of the sea a regrettable necessity are not incommmodated.²⁷⁶

The US fisheries policy argued that tuna is a highly migratory species and should not belong to a particular coastal State. This was a nuisance from the Pacific Island States’ point of view. That it may have conservation and management elements and at the same time showed its cynicism by denying other States access to the migratory Pacific salmon.²⁷⁷

Teiwaki argues that,

The real motivation behind United States tuna policy is the need to protect United States economic interests, especially those of the members of the American Tunaboat Association (ATA), which is a strong lobby comprising a group of purse-seining interests with headquarters in San Diego, California. It was on the strength of the ATA lobby and influence that the USA fought at the LOSC for special provisions for highly migratory species. The LOSC is,

---

²⁷⁵ Pardo, A “An Opportunity Lost”, in Oxman, B.H., Caron, D.D. and Buder, C.O. (eds.), *Law of the Sea: U.S. Policy Dilemma*, Institute for Contemporary Studies, California (1983:15).

²⁷⁶ Pardo, A. “An Opportunity Lost”, in Oxman, B.H., Caron, D.D. and Buder, C.O. (eds.), *Law of the Sea: U.S. Policy Dilemma*, Institute for Contemporary Studies, California (1983:16).

²⁷⁷ Teiwaki, R. “Access Agreements in the South Pacific: Kiribati and the Distant Water Fishing Nations 1979-1986”, 1987 Butterworth & Co. (publishers) Ltd, London (1987:278).

however, very lucid that the sovereignty and ownership of highly migratory species, including tuna, are vested in the coastal state.²⁷⁸

The fact that the ATA directly represented US Tuna Industry interests would have been part of the reason the US did not accept the 1982 Convention.

American fisheries policy has developed dramatically over the last 50 years, as it has been subject to political, economic and military influence. In addition, it has been shaped by the advancement of the marine technology utilized for the research and exploration of marine resources.

The US was the first country to unilaterally declare national jurisdiction over the resources of the seabed and subsoil. This occurred in 1945 under the Truman Administration.²⁷⁹ Lowe asserts that:

The legal validity of the claim to jurisdiction over the shelf resources was established only when the claim was recognized according to the normal processes of assent and acquiescence which constitute the mechanism for the establishment of rights and duties in customary international law. But the fact remains that the basis of the claim was appurtenance and appropriateness, and not the historic display of control.²⁸⁰

The Truman Proclamation of 1945 initiated the race for the extension of maritime boundaries and the concept of EEZ was founded by Latin American countries eager to have some form of control over their coastal resources. The 1952 Santiago Declaration on the Maritime Zone was signed to re-enforce and gain political recognition for their claims.²⁸¹ The Declaration granted sole sovereignty over an extension of not less than 200 nautical miles from their coasts for their people's food supplies and economic development. "On June 7th 1971, 13 Latin American states bordering the Caribbean Sea (plus Guyana and El Salvador) held a meeting at Santo Domingo to formulate their policy on the law of the sea questions. There, in forging the concept of the patrimonial sea, they defined for the first time the confines of

---

²⁷⁸ Teiwaki, R. "Access Agreements in the South Pacific: Kiribati and the Distant Water Fishing Nations 1979-1986", 1987 Butterworth & Co. (publishers) Ltd, London (1987:279).

²⁷⁹ See Hollick, A.L. "U.S. Oceans Policy: The Truman Proclamations", *Virginia Journal of International Law* 17(23) (1976); Hsu, R.T. "A Rational Approach to Maritime Boundary Delimitation", *Ocean Development and International Law* 13(1) (1983:103).

²⁸⁰ Lowe, A.V. "Reflections on the Waters Changing Conceptions of Property Rights in the Law of the Sea", *International Journal of Estuarine and Coastal Law* 1 (1) (1986:3).

²⁸¹ Dahmani, Martin, *The Fisheries Regime of the Exclusive Economic Zone*, Martinus Nijhoff Publishers, The Netherlands (1987:15).

genuine zone of economic jurisdiction over the renewable and non-renewable natural resources of adjacent sea areas.”²⁸² The sovereign rights over resources under the EEZ remained the same as they were under the 1958 Continental Shelf Convention.²⁸³

During the UNCLOS III negotiations, the US extended its fisheries jurisdiction to 200 nautical miles and claimed sovereign rights over the living and non-living resources therein,²⁸⁴ excluding HMS.²⁸⁵ The American agenda here was strongly oriented towards long-term commercial objectives, particularly prospective mining of the deep seabed. But what of the US domestic legislation concerned?

The United States’ fail to recognize national jurisdiction over tuna was backed by a highly punitive fisheries policy.²⁸⁶ This policy was governed by two controversial pieces of legislation, the *Fishermen’s Protective Act* of 1954 (FPA) (previously discussed in Chapter Two) and the *Fisheries Conservation and Management Act* of 1976 (FCMA). Both were formulated under the guidance of the American Tunaboat Association (ATA), a powerful lobbying group promoting the interests of the local fisheries industry. Both retain political access to the highest levels of the US government.

Fisheries Conservation and Management Act

---

²⁸² Dahmani, Martin, *The Fisheries Regime of the Exclusive Economic Zone*, Martinus Nijhoff Publishers, The Netherlands (1987:16).

²⁸³ Dahmani, Martin, *The Fisheries Regime of the Exclusive Economic Zone*, Martinus Nijhoff Publishers, The Netherlands (1987:35).

²⁸⁴ This claim carried out on March 1, 1977. See Pierce, G.A.B. “Selective Adoption of the New Law of the Sea: The United States Proclaims its Exclusive Economic Zone”, *Virginia Journal of International Law* 23 (1983); Smith, R.W. “The Maritime Boundaries of the United States”, *Geographical Review* 71, No.4, October (1981); Silva, M. and Westermeyer, W. “The Law of the Sea and the U.S. Exclusive Economic Zone: Perspective on Marine Transportation and Fisheries”, *Ocean Development and International Law* 15(321) (1985); Inder, S. “US Takes a New Look at South Pacific Policies”, *The Bulletin*, Sydney, December 10 (1985); Inder, S. “South Pacific: The US has Second Thought about its Low Profile Approach”, *The Sunday Honolulu Star-Bulletin and Advertiser*, Honolulu, December 8, Section B (1985:1).

²⁸⁵ See Pierce, G.A.B. “Selective Adoption of the New Law of the Sea: The United States Proclaims its Exclusive Economic Zone”, *Virginia Journal of International Law* 23(581) (1983:598-601).

²⁸⁶ See Hollick, A.L. “The Roots of U.S. Fisheries Policy”, *Ocean Development and International Law* 5 (1978); Slade, N. “Forum Fisheries Agency and the Next Decade: The Legal Aspects”, Herr, R. *The Forum Fisheries Agency: Achievements, Challenges and Prospects*, University of the South Pacific, Suva (1990:300); Cahn, E. *The Moral Decision: Right and Wrong in the Light of American Law*, Indiana University Press, Indiana (1981); Alves, D. *South Pacific Islands: New Focus Needed for US Policy*, Georgetown University Press, Georgetown (1985).

The adoption of the *Fisheries Conservation and Management Act* of 1976 (FCMA) was an additional chapter in US efforts to protect its fisheries policy.²⁸⁷ This asserted that HMS should be managed internationally through regional cooperation.²⁸⁸

The FCMA unilaterally claimed authority to exercise management over HMS species within and beyond the EEZ. The FCMA did provide a comprehensive management system governing the harvesting of tuna in areas claimed as adjacent to US coasts.²⁸⁹ It also encouraged the negotiation and implementation of the international agreements for the conservation and management of HMS.²⁹⁰ The Act further mandated that any surplus should be directly allocated according to rules devised under a cooperative trade policy and reciprocal scheme.

However this contradicted international law as it was emerging under UNCLOS III by requiring coastal States to give particular regard to the rights of land-locked States (LLS); it also geographically disadvantaged certain States (GDS) through the equitable share of the allowable catch. The US forced its own way on this issue, dictating the distribution of allowable catch, regardless of any inconsistencies with international law.

The FCMA outlined US sovereign rights over living and non-living resources within the 200 nautical miles fishing zone and enforced jurisdiction over fisheries resources therein. The FCMA allowed foreign fishers to fish within its 200 nautical mile fishing zones. This was because they took no more than one per cent of the total HMS catch under US jurisdiction.²⁹¹ Other coastal States, including the Pacific Island States, found that fishing within US fishing

---

²⁸⁷ FCMA is also known as the Magnuson Act, which was named after the Congressman who tabled the Bill in the US Congress, and it was signed into law by President Ford on April 13, 1976 and became into effect on March 1, 1977 during the UNCLOS III. See Gaither, N. and Strand, I. "The Fishing Conservation and Management Act of 1976: Economic Issues and Associated with Foreign Fishing Fees and Foreign Allocations", *Ocean Development and International Law* 5(2)(3) (1978); Young, O.R. "The Political Economy of Fish: The Fishery Conservation and Management Act of 1976", *Ocean Development and International Law* 10(3/4) (1982:203).

²⁸⁸ HMS is referred by the Act to include albacore, yellowfin, bigeye, skipjack and bluefin. See Inversen, R.T.B. *U.S Tuna Processors* (1987:25); Healey, C "United States Tuna Management Policy" *ASILS Int'l L.J.* 5 (1981); Hilborn, R. and Sibert, J. "Is International Management of Tuna Necessary", *Marine Policy* 12 (1998).

²⁸⁹ Young, O.R. "The Political Economy of Fish: The Fishery Conservation and Management Act of 1976", *Ocean Development and International Law* 10(3/4) (1982:203).

²⁹⁰ Woodworth, D.C. "U.S Tuna: A Proposal for Resource Management in the American Pacific Islands", *University of Hawaii Law Review* 10, Honolulu (1988:154).

²⁹¹ Tsamenyi, B.M. "The South Pacific States, the U.S.A and Sovereignty over Highly Migratory Species", *Marine Policy* 10(1)(1986:32).

zones was near impossible because of a lack of tuna stocks and the substantial costs entailed.²⁹²

Another controversial provision of the FCMA was its authorization of imprisonment for violations of national fisheries laws and regulations.²⁹³ This provision was inconsistent with international law, which does not endorse imprisonment of foreign fishermen as a penalty for violation of national fisheries laws and regulations.

The embargo provision of the FCMA was purposely designed to cover American fishers operating in the EEZ of foreign countries and was available as a retaliatory measure—one which further underlined their (the US) non-recognition of coastal State EEZ sovereign rights over HMS. This provision banned the importation of fish and fish products from countries that may have arrested and seized American fishing vessels.²⁹⁴ This embargo provision constituted an economic constraint of substance for any coastal States concerned. This was a harsh but effective penalty, given the dominance of the US in the world tuna market.

The implementation and enforcement of the embargo provision of the FCMA of the US legislation made no legal difference to PNG and Solomons when they enforced their national law by arresting *Danica* and *Janette Diana* for illegal fishing in their waters. All three countries had acted legally and legitimately. However, trade embargos can prove effective when the major export of a country is sanctioned.

The US made some contributions to the development of international law and, subsequently, the law of the sea. However it lost standing in the international community by not upholding international law in some instances and by remaining a non-signatory to the 1982 Convention.²⁹⁵ For Meron, the position taken by the US was one where:

---

²⁹² Walford, L.A. *Fishery Resources of the United States*, U.S. Fish and Wildlife Service, Public Affairs Office, Washington DC(1947)

²⁹³ Peirce, G.A.B. "Selective Adoption of the New Law of the Sea: The Limited States Proclaims its Exclusive Economic Zone", *Virginia Journal of International Law* 23 (1983:594).

²⁹⁴ Generally see Floyd, J.M. "US Tuna Import Regulations", Doulman, D.J. (ed.) *The Development of the Tuna Industries in the Pacific Islands Region: An Analysis of Options*, East-West Center, Honolulu (1987); (1982); Brown-John, C.L. *Multilateral Sanctions in International Law: A Comparative Analysis*, Prager, New York (1975); Cahn, E. *The Moral Decision: Right and Wrong in the Light of American Law*, Indiana University Press, Indiana (1981).

²⁹⁵ Burke, W.T. "The Law of the Convention and Fishing Practices of Non-signatories with special Reference to the United States", in Van Dyke, J.M. (ed.) *Consensus and Confrontation: The United States and the Law of the Sea Convention*, University of Hawaii, Honolulu (1985); Harrison, C.S. "Costs to the United States in Fisheries

The first policy objective was to reserve the legal position of the United States with regard to the questions in dispute and to prevent "atrophy" of American rights under international law. The second policy objective was to maintain and to advance the position of the United States on the law of the sea, in view of the rapid formulation by states of claims and counterclaims and the vivid interest of the organized international community in the process of codification and progressive development of the law of the sea.

The US refusal to recognize Pacific Island States' sovereign rights over HMS was based on economic and political (rather than legal) arguments found in Article 64 of the 1982 Convention. As previously stated, this Article urged coastal and other States to cooperate through appropriate international organizations to ensure the conservation and optimum utilization of HMS and, where necessary, develop the organizational means needed to do so.

Yet this Article was not in accord with the position taken by the US. As indicated, this provided procedures that allowed the States concerned to institutionalize the cooperation that was required to manage HMS. From a HMS management perspective, the US had a case in seeking FFA membership. However, the debate on US membership was dominated by political and economic issues, rather than environmental conservation and management imperatives.

While Article 64 required cooperation among coastal States and other States, this did not preclude coastal States from claiming jurisdiction over living resources (including HMS) within their EEZ zones.

The US argued that international management of HMS was the most practical management mechanism. Since they traversed numerous jurisdictions, tuna could not logically come under

---

by not Joining the Law of the Sea Convention", in Van Dyke, J.M. (ed.) *Consensus and Confrontation: The United States and the Law of the Sea Convention*, University of Hawaii, Honolulu (1985); Charney, J.I. "The United States and the Law of the Sea after UNCLOS III – The Impact of General International Law", *Library Chronicle, University of Pennsylvania* 46, Pennsylvania (1983); Harrison, C.S. "The United States as a Third Party to the LOS Convention: Costs in Fisheries, Environmental Protection and Research", paper presented at conference, Customary International Law Governing Pacific Ocean Activities after the Law of the Sea Convention, East-West Center, Honolulu, January 9-14 (1984).

any one single jurisdiction.²⁹⁶ Interestingly, however, the US argument did not include all HMS species found within the EEZ of coastal States.²⁹⁷

The Assistant Secretary of State for Oceans and Fisheries Affairs outlined the US position on HMS by stating that,

The rationale behind the United States approach is straightforward. Tuna are not a resident resource of the EEZ. They are only found within any EEZ temporarily and may migrate far out into the ocean waters beyond. Therefore, the coastal state does not have the ability to manage and conserve tuna, nor does it have a paramount interest in their development. Although many coastal states claim jurisdiction over tuna within 200 nautical miles, none exercise conservation and management authority through purely domestic measures. Only through international agreements have states actually managed effectively the highly migratory tuna species ... Accordingly customary international law precludes the coastal state from establishing sovereign rights over tuna. In the US view this is evidenced by Article 64 of the Law of the Sea Convention, which requires cooperation between coastal states and distant-water fishing nations to manage tuna, both within and outside the EEZ, on a regional basis, through an international organization. It is the view of the United States that Article 64 precludes the coastal state from establishing sovereign rights over tuna.²⁹⁸

This statement endorsed the need for cooperation in the conservation and management of HMS, as outlined in Article 64, which covered all species. However, the US position maintained that only certain species were not subject to sovereign rights claims within the EEZ and this selectivity was inconsistent with the 1982 Convention. It also came from the only country attempting to exclude certain HMS species covered by that Convention.²⁹⁹ The Convention does not seek to distinguish certain species from other fish species so far as the issue of sovereign rights is concerned. Nor is that distinction evident in the sovereign rights as practiced by coastal States. Here, measures embraced in the fisheries laws and regulations

---

²⁹⁶ See Tsamenyi, B.M. "The Treaty on Fisheries Between the Governments of Certain Pacific Island States and the Government of the United States of America: The Final Chapter in United States Tuna Policy", *Brooklyn Journal of International Law* XV: 2 (1989:190); *Ocean Science News* 25(1)(2), June 13 (1983).

²⁹⁷ See Slayter, T. "Tuna and the Impact of the Law of the Sea", Doulman, D.J. (ed.) *Tuna Issues and Perspectives in the Pacific Islands Region*, East-West Center, Honolulu (1987).

²⁹⁸ Theodore G. Kronmiller's Statement on the American tuna Act, s.1564, at Hearing before the National Ocean Policy Study of the Committee on Commerce, Science, and Transportation, December 8. U.S. Senate 97th Congress, 1st Session. CIS 1982 s.261-25 Serial no. 97-85 (1981). Quotation from Van Dyke, J.M. and Nicol, C. "U.S. Tuna Policy: A Reluctant Acceptance of the International Norm", in Doulman, D.J. (ed.) *Tuna Issues and Perspectives of the Pacific Islands Region*, East-West Center, Honolulu (1987).

²⁹⁹ See Slayter, T. "Tuna and the Impact of the Law of the Sea", Doulman, D.J. (ed.) *Tuna Issues and Perspectives in the Pacific Islands Region*, East-West Center, Honolulu (1987).

of coastal States can prove sufficient for the conservation and management of the HMS. Both the 1982 Convention and existing national state practice left the US and DWFN exposed as the real threats to tuna species.

From a commercial perspective, a US recognition of coastal States' sovereign rights over tuna, or an amendment of the existing fisheries policy, undoubtedly stood to adversely affect the supply of tuna resources to American cannery plants, and subsequently the domestic tuna market.³⁰⁰

On the other hand, Pacific Island States argued that tuna was among the few valuable resources available to them and thus they wanted to control and regulate its exploitation. However, effective management required collective action, which was beyond the responsibility or capacity of the Pacific Island States acting alone. One interpretation suggested that if the US and other DWFN did not conduct illegal fishing activities or violated the laws of Pacific Island States, then scope existed to exploit HMS on a sustainable basis. This would not require additional institutional machinery in the form of an international organization. It would be the most convenient way for the Pacific Island States and the DWFN to cooperate for the conservation and management of the HMS in the Pacific region.

Access Provision of the Treaty

The Treaty designed to provide the American tuna fleet access to the Pacific Island States' waters included some important policy concessions. Some regarded the Treaty as largely an access agreement and little more. However Article 3, Access to the Treaty Area, did provide conditions and terms requiring the compliance of American fishing fleet. In this way it broke some new ground in fisheries access treaty-making.

The US gained another concession from the Pacific Island States when they allowed US fishing fleets to fish for albacore tuna in the high seas of the Treaty Area. It is challenging to

---

³⁰⁰ See Harrison, C.S. "Costs to the United States in Fisheries by not Joining the Law of the Sea Convention", in Van Dyke, J. (ed.) *Consensus and Confrontation: The United States and the Law of the Sea Convention*, University of Hawaii, Honolulu (1985); Wade, S.O. "A Proposal to Include Tunas in U.S. Fishery Jurisdiction", *Ocean Development and International Law* 16 (1986).

determine allowable catch for the Pacific Island States, because it requires not only lots of work, but also the collecting of a lot of information and data about the region's living resources.

Burke argues that

... to be more than prudent policy would dictate with regard to any policy matter. Whether a particular undertaking or initiative is appropriate is for the entities involved to decide i.e. the coastal state and the organizations concerned. It seems highly doubtful if this places any significant legal constraint on the coastal state. Judgement would be based on an assessment of factors pertinent to all the interests at stake, including certainly the exclusive interests of the coastal state.³⁰¹

Article 3 permitted the American tuna fleet, pursuant to the Treaty, to engage in fishing in the areas designated and under the terms, conditions and licensing procedures provided in Annex I and Annex II, respectively.³⁰² The obtaining of licenses by the US prior to fishing in areas designated under the Treaty reflected their recognized subordination to the Pacific Island States parties' sovereign rights over tuna resources within their EEZ. Article 3 stipulated:

3.1 Fishing vessels of the United States shall be permitted to engage in fishing in the Licensing Area in accordance with the terms and conditions referred to in Annex I and licenses issued in accordance with the procedures set out in Annex II.

3.2 It shall be a condition of any license issued pursuant to this Treaty that the vessel in respect of which the license is issued is operated in accordance with the requirements of Annex I. No fishing vessel of the United States shall be used for fishing in the Licensing Area without a license issued in accordance with Annex II or in waters closed to fishing pursuant to Annex I, except in accordance with paragraph 3 of this Article, or unless the vessel is used for fishing albacore tuna by the trolling method in high seas areas of the Treaty Area.

3.3 A Pacific Island party may permit fishing vessels of the United States to engage in fishing in waters under the jurisdiction of that party which are:

(a) within the Treaty but outside the Licensing Area;

---

³⁰¹ Burke, W.T. "US Fishery Management and the Law of the Sea", *American Journal of International Law*, Volume 76 (1982:35).

³⁰² Lodge, M. "Minimum Terms and Conditions of Access: Responsible Fisheries Management Measures in the South Pacific Region", *Marine Policy* 16 (1992); Juda, L. "The Law of the Sea Convention Provision on Conditions of Access to Fisheries Subject to National Jurisdiction", *Oregon Law Review* 63 (1984).

- (b) except for purse seine vessels, within the Licensing Area but otherwise than in accordance with the terms and conditions referred to in Annex I, in accordance with such terms and conditions as may be agreed from time to time with owners of the said vessels or their representative. In such a case, if the Pacific Island party gives notice to the Government of the United States of such arrangements, and if the Government of the United States concurs, the procedures of Article 4 and 5.6 shall be applicable to such arrangements.

In the fourth round of negotiations, both parties decided that fishing vessels of the US would be permitted to engage in fishing in the Licensing Area in accordance with the terms and conditions referred to in Annex I and licenses would be issued in accordance with the procedures set out in Annex II.³⁰³ That is, the Pacific Island States permitted the US vessels to fish in the Agreement Area with reference to the terms and conditions outlined in the Annex III of the Treaty. This was based on the sovereign rights of the Pacific States over their respective 200 n.m EEZ under the 1982 Convention; as the US refused to recognize this, permission was required under the Treaty.³⁰⁴ There was some indication that Pacific Island States pushed to include the High Seas in the Access Agreement.³⁰⁵

The term ‘Agreement’ was replaced by ‘Treaty’ and the Pacific Island States required all licensed US fishing vessels to comply with the terms and conditions outlined in the license application form. The US added that to ban any vessel from fishing without license.³⁰⁶ That is, it should be a condition of any license issued under the Treaty in accordance to the requirements of Annex I and no US fishing vessels are to be used for fishing in the Licensing Area without a license issued in accordance with annex II.³⁰⁷ The US put forward an exception—that this be the case unless the vessel is used for fishing albacore tuna by the

---

³⁰³ Record of Discussions of Fourth Round of Negotiations Between the Government of the United States and the Governments of the Forum Fisheries Agency States, held in Wellington, New Zealand, From 17 to 21 June 1985.

³⁰⁴ Record of Discussions of Fourth Round of Negotiations Between the Government of the United States and the Governments of the Forum Fisheries Agency States, held in Wellington, New Zealand, From 17 to 21 June 1985.

³⁰⁵ Record of Discussions of Fourth Round of Negotiations Between the Government of the United States and the Governments of the Forum Fisheries Agency States, held in Wellington, New Zealand, From 17 to 21 June 1985.

³⁰⁶ Record of Discussions of Fourth Round of Negotiations Between the Government of the United States and the Governments of the Forum Fisheries Agency States, held in Wellington, New Zealand, From 17 to 21 June 1985.

trolling method in high seas areas of the Treaty Area. This was another important trade-off for the US delegation. The Pacific Island States accepted the trolling method, not only because it happens on the high seas, but also in acknowledgement of the conservation measures for the exploitation of HMS.

During the 4th round of negotiations, the Pacific Island States suggested that the US should extend its responsibilities to the actual activities of American fishing vessels fishing the Pacific States parties' waters. The US was reluctant to accept this responsibility and was only willing to discuss fishing arrangements that the government gets involved in directly. The Pacific Island States were really determined for the US to take responsibility for its fishing fleets under the Treaty. The US suggested that if Pacific States have separate fishing arrangements with owners, then the US would need to be informed and Article 4 would be applicable, but the Pacific States added Articles 5 and 6.³⁰⁸ The Pacific Island States raised the significance of ensuring the US fishing vessels operate in areas outlined by the Treaty as an issue. The other terms and conditions were also highlighted as being important to respect, not only to avoid arrest and seizure by the Pacific Island States, but also to avoid the economic ramifications of the Fisheries Conservation and Management Act (FCMA).

Apart from some changes in Annex I, this Article remained unchanged when the Treaty's term was extended.³⁰⁹ It thus permitted the American tuna fleet, pursuant to the Treaty, to operate in the Licensing Area subject to their full compliance with the requirements as outlined in Annexes I and II.³¹⁰ To a certain extent the US ceded to the Pacific islands' sovereign rights over the tuna resources within their jurisdiction by complying with these requirements. At the same time, however, Part 1(3) of Annex I stated this differently. This is quoted in full below:

Nothing in this Annex and its Schedules, nor acts or activities taking place thereunder, shall constitute recognition of the claims or the

---

³⁰⁷ Record of Discussions of Fourth Round of Negotiations Between the Government of the United States and the Governments of the Forum Fisheries Agency States, held in Wellington, New Zealand, From 17 to 21 June 1985.

³⁰⁸ Record of Discussions of Fourth Round of Negotiations Between the Government of the United States and the Governments of the Forum Fisheries Agency States, held in Wellington, New Zealand, From 17 to 21 June 1985.

³⁰⁹ Amendments to the original Treaty are as follow: Part 1(c) and (f); Part 3(10); Part 4; Part 5(b); Part 6(18) & (20)(a) & (b) Part 7(24); Part 8(30).

³¹⁰ Licensing Areas defined in Article 1(e) referred, "all waters in the Treaty Area except for (i) waters subject to the jurisdiction of the United States in accordance with international law, and (ii) waters closed to fishing by fishing vessels of the United States in accordance with Annex I." Closed Area described in Schedule 2 of Annex I.

positions of any of the parties concerning the legal status and extent of waters and zones claimed by any party. In the claimed waters and zones, the freedoms of navigation and overflight and other uses of the sea related to such freedoms are to be exercised in accordance with international law.

This provision indicated that the Pacific Island States and the US agreed to insert these competing views over sovereign rights in this carefully worded in an attempt to avoid further complications. But by omitting the sovereign rights issue, this provision created a difficult precedent for the future. Conceivably, if the Pacific Island States pushed to include jurisdiction over non-living resources in the Treaty, then the US would have to agree to explicitly acknowledge the Pacific Island States' sovereign rights over HMS.

This could occur because the US agenda did not exclude future deep-sea mining operations in the region. Alternatively, the US could secure the tuna resources that it sought under the fisheries Treaty, but then negotiate a separate agreement for future deep-sea mining. Here, a future sea-bed mining agreement could see the US concede the Pacific Island States' sovereign rights over HMS as, by then, tuna access would be less of a priority in terms of its overall national interests. However, the inclusion of both living and non-living resources in the Treaty would not leave the US with enough room to maneuver.

US fishing vessels found it necessary to comply with the applicable Pacific Island States' national laws as depicted in Schedule 1.³¹¹ This requirement assisted in the monitoring of the American fleet.

---

³¹¹ Part 2(4) of Annex I. Changes made to the original Treaty and countries listed with laws repelled and/or added in the extended Treaty. **Australia:** Fisheries Management Act, 1991; Fisheries Administration, 1991; Statutory Fisheries Legislation (Consequential Provisions) Act, 1991; Fisheries Legislation (Consequential Provisions) Act, 1991; Foreign Fishing Licences Levy Act, 1991; Fishing Levy Act, 1991; Fisheries Agreements (Payments) Act, 1991 (added); Continental Shelf (Living Natural Resources) Act, 1968; Continental Shelf (Living Natural Resources) Regulations Fisheries Act, 1952; Fisheries Regulation (repelled). **Cook Islands:** Marine Resources Act, 1989 (added); Cook Islands Commercial Fishing Regulation, 1951; Fisheries Protection Act, 1976; Fishing Ordinance, 1950 (repelled). **Fiji:** Fisheries Ordinance, 1979 (repelled). **Kiribati:** Fisheries (Pacific Island States' Treaty with the United States) Act 1988 (added). **Marshall Islands:** Title 33, Marine Resources Act, as amended by P.L. 1989-56, P.L. 1991-43 and P.L. 1992-25 of the Marshall Islands Revised Code (added); Marine Resources Jurisdiction Act, 1978; Marine Zones (Declaration) Act, 1984 (repelled). **Nauru:** Interpretation Act (Amendment) Act No.2 1975 (added). **New Zealand:** Conservation Act, 1987; Driftnet Prohibition Act, 1991; Fishing Industry Board Act, 1963; Marine Reserves Act, 1971; Marine Pollution Act, 1974; Meat Act, 1964; Submarine Cables and Pipelines Protection Act, 1966; Sugar Loaf Islands Marine Protected Area Act, 1991; Wildlife Act, 1953 (added). **Niue:** Niue Fish Protection Ordinance 1965; Sunday Fishing Prohibition Act 1980 (added). **Papua New Guinea:** National Seas Act (Cap 361) (added). **Solomon Islands:** Fisheries (United States of America)(Treaty) Act 1988 (added). **Tonga:** Fisheries Act, 1989 (added); Fisheries Protection Act, 1973; Fisheries Regulation Act, 1923 and Whaling Industry (Amendment)

Article 58(3) of the 1982 Convention obligated States fishing in the region to comply with the national laws and regulations of the coastal States. Hence:

In exercising their rights and performing their duties under this Convention in the exclusive economic zone, States shall have due regard to the rights and duties of the coastal State and shall comply with the laws and regulations adopted by the coastal State in accordance with the provisions of this Convention and other rules of international law in so far as they are not incompatible with this Part.

However, American fishing operators were debarred from using methods other than purse seining and were not permitted to fish for Southern Bluefin Tuna, or to fish in the designated Closed Areas. Vessels could only conduct fishing in the Limited Areas subject to requirements outlined in Schedule 2 of Annex I. They could not use aircraft in support of fishing operations. The transshipment of catch was not permitted at sea, nor was the unloading of fish apart from that conducted within designated areas mutually agreed upon by the operators and the Pacific Island States' authorities.³¹² Reports of catch details from transshipment and unloading had to be sent to the Administrator, as stipulated under Schedule 6.³¹³

Each Wednesday, operators of American fishing vessels had to report the details of their vessels' position, the catch on board and their port departure and entry times to the Administrator when in Licensed or Closed Areas.³¹⁴ A similar weekly report had to be sent to the Pacific Island States concerned and the US government regarding departures, giving entry times into Pacific Island States' jurisdictions.³¹⁵ A daily entry of catch from Licensing Areas, as provided under Schedule 5, had to be posted to the Administrator. This information had to be accurate, complete and correct.³¹⁶ This information was required so that the Administrator could calculate the distribution of the 85 per cent of access fee based on catch ratio. It was considered important to systematically monitor the American tuna fleet from a surveillance and policing point of view.

Act, 1979 (repelled). **Tuvalu:** Foreign Fishing Vessels Licensing (US Treaty) Order 1987 (added); Fisheries (Foreign Fishing Vessel) (Amendment) Regulations, 1984 (repelled). **Samoa:** Fisheries Act, 1988 (added); Fisheries Protection Act, 1972 (repelled).

³¹² Part 4: Transshipment added to the extended Treaty.

³¹³ Part 5(16) of Annex I.

³¹⁴ Part 5(13) of Annex I. Reporting details outlined in Part 1 of Schedule 4.

³¹⁵ Part 5(14) of Annex I. Reporting details stated in Part 2 of Schedule 4.

³¹⁶ Part 8(29) of Annex I.

Part 6 of Annex I outlined an enforcement mechanism for American fishing vessel compliance. The master and crew of the vessel were required to immediately comply with instructions and directions given by an authorized officer of a Pacific Island State:

... including to stop, to move to a specified location and to facilitate safe boarding and inspection of the vessel, its license, gear, equipment, records, facilities, fish and fish products. Such boarding and inspection shall be conducted as much as possible in a manner so as not to interfere unduly with the lawful operation of the vessel. The operator and each member of the crew shall facilitate and assist in any action by an authorised officer of a Pacific Island party and shall not assault, obstruct, resist, delay, refuse boarding to, intimidate or interfere with an authorised officer in the performance of his or her duty.

The authorised officer would assist and enforce the terms and conditions of the Treaty, ensuring compliance with the requirements stated in Annex I.

Operators had to communicate with parties' fisheries management, surveillance and enforcement authorities through specified radio frequencies.³¹⁷ Technical requirements, including 1989 FAO standard specifications for marking and identification of vessel, had to be fully complied with.³¹⁸ The license issued by the Administrator had to be carried by the fishing vessel at all times.³¹⁹

The operator and crew of a vessel had to allow and assist an observer of Pacific Island State parties to:

... board the vessel for scientific, compliance, monitoring and other functions at the point and time notified by the Pacific Island parties to the Government of the United States.³²⁰

The observer also had to be able to/have access to facilities and equipment including:

... fish on board and areas which may be used to hold, process, weigh and store fish; remove samples; have full access to the vessel's records, including its logs and documentation for the purpose of inspection and copying; reasonable access to navigation equipment,

---

³¹⁷ Part 6(19) of Annex I.

³¹⁸ For details of these technical requirements, see Part 6(20) of Annex I.

³¹⁹ Part 6(21) of Annex I.

³²⁰ Part 7(22)(a) of Annex I.

charts, and radios; and gather any other information relating to fisheries in the Licensing Area; without interfering unduly with the lawful operation of the vessel.³²¹

The costs of observers remained the responsibility of the US. The lump sum payment was calculated according to a specified formula.³²²

The fishing vessel had to stow its fishing equipment while in the Closed Area and refrain from operating in ways that could disrupt traditional and local based fishing activities.³²³ This provision was designed to protect the local fishermen and fisheries industries.

Part 8(20) of Annex I added to the extended Treaty, providing a vessel tracking system that could be installed on American fishing vessels pursuant to the Treaty.

Annex II of the Treaty outlined license issuing procedures for the US government to follow:

The Government of the United States shall make application for a license in respect of any fishing vessel of the United States intended by the operator to be used for purse seine fishing in the Licensing Area at any time in the Licensing Period by providing to the Administrator a complete application form as set out in Schedule 1.³²⁴

This indicated a commitment and willingness on the part of the US government to support the Treaty. The license issued is not effective until the license fee had been received by the Administrator with amounts set out in Schedule 2.³²⁵

Annex II (4) gave the Administrator the power to suspend the good standing of any US fishing vessel on the *Regional Register of Foreign Fishing Vessels* (Regional Register) for violation of the terms and conditions provided in Annex I.³²⁶ The Regional Register is among the conservation measures used by the Pacific Island States. However, the Administrator had

---

³²¹ Part 7(22)(b) of Annex I. The operator and crew shall not assault, obstruct, resist, delay, refuse boarding to, intimidate or interfere with an observer in the performance of his or her duties.

³²² For details of the observer's costs, see Part 7(24) of Annex I.

³²³ Part 8 (27) & (28) of Annex I.

³²⁴ Annex II (2).

³²⁵ Annex II (3).

³²⁶ See Doulman, D.J. and Terawasi, P. "The Regional Registered of Foreign Fishing Vessels: A Cost Effective Compliance Tool in the South Pacific", *FFA Report* No. 89/56, Honiara (1989); Doulman, D.J. and Terawasi, P. "The South Pacific Regional Register of Foreign Fishing Vessels", *Marine Policy*, July (1990); Salmon, M. "Surveillance – A View from the Islands", *Pacific Islands Monthly*, December (1978).

discretionary power to revoke the good standing of any vessel on the Regional Register. This could happen in the event that such a vessel violated the terms and conditions of access outlined in Annex I.³²⁷ This seemed inconsistent with in that the Administrator lacked such power in relation to general infringement of the Treaty.

However, the Administrator is required to notify the US government 30 days in advance of a suspension and to provide a statement on the violation concerned. A vessel could be reinstated upon completion of the required action; otherwise it would not be eligible to receive a new license after the current license had expired. The Administrator should suspend the vessel immediately. However, the Administrator was also given discretion to reinstate any vessel once satisfied of its good standing.³²⁸

Furthermore, a license could be denied should an owner or charterer face proceedings under bankruptcy laws in the US, or if the vessel was not on the Regional Register.³²⁹ Annex II (5) (c) explicitly stated rules leading to the withdrawal of a vessel from the Regional Register under the Treaty.

Conclusions

From a legal perspective, the Treaty was a major achievement for the Pacific Island States in terms of the regulation and control of tuna resources, and for the US in terms of the concessions gained. In addition, it represented a major achievement for the South Pacific Forum Fisheries Agency (Agency). The Agency could now face the challenge of advancing regional cooperation in order to develop consistent and common national legislation among Pacific Island States in order to advance cohesive cooperation.

The involvement of the American government in the Treaty negotiation was inconsistent with its official legal position that Pacific Island States could not claim any national jurisdiction over tuna.³³⁰ This resulted in a Treaty that may not provide a long-term solution to Pacific

---

³²⁷ Section 4(a) of Annex II.

³²⁸ Section 4(b) of Annex II.

³²⁹ Annex II (5) (b) &(c).

³³⁰ See Kelly, C.R. "Law of the Sea: The Jurisdictional Dispute over Highly Migratory Species of Tuna", *Columbia Journal of Transnational Law* 26 (1988:510).

Island States-US fishing disputes, as it did not fully resolve the sovereign rights issue. Rather, the issue of sovereign rights was carefully worded in a way that tried to, but only partly managed to, harmonize the contrasting positions of the Treaty parties.

The willingness of the US to accept terms, conditions and requirements of Annex I and other related provisions of the Treaty, including the omission of a trade embargo provision, *de facto* acknowledged the Pacific Island States' sovereign rights over tuna resources within their jurisdiction. A letter by the US Secretary of State to the President in May 1987 stated that the Treaty would eliminate fishing disputes with Pacific Island States over tuna jurisdiction and end the embargo provision of the US fisheries policy.³³¹ This offered to set a potentially important precedent for both parties regarding any future fishing arrangements.

The Forum States' position over sovereign rights remained consistent with the 1982 Convention. By contrast, the US used the conservation issue as a political facade to justify its stance on refusing to recognize sovereign rights over HMS. In sum, certain features of the US fisheries policy were generally inconsistent with the 1982 Convention.

Article 61 of the 1982 Convention indicated that the available information and data shall be exchanged regularly among the States concerned through sub-regional, regional and international organizations. The Pacific Island States really need this cooperation, particularly from a conservation and management perspective, for the living resources within their EEZ and the region as a whole. However, cooperation can at times be tricky due to hidden political agendas. These difficulties have caused some Pacific Island States to shy away from certain countries and organizations. Technology is also a key component to the data and information gathering exercise; this again comes with a political element attached, which again creates uneasy relationships between Pacific Island States and the DWFN with fishing interests in the region. Susskind argues that:

Much of the debate about how best to bring about compliance with international treaties revolves around the advantages and disadvantages of direct techniques for deterring noncompliance versus indirect techniques for encouraging adherence to the rules ... countries will inevitably act in their own self-interest, and that enlightened self-interest encompasses an awareness that every nation

---

³³¹ *Letter of Submittal*, Department of States, Washington, 27 May (1987).

is part of the web on international economic and political relationships ... All countries understand, therefore, that their best interests are almost always served by living up to their treaty obligations.³³²

For the US to recognize the Pacific Island States' sovereign rights over the HMS within their EEZ was a major victory for the Pacific Island States and among the key contributors to the success of the Treaty negotiation. As Mr. David McDowell stated:

We can be confident in our approach to these negotiations. We know that our position on highly migratory species is the right one. We know that it is shared by the international community at large. We know that it is not susceptible to being undermined by our work here. Our confidence in approaching these negotiations is also justified by other consideration. It is justified by the great strides which have been taken in regional fisheries matters over recent years ... The distant water fishing nations were clearly right in apprehending that the creation of the Agency would weaken their positions. That was an object of the exercise. But even there they have had come to terms with the new reality. A few years ago the distant water fishing nations refused to acknowledge the Agency's existence. Today the Agency is participating actively in the negotiations with the American Government, and is playing a vital role ... Clearly the tide has turned. We welcome that ...³³³

The US commitment to the Treaty was reflected in many genuine trade-offs, including their acknowledgement of the Pacific Island States' sovereign rights over HMS within their EEZ. Other key issues resolved in subtle ways throughout the negotiation process were beneficial for both sides.

For the US to accept the Pacific Island States' proposal, which required all licensed US fishing vessels to comply with the terms and conditions outlined in the license, was a key victory. The victory was not only in the fact that the US would pay the access fee, but also that they had in some way recognized the Pacific Island States' sovereign rights over HMS within their EEZ. The US proposal to ban vessels from fishing without a licence was another significant bonus from the Pacific Island States' perspective.

---

³³² Susskind, L.E. *Environmental Diplomacy*, Oxford University Press, New York (1994:107).

³³³ Mr. McDowell's opening speech, Seventh Meeting of Member States to Consider a Fisheries Treaty with the United States, 10-21 June 1985, Wellington, New Zealand.

Chapter Four

The Political Implications of the Treaty

Introduction

A major barrier for international cooperation in the South Pacific was the US fisheries policy, which refused to recognize Pacific Island States' sovereign rights on HMS within their respective EEZ jurisdictions.³³⁴ The US position over HMS undermined the Pacific Island States' approaches to the management and conservation of tuna, including the South Pacific Forum Fisheries Agency Convention 1979 (Agency Convention) and the Nauru Agreement Concerning Cooperation in the Management of Fisheries of Common Interest 1982 (Nauru Agreement). These agreements provided conservation and management measures. To have effective management and conservation of the HMS in the Pacific region, all States and territories in the region were required to cooperate to implement this objective. The Treaty was the ideal mechanism to bring the two opposing policies into some form of a common position.

The Pacific Island States have maintained generally good political and diplomatic relations with the US. Some Pacific Island States have formed friendship treaties with the US. The development of these ties has been assisted by the fishing agreements negotiated between individual Pacific Island States and the American tuna fleet represented by the American Tunaboat Association (ATA).³³⁵ These fishing agreements have provided a further chapter in the story of the region's political relations. As indicated in previous chapters, the fisheries issue generated political tensions between the Pacific Island States and the US over the sovereign rights regime question. The subsequent fishing dispute led to the adoption of the Treaty, which was in part motivated by an intention to resolve these political tensions.

From an American perspective, there were two main objectives. First, the Treaty on Fisheries Between Governments of Certain Pacific Island States and the United States of America

---

³³⁴ See Hyde, C.C. *International Law Chiefly as Interpreted and Applied by the United States*, Little Brown, Boston (1947).

³³⁵ Frazer, I. and Bryant-Tokalau, J. "Introduction: The Uncertain Future of Pacific Regionalism", in Bryant-Tokalau, J. and Frazer, I. (eds.) *Redefining the Pacific? Regionalism Past, Present and Future*, Ashgate Publishing Limited, England (2006).

(Treaty) would help maintain good relations with the Pacific Island States, and second the American tuna fleet could maintain access to the region's rich tuna resources. As well, this would help avoid any Soviet influence in the Pacific. For the Pacific Island States, the Treaty would provide the mechanism needed to control and regulate their fisheries resources.

The Pacific Island States possess some military, strategic, economic and political significance for the US. Political tensions in the South Pacific could jeopardize American dominance in the region. As discussed in Chapter One, two main issues played a fundamental role in the establishment of the Treaty: the fishing disputes between the Pacific Islands and American fishers, and the growing interest of the Soviet Union in the region. The South Pacific became of vital interest to the US for these reasons.

This chapter examines the political implications of the Treaty for the Pacific Island States and the US. Two main provisions of the Treaty are particularly relevant and will be addressed here: Article 4 - Flag State Responsibility; and Article 5 - Compliance Powers.

Articles 4 and 5 of the Treaty broke new ground in treaty making by spelling out explicit steps that the US had to follow in order to enforce the provisions of the Treaty. They included management responsibilities in terms of the actions of its fishing vessels and gave Pacific Island States parties' the power to enforce compliance.

Flag States Responsibility

Goodman points out that while "the principle of flag State jurisdiction is one of the most widely acknowledged in international maritime law," it is also "one of the most contentious." As he explains,

The *rights* of flag States have remained largely unchanged since the original evolution of the concept. But the list of their *responsibilities* has grown exponentially, in areas ranging from ship safety standards and crew training to marine pollution, maritime security, and seafarer welfare ... While the topic of flag State jurisdiction is still the subject of significant discussion in the general maritime context, the principal focus is now on implementing internationally agreed rules and

requirements, rather than developing significant new areas of flag State responsibility.³³⁶

Article 4 of the Treaty outlined the responsibilities of the US government towards its licensed fishing vessels operating in areas covered by the Treaty, as well as license conditions and terms:

The Government of the United States shall enforce the provisions of this Treaty and licences issues thereunder. The Government of the United States shall take the necessary steps to ensure that nationals and fishing vessels of the United States refrain from fishing in the Licensing Area and in waters closed to fishing pursuant to Annex I, except as authorized in accordance with Article 3.³³⁷

Even though this provision allocated the responsibility for ensuring that its fishermen and fishing vessels complied with the Treaty to the US, it was insufficient to guarantee full compliance. While allocating enforcement and surveillance tasks to the US, assistance was also required in terms of Pacific Island States' efforts to control and regulate illegal fishing activities within their waters. While the US had to assume responsibility for ensuring that its fishing vessels did not breach treaty requirements, there was also a requirement that it assist investigations into any alleged breaches of the Treaty.³³⁸ The flag-state provision was designed to help safeguard Pacific Island States' EEZs from illegal fishing by American operators and appears in both the United Nations Convention on the Law of the Sea 1982 (1982 Convention) and the actual Treaty on Fisheries Between the Governments of Certain Pacific Islands States and the Government of the United States of America 1987.

This was needed because of the enormous size of the EEZs of Pacific States, which are virtually impossible to police unassisted. It was clear that the Pacific Island States lacked the financial capacity and technology to provide effective surveillance to control illegal fishing

---

³³⁶ Goodman, C. "The Regime for Flag State Responsibility in International Fisheries Law – Effective Fact, Creative Fiction, or Further Work Required?", 23 A & NA Mar LJ (2009:157) <https://maritimejournal.nurdoch.edu.au/index.php/maritimejournal/article/viewFile/115153>.

³³⁷ Article 4(4.1) of the Fisheries Treaty Between Governments of Certain Pacific Island States and the United States of America (Treaty). See Brownlie, I. *System of the Law of Nations: State Responsibility* (1983); Fidell, E.R., Okatsu, M. and Meseguer, J.L. *Flag State Measures to Ensure Compliance with Coastal State Fisheries Regulations: The US, Japanese and Spanish Experience*, Oxford University Press, Oxford (1986).

³³⁸ Woodworth, D.C. "U.S' Tuna: A Proposal for Resource Management in the American Pacific Islands", *University of Hawaii Law Review* 10, Honolulu (1988).

within their EEZs.³³⁹ Aerial and sea surveillance, moreover, are expensive operations that Pacific Island States cannot afford, even collectively.

In shouldering the responsibility of police its fishing vessels, the US ostensibly reduced the physical and cost burden on the Pacific Island States' enforcement and surveillance services. However, getting the US to accept these responsibilities in reality was not always straightforward; for instance, shortly after the Treaty was signed, Kiribati arrested American fishing vessels for fishing without a license.³⁴⁰

The US were given significant responsibility under the terms of the Treaty and thus had an important role in compliance control in the South Pacific.³⁴¹ This responsibility helped to ensure that American fishing vessels and nationals did not violate the provisions of the Treaty.³⁴²

Goodman argues that:

... flag State responsibility is the subject of an almost entirely different regime. Attention is centred on the responsible flag State as the key panacea for combating illegal, unreported and unregulated (IUU) fishing, and the concept of flag State responsibility itself is still evolving. As fish stocks around the world reach the point of collapse, and IUU fishing continues to undermine international management efforts, issues such as the need for a 'genuine link' between the vessel and its flag State, what action could be taken against 'flags of non-compliance', and the criteria for a responsible flag State are front and centre in international discussions ... flag State responsibility is an effective approach, or whether we should be concentrating our efforts on the development of complementary controls to assist where flag State jurisdiction fails.³⁴³

---

³³⁹ See Bergin, A. "Policing the Fishing Grounds", *Pacific Islands Monthly*, June (1988); Fidell, E., Pokatsu, M. and Meseguer, J. *Flag State Measures to Ensure Compliance with Coastal State Fisheries Regulations: The United States, Japanese and Spanish Experience*, Oxford University Press, Oxford (1986); Van Dyke, J.M. and Heftel, S. "Tuna Management in the Pacific: An Analysis of the South Pacific Forum Fisheries Agency", *University of Hawaii Law Review* 3(1)(6), Honolulu (1981).

³⁴⁰ <https://classshares.student.usp.ac.fj/.../MS205-Part3-Application-MLR.ppt>.

³⁴¹ See Bergin, A. "Ownership and Control over Martine Living Resources", paper presented to PIPSA Conference, December (1993).

³⁴² See Gubon, F. "The Southwest Pacific Multilateral Fisheries: Some Possible Implications for Fisheries Development, Management and Conservation in the Pacific Islands Region", *Melanesian Law Journal* 22 (1994:).

Giving the US responsibility for policing its own fishing fleet served two purposes. First, it provided the Pacific Island States with financial gain through access fee arrangements, and second, it encouraged US fishing vessels to curb illegal fishing activities.

However this provision did not include all American fishing vessels in the South Pacific, instead applying only to those operating pursuant to the Treaty. Fishing vessels operating through interests not party to the Treaty provided the opportunity to fish without license. In this context, the Treaty seemed to fail to take full precautionary measures by not including all registered American fishing vessels.

This created a loophole that allowed non-party American registered fishing vessels to violate Pacific Island States' national fisheries laws and regulations. By failing to include all American fishing vessels under US responsibility, this provision was deficient. It did not fully guarantee that the US and all its fishing vessels would comply with the provisions outlined in Article 4(4.2). This stated:

The Government of the United States shall, at the request of the Government of a Pacific Island party, take all reasonable measures to assist that party in the investigation of an alleged breach of this Treaty by a fishing vessel of the United States and promptly communicate all the requested information to that party.

This wording implicitly recognized the impossibility of the US ensuring that all its fishing vessels had fully complied with the provisions of the Treaty. The US could only take "reasonable measures" to assist the Pacific government concerned in any investigation following a request by a Pacific Island authority.

This Article acknowledged that the US could not fully ensure that its vessels were compliant with the provisions of the Treaty. A key question here was why the onus was placed on the Pacific Island States to assert that an alleged violation of the Treaty had occurred. In particular, why was this needed when it was the responsibility of the US to ensure that its fishing vessels' activities conformed to the provisions of the Treaty?

---

³⁴³ Goodman, C. "The Regime for Flag State Responsibility in International Fisheries Law – Effective Fact, Creative Fiction, or Further Work Required?", 23 A & NA Mar LJ (2009:157).<https://maritimejournal.nurdoch.edu.au/index.php/maritimejournal/article/viewFile/115153>.

Under the Treaty, the US was required to fully investigate and penalize fishing vessels violating the provisions of the Treaty, in the same way it would violations occurring in US territorial waters.³⁴⁴ The US and its judicial system acted as agents of the Pacific Island States pursuant to the Treaty. However, any such alleged infringement required full investigation and reporting as soon as practical to the Pacific Island State concerned.³⁴⁵ This included any action taken or proposed by the US in respect of the alleged infringement, but this again was based upon the request of the Pacific Island State concerned.³⁴⁶

The Treaty provided a range of measures should a report show that Treaty provisions had been violated.³⁴⁷ Violations included fishing in a Licensed Area without a license; fishing in a Limited Area using methods other than purse seining; fishing for Southern Bluefin Tuna; using aircraft to support fishing; destroying evidence of material relevant to legal proceedings; or where the vessel concerned had not submitted to the jurisdiction of the Pacific Island State concerned. Accordingly:

In the event that a report provided pursuant to paragraph 4 of this Article shows that a fishing vessel of the United States:

- (a) while fishing in the Licensing Area did not have a licence to fish in the Licensing Area, except in accordance with paragraph 3; or
- (b) was involved in any incident in which an authorized officer or observer was allegedly assaulted with resultant bodily harm, physically threatened, forcefully resisted, refused boarding or subjected to physical intimidation or physical interference in the performance of this or her duties as authorized pursuant to this Treaty; or that there probable cause to believe that a fishing vessel of the United States:
- (c) was used for fishing in waters closed to fishing pursuant to Annex I, except as authorized in accordance with paragraph 2 of Article 3;
- (d) was used for fishing by any method other than the purse seine method, except in accordance with paragraph 2 of Article 3;
- (e) was used for directed fishing for Southern Bluefin Tuna or fishing for any kinds of fish other than tunas, except that other kinds of fish may be caught as an incidental by-catch;
- (f) used an aircraft for fishing which was not identified on a form provided pursuant to Schedule 1 of Annex II in relation to that vessel; or

---

³⁴⁴ Article 4 of the Treaty. See Gubon, F. "The Southwest Pacific Multilateral Fisheries: Some Possible Implications for Fisheries Development, Management and Conservation in the Pacific Island Region", *Melanesian Law Journal* 22 (1994).

³⁴⁵ Article 4 of the Treaty.

³⁴⁶ Article 4(4.4) of the Treaty.

³⁴⁷ Articles 4 of the Treaty.

(g) was involved in an incident in which evidence which otherwise could have been used in proceedings concerning the vessel has been intentionally destroyed;
and that such vessel has not submitted to the jurisdiction of the Pacific party concerned, the Government of the United States shall, at the request of that party, take all necessary measures to ensure that the vessel concerned leaves the Licensing Area and waters closed to fishing pursuant to Annex I immediately and does not return except for the purpose of submitting to the jurisdiction of the party, or after action has been taken by the Government of the United States shall to the satisfaction of that party.³⁴⁸

During the Treaty negotiation process on this provision—specifically Articles 4(4.4) and 4(4.5)—questions of clarification were raised about certain issues regarding Article 4(4.4).³⁴⁹ These included the following: What is meant by ‘proper infringement’? What standard and who determines it? Is the vessel entitled to a day in court? Why should a license be denied if the US Government is proceeding against? Article 4(4.5) raised similar concerns during the same session—for instance, should the vessel be compelled to leave the Licensing Area after the necessary steps are taken regarding the ‘probable infringement’ of a minor stipulation?

In relation to investigation of an alleged violation of the Treaty, during the negotiation process the US insisted that it would conduct such an investigation of the vessel concerned. The US claimed they would ensure a legal process was put in place and they would take responsibility for the necessary payments.³⁵⁰ The Pacific Island States’ position was that, in the case of an alleged infringement, if the fishing vessel concerned did not submit to the jurisdiction of the Pacific Island State party concerned upon request, the US should keep the said vessel out of the Agreement Area including internal waters, archipelagic waters and territorial seas, until the matter was resolved. The US wanted infringements to be treated differently based on their degree of severity, ranging from fishing without a licence to minor infringements. They also did not want to exclude vessels from any closed areas within the Agreement Area.³⁵¹ The Pacific Island States suggested that an investigation should be

---

³⁴⁸ Article 4(4.5)(a-g) of the Treaty. Note, subparagraph (d) of the original text was omitted.

³⁴⁹ Draft Agreement of Fisheries Between Pacific Island States and the United States of America, Composite Draft Agreement Text, as at 21 June 1985.

³⁵⁰ Draft Agreement of Fisheries Between Pacific Island States and the United States of America, Composite Draft Agreement Text, as at 21 June 1985.

³⁵¹ Draft Agreement of Fisheries Between Pacific Island States and the United States of America, Composite Draft Agreement Text, as at 21 June 1985.

conducted into any ‘alleged’ infringement.³⁵² The bottom line of this debate was the fact that the US wanted to ensure that the fines imposed would be related to the degree of the infringement, while the Pacific Island States insisted that alleged violations of the Treaty must be dealt with accordingly.

As Aqorau writes, important innovations of the Treaty were “the detailed procedures for the investigation by the United States of offenses against the Treaty and Pacific Island State’s laws, the imposition of penalties and the payment of fines, forfeitures and penalties collected.”³⁵³ Aqorau also points to the way it incorporates “some of the more elaborate principles of flag States, including

- Full investigation of any alleged breach of the fisheries laws of the coastal State with a report to be submitted within two months of the investigations to the coastal State;
- Ensuring that vessels that are found to have violated the coastal State’s laws submit to the jurisdiction of the coastal State or take measures to ensure the vessel leaves the area;
- Penalizing the vessel at similar levels for like violations by foreign fishing vessels operating in the waters of the flag State;
- Assisting in the enforcement of a judgment taken by the courts in the coastal State and the collection of sums equivalent to the value of the forfeiture, fine, penalty or other judicial sanctions.³⁵⁴

To treat all alleged infringements the same way would be a form of deterrence and the Pacific Island States suggested that until the infringed vessel was submitted to the jurisdiction of the Pacific Island States party concerned and a fine paid according to the party’s applicable laws, the alleged vessel should not be granted a fishing licence under the Treaty.³⁵⁵ The amount suggested by the US was not more than US\$250,000 and was regarded to be quite generous. This could be seen as a strategic move to prevent further debate on penalties, such as imprisonment and corporal punishment. Also, the Pacific Island States specifically required

---

³⁵² Draft Agreement of Fisheries Between Pacific Island States and the United States of America, Composite Draft Agreement Text, as at 21 June 1985.

³⁵³ Aqorau, T. “Illegal, Unreported and Unregulated Fishing: Considerations for Developing Countries” (p. 303), <http://www.fao.org/DOCRED/005/Y3274E/y3274eok.htm>.

³⁵⁴ Aqorau, T. “Illegal, Unreported and Unregulated Fishing: Considerations for Developing Countries” (p. 303), <http://www.fao.org/DOCRED/005/Y3274E/y3274eok.htm>.

³⁵⁵ Draft Agreement of Fisheries Between Pacific Island States and the United States of America, Composite Draft Agreement Text, as at 21 June 1985.

that the US to apply appropriate penalties under their own laws for American fishing vessels that breached the Treaty and this was accepted by the US.³⁵⁶

The US suggested that the fines should correspond to US law and existing fisheries arrangements. The Pacific Island States agreed to this, stipulating that forfeiture of American fishing vessels would not be required for minor violations.

Article 4(4.6) of the Treaty states that,

In the event that a report provided pursuant to paragraph 4 of this Article shows that a fishing vessel of the United States has been involved in a probable infringement of this Treaty, including an infringement of the kind described in paragraph 5 of this Article, and that the vessel has not submitted to the jurisdiction of the Pacific Island party concerned, the Government of the United States shall, at the request of that party, take all necessary measures to ensure that the vessel concerned:

- (a) Submits to the jurisdiction of that party; or
- (b) is penalized by the Government of the United States at such level as may be provided for like violations in United States law relating to foreign fishing vessels licensed to fish in the exclusive economic zone of the United States but not to exceed the sum of US\$250,000.³⁵⁷

In the event of a report showing that a fishing vessel had violated the applicable national laws, or had infringed on the Treaty in some other way, what remedies were provided? For these purposes the US, on the request of the Pacific Island States concerned, took the necessary measures to ensure that the fishing vessel involved submitted to the jurisdiction of the Pacific Island State concerned. Failure to do so rendered the vessel liable for prosecution under US laws relating to foreign fishing operations licensed to fish in the US EEZ, facing a fine not exceeding US\$250,000.³⁵⁸ This was an interesting provision: it clearly indicated that violations committed by American registered fishing vessels faced prosecution under American law, but this was subject to the prior request of an individual Pacific Island State. That is, American vessels remained liable for prosecution if they had committed an infringement within the US EEZ.

---

³⁵⁶ Draft Agreement of Fisheries Between Pacific Island States and the United States of America, Composite Draft Agreement Text, as at 21 June 1985.

³⁵⁷ Article 4(4.6)(a)(b) of the Treaty.

According to the Treaty, prior to any legal proceeding pursuant to Article 4(4.8), in reference to an alleged infringement of the Treaty provisions:

the Government of the United States shall notify the Government of that Pacific Island party that such proceedings shall be instituted. Such notice shall include a statement of the facts believed to show an infringement of this Treaty and the nature of the proposed proceedings, including the proposed charges and the proposed penalties to be sought. The Government of the United States shall not institute such proceedings if the Government of that Pacific Island party objects within 30 days of the effective date of such notice.³⁵⁹

In these circumstances, the US could appoint an agent located in Port Moresby, PNG. That agent had the authority to receive and respond to any legal action instigated by a Pacific Island States' authority against the operator of any American fishing vessel.³⁶⁰ Any such proceedings required 21 days notification.

Other responsibilities of the US included ensuring that all American licensed fishing vessels, pursuant to the Treaty, were fully insured against risks and liabilities, and ensuring that "each fishing vessel of the US licensed pursuant to this Treaty is fully insured against all risks and liability."³⁶¹ Even though the US assumed responsibility for the activities of American fishing vessels, this did not mean that they were not liable for any infringement committed.

At the negotiation, both parties agreed to make sure that all American vessels fishing in the Agreement Area carried insurance relating to collision, protection and indemnity and to take all necessary measures to facilitate any claim against such vessels and prompt compensation for any loss or damage caused.³⁶² This was another major victory for the Pacific Island States. The flag state responsibility would be a key issue pushed by Pacific Island States and one which the US would reluctantly take on board. At the same time, the US could carry out this task more efficiently than the FFA from a financial and technical perspective. However, the US was keen to take all reasonable measures to investigate a breach of the Treaty.³⁶³ This

---

³⁵⁸ Article 4(4.6)(b) of the Treaty.

³⁵⁹ Article 4(4.8) of the Treaty

³⁶⁰ Article 4(4.9) of the Treaty.

³⁶¹ Article 4(4.3)(a) of the Treaty.

³⁶² Draft Agreement of Fisheries Between Pacific Island States and the United States of America, Composite Draft Agreement Text, as at 21 June 1985.

³⁶³ Draft Agreement of Fisheries Between Pacific Island States and the United States of America, Composite Draft Agreement Text, as at 21 June 1985.

investigation provision may indicate that both parties were not fully confident that the American fishing fleet would comply fully or it may have been a safe guard.

The Pacific Island States may have gained the upper hand in this context, as the US agreed to ensure that all measures were carried out and it stated that any fish illegally taken from the Licensing Area would be compensated promptly at market value. The Pacific Island States wanted the US to take all the necessary measures to minimize fishing gear conflicts and to ensure prompt and adequate compensation of Pacific Island States' nationals for damage to their gear caused by American fishing vessels.³⁶⁴ The US responded to this by stating that it would ensure all fishing vessels were fully insured and it would facilitate any claim of compensation for damages.³⁶⁵

Additionally, the US had to ensure that all measures were taken to facilitate any claim relating to the activities of American vessels. This included the market value of any fish taken from the Licensing Area without authorization. Prompt settlement duly required the US Government to ensure that:

(c) all measures are taken to facilitate:

- (i) any claim arising out of the activities of a fishing vessel of the United States, including a claim for the total market value of any fish taken from the Licensing Area without authorization pursuant to this Treaty, and the prompt settlement of that claim;
- (iii) the prompt and full adjudication in the United States of any claim made pursuant to this Treaty.³⁶⁶

Article 4(4.3) states, The US Government shall ensure that:

(b) all measures are taken to facilitate:

- (ii) the service of legal process by or on behalf of a national or the Government of a Pacific Island party in any action arising out of the activities of a fishing vessel of the United States.
- (iv) the prompt and full satisfaction of any final judgment or other final determination made pursuant to this Treaty. .³⁶⁷

---

³⁶⁴ Draft Agreement of Fisheries Between Pacific Island States and the United States of America, Composite Draft Agreement Text, as at 21 June 1985.

³⁶⁵ Draft Agreement of Fisheries Between Pacific Island States and the United States of America, Composite Draft Agreement Text, as at 21 June 1985.

³⁶⁶ Article 4(4.3)(b)(i)&(iii) of the Treaty.

³⁶⁷ Article 4(4.3)(b)(ii)&(iv) of the Treaty.

The US would also provide legal services on behalf of a Pacific Island State in any action arising from fishing vessels' activities and would ensure the prompt and full satisfaction of any final judgment or determination.

The US also had to ensure all measures were taken to facilitate:

... the provision of a reasonable level of financial assurances, if, after consultation with the Government of the United States, all Pacific Island parties agree that the collection of any civil or criminal judgment or judgments or determination or determinations made pursuant to this Treaty has become a serious enforcement problem.³⁶⁸

This is conditional on a request being made by the Pacific Island party.

Furthermore:

An amount equivalent to the total value of any forfeiture, fine, penalty or other amount collected by the Government of the United States incurred as a result of any actions, judicial or otherwise, taken pursuant to this Article is paid to the Administrator as soon as possible following the date that the amount is collected.³⁶⁹

Unfortunately, the discharging of US responsibilities pursuant to Article 4 of the Treaty has not proved as effective as was originally intended. Pacific Island States' suspicions about American operations have persisted regarding their continued illegal fishing activities in the region. This suspicion was aggravated by the negative attitudes and reputation of American fishers. For example, five American fishing vessels, illegally fishing in Kiribati's waters, were spotted and photographed by a New Zealand Airforce Orion during its surveillance flight across the Pacific in April 1987.³⁷⁰ Just a month later, *Tradition*, an American purse seiner, was seized and arrested by Kiribati officials for fishing without a license.³⁷¹ President Tabai of the Kiribati sent a strong protest note to the US Embassy in Suva stating that "he was disappointed and distressed at the inability of the United States Government to keep its own side of the recently signed treaty with small Pacific nations including Kiribati."³⁷² This matter was eventually resolved, but the mixed reputation of the American fishing fleet in the region remained. This incident was not isolated, it being not uncommon practice for

---

³⁶⁸ Article 4(4.3)(b)(v) of the Treaty.

³⁶⁹ Article 4(4.3)(c) of the Treaty.

³⁷⁰ "Kiribati Captures US Tuna Boat", *Pacific Islands Monthly* 58(6), April (1987).

³⁷¹ "Kiribati's Biggest Catch", *Pacific Islands Monthly* 58(7), July (1987).

American fishing vessels to fish without licenses in the region, even after the Treaty came into force.

Goodman argues that,

Naturally, the corollary of flag State rights is flag State responsibilities. The basic responsibilities of flag States are those set out in Article 94 of the 1982 Convention, which requires a flag State to effectively exercise jurisdiction and control over ships flying its flag, and to take measures to ensure safety at sea. This includes a requirement for the flag State to maintain a register of ships flying its flag and to assume effective jurisdiction under its internal law for the ship, officers and crew in respect of administrative, technical and social matters. Measures to ensure safety at sea must be taken with respect to: construction, equipment and seaworthiness of ships; manning of ships, labour conditions and the training of crews; and the use of signals, maintenance of communication and prevention of collisions.³⁷³

Flag States are required to conform to the generally accepted international regulations, procedures and practices in respect of the things³⁷⁴ listed in Article 94(3) and (4) of the United Nations Convention on the Law of the Sea 1982 (1982 Convention) that,

3. Every State shall take such measures for ships flying its flag as are necessary to ensure safety at sea with regard, *inter alia*, to:
  - (a) the construction, equipment and seaworthiness of ships;
  - (b) the manning of ships, labour conditions and the training of crews, taking into account the applicable international instruments;
  - (c) the use of signals, the maintenance of communications and the prevention of collisions.
4. Such measures shall include those necessary to ensure:
  - (a) that each ship, before registration and thereafter at appropriate intervals, is surveyed by a qualified surveyor of ships, and has on board such charts, nautical publications and navigational equipment and instruments as are appropriate for the safe navigation of the ship;
  - (b) that each ship is in the charge of a master and officers who possess appropriate qualifications, in particular in seamanship, navigation, communications and marine engineering, and that the crew is appropriate in qualification and numbers for the type, size, machinery and equipment of the ship;
  - (c) that the master, officers and, to the extent appropriate, the crew are fully conversant with and required to observe the applicable

---

³⁷² “Kiribati Captures US Tuna Boats”, *Pacific Islands Monthly* 58(6) April 1988:46).

³⁷³ Goodman, C. “The Regime for Flag State Responsibility in International Fisheries Law – Effective Fact, Creative Fiction, or Further Work Required?”, 23 A & NA Mar LJ (2009:158).<https://maritimejournal.nurdoch.edu.au/index.php/maritimejournal/article/viewFile/115153>.

³⁷⁴ Article 94(5) of the United Nations Convention on the Law of the Sea (1982 Convention).

international regulations concerning the safety of life at sea, the prevention of collisions, the prevention, reduction and control of marine pollution, and the maintenance of communications by radio.

The Article also stipulated that a “State which has clear grounds to believe that proper jurisdiction and control with respect to a ship have not been exercised may report the facts to the flag State. Upon receiving such a report, the flag State shall investigate the matter and, if appropriate, take any action necessary to remedy the situation”.³⁷⁵ In this context, the responsibility of investigating rests on the US Government, as requested by the Pacific Island States; this is outlined in Article 4 of the Treaty. The US Government also has a duty to effectively exercise its jurisdiction and control in administrative, technical and social matters over ships flying its flag.³⁷⁶ Specifically, they are responsible for maintaining the register of vessels flying its flag and the assumption of jurisdiction under its internal law vessels flying its flag.³⁷⁷ Again these issues are consistently covered in the Article 4 of the Treaty.

Financial assurances provided pursuant to this Treaty may be drawn against by any Pacific Island party to satisfy any civil or criminal judgment or other determination in favour of a national or the Government of a Pacific Island party.³⁷⁸

At the negotiation, the US proposed enforcement provisions and a process by which licences could be issued. It seemed that the US was more confident that such initiatives could be effectively implemented and enforced than the Pacific Island States were.³⁷⁹ The US is also obliged under the international law in general to help the Pacific Island States at the same time. The US enforcing the Treaty was a clear signal to American fishing vessels that Treaty provisions must be observed. Also, the US really wanted to avoid any more fishing disputes and maintain good relationships with the Pacific Island States. The US Government was to take the necessary steps to ensure that its registered vessels refrain from fishing in the Licensing Area and in waters closed to fishing by Annex I, except as authorised in accordance with Article 3 of the Treaty. The Pacific Island States imposed general obligations on the US in order to make sure their fishing vessels complied not only with the provisions of the Treaty, but more specifically with the Pacific Island States’ applicable

---

³⁷⁵ Article 94(6) of 1982 Convention.

³⁷⁶ Article 94(1) of 1982 Convention.

³⁷⁷ Article 94 (2)(a) and (b) of 1982 Convention.

³⁷⁸ Article 4(4.7) of the Treaty.

³⁷⁹ Draft Agreement of Fisheries Between Pacific Island States and the United States of America, Composite Draft Agreement Text, as at 21 June 1985.

national laws.³⁸⁰ And this was a major issue for both parties during the negotiation. The Pacific Island States ensured that the applicable national laws of the Pacific Island States parties and the Treaty would all be observed.³⁸¹

Article 91 of the 1982 Convention allows States to grant nationality to any ship to register in its territory and the right to fly its flag according to its own conditions; however, there “must exist a genuine link between the State and the ship,”³⁸² and “every State shall issue to ships to which it has granted the right to fly its flag documents to that effect.”³⁸³ Hence, each State is free to fix the conditions for the grant of its nationality, so long as it adheres to minimum acceptable international standards, and is free to establish laws and regulations concerning the registering of vessels.

Bray argues that the failure to effectively exercise the flag State’s responsibilities is widely recognized as the primary cause of IUU.³⁸⁴ In many cases, fishing vessels were granted nationalities and showed a lack of responsibility under the international law in terms of observing the laws of other States. There are international instruments for the flag States to control their registered fishing vessels: the United Nations Convention on the Fish Stocks Agreement, the FAO Compliance Agreement, regional fisheries agreements, the FAO Code of Conduct for Responsible Fisheries and the International Plan of Action to Prevent, Deter and Eliminate IUU Fishing.

Goodman argues that,

In the fisheries context, however, exclusive flag State jurisdiction has been diluted by the establishment of systems for non-flag State enforcement. The most far-reaching is the global high seas boarding and inspection system provided for in the UN Fish Stocks Agreement, but there are also boarding and inspection regimes operating under the auspices of various regional fisheries management organisations. Other collaborative forms of jurisdiction are also becoming increasingly common in the high seas fisheries context, such as ‘ship-

---

³⁸⁰ Draft Agreement of Fisheries Between Pacific Island States and the United States of America, Composite Draft Agreement Text, as at 21 June 1985.

³⁸¹ Draft Agreement of Fisheries Between Pacific Island States and the United States of America, Composite Draft Agreement Text, as at 21 June 1985.

³⁸² Article 91(1) of 1982 Convention.

³⁸³ Article 91(2) of 1982 Convention.

³⁸⁴ Bray, K. A Global Review of Illegal, Unreported and Unregulated (IUU), Expert Consultation on Illegal, Unreported and Unregulated Fishing, Sydney, Australia, 15-19 May 2000.

rider' agreements, and cooperative maritime surveillance and enforcement agreements. The increasing use of collaborative forms of jurisdiction recognises the practical limitations on flag State enforcement, and although not necessarily the most cost-effective form of non-flag State enforcement in the fisheries context (since high seas patrols and enforcement operations are quite expensive), these are a welcome development from a compliance perspective.³⁸⁵

Article 87 of 1982 Convention states that:

... high seas are open to all States ... under the conditions laid down by this Convention and by other rules of international law ... comprises, *inter alia* ... (a) freedom of navigation; (b) freedom of overflight; (c) freedom to lay submarine cables and pipelines, subject to Part VI; (d) freedom to construct artificial islands and other installations permitted under international law, subject to Part VI; (e) freedom of fishing, subject to the conditions laid down in section 2; (f) freedom of scientific research, subject to Parts VI and XIII.³⁸⁶

And these freedoms shall be exercised by all States with due regard for the interests of other States and with due regard for their rights under this Convention with respect to activities in the Area.³⁸⁷

Article 116 of the 1982 Convention states that all States and their nationals do have a right to fish on the high seas subject to their treaty obligations, rights and duties depicted in Articles 63(2), 64 and 67 of the same Convention. In the context of treaty obligation, both Pacific Island States and the US are covered under the Treaty. These States also have duties to other States, in that they must take the necessary measures to conserve living resources within high seas.³⁸⁸

With reference to the determination of the total allowable catch (TAC) and the establishment of other conservation measures for the living resources within the high seas, the States shall

(a) take measures which are designed, on the best scientific evidence available to the States concerned, to maintain or restore populations

---

³⁸⁵ Goodman, C. "The Regime for Flag State Responsibility in International Fisheries Law – Effective Fact, Creative Fiction, or Further Work Required?", 23 A & NA Mar LJ (2009:158).<https://maritimejournal.nurdoch.edu.au/index.php/maritimejournal/article/viewFile/115153>.

³⁸⁶ Article 87(1) of 1982 Convention.

³⁸⁷ Article 87(2) of 1982 Convention.

³⁸⁸ Article 117 of 1982 Convention.

of harvested species at levels which can produce the maximum sustainable yield, as qualified by relevant environmental and economic factors, including the special requirements of developing States, and taking into account fishing patterns, the interdependence of stocks and any generally recommended international minimum standards, whether subregional, regional or global;

(b) take into consideration the effects on species associated with or dependent upon harvested species with a view to maintaining or restoring populations of such associated or dependent species above levels at which their reproduction may become seriously threatened.³⁸⁹

Article 150 of the Convention outlines that activities:

... in the Area shall, as specifically provided for in this Part, be carried out in such a manner as to foster healthy development of the world economy and balanced growth of international trade, and to promote international cooperation for the over-all development of all countries, especially developing States, and with a view to ensuring:

(h) the protection of developing countries from adverse effects on their economies or on their export earnings resulting from a reduction in the price of an affected mineral, or in the volume of exports of that mineral, to the extent that such reduction is caused by activities in the Area, as provided in article 151.

Particular reference is made to the developing States in this Article from conservation and management, and economic perspectives.

The flag States' rationales and principles in terms of rights and responsibilities should be applied equally to all vessels flying their flags, and "yet the responsibilities of flag States for their fishing vessels are, in large part, constituted by a separate regime from that of the general maritime industry."³⁹⁰

In part, this is because the principal international conventions relating to maritime safety do not generally apply to fishing vessels, due mostly to their size, design, construction and operation. More importantly, however, the concept of a responsible *fisheries* flag State must take into account the different way in which fishing vessels 'use' the marine environment ... fishing vessels harvest living marine resources (often in large quantities), including both target species and other species taken unintentionally as 'bycatch' ... using fishing gear of all types (some of which may be lost or discarded in the sea during

---

³⁸⁹ Article 119 of 1982 Convention.

³⁹⁰ Goodman, C. "The Regime for Flag State Responsibility in International Fisheries Law – Effective Fact, Creative Fiction, or Further Work Required?" 23 A & NA Mar LJ (2009:161).<https://maritimejournal.nurdoch.edu.au/index.php/maritimejournal/article/viewFile/115153>.

or after fishing operations). These activities give rise to two key imperatives in the fisheries context. The first is the need for responsible fisheries management, to ensure the sustainable use of fishery resources and the conservation of the marine environment in which those resources are found. The second is the need to prevent, deter and eliminate IUU [illegal, unreported and unregulated] fishing, and the 'flags of non-compliance' which facilitate this activity. These issues have led to the development of a separate, and in many ways quite different, regime for flag state responsibility in the fisheries sector.³⁹¹

Goodman argues that,

The system of flag State responsibility is also hampered by other institutional failures ... the lack of institutional linkage between the flag State responsibilities in the 1982 Convention, which are generally accepted as reflecting customary international law, and the more detailed responsibilities in the UN Fish Stocks Agreement and the Compliance Agreement, which have a much lower level of ratification and acceptance ... these Agreements could usefully be regarded as being generally accepted international rules and standards in relation to the duty to cooperate in international fisheries. However, there is no provision in the 1982 Convention requiring States to comply with any such rules and standards in relation to fisheries, and although the UN Fish Stocks Agreement has been ratified by 75 States, its provisions are not yet generally acknowledged as having reached the level of customary international law. Accordingly, there is a fragmented system of flag State responsibility in international fisheries, with different States claiming to be bound by different rules, in relation to vessels fishing for common resources.³⁹²

Active and effective flag State responsibility is fundamental to the conservation and management of fisheries resources, especially with regard to the enforcement alleged violations. In this context, the US does not register fishing vessels, but ensures that allegations of Treaty violations are dealt with accordingly and efficiently.

The best example of effective flag State responsibility may be found in the Treaty on Fisheries between the Governments of Certain Pacific Island States and the Government of the United States. Under the Treaty, the United States agrees to enforce the provisions of the

---

³⁹¹ Goodman, C. "The Regime for Flag State Responsibility in International Fisheries Law – Effective Fact, Creative Fiction, or Further Work Required?", 23 A & NA Mar LJ (2009:161).<https://maritimejournal.nurdoch.edu.au/index.php/maritimejournal/article/viewFile/115153>. Note, [ ] added.

³⁹² Goodman, C. "The Regime for Flag State Responsibility in International Fisheries Law – Effective Fact, Creative Fiction, or Further Work Required?", 23 A & NA Mar LJ (2009:165).<https://maritimejournal.nurdoch.edu.au/index.php/maritimejournal/article/viewFile/115153>.

Treaty and licenses issued by the FFA. The United States has a duty to take the necessary steps to ensure that US vessels do not fish in the Licensing Area and Closed Areas without appropriate authorization. The US is also required to assist if requested to investigate the alleged breach of the Treaty by a US fishing vessel. To accelerate the processing of claims, the US is obliged to facilitate claims made against US vessels, including claims for the market value of the fish taken without authorization. The US is required to institute legal process by or on behalf of national or government of a Pacific Island State and ensure prompt and full adjudication in the US of any claims made pursuant to the Treaty.³⁹³

Compliance Powers

Article 5 designated the procedures that both parties had to follow from the issuance of licenses to any legal proceedings for violation of Pacific Island States' national laws. The Pacific Island States permitted American fishing vessels, pursuant to the Treaty, to fish within designated areas following the issuing of a license. The Pacific Island States' rights in this context are specified below:

It is recognized that the respective Pacific Island parties may ... enforce the provisions of this Treaty and licenses issued thereunder, including arrangements made pursuant to Article 3.3 and licenses issued thereunder, in waters under their respective jurisdiction.³⁹⁴

In the event of arresting an American fishing vessel:

The Government of ... the Pacific Island parties shall promptly notify the Government of the United States of any arrest of a fishing vessel of the United States or any of its crew and of any charges filed or proceedings instituted following the arrest, in accordance with this Article.³⁹⁵

Fishing vessels of the United States and their crews arrested for breach of this Treaty shall be promptly released upon the posting of a reasonable bond or mother security. Penalties applied in accordance with this Treaty for fishing violations shall not be unreasonable in

---

³⁹³ Aqorau, T. "Illegal, Unreported and Unregulated Fishing: Considerations for Developing Countries" (p.303), <http://www.fao.org/DOCRED/005/Y3274E/y3274eok.htm>.

³⁹⁴ Article 5(5.1) of the Treaty.

³⁹⁵ Article 5(5.2) of the Treaty.

relation to the offence and shall not include imprisonment or corporal punishment.³⁹⁶

The arrested vessel and its crew were to be promptly released upon posting a reasonable bond or security; any penalties incurred were not to include either imprisonment or corporal punishment.³⁹⁷ Pacific Island State parties had to promptly notify the American government of any arrest made involving an American fishing vessel and any proceedings initiated.

It is possible that the US was not confident that its vessels would fully comply with the Treaty's provisions. This provision provided some safeguards in the event that the US failed to assume responsibility for monitoring its fishing vessels. It also revealed some uncertainty on the part of the US about its own capacity to effectively implement these obligations; this caused the Pacific Island States to lose some faith in the Americans. It revealed that the US was aware that it could not control its fishing vessels.

However as mentioned in Article 5(5.6), and with reference to legal proceedings instituted by the US, the Pacific Island State parties limited as stipulated below:

Where legal proceedings have been instituted by the Government of the United States pursuant to Article 4, no Pacific Island party shall proceed with any legal action in respect of the same alleged infringement as long as such proceedings are maintained. Where penalties are levied or proceedings are otherwise concluded by the Government of the United States pursuant to Article 4, the Pacific Island party which has received notice of such final determination shall withdraw any legal charges or proceedings in respect of the same alleged infringement.³⁹⁸

However in the event of arresting American fishing vessel, the US was limited as stipulated below:

The Government of the United States shall not apply sanctions of any kind including deductions, however effected, from any amount which might otherwise have been paid to any Pacific Island party, and restrictions on trade with any Pacific Island party, as a result of any

---

³⁹⁶ Article 5(5.3) of the Treaty.

³⁹⁷ Article 5(5.3) of the Treaty.

³⁹⁸ Article 5(5.6) of the Treaty.

enforcement measure taken by a Pacific Island party in accordance with this Article.³⁹⁹

This meant that the US was not free to apply the embargo provisions of its 1976 *Fisheries Conservation and Management Act* (FCMA), nor to ban importation of fishing and fish products into the US from any Pacific Island States that were party to the Treaty following the arrest of an American fishing vessel. This provision was regarded as a major victory for the Pacific Island States. It further meant that the Pacific Island States could enforce applicable national laws pursuant to the Treaty, allowing all parties to adopt and inform each other about the adoption of any provisions in their national laws that affected the Treaty.⁴⁰⁰

Goodman argues that:

... an international governance framework has developed for high seas fishing that gives effect to the duty to cooperate through a system of regional fisheries management organisations (RFMOs), and sets out the responsibilities of flag States for ensuring compliance with the international fishery conservation and management measures adopted by those organisations. The principal flag State responsibilities are set out in two instruments: the *Agreement to Promote Compliance with International Conservation and Management Measures on the High Seas* (the Compliance Agreement) and the *United Nations Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks 1995* (the UN Fish Stocks Agreement). These Agreements enunciate a range of flag State duties that give specific practical effect to the obligation to ensure effective jurisdiction and control in relation to the activities of fishing vessels. In this way, they could usefully be considered to implement the ‘duty to cooperate’ set out in the 1982 Convention much in the same way as ‘generally accepted international rules and standards’ in MARPOL and SOLAS (for example) implement the general obligations in the 1982 Convention relating to maritime safety and marine pollution.⁴⁰¹

The Compliance Agreement creates basic obligations for the flag States; they are obligated to not only control their vessels’ activities on the high seas, but also to ensure vessels do not

---

³⁹⁹ Article 5(5.4) of the Treaty.

⁴⁰⁰ Article 5(5.5) of the Treaty.

⁴⁰¹ Goodman, C. “The Regime for Flag State Responsibility in International Fisheries Law – Effective Fact, Creative Fiction, or Further Work Required?”, 23 A & NA Mar LJ (2009:162).<https://maritimejournal.nurdoch.edu.au/index.php/maritimejournal/article/viewFile/115153>.

undermine the effectiveness of international conservation and management measures.⁴⁰² The responsibility for cooperation expressed under the 1982 Convention applies to nationals, rather than specifically the flag States.

Goodman argues that,

The UN Fish Stocks Agreement⁴⁰³ includes the elements of flag State responsibility set out in the Compliance Agreement (Article 18)⁴⁰⁴, and adds some important elements of its own to the concept. The first new element is a detailed set of responsibilities requiring the flag State to ensure compliance by its vessels with conservation and management measures, and to take enforcement action where necessary, including full and immediate investigation into alleged violations, referral to appropriate authorities for the institution of proceedings, and the imposition of appropriate sanctions.⁴⁰⁵

The United Nations Conference on Straddling Fish Stocks and Highly Migratory Fish Stocks (1995 Agreement) has been very successful and even though its scope is formally limited for straddling and highly migratory stocks, its principles are widely accepted; the flag State responsibilities in this instrument assist in the conservation and management of fisheries resources.⁴⁰⁶

Interestingly the provision in the Fishermen's Protective Act of 1956 (FPA) regarding reimbursement to fishers of fines and losses incurred through arrest for illegal fishing was excluded from the Treaty. This made the operators and owners of any American fishing vessel arrested entitled to reimbursement.⁴⁰⁷ However, excluding this provision would have left the US unable to ensure that its fishing vessels would fully comply with the provisions of the Treaty. Hence, the reimbursement provisions of the FPA remained intact; they continued to safeguard the interests of the American tuna fleet.

---

⁴⁰² Article III, Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas.<http://www.fao.org/legaltreaties/012t-e.htm>.

⁴⁰³ United Nations Conference on Straddling Fish Stocks and Highly Migratory Fish Stocks.

⁴⁰⁴ Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas.

⁴⁰⁵ Goodman, C. "The Regime for Flag State Responsibility in International Fisheries Law – Effective Fact, Creative Fiction, or Further Work Required?", 23 A & NA Mar LJ (2009:163).<https://maritimejournal.nurdoch.edu.au/index.php/maritimejournal/article/viewFile/115153>.

⁴⁰⁶ Goodman, C. "The Regime for Flag State Responsibility in International Fisheries Law – Effective Fact, Creative Fiction, or Further Work Required?", 23 A & NA Mar LJ (2009:163).<https://maritimejournal.nurdoch.edu.au/index.php/maritimejournal/article/viewFile/115153>.

⁴⁰⁷ See Waugh, G. "Tuna Wars", *Pacific Islands Monthly* 46, June (1988).

During any period of investigation for an alleged infringement of Treaty provisions, the Pacific Island States concerned were required to notify other parties that the license of the vessel concerned was in abeyance and that the vessel was banned from fishing in the waters of any Pacific Island State party concerned.⁴⁰⁸ This provision did not stipulate a time frame for any such investigation, given that this could prove a protracted undertaking. Hence, suspect vessels were to cease any fishing activities until the alleged infringement was fully investigated (this had to be based on reliable information that the Treaty had indeed been violated). If the alleged vessel was found to have breached the provisions of the Treaty, it faced a total ban from the region. This would act as a deterrent to other American vessel operators, warning them that they could not breach the Treaty with impunity and continue fishing under its terms.

It was further provided that:

If full payment of any amount due as a result of a final judgment or other final determination deriving from an occurrence in waters within the jurisdiction, for any purpose, of a Pacific Island party, is not made to that party within sixty (60) days, the license for the vessel involved shall be suspended at the request of that party and that vessel shall not be authorized to fish in the Licensing Area until that amount is paid to the party.⁴⁰⁹

Yet this was a weak approach to demands for the prompt payment of a fine. Having a vessel bonded and only released upon payment of a full fine amount would undoubtedly have done more to discourage and deter American fishing vessels from violating the Treaty's provisions. Such permissiveness seemed to exhibit a lack of commitment on the part of the US to ensuring that its fishing fleets fully complied with the Treaty.

In the Treaty negotiation, the Pacific Island States stated that any American fishing vessel fishing within the Agreement Area or water under Pacific Island States' jurisdiction shall be subject to the laws and regulations of the Pacific Island States concerned.⁴¹⁰ The US suggested that Pacific Island States enforce the provisions of the Treaty and licences issued in

---

⁴⁰⁸ Article 5(5.7) of the Treaty.

⁴⁰⁹ Article 5(5.8) of the Treaty.

their jurisdictions. This suggested generic coverage of the enforcement of the entire Treaty and its provisions and this was a major change from the US perspective in terms of the limitations strictly applied for the major allegation of an infringement. Also the US suggested that the Pacific Island States not take further action against American fishing vessels that have been dealt with by the US.⁴¹¹ The US pushed for the penalties to exclude imprisonment and corporal punishment for any violation and infringement of the Treaty by American fishing vessels. They also did not want the Pacific Island States to prosecute any American fishing vessels that had been penalized by the US already.⁴¹² The US pushed for the penalties to be solely monetary and for them to exclude vessel forfeiture (as deterrence) and they both agreed.⁴¹³ The US insistence on the exclusion of imprisonment and corporal punishments for Treaty violations may have to do with the US purse seiners' masters and crew being American citizens.

The ATA fishing agreement with FSM, Kiribati and Palau stipulated that they were all responsible for the enforcement of the Access Agreement.⁴¹⁴ This was ineffective and problematic, and the United States did not want to go down that road of ensuring its fishing vessels complied with the provisions of the Treaty again. Generally, one of the reasons that the US wanted to form this Treaty was to get rid off the ATA and to mend their relationships with Pacific Island States.

Conclusions

While the Pacific regional organizations were established to secure the political and economic interests of the Pacific Island States, that objective was complicated by the direct (or indirect) influences of foreign and former colonial powers.⁴¹⁵ The US has remained

---

⁴¹⁰ Draft Agreement of Fisheries Between Pacific Island States and the United States of America, Composite Draft Agreement Text, as at 21 June 1985.

⁴¹¹ Draft Agreement of Fisheries Between Pacific Island States and the United States of America, Composite Draft Agreement Text, as at 21 June 1985.

⁴¹² Draft Agreement of Fisheries Between Pacific Island States and the United States of America, Composite Draft Agreement Text, as at 21 June 1985.

⁴¹³ Draft Agreement of Fisheries Between Pacific Island States and the United States of America, Composite Draft Agreement Text, as at 21 June 1985.

⁴¹⁴ Lodge, M.W. "The Development of the Palau Arrangement for the Management of the Western Pacific Purse Seine Fishery", *Marine Policy*, Vol. 22, No. 1 (1998).

⁴¹⁵ Franklin, M.I. *Postcolonial Politics, the Internet, and Everyday life: Pacific Traversals Online*, Routledge, New York (2004).

influential in the region, a fact that is demonstrated by the provisions in the multilateral fisheries Treaty.

At initial meetings among Pacific Island States—convened for the purposes of establishing the FFA—it had previously been noted that tensions were evident over prospective US membership.⁴¹⁶ This was not the first time that the stance of the US in the Pacific faced challenges on political grounds. This had already occurred as a result of Washington's silence over France's nuclear testing in the region, and its non-recognition of Pacific States' 200 nautical miles EEZ, which precipitated legal disputes over American fishing activities in the region.

The American Tunaboat Association (ATA) proved a formidable lobbyist in promoting fishery industry interests during the FFA negotiations; it remained very influential in terms of US fisheries legislation and policy. For some, the proposed Treaty was nearly abandoned because of the pressure tactics adopted by the ATA during difficult negotiations and its 'no room to maneuver' approach. Aware of the political sensitivities in the mix, the US State Department got involved to salvage the negotiations as things began to appear out of control. Primarily a fisheries industry lobbyist, the ATA appeared to lack the diplomatic and political skills needed to handle the negotiation processes.

In the end, the Treaty did gain some concessions from the US, with the government indirectly recognizing the sovereign rights of the Pacific Island States over their EEZ and fisheries resources therein. As certain American fishing vessels were allowed to operate in the Forum States' designated areas, the US accepted the need to comply with fishing licenses and other relevant conditions. That acceptance indicated that the US acknowledged the jurisdiction of the Pacific Island States over their EEZ.

The Treaty also helped to rekindle Pacific Island States-US political relations, by being seen to pay more attention to the needs of the region. It also helped to reaffirm US political and

---

⁴¹⁶ Chand, G. "The United States and South Pacific Regionalism: Participation or Subversion", *Bulletin of Concerned Asian Scholars*, Vol. 24 (1992).

security interests in the region.⁴¹⁷ The Treaty thus helped to refocus US relations with Pacific Island States and to ‘reclaim’ its dominance in the region’s politics and diplomacy.

While the US took on some responsibility for policing its fishing fleet, this remained restricted to vessels covered by the Treaty. In fact, not all American registered fishing vessels were obligated to comply with the terms and conditions provided by the Treaty. The restriction of US responsibilities to vessels covered by the Treaty could be seen as a failure, because the threat of illegal fishing by other American registered fishing vessels remained. The Treaty failed to cover all American registered fishing vessels. Vessels flying US flags should logically come under the sphere of US responsibility.

The restricting of the American fishing fleet to the fishing grounds depicted in the Treaty could be construed as US recognition of national jurisdiction of the Pacific Island States over their EEZ. For the first time, it could be argued that the Pacific Island States had gained some form of control over the American fishing fleet’s activities. It was also unusual for the US to relinquish access to the complete fishing grounds of a designated region, something rarely seen in its political, economic and diplomatic practices elsewhere. Gaining this concession was seen as a victory from the Pacific Island States’ perspective. In general, then, the Pacific Island States and the US achieved some balance in terms of the trade-offs that they negotiated. But in achieving that balance, the political dimensions concerned influenced the outcomes achieved.

At the Treaty negotiation, the Pacific Island States proposed that any party involved in a dispute may request that the Director of the FFA appoint the members of the Tribunal.⁴¹⁸ The tribunal was comprised of 5 members—all fisheries qualified professionals chosen from States not involved in the dispute; and decisions made by the Tribunal should have the consent of no fewer than three of the members.⁴¹⁹ The US proposed three members

---

⁴¹⁷ See Gubon, F. “The Southwest Pacific Multilateral Fisheries Treaty: Some Possible Implications for Fisheries Development, Management and Conservation in the Pacific Islands Region”, *Melanesian Law Journal* 22 (1994). See also “Contempt for Tuna Accord”, *Pacific Islands Monthly* 58(8) August (1987); Tsamenyi, B.M. “The Treaty on Fisheries Between the Governments of Certain Pacific Island States and the Government of the United States America: The Final Chapter in United States Tuna Policy”, *Brooklyn Journal of International Law* 2 (1989).

⁴¹⁸ Draft Agreement of Fisheries Between Pacific Island States and the United States of America, Composite Draft Agreement Text, as at 21 June 1985.

⁴¹⁹ Draft Agreement of Fisheries Between Pacific Island States and the United States of America, Composite Draft Agreement Text, as at 21 June 1985.

comprising disputed parties and a third party as president of the Tribunal and decision should be consent by no fewer than two members. Both agreed that procedures would be determined by the Tribunal itself and that the decision would be binding. It looked like the US would never be part of the Tribunal because potential disputes would always be between Pacific Island State(s) on one side and the US on the other. And because the US would always be one party, they pushed to lower the proportional representation to their original three members of the Tribunal, to avoid Pacific Island States being over represented in this exercise. They felt this would provide an even playing field for the US. However, both parties to the Treaty felt that the arbitral Tribunal should exercise its rights with reference to the Treaty not the US or Pacific Island States fisheries policy and the US did not want the Tribunal to make a decision based on a legal interpretation and analysis of their fisheries policy. Both agreed that each party should pay 50% of the fee and expenses of the tribunal.⁴²⁰

---

⁴²⁰ Draft Agreement of Fisheries Between Pacific Island States and the United States of America, Composite Draft Agreement Text, as at 21 June 1985.

Chapter Five

An Economic Assessment of the Fisheries Treaty

Introduction

Traditionally, Pacific Island States have relied heavily on marine resources for their livelihoods. Often they have developed local economies based on marine resources along coastal areas. As the indigenous people of the Pacific, they also established pastoral and spiritual relationships with the natural environment. Contact with Europeans introduced totally different economic ideologies and practices and as a result of this marine environments would never be the same again.

Traditional, subsistence-based economies were altered in some locations following the discovery of tuna resources and the associated growth of commercial enterprises in the 1950s. This commercial exploitation of Pacific Island States' fisheries resources was initially gradual, pioneered by Japanese fishermen in the early 1920s, who were subsequently followed by American and other distant water fishing nations' (DWFN) fishing fleets in the 1940s.⁴²¹ The advancement of marine technologies, and the skyrocketing price of tuna products on world markets, has opened up the Pacific's tuna fishing grounds for serious competition.⁴²² This has resulted in the growing political and economic domination of DWFN interests throughout the region.

The tuna resources of the Pacific Island States are now regarded as the most commercially productive in the world, providing some 72 per cent of the world's tuna production with an annual landed value of US\$1.46 billion in 1993 alone.⁴²³

---

⁴²¹ Doulman, D.J. "Distant-water Fleet Operations and Regional Fisheries Cooperation", in Doulman, D.J. (ed.) *The Development of the Tuna Industries in the Islands Region: An Analysis of Options*, East-West Center, Honolulu (1987:54). See also Christy, L.C. and Moore, G.K. "Forms of Foreign Participation in Fisheries: Coastal State Practice", UN Doc. FAO Fisheries Report 193 (1983); Comitini S. "Japanese Trading Companies: Their Possible Role in Pacific Tuna Fisheries Development", Doulman, D.J. (ed.) *The Development of the Tuna Industries in the Pacific Islands Region: An Analysis of Options*, East-West Center, Honolulu (1987).

⁴²² Gillet, R., McCoy, A. and Itano, D.G. "Status of the United States Western Pacific Tuna Purse Seine Fleet and Factors Affecting Its Future", <http://www.soet.hawaii.edu/pfrp/soetjimarrpts/gpaamer Samoa.pdf>.

⁴²³ Veitayaki, J. "The Peaceful Management of Transboundary Resources in the South Pacific", in Blake, G.H., et al (eds.) *The Peaceful Management of Transboundary Resources*, Kluwer Law International, The Netherlands (1995). See also Munro, G.R. "Environmental Cooperation Among Pacific Developing Coastal States: A Fisheries Case Study", *University of British Columbia Law Review* 27(1) (1993); "Summit over Tuna", *New*

The Pacific islands are the most important fishing region in the world. The region supplies an estimated one-third of all landed tuna, 40-60 per cent of total supply to tuna canneries, and 30 per cent of tuna to the valuable Japanese sashimi (raw fish) market. Most Pacific island countries have a narrow resource base and small domestic markets, resulting in heavy dependence on a small number of export commodities. Economic growth for the Pacific islands region as a whole has been slow due to insecure and poorly defined institutional structures. The South Pacific tuna fishery is the Pacific islands' main natural resource. Tuna stocks have the greatest potential for the expansion of exports from Pacific island countries.⁴²⁴

Since then, this value has increased substantially. Yet only a tiny percentage of this amount is directly generated within some Pacific Island States, through selling licenses to DWFN to fish for tuna within the region's waters.⁴²⁵ The 20 Pacific Island states rely heavily upon their oceans as an economic resource, as tuna fisheries constitute up to 40% of the Gross Domestic Product (GDP) of some States.⁴²⁶ The economic returns for the region thanks to the tuna catch of 2001 were equivalent to 11% of the combined GDP of all the countries in the region.⁴²⁷ Pacific Island States now regularly supply more than half of the global demand for canned tuna.⁴²⁸

Zealand Herald, March 14 (1997:B2); Kent, G. "Fisheries Politics in the South Pacific", *Ocean Yearbook*, vol.2 (1980); Shepard, M. and Clark, L. *South Pacific Fisheries Development Assistance Needs*, Consultancy Report prepared for FAO and UNDP (1984); Munro, G.R. "Extended Jurisdiction and the Management of Pacific Highly Migratory Species", *Ocean Development and International Law* 21 (1990); Gomez, G. "Tuna Linkages and Areas for Cooperation in Tuna Management and Development Between Latin American Coastal States and Island Nations of the Pacific", in Munaylla, U. and Dulanto de Soldi, L. (eds.) *Pacific Latin American-Pacific Island Nations International Fisheries Conference: Summary Report and Papers* (1989); Hviding, E. "Fisheries and Coastal Resources: Knowledge and Development", in Burt, B. and Clerk, C. (eds.) *Environment and Development in the Pacific Islands*, Australian National University, Canberra (1997); King, D.M. "The Global Tuna Markets: A Pacific Island Perspective", Doulman, D.J. (ed.) *Tuna Issues and Perspective in the Pacific Island Region*, East West Center, Honolulu (1987); Kiste, R.C. "Economics Security Issues in the South Pacific", *Economics & Pacific Security*, The 1986 Pacific symposium (1987). Lieberman, W.H. "Towards Improving Fishery Management Systems", *Marine Policy* 10 (1986); Redclift, M. "The Meaning of Sustainable Development", *Geoforum* 23(395) (1992); Sachs, W. "Environment and Development: The Story of a Dangerous Liaison", *Ecologists* 21(252) (1991); Scully, G. "The Institutional Framework and Economic Development", *Journal of Political Economy* 96(3) (1988); Copes, P. *Factor Rents, Sole Ownership, and the Optimum Level of Fisheries Exploitation*, Simon Fraser University, British Columbia (1972).

⁴²⁴ South Pacific Commission, Noumea (1996:3).

⁴²⁵ This was acknowledged by the 1977 South Pacific Forum meeting. See "Stirring Up the Pacific", *Asiaweek*, January 19 (1979). See also *South Pacific Commission* (1989); Van Dyke, J. and Heftel, S. "Tuna Management in the Pacific: Ana Analysis of the South Pacific Forum Fisheries Agency", *University of Hawaii Law Review* 3(1)(6)(1981:189). See also "Sharks Among Tuna", *Pacific Islands Monthly*, June (1988).

⁴²⁶ South Pacific Commission, Noumea (1996:3).

⁴²⁷ <http://www.greenpeace.org/raw/content/australia/resources/reports/overfishing/tuna-pacific-s-most-valuable-a.pdf>

⁴²⁸ "Tuna: A Key Economic Resource in the Pacific Island", <http://www.adb.org/documents/reports/tuna/tuna.pdf>.

The tuna fishery represents one of the Pacific's greatest natural resources, but only about a tenth of its two billion dollar annual value remains in the Pacific. The majority of the catching and processing of Pacific tuna is done by foreign boats and factories, and access fees currently paid by foreign vessels in Pacific waters amount to only around one-twentieth of the value of the fish caught. The people of the Pacific deserve a greater share of the revenue from this precious resource. Two obvious ways to ensure greater benefits to Pacific Island peoples is to increase Pacific Island involvement in the catching of fish and their processing into fish products, as well as to increase the access fees paid by foreign fishers.⁴²⁹

The economic significance of the Pacific Island States' tuna resources was secured during the negotiations of the United Nations Conference on the Law of the Sea III (UNCLOS III) and led to the adoption of the United Nations Convention on the Law of the Sea in 1982 (1982 Convention) and its ratification in 1994. This gave sovereign rights to coastal States—Pacific Island States in this case—over resources within their 200 nautical mile exclusive economic zones (EEZ). The Treaty on Fisheries between the governments of certain Pacific Island States and the United States of America (Treaty) is a classic example of a collective approach being used to maximize economic benefits for the Pacific Island States through the exploitation and conservation of its precious tuna resources.

The adoption of a Treaty between the Pacific Island States and the US, and previous fishing agreements all indicated the economic significance of tuna resources for the region's economies.⁴³⁰ From a Pacific Island State parties' perspective, the Treaty was a comprehensive legal regime that promised significant economic benefits.⁴³¹ Under the Treaty,

---

⁴²⁹ Fishing for a Future, The Advantages and Drawbacks of a Comprehensive Fisheries Agreement between the Pacific and European Union, Oxfam New Zealand (p.3). (<http://www.oxfam.org.nz/imgs/pdf/oxfam%20nz%20fisheries%20final%2019%20oct.pdf>).

⁴³⁰ "Tuna: A Key Economic Resource in the Pacific Island", <http://www.adb.org/documents/reports/tuna/tuna.pdf>, "Technical Assistance for Alternative Negotiation Arrangements to Increase Revenues in the Pacific", http://www.adb.org/Documents/TARs/OTH/tar_oth_36669.pdf.

⁴³¹ See "Sharks Among the Tuna", *Pacific Islands Monthly*, June (1988); Bertram, A. and Haward, M. "Sustainability, Aid and Material Welfare in Small South Pacific Island Economic 1900-1990", *World Development* 21(2) (1993); Burt, B. and Clerk, C. "Environment and Development in the Pacific Islands: Introduction", in Burt, B. and Clerk, C. *Environment and Development in the Pacific Islands*, Australian National University, Canberra (1997); Charney, J.I. "Progress in International Maritime Boundary Delimitation Law", *American Journal of International Law* 88 (1994); Connell, J. "Island Microstate: The Morage of Development", *The Contemporary Pacific* 32 (1991); Copes, P. "Factor Rents, Sale Ownership and the Optimum Level of Fisheries Exploitation", The Manchester School of Economics and Social Studies, No. 2, June, Manchester (1972). Gordon, H.S. "The Economic Theory of a Common-Property Resources: The Fishery", *Journal of Political Economy* 62(2) (1954); (1984), Haynes, J. and brown, D. "An Economic Perspective on Fisheries Levies", *Quarterly Review of the Rural Economy*, Vol. 7(4), November (1985); Kearney, B. "The Tuna Resources Base in the Pacific", in Campbell, H., Menz, K. and waughm G. (eds.)

American tuna fleet could fish within the Pacific Island State parties' EEZs. This activity provided a secure and constant flow of tuna to American canning and processing operations.

The Pacific Island States needed some form of sustainable mechanism to secure the flow of economic benefits from their tuna resources, and Treaty not only provided financial benefits, but it also restricted American fishing vessels' illegal fishing in the region. The greatest threat to the Pacific's tuna fisheries is overexploitation; as a result of overfishing through harvesting "unsustainable amounts of tuna, the economic stability and health of Pacific Island communities is under threat as well as the very survival of these fleets whose operational margins are pushed to negative as they have to spend more time and effort in catching the same amount of fish".⁴³²

The Treaty itself not only provided American purse seiners access to fish in the Pacific Island States' EEZ, but it also provided substantial subsidies and if new subsidies were negotiated "then the US treaty in its present form would likely have to be revised. This would put further pressure on the US purse seiners to shift operations to the eastern Pacific. Without the US treaty the average access fee for Pacific Island countries would drop to 3%."⁴³³ That is, the Treaty provided an improved and increased access fee compared to other fishing arrangements with the other DWFN.⁴³⁴

However, different target HMS species not only have different market landing prices, but different vessels with varied operational costs would further complicate the access fee discussion and negotiation.

The four key tuna species that are of commercial value, and are the subject of cooperative management arrangements in the South Pacific are skipjack (*katsuwonus pelamis*), yellowfin (*Thunnus albacares*),

---

Economics of Fishery Management in the Pacific Islands Region, University of Tasmania, Hobart (1989); Kearny, R.E. "Fishery Potential in the Tropical, Central and Western Pacific: Environment and Resources in the Pacific", UNEP Regional Seas Reports and Studies 69 (1985); Lawson, R. "Fisheries Economics in the South Pacific Region", in Herr, R. (ed.) *The Forum Fisheries Agency: Achievements, Challenges and Prospects*, The University of the South Pacific, Suva (1990); Levy, J.P. "Towards an Integrated Marine Policy in Developing Countries", *Marine Policy* 12 (1988).

⁴³² <http://www.greenpeace.org/raw/content/australia/resources/reports/overfishing/tuna-pacific-s-most-valuable-a.pdf>

⁴³³ Grynberg, R. "WTO Fisheries Subsidies Negotiations: Implications for Fisheries Access Arrangements and Sustainable Management", Commonwealth Secretariat, Economic Affairs Division, London (2003:7-8).

⁴³⁴ Hey, E. *The Regime for the Exploitation of Transboundary Marine Fisheries Resources*, Martinus Nijhoff Publishers, The Netherlands (1989); Report of and Papers presented at the Expert Consultation on Illegal, Unreported and Unregulated Fishing (Sydney, Australia, 15-19 May 2000), FAO Fisheries Report No. 666, FIPL/R666(En), Rome (2001).

albacore (*Thunnus alalunga*), and bigeye (*Thunnus obesus*). The fishery is dominated by three main gear types, namely, purse seining, longlining and to a smaller extent pole-and-lining. The largest fishery in terms of the volume of catch is taken by the purse seine fishery. The preliminary estimate of the 2000 purse seine catch was 1 038 748 tonnes. This represents an increase of approximately 1 percent compared to the estimated 1999 catch of 1 02 450 tonnes. The breakdown by species of the 2000 catch is as follows: skipjack 812 880 tonnes (up 4 percent from 1999), yellowfin 19 159 tonnes (down 8 percent); bigeye 28 745 tonnes (down 15 percent).⁴³⁵

The global multi-billion dollar fisheries industry employs millions of people and at the same time provides food security for a significant portion of the world's population, yet three quarters of the world's fish stocks are dangerously near depletion.⁴³⁶ The West and Central Pacific Ocean is the largest and the least over-exploited tuna fishery in the world, accounting for one-third of the global tuna catch.⁴³⁷ However, it is not exempt from the threat of exploitation and the subsequent loss of significant financial revenue. It is difficult to offer a conclusive scientific explanation for the status of the region's HMS stocks due to the varied outcomes of the many studies that have been done.⁴³⁸

The share of the South Pacific harvest taken by Pacific island countries is modest, at around 10 per cent. The remaining 90 per cent of the value of the catch is taken by Distant-Water Fishing Nations (DWFNs) ... The distant-water fishing nations pay access fees to the Pacific island countries for the right to fish in their waters. These revenues are increasing. For example, in 1999 fees amounted to US\$ 60.3 million but are still a small proportion of the total value of the total catch ... Licence fees contribute significantly to the public revenue of many Pacific island countries ... Where foreign fishing vessels regularly call at local harbours, additional benefits accrue in delivery of goods and services.⁴³⁹

---

⁴³⁵ Aqorau, T. "Cooperative Management of Shared Fish Stocks in South Pacific", in FAO, Papers Presented at the Norway-FAO Expert Consultation on the Management of Shared Fish Stocks, Bergen, Norway, 7-10 October 2002, FAO Fisheries Report No. 695 Supplement, Rome. Note, [ ] was added.

⁴³⁶ Nambiar, K.P.P. and Pawiro, S. (eds.) *Papers of the 5th World Tuna Conference* (25-27 October 1997, Bangkok, Thailand), Tuna 97 Bangkok, INFOFISH, Bangkok (1997); Report of and Papers presented at the Expert Consultation on Illegal, Unreported and Unregulated Fishing (Sydney, Australia, 15-19 May 2000), FAO Fisheries Report No. 666, FIPL/R666(En), Rome (2001).

⁴³⁷ Fishing for a Future, The Advantages and Drawbacks of a Comprehensive Fisheries Agreement between the Pacific and European Union, Oxfam New Zealand (p.3). (<http://www.oxfam.org.nz/imgs/pdf/oxfam%20nz%20fisheries%20final%2019%20oct.pdf>).

⁴³⁸

⁴³⁹ Fisheries in the Pacific: Coherence Between Development and Commercial Objectives, prepared by DG DEV/AIDCO Fisheries Task Force (include B. Van Helden/D. Friedrichs, T. Schmale, H. Pilgaard (DEV/C/4); J.Prade, J. Favre (DEV/B/4); F.Affinito/V.Dowd (DEV/C/I) & R.Noë (AIDCO C/5), Pacific Issues Paper No. 1, I:\fed\gener\fish9.doc, Brussels, 18 February (2002:4-5).

Regulation and control of the exploitation of tuna resources in the region is urgently needed. This will secure the sustainable development of these vital and strategic resources for the long term economic development of the Pacific Island States.

The US tuna fleet accounts for some 95 per cent of American domestic tuna landings.⁴⁴⁰ However, more than 90% of the region's tuna resources are caught by fleets not associated with the US. Those involved include Japan, Korea, Taiwan, China, Phillipines and the European Union and these fishing fleets take 900% more than locally based vessels, which annually make over US\$3 billion from the Pacific Island States' fisheries resources. The Pacific Island States receive around 6% of this, mainly from licensing and access fees.⁴⁴¹ In 2003, a Niuean fleet of small boats and outrigger canoes caught around 100 tonnes of tuna; a super seiner could catch the same amount in just two days.⁴⁴²

The US thus has a secure supply of tuna resources for its industries. Furthermore, they subsequently benefit from the added value provided by the domestic canning of tuna. Pacific Island State parties stood to benefit from fishing licenses and other royalty benefits regularly paid from US sources. In general, representatives from the Pacific Island States and the US believed that the Treaty offered a win-win situation.

The Food and Agriculture Organization (FAO) estimated that some 75% of tuna resources around the world had collapsed or been depleted; as a result of this, many DWFN fleets moved to the Pacific.⁴⁴³ It globally estimated that 50% of the fish caught are caught by only 1% of fishing boats. Large DWFN fishing fleets used larger vessels with modern technology to increase the quantity of their catches and they pocket most of the profits.⁴⁴⁴

---

⁴⁴⁰ King, D.M. "The U.S. Tuna Market: A Pacific Islands Perspective", Doulman, D.J. (ed.) *The Development of the Tuna Industries in the Pacific Islands Region: An Analysis of Options*, East-West Center, Honolulu (1987:69-70). See also Cross, M.L. "The Behavior of Licensed Fishing Firms: A Contrast with Sole Ownership", *Ocean Development and International Law* 8(3) (1980); Doulman, D.J. "Tuna Fleet Rides Out Recession", *Pacific Islands Monthly* 57(4) (1986); Inversen, R.T.B. "U.S. Tuna Processors", Doulman, D.L. (ed.) *The Development of the Tuna Industry in the Pacific Islands Region: An Analysis of Options*, East-West Center, Honolulu (1987).

⁴⁴¹ <http://www.greenpeace.org/raw/content/australia/resources/reports/overfishing/tuna-pacific-s-most-valuable-a.pdf>

⁴⁴² <http://www.greenpeace.org/raw/content/australia/resources/reports/overfishing/tuna-pacific-s-most-valuable-a.pdf>

⁴⁴³ <http://www.greenpeace.org/raw/content/australia/resources/reports/overfishing/tuna-pacific-s-most-valuable-a.pdf>

The Treaty itself was appealing in that it largely consisted of cash payments and other forms of assistance that would benefit all Pacific Island State parties. Added to this, the US government was formally party to the Treaty, which was added assurance that the economic terms agreed upon would be fulfilled. The cash payment terms and other assistance pursuant to the Treaty were considered favorable by the Pacific Island States.⁴⁴⁵ The parties were optimistic that the Treaty would benefit all the parties economically.

The tuna fishery is by far the most economically significant fishery in the WCPO [Western and Central Pacific Ocean]. It is the largest in the world, with approximately 2 million tonnes caught annually, worth US\$2 billion, and comprising roughly one-third of all landed tuna. This equates to roughly a fifth of the region's combined gross domestic product.⁴⁴⁶

The fishery is the region's largest natural resource and is one that offers potential exports, yet it is DWFN that are controlling the harvesting and processing of this resource.⁴⁴⁷ The Pacific Island States may consider setting up regional fisheries processing plants to process and sell finished products. This would undoubtedly increase their profit margins, while at the same time maintaining the exploitation rate of the region's tuna resources in a sustainable manner.

However, the Treaty entered into force on 15 June 1988 and extended for a period of five years. It expired in 14 June 1993, but in March 2002, both parties agreed to amend and extend the Treaty for a further 10 years (until 15 June 2003).⁴⁴⁸ The 2003 extension provided up to 40 licenses for purse seiners, with an option for 5 additional licenses reserved for joint venture arrangements, to fish for tuna in the EEZ's of the Pacific Island Parties.⁴⁴⁹ The 2003

---

⁴⁴⁴ <http://www.greenpeace.org/raw/content/australia/resources/reports/overfishing/tuna-pacific-s-most-valuable-a.pdf>

⁴⁴⁵ See Tsamenyi, B.M. and Blay, S.K.N. "Extended Zones of Jurisdiction over Marine Resources: State Practice in the South Pacific Region", in Campbell, H., Menz, K. and Waugh, G. (eds.) *Economics of Fishery Management in the Pacific Islands Region*, University of Tasmania Press, Hobart (1989:48). See also Moore, G. *Principles of Fisheries Legislation under the New Law of the Sea*, ? ? (1986); Fisk, E.R. "Development and Aid in the South Pacific in the 1980s", *Australian Outlook* 36(2), August (1982).

⁴⁴⁶ Fishing for a Future, The Advantages and Drawbacks of a Comprehensive Fisheries Agreement between the Pacific and European Union, Oxfam New Zealand (p.3), (<http://www.oxfam.org.nz/imgs/pdf/oxfam%20nz%20fisheries%20final%2019%20oct.pdf>). Note [ ] was added.

⁴⁴⁷ Fishing for a Future, The Advantages and Drawbacks of a Comprehensive Fisheries Agreement between the Pacific and European Union, Oxfam New Zealand (p.3), (<http://www.oxfam.org.nz/imgs/pdf/oxfam%20nz%20fisheries%20final%2019%20oct.pdf>).

⁴⁴⁸ <http://www.america.gov/st/washfile-english/2002/July/20020724124720morse@pd.state.Gov0.8919794.html#ixzz0we5zZv63>.

⁴⁴⁹ <http://www.america.gov/st/washfile-english/2002/July/20020724124720morse@pd.state.Gov0.8919794.html#ixzz0we5zZv63>.

revised Treaty also contains a number of amendments, such as updating the methods available for reporting; a revised procedure for amending the annexes; a revised observer program fee formula; provisions on the use of a vessel monitoring system (VMS); and general provisions on fishing capacity, revenue sharing and linkages between the Treaty and the Convention for the Conservation and Management of the Highly Migratory Fish Stocks of Western and Central Pacific (Fish Stocks Convention).⁴⁵⁰ The Treaty was then extended a further 10 years, until 14 June 2013.⁴⁵¹ Both parties agreed that in 2012, they would renegotiate for a further extension beyond the 14 June 2013 expiry.⁴⁵²

As Grynberg puts it,

The financial terms of the revised which come into force in June 2003 US Treaty (currently US\$18 million per annum) fall into three categories: (a) annual industry payment representing licence fees for a maximum of 45 purse seine vessels and technical assistance; (b) observer programme costs paid by industry; (c) economic development assistance provided by the US Government pursuant to a related agreement between the US Government and the Forum Fisheries Agency.' Under current arrangements in the Multilateral Treaty USAID pays approximately US\$14 million of the US\$18 million of annual returns to the beneficiaries.⁴⁵³

The Treaty was by far the most significant fishing arrangement ever reached between Pacific Island States and the US and created a multilateral framework that gave American fishing fleet access to Pacific Island States' EEZ.⁴⁵⁴ Certain conditions and terms must be observed by US fishing fleet to preserve their access under the Treaty.

Financial and economic elements were among the key issues raised at the initial meeting between the Pacific Island States and US delegations when they met to discuss the fishing

---

⁴⁵⁰ <http://www.america.gov/st/washfile-english/2002/July/20020724124720morse@pd.state.Gov0.8919794.html#ixzz0we5zZv63>.

⁴⁵¹ <http://www.america.gov/st/washfile-english/2002/July/20020724124720morse@pd.state.Gov0.8919794.html#ixzz0we5zZv63>.

⁴⁵² <http://www.ffa.int/node/280>; Pacific Ocean For a, Department of Agriculture, Fisheries and Forestry, Australian Government, <http://www.daff.gov.au/fisheries/international/multilateral/pacific-ocean-fora>; Ratification of Amendments to the US Treaty, Department of Agriculture, Fisheries and Forestry, <http://www.daff.gov.au/fisheries/interantional/multilateral/ustreaty>.

⁴⁵³ Grynberg, R. "WTO Fisheries Subsidies Negotiations: Implications for Fisheries Access Arrangements and Sustainable Management", Commonwealth Secretariat, Economic Affairs Division, London (2003:7).

⁴⁵³ <http://www.ffa.int/node/280>.

⁴⁵⁴ Grynberg, R. "WTO Fisheries Subsidies Negotiations: Implications for Fisheries Access Arrangements and Sustainable Management", Commonwealth Secretariat, Economic Affairs Division, London (2003:7).

agreement.⁴⁵⁵ It reflected the willingness of the Pacific Island States to secure financial benefit from their billion dollars fisheries resources was an extra special for both parties in the negotiation and tried to find way that they both winners economically.

Provisions of the Treaty

Two provisions of the Treaty stipulated relevant economic objectives. They included, first, under Article 2: Broader Cooperation of the principal Treaty, the manner in which the US would assist and promote the development of the Pacific Island States' fisheries resources. The second, under Schedule 2, dealt with payments under the original Treaty, while Article 4 of the *Agreement Between the Government of the United States of America and the South Pacific Forum Fisheries Agency* (FFA Agreement) did so under the extended Treaty.

Article 2: Broader Cooperation

In stipulating how the US would cooperate with the Pacific Island States in developing their tuna resources pursuant to the Treaty, this Article comprised two provisions. These are discussed separately. The first provision, Article 2(2.1), stated:

The Government of the United States shall, as appropriate, cooperate with the Pacific Island parties through the provision of technical and economic support to assist the Pacific Island parties to achieve the objective of maximizing benefits from the development of their fisheries resources.

This offered the US an opportunity to cooperate with the Pacific Island States through technical and economic support and to assist them in developing their fisheries resources. However, this cooperation was not mandatory. The FFA States' proposal stated that the obligation to provide assistance would arise only at the request of any Pacific Island State party and only if assistance was deemed appropriate.⁴⁵⁶

Fisheries exports from the region consist almost wholly of tuna, which is the South Pacific's most important development resource. Canneries in American Samoa, Fiji and the Solomon Islands export tuna at slightly higher prices than their Southeast Asian counterparts,

---

⁴⁵⁵ <http://www.ffa.int/node/280>.

⁴⁵⁶ Draft Agreement of Fisheries Between Pacific Island States and the United States of America, Composite Draft Agreement Text, as at 21 June 1985.

but the latter two states benefit from African, Caribbean and Pacific (ACP) status in the European Union (EU) market.⁴⁵⁷

Again, accessing world markets for finished Pacific fish products would be challenging in terms of price competition (as well as capital and infrastructure), especially when coming up against the well-established process plants with generous tax incentives and ‘relaxed’ local legislation and regulations.⁴⁵⁸ Hence, the Treaty does not indicate cooperation in terms of trading finished tuna products. However, this exercise could fall within the ‘maximizing benefit’ framework of the development of the Pacific Island States’ tuna resources.

Regional cooperation among Pacific Island States is seen as a ‘shining example’ of how to ensure effective management of fisheries resources through regional organizations and institutions.⁴⁵⁹ For the Pacific Island States, the concept of regional cooperation was born out of the need for specialized regional bodies to deal with the specific requirements of the region; these address everything from national differences to international interests.⁴⁶⁰ The economic development of fisheries resources in the region is among the key regional interests and is a vital one. As the ‘specialized’ body dealing with fisheries, the FFA had done a good job and the Treaty was among its major achievements.

Cooperation among Pacific Island States has been recognized internationally as having produced relatively high levels of achievement.⁴⁶¹ This has been reflected in the cooperative and collective approach adopted by the Pacific Island States under the FFA as a regional specialized body dealing with fisheries issues, including conservation and management measures.⁴⁶² The FFA has been an important and effective regional institution and the conclusion of the Treaty is among its great achievements.

---

⁴⁵⁷ South Pacific Commission, Noumea (1996:3).

⁴⁵⁸ Cycon, D. “Managing Fisheries in Developing Nations: A Plea for Appropriate Development”, *Natural Resources Journal*, Vol.26, No.1 (1986).

⁴⁵⁹ South Pacific Commission, Noumea (1996:3).

⁴⁶⁰ McConnell, M. “Ocean Politics: Regionalism and the South Pacific Island States”, paper presented at the annual meeting of the International Studies Association, Le Centre Sheraton Hotel, Montreal, Quebec, Canada (17 March 2004), http://www.allacademic.com/meta/p72566_index.html.

⁴⁶¹ Bergin, A. “Ownership and Control over Marine Living Resources”, paper presented to PIPSA Conference, Cook Islands, December (1993).

⁴⁶² See Tsamenyi, B.M. and Blay, S.K.N. “Extended Zones of Jurisdiction over Marine Resources: States Practice in the South Pacific Region”, in Campbell, H., Menz, K. and Waugh, G. (eds.) *Economics of Fishery Management in the Pacific Islands Region*, University of Tasmania, Hobart (1989). See also Moore, G. *Principles of Fisheries Legislation under the New Law of the Sea* (1986); Barbier, E.B. “The Concept of Sustainable Economic Development”, *Environmental Conservation* 14(2)(1987); Carew-Reid, J. “Conservation and Protected Areas on South Pacific Islands: The Importance of Tradition”, *Environmental Conservation* 17(1)(29) (1990); Gordon, W. “Management of Living Marine Resources: Challenge of the Future”, in Tippie, V.K. (ed.) *Centre for Ocean Management Studies, comparative Marine Policy* (1981); Miller, G. and Hundloe,

The financial significance of the Pacific Island States' tuna resources was highlighted by the establishment of the FFA and its aim to ensure a generation of revenue from fisheries resources. In dealing with all fisheries matters affecting its members in the region, the FFA was keen to ensure that the people of the Pacific Islands achieved the maximum benefits possible from their tuna resources.⁴⁶³

As the Treaty did not explicitly deal with the conservation and management of the Pacific Island States' fisheries resources, the previously cited provision placed considerable importance on the Pacific Island States' attempts to get the most out of their tuna resources. Under this provision, the US could, in the spirit of cooperation, decide to provide technical and economic support to Pacific Island State parties.

Traditionally, fishing agreements between the Pacific Island States and the DWFN have largely addressed issues of technical assistance, rather than on any monetary value gained.⁴⁶⁴ However, the kind of technical assistance provided for the most part did not actually benefit the Pacific Island States due to its inapplicability within this region. Local fishers simply did not have the necessary skills needed to operate new fisheries equipments. Generally, the technical assistance provided to the Pacific Island States only worked in the short term, if at

---

T.J. "Environmental Impact Assessment: Its Role and Processes", in Doulman, D.J. (ed.) *The Development of Tuna Industries in the Pacific Islands Region: An Analysis of Options*, East-West Center, Honolulu (1987); (1982); Musket, R. "International Environmental Law and the Asia Pacific Region: Recent Developments", *California Western International Law Journal* 20 (21)(1989); Paisley, R.K. "Pacific Fisheries and the Emerging International Law of the Sea", *University of British Columbia Law Review* 24(1)(1990); Pollanac, R.B. and Littlefield, S.J. "Sociocultural Aspects of Fisheries Management", *Ocean Development and International Law* 12(3-4)(1989); Scattersdal, G. "Problems of Managing and Sharing Living Resources Under the New Ocean Regime", *Ocean Yearbook* 4 (1983); Sem, G.S. "Cooperation Management of Fisheries and Regionalism", *South Pacific Forum* 3(2) (1986); Shyam, M.R. "The New International Economic Order and the New Regime for Fisheries Management", *Ocean Management* 8(1) (1982); Bertram, G. *Sustainable Development in Pacific Micro-economies*, Department of Economics, Victoria University of Wellington, Wellington (1985); Brown, M.L. *Developing Countries and Regional Economic Cooperation*, Praeger, Westport (1994); Browne, C. *Economic Development of the Pacific Basin: Growth Dynamics, Trade Relations and Energy Cooperation*, St. Martin's Press, New York (1986); Carew-Reid, J. *Strategies for National Sustainable Development: A Handbook for their Planning and implementation*, Earthscan Publications, London (1994); Clark, L.G. *South Pacific Ocean Fisheries*, FFA Report 85/2, January, Honiara (1985); O'Connell, D. *Sharing of Ocean Resources in Law of the Sea Workshop 1981*, Clarendon Press, London (1982); Craven, J.P. *The Management of Pacific Marine Resources: Present Problems and Future Trends*, Westview Press, Colorado (1982); Doulman, D.J. (ed.) *The Development of the Tuna Industries in the Pacific Islands Region: An Analysis of Options*, East-West Center, Honolulu (1987); Doumenge, F. *The Social and Economic Effects of Tuna Fishing in the South Pacific: Report on an Investigation*, SPC Technical Paper, No.149, Noumea (1966).

⁴⁶³ See Herr, R. (ed.) *The Forum Fisheries Agency: Achievements, Challenges and Prospects*, University of the South Pacific, Suva (1990:4).

⁴⁶⁴ Havice, E. "The Structure of Tuna Access Agreements in the Western and Central Pacific Ocean: Lessons for Vessel Day Scheme Planning", *Marine Policy* 34 (2010).

all. Part of this failure, from the author's personal observations, is due to a failure to provide maintenance resources as part of the package. This is quite a common problem with aid-related projects in the Pacific Island States—local governments often cannot afford the maintenance costs involved in foreign aid-initiated projects.

The differences in terms of socio-political and economic circumstances in the region was also a crucial factor. Australia and New Zealand are the 'superpowers' of the region, and Pacific Island States expected their assistance through regional cooperation. However, these 'superpowers' also had significant interests elsewhere and geopolitical changes arguably made the Pacific less important to them. As Bergin and Michaelis note:

With the end of the Cold War, and the strategic interests of outside powers in the region declining, the strategic importance of the PICs to Australia is, however, quite modest. In economic terms, too, Australia does not have a compelling interest in the region. Its main economic relationships lie elsewhere.⁴⁶⁵

DWFN developed a reputation for making promises that were never fulfilled. Their negative experiences when receiving technical assistance in the past forced Pacific Island States' leaders to consider adopting a fresh approach to fishing agreements.

Under the Treaty, US\$250,000 per annum was allocated to Pacific Island State parties for technical assistance upon request, as coordinated by the Administrator.⁴⁶⁶ More emphasis was placed on direct cash payments; this took time, however, given the lack of collective cooperation even after the establishment of the FFA in 1979.

Regional arrangements for the Pacific Island States were urgently needed, as was international cooperation, particularly with regards to the DWFN.⁴⁶⁷ This could be an

---

⁴⁶⁵ Bergin, A. and Michaelis, F.B. "Australia and the South Pacific: Implementing the UNCED Oceans Agenda", *Marine Policy*, Vol. 20, No. 1 (1996:47).

⁴⁶⁶ Part 2(3), Schedule 2 of the original Treaty; Hodder, B.W. *Economic Development in the Tropics* (1968); Howard, M.C. *The Political Economy of the South Pacific: An Introduction*, James Cook University of Queensland, Melbourne (1983); Hunt, C. *Pacific Development Sustained: Policy for Pacific Environments*, Australian National University, Canberra (1998); Lawson, R.M. *Economics of Fisheries Development*, Frances Printer, New York (1984); Waugh, G. *The Development of Fisheries in the South Pacific Region with Reference to Fiji, Solomon Islands, Vanuatu, Western Samoa and Tonga*, Australian National University, Canberra (1986).

⁴⁶⁷ Aqorau, T. "Cooperative Management of Shared Fish Stocks in South Pacific", in FAO, Papers Presented at the Norway-FAO Expert Consultation on the Management of Shared Fish Stocks, Bergen, Norway, 7-10 October 2002, FAO Fisheries Report No. 695 Supplement, Rome (p.4).

effective way to ensure the economic benefits of the region's fisheries resources are secured at regional and international levels.

However, this technical assistance fund increased to \$US1.8 million per annum under the terms of the extended Treaty.⁴⁶⁸ The sums involved were deposited into the bank accounts of Pacific Island State parties in New York, although the FFA was designated to administer the fund. All Pacific Island State parties had equal access to the fund through project proposal submissions made to the FFA via the Ministries of Foreign Affairs within the respective countries concerned. This fund was open to project bids, excluding any of an overtly military nature.

Observer Programme

To assist enforcement officers carry out their duties, the operators of foreign fishing vessels are required to give full access to authorized officers of the licensing State to the vessel's log book and catch records. Examination of the logbook and catch records can reveal if the vessel has complied with the licensing State's laws.⁴⁶⁹

It is also important to collect correct data regarding the catch and general activities of the vessels and to ensure that the vessels observe the agreed upon terms and conditions.⁴⁷⁰

The costs of an observer program would be paid by the American fishing vessels concerned (with these costs including travel expenses, salaries, allowances, full insurance and training).⁴⁷¹ The expenses and costs of observers would be paid annually in lump sums to the Administrator according to the following formula.

---

⁴⁶⁸ Schedule 1, Agreement Among Pacific Island States Concerning the Implementation and Administration of the Treaty on Fisheries Between the Governments of Certain Pacific Island States and the Government of the United States of America.

⁴⁶⁹ Aqorau, T. "Cooperative Management of Shared Fish Stocks in South Pacific", in FAO, Papers Presented at the Norway-FAO Expert Consultation on the Management of Shared Fish Stocks, Bergen, Norway, 7-10 October 2002, FAO Fisheries Report No. 695 Supplement, Rome (p.7).

⁴⁷⁰ Aqorau, T. "Cooperative Management of Shared Fish Stocks in South Pacific", in FAO, Papers Presented at the Norway-FAO Expert Consultation on the Management of Shared Fish Stocks, Bergen, Norway, 7-10 October 2002, FAO Fisheries Report No. 695 Supplement, Rome (p.7).

⁴⁷¹ Part 7(24)(a), Annex I of the extended Treaty.

The number of licensed United States vessels multiplied by the average annual number of trips per vessel for the latest licensing period for which information is available multiplied by 20 per cent multiplied by the cost per trip (US\$4,000) equals a lump sum payment. In addition in the first two years following 15 June 1993, an additional payment of US\$15,000 per year for training shall be made to the Administrator.

Administrative Costs

Article 7(7.2) of the Internal Agreement of the extended Treaty stipulated an amount set aside for administrative costs. Hence:

The Administrator shall make quarterly deductions from the accrued money received pursuant to the Principal Agreement, equal to the administrative costs incurred during the previous quarter, provided that the total deductions for the Licensing Period shall not exceed the total amount approved in accordance with paragraph 1 of this Article.

The Administrator thus received the administrative costs involved upon parties' approval of the relevant budget items, including the direct costs of performing the functions and other services pursuant to the Treaty and the Internal Agreement.⁴⁷² The administrative cost was estimated to be US\$200,000 per annum, subject to any other changes.

Hanich and Tsamenyi argue that the

LOSC [United Nations Convention on the Law of the Sea 1982] describes the expectations placed on coastal States by the world community in regard to their EEZ ... three important obligations: conservation; optimum utilization; and a duty to co-operate.⁴⁷³

Article 61 of the 1982 Convention requires that coastal States manage and conserve fisheries within their EEZs and determine the total allowable catch (TAC) of fisheries resources in their EEZ. It also indicates that they must in the process ensure proper conservation and management measures are taken to avoid over exploitation. At the same time, Article 62 of the 1982 Convention obliges those same coastal States to share fisheries surpluses and to promote the optimum utilization of the living resources within their EEZ. This reflected DWFN's concerns that coastal States would drastically limit other parties' use of the living

---

⁴⁷² Article 7(7.1)(a) & (b) of the Internal Agreement.

resources within their EEZs and many developing coastal States did not have the capacity for maximum harvest and allocation of surplus for developed DWFN fishing fleet.

Development

In some respects Article 2 could be viewed as a failure by the Pacific Island States, given that it did not make cooperation mandatory. Some argue that the US should have been committed to unconditionally supporting a maximization of Pacific Island States' economic benefits through the further development of their fisheries resources. However another interpretation of this provision is that the Pacific Island States were not willing to determine when and how the US might act to assist them in maximizing the economic benefits of their tuna resources. The question of how the Pacific Island States could achieve optimum economic benefits from the development of their fisheries resources so long as cooperation to that end remained conditional upon the goodwill of the US remained unresolved.

One of the difficulties encountered by Pacific island States in terms of economic development generally (and specifically in terms of fishing) has been the longer term inadequacy of the economic models chosen. The imposition of foreign economic models by local but overseas-trained economists, and the exclusion of local social, political, economic, cultural and environmental factors have all been in part responsible.

In addition, there has been a deficit in terms of the capital, infrastructure and expertise needed to provide sound foundations that would foster economic development in the long term. The Treaty did not provide adequately for assistance in the development of Pacific Island States' fisheries resources. The modest funding provided was primarily designed to assist individual Pacific Island State parties, rather than to serve the collective regional requirements (such as the possible establishment of a regional cannery plant).

---

⁴⁷³ Hanich, Q. And Tsamenyi, M. "Exclusive Economic Zones, Distant Water Fishing Nations and Pacific Small Island Developing States: Who Really Gets all the Fish," (2006:2-3). <http://www.fish.wa.gov.au/docs/events/ShareFish/papers/QuentHanich.pdf>.

Acting alone, the Pacific Island States have been unable to develop and sustain long-term economic development. While regionally the South Pacific has received the highest level of development assistance per capita in the world, this has not necessarily hastened the region's economic development. The ineffectiveness of development assistance for Pacific Island States' economic development is the result of two things: the lack of government accountability when representing the general needs of their populations, and policies that are designed to promote donor interests. Here, foreign aid has been seen by some States in the Pacific as more a form of donor public relations than as a means of assisting effective and longer term economic development. Specific projects funded through foreign assistance have not assisted economic development in the Pacific Island States, including the facilities needed to develop fisheries resources.

The full development of Pacific Island States' fisheries resources requires the establishment of local fisheries industries, with fish products gaining unlimited access to the US and other markets. The Treaty failed to provide the Pacific Island State parties with such access to US markets. Without this, the Pacific Island States cannot take full advantage of their fisheries resources under the Treaty, nor indeed any other fishing arrangements. Currently, the Pacific Island States are still simply suppliers of tuna resources, not suppliers of value-added finished products.

This is a reality at odds with the purposes outlined in the Treaty *Preamble*, indicating the desire of both the Pacific Island States and the US to maximize the benefits flowing from the development of the fisheries resources within the EEZ of the Pacific Island State parties. Under the Treaty, therefore, it would seem that the US has at least some degree of moral obligation to ensure that the tiny Pacific Island States' economies receive the maximum financial benefit possible from their tuna resources.

Article 2(2.2) of the Treaty stipulated that the US should seek to promote the maximization of Pacific Island States' benefits from the operations of its fishing vessels pursuant to the Treaty. This Article stated:

2.2 The Government of the United States shall, as appropriate, promote the maximization of the benefits generated for the Pacific Island parties from the operations of fishing vessels of the United States licensed pursuant to this Treaty, including:

- (a) the use of canning, transshipment, slipping and repair facilities located in the Pacific Island parties;
- (b) the purchase of equipment and supplies, including fuel supplies, from suppliers located in the Pacific Island parties; and
- (c) the employment of nationals of the Pacific Island parties on board licensed fishing vessels of the United States.

This provision contains similar conditions to those already mentioned under Article 2(2.1) regarding US cooperation. These stipulated that the US would, as appropriate, promote the maximization of the benefits generated from the facilities and services provided by the Pacific Island States for American fishing vessels, pursuant to the Treaty. It may seem as though the US wanted to limit its obligations by using the words ‘as appropriate’ within the context of the request. Of interest here is the fact that American purse seiners required sophisticated facilities of the type that were often not available in the Pacific Island States. The facilities used to service American sophisticated fishing vessels are owned by American or foreign companies, which offer very little local employment and thus fail to benefit local communities.⁴⁷⁴ Spare parts, for instance, are air freighted from the US or countries other than the Pacific Island States.⁴⁷⁵

Paragraph (a) of this Article stated that the American fleet will use the canning, transshipment, slipping and repair facilities located within the Pacific Island States party to the treaty. The cannery plant processing tuna under the Treaty, which is located in Pago Pago, American Samoa, was owned by an American company. This plant also employed local labour, but American Samoa was not a Pacific Island State party to the Treaty. Accordingly, Pacific Island State parties did not benefit from this cannery, even though it was processing tuna resources harvested by an American tuna fleet pursuant to the Treaty.

The Pacific Island States widening cooperation for economic benefit with the US through operations and facilities already existed in the region to be used by the American fishing vessels and their catches.⁴⁷⁶ This was a huge achievement for the Pacific Island States’

---

⁴⁷⁴ Distant Water Tuna Fleet (aka U.S. Purse Seine Fleet), Annual Report to Congress, April 30, 2010, Home Security, United States Coast Guard, National Marine Fisheries Service, http://www.nts.gov/Events/forum_fishing_vessel_safety/Background/2010%200%2030%20Distant%20Water%20Tuna%20Fleet%20Report.pdf.

⁴⁷⁵ http://www.tradingmarkets.com/news/stock-alert/epfif_international-fisheries-pacific-tuna-fisheries-vessels-capacity-limit-in-the-purse-seine-fishery-in-1149614.html.

⁴⁷⁶ Draft Agreement of Fisheries Between Pacific Island States and the United States of America, Composite Draft Agreement Text, as at 21 June 1985.

negotiation team and FFA members in general. This issue would also benefit the region as a whole through the sharing of the advanced technologies possessed by the US—an achievement on its own. The US showed a willingness to provide technical and economic support to assist the maximization of the development of the region's fisheries resources through use of facilities in the region such as canneries, transshipment, fuel and equipment supplies, slipping and repair supplies and employment of locals on the US fishing vessels. Theoretically, this was a very generous offer from the US to the Pacific Island States, economically-speaking.

In paragraph (b) of this section of Article 2, it is stated that the American tuna fleet is to buy equipment and supplies, including fuel, from suppliers located in the Pacific Island States. Again equipment and supplies for the sophisticated American purse seiners were not provided by the Pacific Island States; the fuel was supplied to the region by foreign oil companies. This provision, therefore, does little to assist the promotion or maximization of Pacific Island States' ability to benefit from the operation of the American tuna fleet. The last paragraph of this Article stipulates that American fishing vessels are to employ locals as crew. Outwardly this seems promising as a means of securing employment for Pacific Islanders, but no indication is provided as to the number of locals that must be so employed. Moreover, local crews may lack the skills and experience required to handle purse seining techniques.

At the Treaty negotiation, the US brought up the need for both parties to co-operate in the rational management of fisheries resources to ensure their conservation and optimum utilization.⁴⁷⁷ In this context, the US offered a beneficial co-operation package to deal with not only the conservation and management of the fisheries resources, but also their maximum utilization for economic gain. Even the Pacific Island States could see the paradox being put forward by the US—any significant economic benefit would always outweigh everything else. Therefore, it was necessary to fine tune and clarify what the US had proposed so far.⁴⁷⁸

The other issue would be the fact that, should the Pacific Island States request such assistance, it would be up to the US to decide whether the request was appropriate. In other

---

⁴⁷⁷ Draft Agreement of Fisheries Between Pacific Island States and the United States of America, Composite Draft Agreement Text, as at 21 June 1985.

words, much depended on the application and implications of their interpretation and how they negotiated the issue. The concept of an appropriate request needed definition. The US insisted that this not be a requirement, claiming they needed it to remain generic.⁴⁷⁹ However, Article 64 of 1982 Convention encouraged co-operation between coastal States and others, not only for conservation and management purposes, but also to maximize utilization of fisheries resources.

The fisheries interaction between the governments of the States whose nationals dominate the fishery and the governments of the South Pacific countries provide an important political and economic link between the two sides. The two sides do not often share the same common vision on how the tuna resource should be managed. Understanding the different dynamics at play in the fishery and the diverse national interests at stake, is fundamental to appreciating how regional cooperation has been shaped in the South Pacific.⁴⁸⁰

Transshipment is another service addressed under this provision, again to maximize Pacific Island State parties' ability to benefit pursuant to the Treaty. Under the original Treaty, transshipment services were not included—this function was carried out at sea. Under the extended Treaty however, transshipment was included; it was carried out in Pacific Island State parties' ports as part of a package designed to maximize Pacific Island States' benefits.

The transshipment provisions of the extended Treaty were explicitly outlined in Part 4 of Annex I, as were the relevant procedures. The operator of the US fishing vessel was required to notify the Administrator and appropriate Pacific Island States' authority of the transshipment details, including its international radio call sign, its position, the species taken and the catch amount.⁴⁸¹ A location request would then be made so the transshipment could occur.⁴⁸² All transshipments had to be authorized by the Pacific Island States and a full report of any transshipment had to be submitted.⁴⁸³

---

⁴⁷⁸ Draft Agreement of Fisheries Between Pacific Island States and the United States of America, Composite Draft Agreement Text, as at 21 June 1985.

⁴⁷⁹ Draft Agreement of Fisheries Between Pacific Island States and the United States of America, Composite Draft Agreement Text, as at 21 June 1985.

⁴⁸⁰ Aqorau, T. "Cooperative Management of Shared Fish Stocks in South Pacific", in FAO, Papers Presented at the Norway-FAO Expert Consultation on the Management of Shared Fish Stocks, Bergen, Norway, 7-10 October 2002, FAO Fisheries Report No. 695 Supplement, Rome (p.3).

⁴⁸¹ Article 1(1.1)(f) defines operator as "any person who is in charge of, directs or controls a vessel, including the owner, charterer and master".

⁴⁸² Part 4(11)(a) of Annex I of the Treaty.

⁴⁸³ Part 4(1.1)(b) of Annex I of the Treaty.

The master and crew of the American tuna vessel undertaking the transshipping was to assist the officer authorized by the Pacific Island State party. This officer was given access to the fish being transshipped and any other related information. In the last six months of 1993, 360 transshipments took place in Pacific Island States' ports; it total these were worth some US\$ 3.6 million.⁴⁸⁴ The American purse seining fleets do not transship their catches in the Pacific Island States' ports. However, transshipments of American vessels are carried out in the ports of American territories such as Guam and Titian before they are shipped to canneries in American Samoa and Puerto Rico.⁴⁸⁵ The future of design-specific transshipment facilities in the Pacific region will depend primarily on how Article 62 of the 1982 Convention is interpreted and enforced.

It will also depend on the capacity to provide and manage transshipment facilities and on the size and types of foreign fleets operating in the South Pacific.⁴⁸⁶ Japanese purse seiners' catches are landed in Japan's ports. Taiwanese purse seiners' catches are transferred on the high seas and transported to Thailand, Japan and the US.⁴⁸⁷

Overall, the main flaw in the Article 2 provisions of the Treaty lay in their failure to make it mandatory for the US to cooperate in ways designed to promote and ensure maximum benefits for the Pacific Island States.

Access Fee and Funds Distribution

In 1999 the combined annual tuna catch was equivalent in value to approximately 11% of the combined GDP of FFA member Pacific Island States. Revenue from tuna canning contributed up to 42% of the gross domestic product (Kiribati and Tuvalu). The access fees

---

⁴⁸⁴ Veitayaki, J. "The Peaceful Management of Transboundary Resources in the South Pacific", in Blake, G.H., et al (eds.) *The Peaceful Management of Transboundary Resources*, Kluwer Law International, The Netherlands (1995).

⁴⁸⁵ Doulman, D.J. "Distant-water Fleet Operations and Regional Fisheries Cooperation", in Doulman, D.J. (ed.) *The Development of the Tuna Industries in the Pacific Islands Region: An Analysis of Options*, East-West Center, Honolulu (1987).

⁴⁸⁶ Doulman, D.J. and Kearney, R.E. *The Domestic Tuna Industry in the Pacific Islands Region*, East-West Center, Honolulu (1986).

⁴⁸⁷ Naraski, O. "Structure of DWFNs' Purse Seiner Fleets and their Production Volumes", in Herr, R. (ed.) *The Forum Fisheries Agency: Achievements, Challenges and Prospects*, University of the South Pacific, Suva (1990).

paid are significant components of the national economies of 7 of the 14 Pacific Island States.⁴⁸⁸ Hanich and Tsamenyi argue that,

These tuna resources of the area are enormous in relation to the national economies (of the Pacific small island developing States). A purse seine vessel, in a single haul can capture enough tuna to match the value of a year's exports from one of the smaller countries.⁴⁸⁹

Other associated natural elements also come into the equation, as they affect the revenue of the Pacific Island States. One example of this is the El Nino Southern Oscillation (ENSO) Index, which also affects the quality of the fisheries resources.⁴⁹⁰

The economic benefits gained from the Pacific Island States' fisheries resources and their impact overall is huge. They offered some form of economic relief to some Pacific Island States for the first time. At the same time, however, there are some concerns. As Parris and Grafton put it,

Whatever EEZs may have delivered to PICs, they have coincided with a substantial increase in fishing effort and harvests ... the total harvest of tuna has more than doubled since the 1980s, and the region now supplies about 40% of the world's global catch of tuna. The latest data suggests that catches of some tuna in the region may have peaked, such as yellowfin tuna, and that some stocks, such as bigeye tuna, may even be overexploited. Another worrying trend has been a 70% decline in the catch per unit of effort of yellow-fin tuna in the western Pacific over the past 50 years, although the significance of this trend in terms of what it implies about declines in tuna populations is disputed.⁴⁹¹

---

⁴⁸⁸ Hanich, Q. And Tsamenyi, M. "Exclusive Economic Zones, Distant Water Fishing Nations and Pacific Small Island Developinjj States: Who Really Gets all the Fish," (2006:5), http://www.fish.wa.gov.au/docs/events/Share_Fish/papers/QuentHanich.pdf.

⁴⁸⁹ Hanich, Q. And Tsamenyi, M. "Exclusive Economic Zones, Distant Water Fishing Nations and Pacific Small Island Developinjj States: Who Really Gets all the Fish," (2006:5).http://www.fish.wa.gov.au/docs/events/Share_Fish/papers/QuentHanich.pdf.

⁴⁹⁰ Hanich, Q. And Tsamenyi, M. "Exclusive Economic Zones, Distant Water Fishing Nations and Pacific Small Island Developinjj States: Who Really Gets all the Fish," (2006:5).http://www.fish.wa.gov.au/docs/events/Share_Fish/papers/QuentHanich.pdf.

⁴⁹¹ Parris, H. and Grafton, R.Q. "Tuna-Led Sustainable Development in the Pacific", Asia Pacific School of Economics and Governments, Australian National Univesity, Canberra (2005:2-3).

Most tuna caught by large purse seiner vessels were from Pacific Island States' EEZ and Western and Central Pacific alone. This came to a total landed value worth of some US\$ 2 billion, with only about US\$60 million in access fees paid to Pacific Island States.⁴⁹²

Pacific Island States very much relied on their fisheries as primary sources of protein and, for some countries, some 40% of their Gross Domestic Product (GDP). In 2001, Papua New Guinea received \$US5.84 million in access fees as part of their \$US3.4 billion GDP; the Fiji Islands' access fees for the same period of time were \$US212,000 out of a total \$1.8billion GDP.⁴⁹³ Employment in tuna industry related projects had an significant economic impact on the Pacific Island States.⁴⁹⁴

Greenpeace argues that,

Each year industrial fishers make over US\$3 billion from the Pacific's fish resources. Out of this, Pacific nations receive around 6% mainly from licensing and access fees. These foreign fishing fleets take 900 per cent more than locally based vessels. For example in Niue, a fleet of small aluminium boats and outrigger canoes caught an estimated 100 tonnes of the main tuna species for the whole of 2003 – a super seiner would catch this much fish in just two days. Left unchallenged, this exploitation will destroy our ocean and Pacific Island economies that have few other resources. Pacific communities will lose their greatest resource.⁴⁹⁵

The exploitation and management of these strategic resources is a huge concern for the Pacific Island States.

The Treaty is said to be working efficiently and to the benefit of all involved. It has been viewed as a model of international and fishery cooperation. Issues that arise are typically addressed in formal annual consultations between US Government and Pacific Island States representatives, or during informal discussions (which also take place on an annual basis). The Department of State has specific authority to act for the US.

---

⁴⁹² Parris, H. and Grafton, R.Q. "Tuna-Led Sustainable Development in the Pacific", Asia Pacific School of Economics and Governments, Australian National University, Canberra (2005:3).

⁴⁹³ "Tuna: Pacific's Most Valuable Asset", Greenpeace (p.1), <http://www.greenpeace.org/raw/content/australia/resources/reports/overfishing/tuna-pacific-s-most-valuable-a.pdf>.

⁴⁹⁴ "Tuna: Pacific's Most Valuable Asset", Greenpeace (p.1), <http://www.greenpeace.org/raw/content/australia/resources/reports/overfishing/tuna-pacific-s-most-valuable-a.pdf>.

⁴⁹⁵ "Tuna: Pacific's Most Valuable Asset", Greenpeace (p.3), <http://www.greenpeace.org/raw/content/australia/resources/reports/overfishing/tuna-pacific-s-most-valuable-a.pdf>.

Article 61 of the 1982 Convention outlines that coastal States' right to determine their allowable catch, but at the same time specifies that they are instructed by Article 64 to cooperate with DWFN to establish the TAC.

Article 62 of the 1982 Convention outlines the objectives regarding how coastal States harvest their resources; they must promote optimum utilization and give other states access to their surplus of allowable catch (as arranged in official agreements). The Article clearly indicated “ ... the significance of the living resources of the area to the economy of the coastal State concerned ... the requirements of developing States in harvesting part of the surplus and ... minimize economic dislocation in States whose nationals have habitually fished in the zone ...”⁴⁹⁶ The Preamble of the Treaty makes a point of “Recognizing the strong dependence of the Pacific Island parties on fisheries resources and the importance of the continued abundance of those resources.”⁴⁹⁷

It is also significant to acknowledge that Article 72 of the 1982 Convention prohibits any State from transferring fishing access rights to a third party. This stops access certificates being sold on for less to someone else, which would lead to economic disaster and environmental devastation for the Pacific Island States and their tuna resources.

The lack of any other framework which could provide the basis for the determination of an allowable catch for the shared stocks poses some problems for the South Pacific countries. An additional layer to the complexity of determining an allowable catch is that other coastal States with important tuna fisheries in the region are not members of the Agency. These are Indonesia and the Philippines. It would not be possible to set a regional total allowable without consideration for the catch in Indonesia and the Philippines.⁴⁹⁸

In the early stages of their involvement in the Pacific, US access fees under the American Tunaboat Association (ATA) were relatively low in comparison to that paid by the Japanese.⁴⁹⁹ It did not take long for this access fee to escalate due to the rapidly increasing demand for tuna on the world market and increased competition between and among DWFN

---

⁴⁹⁶ Article 62 of the United Nations Convention on the Law of the Sea 1982.

⁴⁹⁷ Preamble, Treaty on Fisheries Between Governments of Certain Pacific Island States and the United States of America, 1987.

⁴⁹⁸ Aqorau, T. “Cooperative Management of Shared Fish Stocks in South Pacific”, in FAO, Papers Presented at the Norway-FAO Expert Consultation on the Management of Shared Fish Stocks, Bergen, Norway, 7-10 October 2002, FAO Fisheries Report No. 695 Supplement, Rome (p.10). Note [ ] was added.

fleets. Other major issues helped alleviate pressure over access fees; for instance foreign aid began to be a part of fishing package agreements. These issues were also influential in the negotiation process.⁵⁰⁰

Fisheries had been regarded as offering a “primary development opportunity for many developing Pacific Island States. These States are some of the poorest and smallest States in the world. For some, their EEZ tuna resources are their only significant resource and are vital to their national well being. Pacific Island States depend upon these stocks as a traditional and important source of food; as a critical form of revenue (US\$60-70 million in access fees); for employment (25,000 regional jobs) and for income (expenditure by locally based vessels is worth US\$130 million).⁵⁰¹

For industrial fisheries, tuna is the main target and distant-water fishing fleets from several countries outside the region participate through access agreements; in fact, Pacific island national fleets take only about 6.5 percent of the total catch of around 1 million tonnes. Small-scale coastal fisheries are divided between those targeting export products and those fishing for domestic consumption. Export production includes high-value products for specific niche markets, for example sea cucumbers, snapper and mother-of-pearl shells.⁵⁰²

Another issue of concern for the region’s fisheries was the fact that the data and information seemed to be inaccurate and incomplete. The information and data used in policy-making were anecdotal. Pacific Island States were concerned that the fishing activities in the high seas would impact the fisheries stocks of the whole region and, subsequently, the economies of Pacific Island States.

Hunt argues that,

The future of tuna stocks is of great socio-economic importance to the region because stocks constitute the region's major renewable resource. The ability of tuna to generate substantial and sustainable income flows has recently come into focus because of the poor economic performance of most PICs (when compared with Caribbean island states, for example), a reduction in aid flowing to the region

---

⁴⁹⁹ Bergin, A. and Howard, M. “Japanese Tuna Fisheries: Future Trends,” *Marine Policy*, May (1992).

⁵⁰⁰ Petersen, E. “The Catch in Trading Fishing Access for Foreign Aid”, *Marine Policy*, 27(2003).

⁵⁰¹ Hanich, Q. And Tsamenyi, M. “Exclusive Economic Zones, Distant Water Fishing Nations and Pacific Small Island Developing States: Who Really Gets all the Fish,” (2006:5), <http://www.fish.wa.gov.au/docs/events/ShareFish/papers/QuentHanich.pdf>.

⁵⁰² South Pacific Commission, Noumea (1996:1-2).

and rapid and unsustainable exploitation of forest resources (principally of Papua New Guinea and the Solomon Islands).⁵⁰³

The economic impact and revenue of the Treaty and other fishing arrangements in the region varies from government to government. For instance, in Kiribati and Tuvalu 30% and 50% of government revenue, respectively, came from tuna.⁵⁰⁴ Many are concerned about the amount paid to the Pacific Island States in access fees. As Joseph (Director of Marshall Islands Marine Resources Authority) puts it, “The amount and the value of the fishery taken out of the Pacific waters amounts to about four billion dollars. And by all assessments the Pacific Islands are not getting a fair share of that four billion dollars.”⁵⁰⁵

Greenpeace states that:

Powerful fishing nations use their financial clout to pressure developing coastal States to exchange access to their fish resources for cash payments or even aid. More often than not these legal agreements lead to resource depletion for the coastal State. This report is a detailed look at these access arrangements as they relate to tuna. It examines how they are used by powerful fishing nations to sustain their distant water fleets. It also shows the impact this has on the economies and natural resource sustainability of the coastal countries which sell the access.⁵⁰⁶

The FFA was established in order to ensure the sustainability of Pacific Island fisheries resources. These resources should generate financial benefits through providing expertise for member States directly involved with fishery negotiations with DWFN, operating regional register fishing vessels and vessel satellite monitoring system.⁵⁰⁷ At the negotiation, both parties had their own individual bargaining advantages; the Pacific Island States have the largest tuna reserve in the world, while the US is the most powerful country in the world. This situation created interesting dynamics around the negotiation table. Other individual trade arrangements between certain Pacific Island States and the US also added to the atmosphere.

---

⁵⁰³ Hunt, C. “Management of the South Pacific Tuna Fishery”, *Marine Policy*, Vol. No. 2 (1997:155).

⁵⁰⁴ Hunt, C. “Management of the South Pacific Tuna Fishery”, *Marine Policy*, Vol. No. 2 (1997:155).

⁵⁰⁵ “New Pacific Fisheries Chief Strengthens Nauru Group”, <http://www.radioaustralia.net.au/pacbeat/stories/201002/s2809875.htm>.

⁵⁰⁶ “Taking Tuna Out of the Can: Rescue Plan for the World’s Favorite Fish”, Greenpeace International, Amsterdam (2007:2-3).

The development of local processing plants would benefit individual countries and the region as a whole economically.

Most Pacific states are in the stage of sale of licenses, Kiribati is moving slowly to on-shore processing, while PNG, Fiji, Samoa and Solomon Islands have processing facilities and are developing national fleets. Other, cross cutting development considerations are: Proper development of the Fisheries Sector presupposes adequate national and regional development strategies to make the right decisions. Such strategies hardly exist in the Pacific region. Development of the sector should contribute to social and economic development, employment and food security and is dependent on good governance.⁵⁰⁸

The development of local canneries would require local and foreign investments, who would need incentives to secure a constant flow of tuna for the local processing plants.⁵⁰⁹ The US purse seine fleet concentrated in the Western and Central Pacific, mainly due to their abundance of tuna and the waters being dolphin-free, as well as the capacity constraints on the fisheries resources in the Eastern Pacific.⁵¹⁰

A difficult issue when negotiating any fishing arrangement is that of the access fee: how much DWFN are willing to pay and whether this is acceptable to the Pacific Island States concerned. Access fees are always a sticky issue in any fishing arrangement.⁵¹¹

Traditionally, fishing arrangements between the Pacific Island States and DWFN were predominantly based on aid and technical assistance.⁵¹² Recently, access attained via cash payments was allowed in order to create more flexible and lenient conditions.

The FFA's principal role was to negotiate DWFN's optimum access fees and associated terms to help maximize advantages for the Pacific Island States.⁵¹³ The most practical and

---

⁵⁰⁷ "Sustainable Tuna Fishing in the South Pacific", <http://www.globaleducation.edu.au/archives/secondary/casestud/southpacific/2tuna.html>.

⁵⁰⁸ Fisheries in the Pacific: Coherence Between Development and Commercial Objectives, prepared by DG DEV/AIDCO Fisheries Task Force (include B. Van Helden/D. Friedrichs, T. Schmale, H. Pilgaard (DEV/C/4); J.Prade, J. Favre (DEV/B/4); F.Affinito/V.Dowd (DEV/C/I) & R.Noë (AIDCO C/5), Pacific Issues Paper No. 1, I/fed\gener\fish9.doc, Brussels, 18 February (2002:4-5).

⁵⁰⁹ Grynberg, R. "WTO Fisheries Subsidies Negotiations: Implications for Fisheries Access Arrangements and Sustainable Management", Commonwealth Secretariat, Economic Affairs Division, London (2003:6-7).

⁵¹⁰ Grynberg, R. "WTO Fisheries Subsidies Negotiations: Implications for Fisheries Access Arrangements and Sustainable Management", Commonwealth Secretariat, Economic Affairs Division, London (2003:7)

⁵¹¹ Codipilly, H.M.A. *Pacific Island Economies: Building a Resilient Economic Base for the Twenty-First Century*, The World Bank, Washington DC (1996).

basic instrument for revenue generation from the region's tuna resources lay in the selling of licenses to DWFN to fish within Pacific Island States' waters. Even though the financial benefits generated for the Pacific Island States through selling licenses were not huge, they significantly contributed to national budgets.⁵¹⁴

Grynberg argues that,

Access=Average Price of Tuna × Average Catch per Vessel × Minimum Rate of Return. This access fee formula or variants thereof have been used by Pacific Island countries as a method for calculating access fees for over a decade. On the basis of current estimates US purse seine owners are paying USD120,000 for access as compared with USD250,000 for access from Japan, Korea and Taiwan. EU purse seiners will pay an extra €65,000 (USD70,000) for access.⁵¹⁵

This formula contrasts sharply with the access fee provisions under the Treaty; the fee is highly subsidized and not related to the catch levels. This means vessels' operators have no reason to under-report or mis-report.⁵¹⁶

The financial benefits reaped by Pacific Island States varied depending on location of the species fished and the size of national jurisdictions.⁵¹⁷ While these financial benefits were based on those factors, they were also subject to variations in the market prices of the different species.⁵¹⁸ For instance, the Federated States of Micronesia (FSM), Kiribati, Marshall Islands (Marshalls), Nauru, Palau, Papua New Guinea (PNG) and Solomon Islands (Solomons) cover 14 million sq. km.⁵¹⁹ This equates to some 69 per cent of the total Pacific

---

⁵¹² Petersen, E. "The Catch in Trading Fishing Access for Foreign Aid", *Marine Policy* 27 (2003:219-228).

⁵¹³ <http://www.ffa.int>; Ben, B., Ramsay, R. and Rothwell, D. *International Environmental Law in the Asia Pacific*, Kluwer Law International Limited, London (1998).

⁵¹⁴ Gillett, R.D. *Tuna: A Key Economic Resource in the Pacific Island*, Report prepared for the Asian Development Bank and the South Pacific Forum Fisheries Agency (2001).

⁵¹⁵ Grynberg, R. "WTO Fisheries Subsidies Negotiations: Implications for Fisheries Access Arrangements and Sustainable Management", Commonwealth Secretariat, Economic Affairs Division, London (2003:9).

⁵¹⁶ Grynberg, R. "WTO Fisheries Subsidies Negotiations: Implications for Fisheries Access Arrangements and Sustainable Management", Commonwealth Secretariat, Economic Affairs Division, London (2003:10).

⁵¹⁷ Gillett, R.D. *Tuna: A Key Economic Resource in the Pacific Island*, Report prepared for the Asian Development Bank and the South Pacific Forum Fisheries Agency (2001).

⁵¹⁸ Codippily, H.M.A. *Pacific Island Economies: Building a Resilient Economic Base for the Twenty-First Century*, The World Bank, Washington DC (1996).

⁵¹⁹ Axline, W.A. (ed.) *The Political Economy of Regional Cooperation: Comparative Case Studies*, Printer Publishers, London (1994); Teiwaki, R. *Management of Marine Resources in Kiribati*, Star Printery Ltd, Suva (1988).

Island States' national jurisdiction, within which US and DWFN fishing activities have taken place.⁵²⁰

Grynberg states that,

The 'access fees' are usually set by negotiation between a PIC and representatives of a distant water fleet. The fee in the purse seine fishery is normally a percentage of the expected catch for a year multiplied by its expected price. The Japanese currently pay a fee of about 5% of expected value to fish under such bilateral agreements. In other cases, there is a lump sum demanded for access. For example, while Kiribati sets fees of approximately 5% of the value of catch under bilateral access arrangements for purse seine fishing, it has been charging the longline vessels of Korea and Japan \$US181 000 per vessel.⁵²¹

Hunt asserts that in 1993, the access fee levels were estimated to be 3.1-5.1% and that, with a total of \$US60 million paid by DWFN to the Pacific Island States, in contrast to the usual bilateral fishing arrangements, the US operates under a regional agreement that sets the annual fee at \$US18 million (for 10 years under the 1993 agreement). The US Tuna Boat Association is subsidized by the US government, which provides \$US14 million; the association itself contributes \$US4 million to the fee of \$US18 million. Under the Treaty a \$US1.8 is also paid annually to the project development fund (PDF) by the FFA.⁵²²

Hunt also argues that,

Fee levels under bilateral agreements were often less than they could have been due to under- and non-reporting of catches to the SPC, particularly by Taiwan and the Republic of Korea. Mandatory port transshipment, begun in June 1993, has improved purse seine catch data, now virtually complete. As well as the indirect benefits of more accurate catch data in terms of setting of access fees there are direct benefits of transshipment to PICs hosting the purse seiners.⁵²³

---

⁵²⁰ Lawson, R. "Fisheries Economic in the South Pacific Region", in Herr, R. (ed.) *The Forum Fisheries Agency: Achievements, Challenges and Prospects*, The University of the South Pacific, Suva (1990:281). See also Doulman, D.J. *Fishing For Tuna: The Operation of Distant-Water Fleets in the Pacific Islands Region*, East-West Center, Honolulu (1986:3-4); Haynes, J. and Brown, D. "An Economic Perspective on Fisheries Levis", *Quarterly Review of the Rural Economy*, Volume 7(4), November (1985).

⁵²¹ Hunt. C. "Management of the South Pacific Fishery, *Marine Policy*, Vol. 21, No. 2 (1997:158).

⁵²² Hunt. C. "Management of the South Pacific Fishery, *Marine Policy*, Vol. 21, No. 2 (1997:158); Crawford, J. *The Law of the Sea in the Asian Pacific Region: Development and Prospect*, Kluwer Academic Publishers, The Netherlands (1995).

⁵²³ Hunt. C. "Management of the South Pacific Fishery", *Marine Policy*, Vol. 21, No. 2 (1997:158).

The Treaty is the only multilateral agreement with the US in force and commentators describe it as an example of how fishing arrangements should be, because it allows for increases in access fees. This makes it unlike bilateral fishing arrangements, where Pacific Island States compete among themselves and the access fee goes down.⁵²⁴

Some Pacific Island States find it difficult to co-operate with others because it would be disadvantageous and it does not serve their best economic interests. The Nauru Group is an example of effective co-operation among certain Pacific Island States as best serves their interests. Ultimately, Pacific Islands States have no choice but to stick together for the benefit and interest of the region as a whole.⁵²⁵

Greenpeace indicates that there have been studies that show that reductions in the number of vessels fishing in the region increase access fees for the Pacific Island States. These increased between 10-40% and in a “modelling exercise conducted in 2000, theoretical reduction of Pacific seine fleet effort to less than 50% of 1996 levels showed fleet revenues would fall by only 15% but that costs would fall by 30%. Most significantly, resource rent (i.e. access fees) would have more than doubled and returns to coastal States from tuna access fees would have risen by 39% under the existing fee structure.”⁵²⁶

Throughout the Treaty negotiations, the access fee issue was among the most difficult to resolve. It took four meetings for both parties to resolve the fee issue, and each involved hard bargaining on both sides.⁵²⁷ This was primarily due to the US offering largely technical assistance, when the Pacific Island States wanted more in the way of cash payments.⁵²⁸

Under current conditions most analysts agree that the distant water tuna fleets in the WCPO (and throughout the world) are operating under very tight margins and that access fees in the range of 5% to 6% of catch value, which most Pacific Island Countries seek and are

---

⁵²⁴ Hunt. C. “Management of the South Pacific Fishery”, *Marine Policy*, Vol. 21, No. 2 (1997:158).

⁵²⁵ Hunt. C. “Management of the South Pacific Fishery”, *Marine Policy*, Vol. 21, No. 2 (1997:158-159).

⁵²⁶ “Taking Tuna Out of the Can: Rescue Plan for the World’s Favorite Fish”, Greenpeace International, Amsterdam (2007:17).

⁵²⁷ Draft Agreement of Fisheries Between Pacific Island States and the United States of America, Composite Draft Agreement Text, as at 21 June 1985.

⁵²⁸ Record of Discussions of Fourth Round of Negotiations Between the Government of the United States and the Governments of the Forum Fisheries Agency States, Held in Wellington, New Zealand, From 17 to 21 June 1985.

able to achieve, are near or at the maximum which the fleets will pay.⁵²⁹

There are economic employment benefits in the region; for instance, the canneries in American Samoa provide jobs for thousands of people within and outside Samoa.⁵³⁰

The deep division between Pacific Island States and DWFN, especially in terms of the management and allocation of fishing rights, has prevented the Pacific Island States from fully benefitting from their tuna resources.⁵³¹ This was abundantly clear during the Treaty negotiation. Even the negotiations of the 1995 Agreement and the Fish Stocks Convention were effected. It seems that the divisions between the two groups may not be resolved any time soon, because their vital interests are represented by their opposing views on the issues.

Industrial tuna fishing is by nature a high risk, high skilled and capital intensive industry (particularly purse seine). By the late 1980s when Pacific Island States first started seriously considering establishing their own tuna industries (partly in response to ongoing low access fees) ... Island States discovered that they had access to the fish, but not the far more lucrative distribution and retail parts of the industry ... In sum, by the time the Pacific Islanders were ready to invest, tuna harvesting and canning had become unprofitable, but going into raw material trading or retail/distribution, which *were* profitable activities, was not a serious option for the Pacific Island countries.⁵³²

In November 1986, the Pacific Island States and American delegations agreed upon the access payment of US\$12 million per annum for a period five years started from June 14, 1988 until June 15, 1993.⁵³³ Breaking down this payment, the US paid US\$10 million in cash, while US\$2 million was paid by the US Fisheries Industry (ATA pays US\$50,000 per

---

⁵²⁹ "Taking Tuna Out of the Can: Rescue Plan for the World's Favorite Fish", Greenpeace International, Amsterdams (2007:17).

⁵³⁰ "Taking Tuna Out of the Can: Rescue Plan for the World's Favorite Fish", Greenpeace International, Amsterdam (2007:20).

⁵³¹ Hanich, Q. And Tsamenyi, M. "Exclusive Economic Zones, Distant Water Fishing Nations and Pacific Small Island Developinjj States: Who Really Gets all the Fish," (2006:8). <http://www.fish.wa.gov.au/docs/events/ShareFish/papers/QuentHanich.pdf>.

⁵³² Hanich, Q. And Tsamenyi, M. "Exclusive Economic Zones, Distant Water Fishing Nations and Pacific Small Island Developinjj States: Who Really Gets all the Fish," (2006:8). <http://www.fish.wa.gov.au/docs/events/ShareFish/papers/QuentHanich.pdf>.

⁵³³ The discussion on access fee payment took four sessions, and finally both parties agreed for \$US 12 millions for five years at the fourth meeting held in Nuku'alofa, Tonga 1986.

vessel – 35 minimum and US\$250,000 technical assistance).⁵³⁴ All payments pursuant to the Treaty and other subsidiary Agreements were received by the Administrator (the Director of the FFA) for distribution and allocation purposes. This amount was estimated to be nine per cent of the landed value of tuna caught in the Pacific Island State parties, which almost doubled the fee paid by other DWFN currently fishing in the region.⁵³⁵ Hence, the Treaty produced the best fishing access fee outcome ever concluded in any fishing arrangement in the region's history of fisheries agreements.⁵³⁶

The access fee was divided into two main pools: some 85 per cent was allocated to Pacific Island States based on catch ratio, the remaining 15 per cent distributed to all Forum member countries excluding Australia and New Zealand. The formulae of access fee distribution, 15% distributed for all Pacific Island parties and remaining 85% distributed base on catch ratio in their respective EEZ; not only a fair formulae for all the Pacific Island States, but also the highest return by far.⁵³⁷

The 15 per cent comprised of project aid and technical development with two funding recipients: (1) an Economic Development Fund, dealing with small fisheries development projects and subject to United States Agency for International Development (USAID) allocations of US\$66,666.67 per country each year; and (2) a Technical Assistance Fund to finance consultancies, training and relevant meetings, for which each country was allocated US\$16,666.67 annually.

The access fee was reviewed during negotiation for a further extension of the Treaty. The FFA Annual Report summarized the access fee received by the FFA as the administrator under the Treaty in 2006:

A total of \$22,099,344 (2006: \$21,861,481) was received from the US as payment for the 19th licensing period, and interest receipts. From this amount, the US Government contributed US\$18 million, of

---

⁵³⁴ Thirteenth Meeting of Member States to Consider a Fisheries Treaty with the United States, Nuku'alofa, Kingdom of Tonga (9-22 October 1986), Briefing Notes, South Pacific Forum Fisheries Agency, Honiara, Solomon Islands, FFA 86/42.

⁵³⁵ Bergin, A. and Haward, M. "The Last Jewel in a Disintegrating Crown – The Case of Japanese Distant Water tuna Fisheries", *Ocean Development and International Law* 25 (1994:200).

⁵³⁶ Gillett, R., McCoy, M., Rodwell, L. and Tamate, J. "Tuna: A key Economic Resource in the Pacific Islands", <http://www.adb.org/documents/reports/tuna/tuna.pdf>.

⁵³⁷ *Taking the Tuna Out of the Can: Rescue Plan for the World's Favorite Fish*, Greenpeace International, Amsterdam (2007:20).

which \$17,820,000 was received in June 2006, and the balance of \$180,000 paid in September 2006. Distribution of the funds was based on the current procedures provided in Article 1 of Schedule 1 of the Internal Agreement. The procedures require that a total of US\$18 million is to be distributed as follows: Administration budget is deducted first; A total of US\$1.778 million for Project Development Fund (PDF) is then deducted; 15% from the balance is distributed equally to the 16 Pacific Island Parties; and 85% from the balance is distributed based on the catch made in the Parties' waters.⁵³⁸

In June 2006, the Project Development Fund payment received by the FFA totalled US\$1.778 million, which was distributed equally to all Pacific Island parties (US\$111,125 each), apart from Australia, which donated its share back to the FFA Secretariat, and New Zealand, which donated its share to Tokelau.⁵³⁹ In June of the same year, the 15% (a total of US\$2,355,360) was distributed equally to the Pacific Island parties, with each of the 16 Pacific Island States receiving US\$147,210 each.⁵⁴⁰ In December of the same year, the 85% allocation of a total US\$13,979,368 was distributed to the Pacific Island parties in December 2006 based on the catch ration agreed upon under the Treaty.⁵⁴¹

From an economic perspective, the access fee is the way to go for the Pacific Island States, even though the estimation of the 'right' cost is always challenging. As Hunt puts it,

... the estimation of rents is very difficult--fishers always claim that costs are high and rents low. In any case rents vary from vessel to vessel, fleet to fleet and from season to season. Therefore, the usual method employed to extract the resource owner's share of the rent in the region is a fee based on the expected value of catch. While the proportion of value of catch and licence fee methods are distortionary (compared with a royalty) and transfer risk to the fishing nation, they are easy to calculate and provide a relatively more certain level of income for the resource owners than would royalties.⁵⁴²

Imposing certain terms and conditions on DWFN fleets to compliment the access fee would increase the economic benefits gained by the Pacific Island States through off-shore employment and other activities.⁵⁴³ At the same time, generally DWFN industrial purse-seine

---

⁵³⁸ *Annual Report 2007*, Pacific Islands Forum Fisheries Agency, Honiara, Solomon Islands (2007: 26).

⁵³⁹ *Annual Report 2007*, Pacific Islands Forum Fisheries Agency, Honiara, Solomon Islands (2007:27).

⁵⁴⁰ *Annual Report 2007*, Pacific Islands Forum Fisheries Agency, Honiara, Solomon Islands (2007:27).

⁵⁴¹ *Annual Report 2007*, Pacific Islands Forum Fisheries Agency, Honiara, Solomon Islands (2007:27).

⁵⁴² Hunt. C. "Management of the South Pacific Fishery, *Marine Policy*, Vol. 21, No. 2 (1997:157).

⁵⁴³ *Taking Tuna Out of the Can: Rescue Plan for the World's Favorite Fish*, Greenpeace International, Amsterdams (2007:18).

and longline fleets create only a marginal number of job opportunities for coastal States and economic connections attached to domestic ports and markets.⁵⁴⁴ Maximising access fees for the Pacific Island States seemed to be the only viable way, yet other options have been developed—for instance, Fiji used a small-scale, long-line model to create a successful export, while Solomon Islands have created a substantial bait fishery.⁵⁴⁵

The classical example of such collaboration in the region is the *Treaty on Fisheries between the Governments of certain Pacific Island States and the Government of the United States*. Under the Treaty, the United States Government and tuna industry pay for the right to fish. In consideration of payment of such fees, the South Pacific countries agree to provide access for up to 40 US purse seiners in their EEZs. US purse seiners operate in all sixteen EEZs of the South Pacific countries on similar terms and conditions although individual reporting requirements have to be complied with when fishing in the EEZs.⁵⁴⁶

The Pacific Island States are just like “those coastal States with little capacity to develop their own fishery-based industries, engaging in the resource renter strategy may remain the only option. It is therefore essential that access agreements are negotiated according to principles and standards that safeguard sustainability, ensure the maximum benefits to the coastal State (the custodian of the resource for its people), and ensure that the risks arising from overfishing, financial losses and socio-economic pitfalls are minimized.”⁵⁴⁷

Part 1, Schedule 2 of Annex II of the Treaty outlined the access fee payment to be paid by the US and is quoted below.

1. The amounts payable as set forth in this paragraph:
  - (a) Annual industry payments shall be made as follows:
    - (i) for the first annual Licensing Period, a lump sum of US\$1.75 million for 35 vessels, with the next five licenses to be made available for the same pro-rate payment as the first 35 licenses, and an additional 10 licenses to be made available at US \$60,000 per vessel;

---

⁵⁴⁴ *Taking the Tuna Out of the Can: Rescue Plan for the World's Favorite Fish*, Greenpeace International, Amsterdam (2007:22).

⁵⁴⁵ *Taking the Tuna Out of the Can: Rescue Plan for the World's Favorite Fish*, Greenpeace International, Amsterdam (2007:22).

⁵⁴⁶ Aqorau, T. “Cooperative Management of Shared Fish Stocks in South Pacific”, in FAO, Papers Presented at the Norway-FAO Expert Consultation on the Management of Shared Fish Stocks, Bergen, Norway, 7-10 October 2002, FAO Fisheries Report No. 695 Supplement, Rome (p.7).

⁵⁴⁷ *Taking the Tuna Out of the Can: Rescue Plan for the World's Favorite Fish*, Greenpeace International, Amsterdam (2007:16).

(ii) for the subsequent annual Licensing Periods, 40 vessels licenses calculated on the same basis as the 40 vessel licenses in subparagraph (a) and indexed to the price of fish as set forth below, with 10 additional licenses to be made available at US\$ 60,000 per vessel and indexed to the price of fish as set forth below.

The US had to pay US\$50, 000 per vessel for the first 40 vessels, and US\$60,000 per vessel for ten extra vessels.⁵⁴⁸ A total of 50 licenses would be made available for American fishing vessels during the five year licensing period.

Hanich and Tsamenyi argue that,

There is no doubt that EEZs have brought Pacific Island States some benefits and increased economic opportunities. Access fees deliver needed financial contributions to governments ... The EEZs have also become an important motivation for DWFNs to donate foreign aid into the Pacific. For example, fisheries access was the original motivation for one of the region's largest donors, Japan, and continues to be a major factor driving its Pacific aid policies. In 1998-99, Japan donated approximately US\$152.7 million of bi-lateral aid to the region.⁵⁴⁹

It is estimated that 10% or less of the total catch is taken by Pacific Island States, which makes up about 41 % of the catch coming from their EEZs. Approximately 3.5 - 6% (or around \$60-70 million) of the value of the catch is returned to Pacific Island States in access fees.⁵⁵⁰ These figures are self-explanatory in terms of offering little revenue to the Pacific Island States, with the bulk of the benefit going to the DWFN.

Schedule 2 of the Treaty also outlined vessel payment calculations, as cited below:

(ii) Calculation and Application of Indexing Factor

---

⁵⁴⁸ Thirteenth Meeting of Member States to Consider a Fisheries Treaty with the United States (Briefing Notes), Nuku'alofa, Kingdom of Tonga, 9-22 October 1986, South Pacific Forum Fisheries Agency (FFA Report 86/42), Honiara, Solomon Islands.

⁵⁴⁹ Hanich, Q. And Tsamenyi, M. "Exclusive Economic Zones, Distant Water Fishing Nations and Pacific Small Island Developing States: Who Really Gets all the Fish," (2006:5-6), <http://www.fish.wa.gov.au/docs/events/ShareFish/papers/QuentHanich.pdf>.

⁵⁵⁰ Hanich, Q. And Tsamenyi, M. "Exclusive Economic Zones, Distant Water Fishing Nations and Pacific Small Island Developing States: Who Really Gets all the Fish," (2006:5-6), <http://www.fish.wa.gov.au/docs/events/ShareFish/papers/QuentHanich.pdf>.

A. To obtain the indexing factor by which the Adjusted Individual Vessel Payment shall be calculated, divide the Average Estimated Landed Value for the preceding four quarters by the Base Price.

B. To obtain the Adjusted Individual Vessel Payment, multiply the Base Vessel Payment by the indexing factor obtained in Paragraph (ii) A.

C. In no case shall the Adjusted Individual Vessel Payment be less than the Base Vessel Payment.

The definitions of these indexing factors for calculation of the vessel payment were outlined in Part 1(b)(a-g), Schedule 2, Annex II of the Treaty.⁵⁵¹ The Treaty's Administrator had to consult US representatives when the price categories changed in order to revise the formula.⁵⁵² In addition:

There shall be no pro-ratio of the Base Vessel Payment or the Adjusted Individual Vessel Payment. There shall be no refunds of the Base Vessel Payment or the Adjusted Individual Vessel Payment following license issuance pursuant to Annex II.⁵⁵³

---

⁵⁵¹ A. Base Vessel Payment (BVP): The BVP is \$US 50,000 for the first 40 vessels to be licensed and \$US 60,000 for vessels to be licensed in excess of 40 vessels.

B. Adjusted Individual Vessel Payment (AIVP): The AIVP is the individual vessel payment of each annual Licensing Period (LP) after the first annual Licensing Period. The AIVP will always apply to the LP immediately following its calculation.

C. Landed Price (LP): The LP is the published standard price per ton (American Tuna Sales Association) for fish deliver to American Samoa prevailing at the time a United States purse seine arrives in port for the purpose of offloading its catch.

D. Average Landed Price (ALP): The ALP is calculated by averaging the established landed price categories for yellowfin and skipjack tuna in American Samoa. The landed price categories to be used are: over 7.5 pounds, 4 to 7.5 pounds and 3 to 4 pounds for skipjack; over 20 pounds, 7.5 to 20 pounds and 4 to 7.5 pounds for yellowfin.

E. Base Price (BP): The BP is the ALP for the three months prior to the Treaty entering into force. F. Estimated Landed Price in effect at the time of a vessel's landing weighted by the yellowfin/skipjack mix ration to be calculated from information on Schedule 6 for the vessel.

G. Average Estimated Landed Value (AELV): The AELV is the ELV for all landings by United States purse seine vessel in American Samoa in the four quarters preceding the final quarters of the applicable licensing period divided by the total number of those landings for the same period.

⁵⁵² Part I(1)(b)(iv), Schedule 2 of the original Treaty.

⁵⁵³ Part I, (1)(c), Schedule 2 of the original Treaty.

The extended Treaty increased the access payment from US\$12 million under the original Treaty to US\$18 million per annum. The Administrator was to make available a maximum of 55 licenses for American fishing vessels over the ten year licensing period.

Additional agreements were added under the extended Treaty relating to payment procedures and distribution. These Agreements included the *Agreement Among Pacific Island States Concerning the Implement and Administration of the Treaty on Fisheries Between the Governments of Certain Pacific Island States and the Government of the United States of America* (Internal Agreement); and the *Agreement Between the Government of the United States of America and the South Pacific Forum Fisheries Agency* (FFA Agreement).

The FFA Agreement provided procedures for the allocation of funds referred to within the principal extended Treaty for the purposes of developing the Pacific Island States' fisheries resources and the role of the FFA in relation to the allocation of the fund on behalf of the Pacific Island State parties pursuant to the Treaty.

Pursuant to the Agreement, the FFA shall control and administer the fund. It is agreed that the fund will solely be used for the purposes of supporting economic development in accordance with section 531(e) of the 1961 US Foreign Assistance Act.

Under the FFA Agreement, both the FFA and the US emphasized the need to:

... continue and strengthen the ties of friendship, understanding and co-operation which have historically linked the United States and the peoples of the member States of the South Pacific Forum Fisheries Agency.⁵⁵⁴

In addition, the Preamble of the principal Treaty noted the commitment of the Pacific Island States to fully developing their economies by providing employment for the people of the region. Also expressed was the belief that economic co-operation would benefit both the people of the South Pacific and the US.

Article 4 of the Agreement outlined the amount of the fund and its specific purpose quoted below in full.

---

⁵⁵⁴ Preamble of the extended Treaty.

4.1 During the time this Agreement is in force, the Government of the United States shall make annual cash payments to the FFA for the fund – from the Agency for the International Development – in an average amount of fourteen million U.S. dollars (US\$14,000,000), subject to the availability of funds for this purpose. The Government of the United States shall provide such fund in accordance with either of the following:

- (a) fourteen million U.S. dollars (US\$14,000,000) annually; or
- (b) ten million U.S. dollars (US\$10,000,000) for 1993 and fourteen million U.S. dollars (US\$14,000,000) annually thereafter. An additional four million U.S. dollars (US\$4,000,000), otherwise payable in respect of 1993, is payable in accordance with a schedule to be notified by the Government of the United States following the entry into force of this Agreement.

4.2 The FFA shall, in accordance with Article 3.1 above, obtain annual assurance from the Pacific Islands States party to the Treaty on Fisheries referred to in Article 2 above that any payments made under this Agreement were used solely to support economic development purposes, and not for military or paramilitary uses. Nothing in this paragraph shall be construed to confer audit rights under this Agreement other than as provided in Article 3.3 above.

The Internal Agreement stipulated the terms and conditions regarding how the fund should be distributed and allocated. Any payment received by the Administrator pursuant to the Treaty would be deposited in American currency in an ensured bank account in the Pacific region, allowing the fund to earn the highest interest available.⁵⁵⁵ It was the sole responsibility of the Administrator to distribute funds under the Treaty.⁵⁵⁶ The auditor of the FFA was required to audit the account in relation to payments made pursuant to the Treaty prior to the distribution of funding.

The distribution of the fund pursuant to the Treaty started by deducting FFA administrative costs, which were outlined previously. The remaining fund was then divided into two pools. The first 15 per cent (an estimated \$US1.23 million) was distributed equally among the Pacific Island State parties. Australia donated its received share to the core budget of the FFA.⁵⁵⁷ The remaining 85 per cent (an estimated US\$6.93 million) would be distributed based on the volume of catches from the Licensing Areas of the respective Pacific Island

---

⁵⁵⁵ Article 8(8.1) of the Internal Agreement.

⁵⁵⁶ Article 8(8.2) of the Internal Agreement. See Article 2 of the Internal Agreement for other responsibilities of the Administrator pursuant to the Agreement.

⁵⁵⁷ <http://www.daff.gov.au/fisheries/international/multilateral/pacific-ocean-fora>.

State parties. Most amounts were distributed between Papua New Guinea and the Federated States of Micronesia, Kiribati, Palau and Marshall Islands.⁵⁵⁸

Access fees, however, represent only a small fraction of the value of the tuna fish harvested by foreign vessels. Currently, average access fees are a little more than 4 percent of the value of the catch (that is, the reported catch - illegal fishing by some countries may be high). To capture additional benefits many of the islands are endeavoring to develop further their own commercial fishing capabilities as well as improve their port, fish processing and transshipment facilities associated with offshore fishing operations.⁵⁵⁹

Investing in fisheries development is a risky undertaking and governments in the region may only provide assistance for the fisheries industry through building infrastructure and other initiatives.⁵⁶⁰

The distribution of funds by the Administrator should be carried out as soon as practical, but no later than six months after the end of the Licensing Period.⁵⁶¹ The Administrator should also maintain a separate fund for the observer costs stipulated in Part 7, Annex I of the Treaty.⁵⁶² The operator of the American fishing vessels was made responsible for the costs of the observers, which were paid annually as a lump sum to the Administrator.⁵⁶³ The formula for the observer payment was based on the:

... number of licensed United States vessels multiplied by the average annual number of trips per vessel for the latest licensing period for which information is available multiplied by 20 percent multiplied by the cost per trip (US\$4,000 equates lump sum payment. In addition in the first two years following 15 June 1993, an additional payment of US\$15,000 per year for training shall be made to the Administrator.⁵⁶⁴

The Administrator was required to apply the fund in the manner specified by the Pacific Island State parties at an annual consultation, pursuant to Article 7 of the Treaty.

---

⁵⁵⁸ "Tuna: Pacific's Most Valuable Asset", <http://www.greenpeace.org/raw/content/australia/resources/reports/overfish/tuna-pacific-s-most-valuable-a.pdf>.

⁵⁵⁹ Western Pacific Regional Fishery Management Council, July (1999:5).

⁵⁶⁰ Western Pacific Regional Fishery Management Council, July (1999:5).

⁵⁶¹ Schedule 1(3)&(4) of the Internal Agreement.

⁵⁶² Schedule 1(5) of the Internal Agreement.

⁵⁶³ Part 7(24)(a) and (b), Annex I of the Treaty.

⁵⁶⁴ Part 7(24)(b), Annex I of the Treaty.

The Pacific Island States should not make the mistake of relying too strongly on the economic hope offered by the 1982 Convention; they should continue to promote the economic development of their fisheries resources and to secure overexploitation.⁵⁶⁵

Initial attempts by the PICs to obtain reasonable access to resource rents accruing from their fisheries were hampered by their negotiation experiences with the Japanese, who in the early 1980s harvested about three-quarters of the tuna stocks. Moreover, early experiences of multilateralism in the 1970s in other areas, such as air transportation, which have been less than successful have made some PICs reluctant to collaborate and bargain as a group.⁵⁶⁶

The multilateral approach to fishing arrangements proved unpopular with some DWFN, particularly the Japanese, who usually manipulated the negotiation using a ‘divide and conquer’ strategy by refusing to negotiate multilaterally, leaving the Pacific Island States to compete against each other.⁵⁶⁷ Cooperation among Pacific Island States in terms of seeking better access fees was the only way to go in terms of collective negotiation. The Nauru Group spearheaded this and, subsequently, the Treaty. At the same time, the DWFN started to compete amongst themselves, which was a reverse of the bilateral approach and access fees increased as result. This improvement was basically determined by the Pacific Island States shift from a bilateral to a multilateral approach—DWFN had no choice in the matter, because the owners of the tuna resources had spoken.

Although some cooperation between PICs has been successful, it may be possible that PICs could improve potential payoffs through further co-operation, particularly on economic issues ... better bargaining power in terms of access fees with DWFNs from the current mean level of about 40% of the total rent ... increased resource rent and greater population resilience from moving to lower rates of exploitation that could more than double the resource rent from the fisheries.⁵⁶⁸

Cooperation is not necessarily a bad thing and both the Pacific Island States and the DWFN would be better off if they embraced cooperation and negotiation in a way benefitted both

---

⁵⁶⁵ Parris, H. and Grafton, R.Q. “Tuna-Led Sustainable Development in the Pacific”, Asia Pacific School of Economics and Governments, Australian National University, Canberra (2005:2).

⁵⁶⁶ Parris, H. And Grafton, R.Q “Tuna-Led Sustainable Development in the Pacific”, Asia Pacific School of Economics and Government, Australian National University, June (2005:3).

⁵⁶⁷ Parris, H. And Grafton, R.Q “Tuna-Led Sustainable Development in the Pacific”, Asia Pacific School of Economics and Government, Australian National University, June (2005:3).

⁵⁶⁸ Parris, H. And Grafton, R.Q “Tuna-Led Sustainable Development in the Pacific”, Asia Pacific School of Economics and Government, Australian National University, June (2005:5).

groups.⁵⁶⁹ Fisheries management is nothing new; fisheries resources to which people have open access cannot be maintained if subjected to a rational level of exploitation.⁵⁷⁰ The region's fisheries sector is among the primary drivers of Pacific Island States' economic development. In some Pacific Island States, the fishery is the power house of their economic development.⁵⁷¹

The promotion of sustainable fisheries and the implementation of regional and national arrangements to ensure that fisheries resources are utilized rationally are major social and economic policy issues in the South Pacific and most states and territories are attempting to deal with overfishing of inshore resources.⁵⁷²

DWFN's fleets are attracted to the Pacific region's fisheries resources mainly due to unavoidable fishing restrictions and/or declining fisheries stocks in other parts of the world. HMS resources are highly mobile and catches fluctuate between seasons annually.⁵⁷³ The Pacific Island States should also work hard on the implementation and enforcement of the terms and conditions of fisheries agreements—including the Treaty—in order to maintain their tuna resources in a sustainable manner.

The harmonization of terms and conditions of access for foreign fishing vessels is intended to provide a framework in which all fishing vessels operate under the same regulations. If a multinational fishery is to be managed effectively, fishing vessels must comply with the same terms and conditions regardless of which EEZ they fish.⁵⁷⁴

The harmonization of the Pacific Island States fisheries resources established due to the high mobility of both the tuna and the fishing fleets. Harmonized terms and conditions include

---

⁵⁶⁹ Parris, H. And Grafton, R.Q "Tuna-Led Sustainable Development in the Pacific", Asia Pacific School of Economics and Government, Australian National University, June (2005:5).

⁵⁷⁰ Moron, J. "Tuna Fishing Capacity: Perspective of Purse Seine Fishing Industry on Factors Affecting It and Its Management", in Methodological Workshop on the Management of Tuna Fishing Capacity: Stock Status, Data Development Analysis, Industrial Survey and Management Options, La Jolla (California), 8-12 May 2006.

⁵⁷¹ Aqorau, T. "Cooperative Management of Shared Fish Stocks in South Pacific", in FAO, Papers Presented at the Norway-FAO Expert Consultation on the Management of Shared Fish Stocks, Bergen, Norway, 7-10 October 2002, FAO Fisheries Report No. 695 Supplement, Rome (p.7).

⁵⁷² Aqorau, T. "Cooperative Management of Shared Fish Stocks in South Pacific", in FAO, Papers Presented at the Norway-FAO Expert Consultation on the Management of Shared Fish Stocks, Bergen, Norway, 7-10 October 2002, FAO Fisheries Report No. 695 Supplement, Rome (p.7).

⁵⁷³ Western Pacific Regional Fishery Management Council, July (1999:5).

licensing, not transshipping at sea, full access being given to authorized officers by operators and submitting catch logs for operations.⁵⁷⁵

Parris and Grafton argues that,

A major strategy pursued by PICs to achieve the desired economic benefits from their tuna fisheries has been ‘domestication’, or the process of developing and/or then integrating domestically located harvesting and processing sectors to serve export markets.⁵⁷⁶

Pacific Island States encouraged domestication through growing their domestic tuna industry. Industry development conditions should be attached to access arrangements.⁵⁷⁷

Conclusions

The future of the Pacific Island States’ ability to economically benefit from their fisheries through either selling fishing licenses or direct exploitation depends on the how HMS stocks in the region are managed and exploited,⁵⁷⁸ through relevant regional and international instruments. Parris and Grafton argue that,

PICs have chosen to focus on the harvesting sector in terms of their public sector investment. Unfortunately, the harvesting of tuna generates highly variable revenues, requires large upfront sunk costs and substantial technical requirements. The high investment costs and the fickle nature of fishing has meant that mistakes have been made that are financially burdensome for some PICs.⁵⁷⁹

---

⁵⁷⁴ Aqorau, T. “Cooperative Management of Shared Fish Stocks in South Pacific”, in FAO, Papers Presented at the Norway-FAO Expert Consultation on the Management of Shared Fish Stocks, Bergen, Norway, 7-10 October 2002, FAO Fisheries Report No. 695 Supplement, Rome (p.7).

⁵⁷⁵ Aqorau, T. “Cooperative Management of Shared Fish Stocks in South Pacific”, in FAO, Papers Presented at the Norway-FAO Expert Consultation on the Management of Shared Fish Stocks, Bergen, Norway, 7-10 October 2002, FAO Fisheries Report No. 695 Supplement, Rome (p.7).

⁵⁷⁶ Parris, H. and Grafton, R.Q. “Tuna-Led Sustainable Development in the Pacific”, Asia Pacific School of Economics and Governments, Australian National University, Canberra (2005:4).

⁵⁷⁷ Parris, H. and Grafton, R.Q. “Tuna-Led Sustainable Development in the Pacific”, Asia Pacific School of Economics and Governments, Australian National University, Canberra (2005:4).

⁵⁷⁸ Hunt, C. “Management of the South Pacific Fishery”, *Marine Policy*, Vol. 21, No. 2 (1997:162).

⁵⁷⁹ Parris, H. and Grafton, R.Q. “Tuna-Led Sustainable Development in the Pacific”, Asia Pacific School of Economics and Governments, Australian National University, Canberra (2005:4).

Lack of natural resources in the South Pacific has remained the major impediment to Pacific Island States' economic development.⁵⁸⁰ Even though tuna resources exist in abundance throughout the region, offering potential long-term economic advantages, the essential infrastructure needed to develop these potential resources is lacking.⁵⁸¹

Nevertheless, Pacific Island State parties see an opportunity in the Treaty to develop their fisheries resources. As demonstrated in this Chapter, the Treaty does not differ from other fishing agreements in regard to selling fishing licenses to the DWFN. However, access payments made by the US under the Treaty are higher than those for any other DWFN fishing in the region. That premium is more a result of US political and military interests in the South Pacific than it is a commitment to a genuine economic program designed to benefit the Pacific Island States (in terms of the long-term development of their tuna resources). Overall, the Treaty did not alter the economic processes nor benefit the Pacific Island State parties as expected.

The financial benefits obtained by the Pacific Island State parties are relatively minor when compared to the substantial economic benefits gained by the US under the Treaty.⁵⁸² Generally, the access fee paid by US under the Treaty and other DWFN fishing agreements has been estimated to be around five per cent of the value of canning tuna.⁵⁸³ Accordingly, the US has benefited both politically and economically.

The higher access payment package provided by the Treaty has underlined the close cooperation that has developed between Pacific Island State parties and the FFA. Although the FFA performed admirably throughout the Treaty negotiation, it has yet to meet the

---

⁵⁸⁰ Fisheries in the Pacific: Coherence Between Development and Commercial Objectives, prepared by DG DEV/AIDCO Fisheries Task Force (include B. Van Helden/D. Friedrichs, T. Schmale, H. Pilgaard (DEV/C/4); J.Prade, J. Favre (DEV/B/4); F.Affinito/V.Dowd (DEV/C/I) & R.Noë (AIDCO C/5), Pacific Issues Paper No. 1, I:\fed\gener\fish9.doc, Brussels, 18 February (2002:4-5).

⁵⁸¹ *Taking the Tuna Out of the Can: Rescue Plan for the World's Favorite Fish*, Greenpeace International, Amsterdam (2007).

⁵⁸² Parris, H. and Grafton, R.Q. "Tuna-Led Sustainable Development in the Pacific", Asia Pacific School of Economics and Governments, Australian National University, Canberra (2005:4).

⁵⁸³ Hunt, C. *Pacific Development Sustained: Policy for Pacific Environment*, Australian National University, Canberra (1998: 62); See also Christy, C. *Forms of Foreign Participation in Fisheries: Coastal State Policy* (1983); Clement-Jones, R. *Public Investment and Taxation: Approaches to Investment*, East-West Center, Honolulu (1987).

challenge of adopting a more aggressive position in promoting the sustainable development of Pacific Island States' fisheries resources into the longer term.⁵⁸⁴

The Pacific Island States' ability to take advantage of and sustain the potential economic benefits of their fisheries resource depends on how they manage these resources. Management requires the collection of accurate and complete data, which can inform the creation of an effective, sustainable model of exploitation. Environmental conservation and management initiatives should also be part of the access package.

In the Pacific, access to fisheries has typically been granted on a bilateral basis, either between a DWFN government and a Pacific government, or between a Pacific government and a foreign fishing association or company. Agreements are usually renegotiated each year and determined on the basis of the previous year's price and catch. Since the 1970s, fees paid to Pacific ACP states have slowly risen from around four percent of the catch value to the current rate of around five or six percent.⁵⁸⁵

Bilateral fishing arrangements are secretive in nature. It is very hard to find out the exact fee and the other components that make up the whole package. This creates opportunities for corruption.⁵⁸⁶

For the Pacific Island States to rectify the overall imbalance that exists between the access fees obtained and the benefits gained from the US (and other DWFN), they must urgently consider other options. These include direct foreign investment through joint ventures, which could provide employment opportunities for local populations.⁵⁸⁷ Locally-owned fisheries

---

⁵⁸⁴ See Lewis, A.D. "Fisheries Research in the South Pacific: Overview", in Herr, R (ed.) *The Forum Fisheries Agency: Achievements, Challenges and Prospects*, The University of the South Pacific, Suva (1990:286).

⁵⁸⁵ Fishing for Future, the Advantages and Drawbacks of a Comprehensive Fisheries Agreement Between the Pacific and European Union, Oxfam New Zealand (p.7), <http://www.oxfam.org.nz/imgs/pdf/oxfam%20nz%20fisheries%20final%2019%20oct.pdf>.

⁵⁸⁶ Fishing for Future, the Advantages and Drawbacks of a Comprehensive Fisheries Agreement Between the Pacific and European Union, Oxfam New Zealand (p.7), <http://www.oxfam.org.nz/imgs/pdf/oxfam%20nz%20fisheries%20final%2019%20oct.pdf>.

⁵⁸⁷ See Doulman, D.J. "A Critical Review of Some Aspects of Fisheries Joint Ventures", in Campbell, H., Menz, K. and Waugh, G. *Economics of Fishery Management in the Pacific Islands Region*, University of Tasmania, Hobart (1989); Doulman, D.J. *The Tuna Industry in the Pacific Island Region: Opportunities for Foreign Investment*, East-West Center, Honolulu (1985); Bour, W. and Galenon, P. *The Development of Tuna Fisheries in the Western Pacific*, South Pacific Commission, Noumea (1979); Buchholz, H.J. *New Approaches to Development Cooperation with South Pacific Countries*, Breitenbach, Fort Lauderdale (1987); Howard, M.C. *Transnational Corporations and the Island Nations of the South Pacific*, The University of Sydney, Sydney (1986); Jayaraman, T.K. *Private Investment and Macroeconomic Environment in the South Island Countries: A Crosscountry Analysis*, Asian Development Bank, Manila (1996); King, M.G. *Fisheries in the Economy of the South Pacific*, The University of the South Pacific, Suva (1991); Skapin, B. and Pintz, W.S. *Financing a Tuna*

industries require access to relevant fishing equipment and technologies in order to compete with foreign operators in the region and to access the world markets with their fish products.

Grynberg argues that,

The US agreement with extensive subsidies is far more conducive to sustainability because it is multilateral in nature, transparent to all parties and in large measure respecting of environmental and marine standards established in the Pacific Islands. The US treaty is widely regarded in fisheries circles as a model and that US Distant Water Fishing Fleet behaviour in terms of sustainability and monitoring is exemplary. The USA is widely seen as the DWFN that is least involved in under-reporting and misreporting. The reason for this is because the treaty is based on access fees that are decoupled from fish catches. Thus whether the US fleets reports catches on the high seas or on the EEZ of the Pacific Island Countries it will not affect the amount of access it will pay in the current years. Thus the US Treaty imposes an access fee regime that is the equivalent of a lump sum tax and thus does not distort behaviour.⁵⁸⁸

The development and environmental conservation of the fisheries resources in the region is of paramount importance for the Pacific Island States now and the future. These resources are vital sources of food and have a serious impact on the welfare of the region's population. However, the adoption of the 1982 Convention (and the concept of EEZ in particular) has brought about some advantages and some disadvantages for the Pacific Island States. For instance, the land-sea ratio is now 1:51.⁵⁸⁹

Another consideration for PICs, in terms of the domestication of their fishing industry, is the very substantial cost associated with fisheries management. In a number of countries outside of the region the costs of fisheries management exceed the potential benefits from the fisheries. This suggests that a 'go-it-alone' strategy in terms of harvesting and managing tuna may be a costly exercise for PICs that may generate few, if any, net benefits. The question for advocates of 'domestication' is, therefore, what should be the nature of the partnerships between PICs and DWFNs that will maximise the payoffs to the Pacific states.⁵⁹⁰

Project, East-West Center, Honolulu (1987); Sullivan, J.J. *Pacific Basin Enterprise and the Changing Law of the Sea*, Lexington Books, Masschuttes (1977).

⁵⁸⁸ Grynberg, R. "WTO Fisheries Subsidies Negotiations: Implications for Fisheries Access Arrangements and Sustainable Management", Commonwealth Secretariat, Economic Affairs Division, London (2003:9-10).

⁵⁸⁹ Grynberg, R. "WTO Fisheries Subsidies Negotiations: Implications for Fisheries Access Arrangements and Sustainable Management", Commonwealth Secretariat, Economic Affairs Division, London (2003:9).

⁵⁹⁰ Parris, H. and Grafton, R.Q. "Tuna-Led Sustainable Development in the Pacific", Asia Pacific School of Economics and Governments, Australian National Univesity, Canberra (2005:5).

In addition, a regional cannery could potentially be run, operated and managed by the Pacific Island States through the FFA. These developments would nevertheless have to face the difficult problem of gaining access to the US and other markets. Appropriate technology and expertise would be required; governments of the region would have to be directly involved in the complete process, which would extend from initial negotiation through to the possible establishment of a regional cannery. Getting this venture to work will require strong central government direction and economic vision. Pacific Island States also need to get directly involved in negotiations with the US government and the American fisheries industry over protectionist measures taken against overseas fish products entering US markets.

Relative socio-political and economic circumstances among Pacific Island States would be constantly challenging in terms of the environmental conservation and management of the region's fisheries resources. As a region, the Pacific Island States share common conservation and management interests in terms of tuna resources and yet have their own separate national development strategies that are not always aligned:

With the exception of their dealings with the US in which they act collectively, most dealings with DWFNs have been through bilateral dialogue. While the advantage is that they are able to tailor the outcomes to suit their national interests, DWFNs have been successful in playing one country off against another resulting in a dissipated return in access fees. It is argued that collective bargaining and having a centralized licensing system would strengthen rather than weaken the South Pacific countries negotiating powers and potentially increase revenue from the resource.⁵⁹¹

Greenpeace asserts that while maximizing economic revenues for the Pacific Island States' fisheries by reducing effort and fishing capacity would reduce pressure on fisheries stocks:

... it will not alone guarantee that tuna fishing will be sustainable. Under current tuna access agreements, coastal States assume all the risks associated with resource depletion as the fees they receive are based on a percentage of the present-day cash-value of the estimated catch taken by foreign fleets.⁵⁹²

---

⁵⁹¹ Aqorau, T. "Cooperative Management of Shared Fish Stocks in South Pacific", in FAO, Papers Presented at the Norway-FAO Expert Consultation on the Management of Shared Fish Stocks, Bergen, Norway, 7-10 October 2002, FAO Fisheries Report No. 695 Supplement, Rome (p.11).

⁵⁹² *Taking the Tuna Out of the Can: Rescue Plan for the World's Favorite Fish*, Greenpeace International, Amsterdam (2007:18).

The socio-economic desperation among Pacific Island States puts pressure on fish stocks; individual governments feel the pressure of their legal obligations under regional and international environmental instruments and institutions.

The annual average tuna harvest from the region is currently about 1 million metric tonnes with a landed value close to US\$1.7 billion. Approximately 90 per cent of this catch is harvested by distant-water fishing nations who pay access fees of approximately 4 per cent of their gross revenue of the catch.⁵⁹³

It has been argued that the access fee is very much under market value, although a proper risk premium for vessel owners is justified.⁵⁹⁴

HMS is the most important tuna species in the region, with a US\$3 billion price tag. It provides Pacific Island States with about 10% of their combined GDP, as well as providing employment for 6-8% of the population (21,000-31,000 people).⁵⁹⁵ Therefore, taking the time to consistently, seriously consider how tuna resources in the region are exploited will be the key to maintaining sustainable development in the long term. Even though the Treaty was a lucrative deal from the Pacific Island States' perspective (in terms of both monetary aid and technical assistance),⁵⁹⁶ careful further consideration is required regarding the key provisions for the future. As one international group of activists have argued:

Pacific Island governments need to realise that the key to increasing income from their tuna fisheries in the long term, is to cut fishing effort in the over-fished and unsustainable fisheries in the short term. This is also how they will preserve the valuable tuna resource for future generations.⁵⁹⁷

---

⁵⁹³ Fisheries in the Pacific: Coherence Between Development and Commercial Objectives, prepared by DG DEV/AIDCO Fisheries Task Force (include B. Van Helden/D. Friedrichs, T. Schmale, H. Pilgaard (DEV/C/4); J.Prade, J. Favre (DEV/B/4); F.Affinito/V.Dowd (DEV/C/I) & R.Noë (AIDCO C/5), Pacific Issues Paper No. 1, I:\fed\gener\fish9.doc, Brussels, 18 February (2002).

⁵⁹⁴ Fisheries in the Pacific: Coherence Between Development and Commercial Objectives, prepared by DG DEV/AIDCO Fisheries Task Force (include B. Van Helden/D. Friedrichs, T. Schmale, H. Pilgaard (DEV/C/4); J.Prade, J. Favre (DEV/B/4); F.Affinito/V.Dowd (DEV/C/I) & R.Noë (AIDCO C/5), Pacific Issues Paper No. 1, I:\fed\gener\fish9.doc, Brussels, 18 February (2002).

⁵⁹⁵ "Sustainable Tuna Fishing in the South Pacific", http://www.globaleducation.edu.au/archives/secondary/casestud/south_pacific/2tuna.html.

⁵⁹⁶ Fishing for Future, the Advantages and Drawbacks of a Comprehensive Fisheries Agreement Between the Pacific and European Union, Oxfam New Zealand (p.7), <http://www.oxfam.org.nz/imgs/pdf/oxfam%20nz%20fisheries%20final%2019%20oct.pdf>.

⁵⁹⁷ "Tuna: Pacific's Most Valuable Asset", Greenpeace, Stolen Fish, Stolen Future (www.greenpeace.org.au).

Chapter Six

Conceptual Analysis of Key Issues

Introduction

This chapter discusses some of the key concepts relating to the Treaty on Fisheries between the governments of certain Pacific Island States and the United States of America (Treaty). These concepts cover international politics and diplomacy, including trade-offs between powerful United States of America and its foreign policy interests and the Pacific Island States depicted in the Treaty, and are outlined in terms of their possible implications and applications. This discussion highlights how these concepts relate to the Treaty.

Regional fisheries conservation co-operation among Pacific Island States is discussed with reference to the policies of existing regional organizations. Here we identify the roles played by each organization with reference to implementation and enforcement. This leads to a discussion about the traditional conservation and management of fisheries as an alternative and how this could now serve as a relevant and effective mechanism.

Ideological rivalry between the US and the Soviet Union in the Pacific played a crucial role in the formulation of the Treaty. This demonstrated US foreign policy in action, with the negotiation process producing an international agreement. This discussion also includes political and diplomatic relations between the Pacific Island States and the US, and the emergence of key new players in the region's politics and diplomacy, namely Japan, China and Taiwan. During the life of the Treaty, dramatic changes have occurred in the region's geo-politics following the collapse of the Soviet Union.

The Treaty is something of a test case that illustrates the contrast of political attitudes between the power of the US on the one hand and the much weaker, poorer Pacific Island

States on the other. Here, the trade-offs between the two sides are analyzed by outlining the rationale underlying their initial intentions and what emerged as the final version of the Treaty. The questions pertain to what the Pacific Island States and the US achieved and how they reached particular outcomes.

The relationship established between the US and the Pacific Island States and developed over the past fourteen years under the Treaty has yielded benefits in other related areas.⁵⁹⁸ One important example is the negotiations to establish the Convention for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (Fish Stocks Convention). The distinction between the Fish Stocks Convention and the Treaty is that, the Treaty is primarily an access arrangement for US vessels, while the new Convention establishes conservation and management measures to be adhered to by all countries and fishing entities with vessels operating in the region.⁵⁹⁹ One key issue that the US hopes to see addressed under the Treaty is the issue of excess fishing capacity and the prospect of too many vessels catching too many fish.⁶⁰⁰

The Treaty and the Fish Stocks Convention form a strong foundation for US involvement and cooperation with the States of the Western and Central Pacific.⁶⁰¹ This was based on American tuna fleet operating in the region, which widened and strengthened relations between governments and the commercial interests and fisheries sector and was the main source of close cooperation between the Pacific Island States and the US.

The South Pacific Regional Environment Program (SPREP) established some 15 years ago aimed to protect the region's environment and its sustainable development in close cooperation with Australia, New Zealand and the US.⁶⁰²

---

⁵⁹⁸ http://www.america.gov/st/washfile-english/2002/July/20020724124720morse_@pd.state.gov0.8919794.html#ixzz0we6SQyQ1; Grynberg, R. (ed.) *Fisheries Issues in WTO and ACP-EU Trade Negotiations*, Commonwealth Secretariat, London (2003).

⁵⁹⁹ http://www.america.gov/st/washfile-english/2002/July/20020724124720morse_@pd.state.gov0.8919794.html#ixzz0we6SQyQ1; <http://www.wcpfc.int/>; the Western and Central Pacific Fisheries Commission was established under the Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean.

⁶⁰⁰ http://www.america.gov/st/washfile-english/2002/July/20020724124720morse_@pd.state.gov0.8919794.html#ixzz0we6SQyQ1; Noonan, D.S. "International Fisheries Management Institutions: Europe and the South Pacific", in Baden, J.A. and Noonan, D.S. (eds.) *Managing the Commons*, Second Edition, Indiana University Press, Bloomington (1998:165-180).

⁶⁰¹ http://www.america.gov/st/washfile-english/2002/July/20020724124720morse_@pd.state.gov0.8919794.html#ixzz0we6SQyQ1.

⁶⁰² http://www.america.gov/st/washfile-english/2002/July/20020724124720morse_@pd.state.gov0.8919794.html#ixzz0we6SQyQ1; Teiwaki, R. *Management of Marine Resources in Kiribati*, University of the South Pacific, Suva (1988).

SPREP is the best opportunity for us to both influence regional Pacific environmental policies and encourage coordinated approaches on environmental and sustainable development issues. With greater commercial development, the region's unique wildlife and plants are at risk. With a decreased USAID presence in the region, US participation in SPREP sends a strong signal that the Pacific region remains a priority for us.⁶⁰³

Tuna (as raw material and in finished products) are very popular globally in comparison to other fisheries and therefore demand is always high. At the same time, the threat of over exploitation and the depletion of tuna resources is very real.

Tuna is one of the world's favourite fish. It provides a critical part of the diet for millions of poor people, as well as being at the core of the world's luxury sashimi markets. But global tuna stocks are under threat. Many tuna species are now listed as either endangered or critically endangered. In fact, global tuna stocks are disappearing. Stocks of the most iconic and valuable of all the tuna species, the magnificent bluefin, are on the brink of collapse. Those of other species, such as bigeye and yellowfin, are fully or over-exploited in *all* oceans.⁶⁰⁴

The rapid increase in distant water fishing nations (DWFN) fleets from all over the world fishing for tuna is likely to have an adverse effect on the region's tuna resources. Several decades ago, the world's appetite for tuna increased the number and capacity of tuna fishing vessels of DWFN (include the US) in the Pacific's tuna fishing grounds and while this may seem alright now, the situation is not immune from the global over exploitation trend.⁶⁰⁵

Dealing with DWFN fleets was a constant challenge for Pacific Island States in terms of monitoring and policing. The concept of a Regional Register aimed to collect relevant information about fishing vessels for monitoring purposes; access consideration was given to vessels in the Register with good standing.⁶⁰⁶

---

⁶⁰³ http://www.america.gov/st/washfile-english/2002/July/20020724124720morse_@pd.state.gov0.8919794.html#ixzz0we6SQyQ1.

⁶⁰⁴ "Taking Tuna Out of the Can: Rescue Plan World's Favourite Fish: Defending Our Oceans", Greenpeace International, Amsterdam (2007:2).

⁶⁰⁵ "Taking Tuna Out of the Can: Rescue Plan World's Favourite Fish: Defending Our Oceans", Greenpeace International, Amsterdam (2007:2).

⁶⁰⁶ Aqorau, T. "Illegal, Unreported and Unregulated Fishing: Considerations for Developing Countries", South Pacific Forum Fisheries Agency, Honiara, Solomon Islands (p.11-12).

There is major concern within the governance and management of the Pacific Island States' tuna fishery that the existing strategies may be insufficient to secure long-term sustainability and to ensure that the rate of harvest is not greater than the regeneration rate.⁶⁰⁷ An 'act-now' approach is definitely required to prevent the depletion of the region's HMS stocks.

Regional Cooperation in Fisheries Conservation and Management

In the South Pacific, there are 30 Pacific Island States, including 14 independent States, eight self-governing States and eight colonies.⁶⁰⁸ This comprises a population of five million people (0.1 percent of the world's population) and 10,000 islands, which support the greatest diversity of cultures, languages and history of any region in the world. A marine economy under a traditional subsistence system was the traditional practice in this setting. This persisted until European contact arrived, introducing Western ideologies including capitalism.

The marine politics of the Pacific Ocean were further accelerated by an introduction of technologies signalling a new era in the exploration and exploitation of the region's marine resources.⁶⁰⁹ Subsequently, the discovery of tuna changed the region's political and diplomatic relations—not only between and among Pacific Island States, but with foreign fishing nations as well.⁶¹⁰ The huge demand for tuna in world markets attracted foreign

---

⁶⁰⁷ Fisheries in the Pacific: Coherence Between Development and Commercial Objectives, prepared by DG DEV/ Fisheries Task Force (include B. Van Helden/D. Friedrichs, T. Schmale, H. Pilgaard (DEV/C/4); J.Prade, J. Favre (DEV/B/4); F.Affinito/V.Dowd (DEV/C/I) & R.Noë (AIDCO C/5), Pacific Issues Paper No. 1, Ifed\gener\fish9.doc, Brussels, 18 February (2002:3-4).

⁶⁰⁸ Republic of the Fiji Islands (independent in 1970 from UK, member of Commonwealth and United Nations), Samoa (independent in 1962 from New Zealand, member of Commonwealth in 1970 and United Nations in 1977), Tonga (a protectorate of Britain until 1970, member of United Nations in 2002), Kiribati (formerly Gilbert – independent 1979 and member of Commonwealth), Papua New Guinea (independent 1975 and member of Commonwealth and United Nations), Solomon Islands (independent in 1978 from Britain and member of Commonwealth), Tuvalu (independent in 1978 and member of Commonwealth), Vanuatu (formerly New Hebrides and independent in 1980), Nauru (independent in 1968) from Australia, member of Commonwealth) – Hoadley, S. *The South Pacific Foreign Affairs Handbook*, Allen & Unwin, Scoreby (1992). Guam, American Samoa and Northern Mariana are colonies and Marshall Islands, Palau and Federated States of Micronesia are free-association with the United States (UN Trust Territory under the US administration). French Polynesia, New Caledonia, Wallis and Futuna are colonies of France. Cook Islands and Niue are free-association with New Zealand and Tokelau is a dependency of New Zealand. Pitcairn is a colony of United Kingdom.

⁶⁰⁹ Fisheries Technologies for Developing Countries, Report of an Ad Hoc Panel of the Board on Science and Technology for International Development, National Academy Press, Washington DC (1988).

⁶¹⁰ Petersen, E.H. *Institutional Economics and Fisheries Management: The Case of Pacific Tuna*, Edward Elgar Publishing Limited, Cheltenham (2006).

fishing nations into the region and illegal fishing activities became common practice.⁶¹¹ These violations occurred because Pacific Island States lacked the resources needed to properly conduct effective surveillance and patrolling of their waters.

The Pacific Island States felt ignored, notwithstanding the protests that they made through various diplomatic channels about the need to control tuna poaching activities.⁶¹² Collectively, the need to harness group resources to end such exploitation was recognized. This realization motivated the establishment of the South Pacific Forum Fisheries Agency (FFA) in 1979.⁶¹³ The Treaty, in turn, resulted in part from the Pacific Island States' frustration over their lack of control over tuna fishing without a licence in their EEZs. Hence the Treaty was seen as a means of safeguarding and protecting tuna resources, while also generating some financial returns through the sale of licenses to foreign fishing operators.⁶¹⁴

At the May 1987 South Pacific Forum meeting in Apia, Samoa (after the Treaty had been signed a month earlier), the idea emerged that Japan might be keen to participate in a multilateral fishing arrangement similar to the arrangement with the US.⁶¹⁵ The Director of the FFA was asked to facilitate discussions. The Forum saw a fishing arrangement with Japan as economically advantageous, as it would provide competition for the US over access fees and other technical assistance.⁶¹⁶ However Japan did not want to compete commercially with the US through a collective fishing arrangement with the Forum countries.⁶¹⁷ While Japan maintained stable relations with Pacific Island States, US policy toward the region had been inconsistent. Washington was desperate to reclaim its superiority in the region and the Treaty was seen as the most appropriate political and diplomatic means to serve this purpose.

---

⁶¹¹ Navidson, S. "The Law of the Sea and Freedom of Navigation in Asia Pacific", in Leane, G. and Tigerstrom, B.V. (eds.) *International Law Issues in the South Pacific*, Ashgate Publishing Limited, England (2005:127-160).

⁶¹² "Wake Up! Our Fish is Being Stolen," Scoop Independent New (New Zealand) (24/04/2006), http://www.illegal-fishing.info/item_single.php?item=news&item_id=257&approach_id=16.

⁶¹³ Gubon, F. "History and Role of the Forum Fisheries Agency", in Doulman, D.J. (ed.) *Tuna Issues and Perspective in the Pacific Islands Region*, East-West Center, Honolulu (1987); Hey, E *The Regime for the Exploitation of Transboundary Marine Fisheries Resources*, Martinus Nijhoff Publishers, The Netherlands (1989).

⁶¹⁴ Hunt, C. "Management of the South Pacific Fishery", *Marine Policy*, Vol. 21, No. 2 (1997).

⁶¹⁵ Eighteenth South Pacific Forum, Apia, Western Samoa, 29-30 May 1987, SPEC (87)-OR.10.

⁶¹⁶ Bergin, A.B. and Haward, M. *Japan's Tuna Fishing Industry: A Setting Sun or New Dawn*, Nova Science Publishers, Inc., New York (1996).

⁶¹⁷ Lal, B.V. and Fortune, Kate (eds.) *The Pacific Islands: An Encyclopedia*, University of Hawaii Press, Honolulu (2000).

However, in the 1980s, Japan proposed that the Forum and DWFN discuss the possibility of setting up a broad-based regional fisheries organization.⁶¹⁸ The proposed body would deal with all fisheries issues, including the conservation and management of the region's fish stocks. With the biggest fishing fleet presence in the region, Japan stood to benefit from seeking the support of other DWFN for such an organization.⁶¹⁹ Hence, Japan saw such an organization as an opportunity to become directly involved in the region's fisheries. This was an attempt by Japan to become a member of the FFA in order to have greater influence in the region's fisheries business. This proposal was rejected by the Forum for obvious reason. From the Forum's perspective, such an organization would minimize its bargaining power in negotiations and other ongoing issues with DWFN, and could prove disadvantageous for the region as whole. Access fees and the terms and conditions of fishing arrangements would be compromised and illegal fishing activities exacerbated. Moreover, regional and international environmental organizations were already dealing with and supporting Forum members in fisheries conservation and management programmes.⁶²⁰ In other words, the Forum countries would be better off under current arrangements from both an economic and an environmental conservation perspective in the longer term. Also if such an organization was set up, then it would create a 'conflict of interest' for DWFN; Japan and other potential DWFN would benefit more than the Pacific Island States.

Nor would the US support such an organization, since it would undermine its economic and political stance in the region. Again, it can be argued that by pushing the Treaty negotiation process, the US aimed to block any multilateral fisheries arrangements between Pacific Island States and any DWFN, particularly Japan. The debate over the conservation and management of the region's fisheries resources was thus to remain a political challenge between and among Forum countries.⁶²¹ Forum countries responded to different DWFN according to the levels of foreign aid and technical assistance received. That is, foreign aid from DWFN varied according to bilateral links and the kind of assistance package provided.⁶²² These factors served to complicate the collective stance adopted by the Pacific Island States.

---

⁶¹⁸ Katzenstein, P.J. and Shiraishi, T. (eds.) *Network Power Japan and Asia*, Cornell University Press, London (n.d.), www.artscornell.edu/.../NETWORK%20POWER%20JAPAN%20AND%20ASIA.doc.

⁶¹⁹ Bergin, A.B. and Haward, M. *Japan's Tuna Fishing Industry: A Setting Sun or New Dawn*, Nova Science Publishers, Inc., New York (1996).

⁶²⁰ Deere, C. *Net Gains: Linking Fisheries Management, International Trade and Sustainable Development*, International Union for Conservation of Nature and Natural Resources, Washington DC (2000).

⁶²¹ Hoel, A.H. "Political Uncertainty in International Fisheries Management", *Fisheries Research* 37, Norway (1998:239-250).

⁶²² Petersen, E. "The Catch in Trading Fishing Access for Foreign Aid", *Marine Policy* 27 (2003:219-228).

The Pacific Island States increasingly realized the potential economic benefits that lay in the exploitation of tuna resources and the rapid increase of foreign fishing vessels operating illegally.⁶²³ These activities posed imminent threats to the region's tuna resources, making depletion a distinct possibility. Hence, there was a definite need to control and regulate the exploitation of tuna in a sustainable manner. Constant surveillance and patrolling the Pacific Island States' EEZ was needed. Foreign countries (in particular Australia and New Zealand) could carry out some of these tasks in addition to their financial and technical assistance.⁶²⁴ Certainly this task was practically impossible for the Pacific Island States on their own, given the huge financial costs involved and their lack of relevant technical and professional expertise.

The Treaty was perceived as a suitable mechanism for controlling and minimizing illegal foreign fishing activities—and one that could also provide economic benefits.⁶²⁵ Once in force, the Treaty began to successfully curb illegal fishing operations in the region, particularly those conducted by American-registered fishing fleets.⁶²⁶

The Pacific Island States have constantly struggled to implement and enforce the international and regional environmental, conservation and management instruments to which they are signatories.⁶²⁷ In fact, the full enforcement and implementation of these instruments, as originally designed, has proven near impossible. Such fulfilment would force heavy economic constraints upon populations already struggling financially to meet their basic needs. Countries in the Pacific region are predominantly reliant on foreign aid, overseas remittances and other forms of financial and technical assistance.⁶²⁸ Imposing further restrictions on fishing activities for environmental purposes could prove unduly onerous. That is, Pacific governments have to be 'flexible' in terms of the enforcement of imported

---

⁶²³ Hunt, C. "Management of the South Pacific Fishery", *Marine Policy*, Vol. 21, No. 2 (1997).

⁶²⁴ Wilson-Roberts, G. (ed.), "Maritime Surveillance, Centre for Strategic Studies, Victoria University of Wellington, Wellington, Strategic Briefing Papers, Volume 4, Part 4, November 2000.

⁶²⁵ Hunt, C. "Management of the South Pacific Fishery", *Marine Policy*, Vol. 21, No. 2 (1997).

⁶²⁶ Parris, H. and Grafton, R.Q. "Tuna-Led Sustainable Development in the Pacific: Asia Pacific of Economics and Governments, Australian National University, Canberra (2005).

⁶²⁷ Warmer, R.F. *Protection the Ocean Beyond National Jurisdiction: Strengthening the International Law Framework*, Martinus Nijhoff Publishers, The Netherlands (2009).

⁶²⁸ Gibson, J., Boe-Gibson, G., Rohorua, H. and McKenzie, D. "Efficient Remittance Services for Development in the Pacific", <http://wms-soros.mngt.waikato.ac.nz/NR/rdonlyres/eiaj746lubo17blwsfioesahnwflsxntmujckjm2h7th637dj2auuahovnhcpizlndjnxjncimay5e/apdJRvisedEfficientRemittanceServiceforDevelopment.pdf>.

environmental instruments in order to prevent further restrictions being placed on coastal communities whose livelihoods are heavily affected.

Legislating for international and regional instruments is one thing, but enforcement is quite another. The gap involved relates to the fact that when these instruments were drafted they did not adequately account for the region's social, economic, political and cultural circumstances. Yet consideration of these issues was essential when establishing such instruments. Hence, any 'wholesale' imposition of environmental measures could prove ineffective. At the same time, these instruments were accompanied by foreign aid packages, which 'forced' Pacific Island States to implement these provisions, if only superficially, in order to secure aid flowing into the region.⁶²⁹ Cosmetic compliance became a common practice throughout the region in many cases.

A more united position could help to reinforce national jurisdiction over fisheries resources and could enable Pacific Island States to generate financial gain when selling fishing licences. The advantage of collective co-operation among Pacific Island States would thus be to create a stronger joint stance over the sovereign rights issue and ensure better financial outcomes.⁶³⁰

Regional organizations were established in the hope that they would benefit all members through political, economic and environmental co-operation.⁶³¹ Yet bringing together countries with different social, political and economic circumstances proved challenging, their historical and political ties to powerful foreign countries further complicating the matter. Moreover, external donors substantially funded these organizations, whether in the form of individual government grants or a combination of sources that included inter-governmental and non-governmental (NGO) agencies.⁶³² Accordingly, the institutional funding factor complicated the region's political dynamics.

Pacific Island States remained economically reliant on foreign aid and related financial and technical assistance, particularly from Australia, New Zealand, the US, individual European

---

⁶²⁹ Wright-Neville, D.P. *The Evolution of Japanese Foreign Aid, 1955-1990: The Impact of Culture, Politics, and the International System on the Policy Formation Process*, Monash University, Melbourne (1991).

⁶³⁰ Kwiakowska, B. *International Organizations and the Law of the Sea: Documentary Yearbook 1996*, Netherlands Institute for the Law of the Sea, The Netherlands (1996).

⁶³¹ Fry, G.E. "International Cooperation in the Pacific: From Regional Integration to Collective Diplomacy", in Axline, W.A. (ed.) *The Political Economy of Regional Cooperation: Comparative Case Studies* (1994:136-177).

countries, the European Union and international NGOs. Asian countries also became increasingly involved in the region.⁶³³ Japan's aid to the region increased markedly, sometimes for political reasons including their opposition to a proposed South Pacific whale sanctuary.⁶³⁴

China and Taiwan have also emerged as major players in the Pacific in the last few decades.⁶³⁵ China's involvement has to do with its determination to maintain its 'One China policy' and to prevent the Pacific Island States, particularly those that are members of the United Nations, from officially recognizing Taiwan as a sovereign state.⁶³⁶

For its part, Taiwan seeks the support of Pacific Island States in its quest for official recognition. From some Pacific Island States' perspectives, such rivalry is propitious because this 'Asian Cold War' helps ensure that assistance keeps flowing freely into the region.⁶³⁷ Here there is less interest in taking sides than in gaining aid. In some respects, this resembles aspects of the Cold War era's ideological rivalry between the US and Soviet Union (when the Pacific Island States saw enhanced levels of foreign aid forthcoming from these superpowers and some of their allies).⁶³⁸

The Taiwan-China struggle for recognition in the region has had a negative impact on certain Pacific Island States and it seems likely it will continue to be a major concern in the future. This is due to foreign aid competition between the two entities, which can involve governments as well as oppositions in recipient Pacific Island States.⁶³⁹ China-Taiwan rivalry in the region has thus added to the long term political problems facing the region at regional

---

⁶³² Davenport, E. "CID Study of NGO Capacity Building Issues for Donors in the Pacific", <http://www.devnet.org.nz/conf/Papers/webster.pdf>.

⁶³³ Woods, L.T. *Asia-Pacific Diplomacy: Nongovernmental Organizations and International Relations*, University of British Columbia, British Columbia (1993).

⁶³⁴ Nette, A. "Japan Tries to Sink Whale Sanctuary Plan", *Monitor*, <http://www.albionmonitor.com/9901b/copyright/whalesanctuary.html>.

⁶³⁵ Crocombe, R., *Asia in the Pacific Islands Replacing the West*, IPS Publications, University of the South Pacific, Suva (2007).

⁶³⁶ Friedman, E. "The Prospects of a Larger War: Chinese Nationalism and the Taiwan Strait Conflict", in Zhao, S. (ed.) *Across the Taiwan Strait: Mainland, China, Taiwan and the 1995-1996 Crisis*, Routledge, New York (1999:243-276).

⁶³⁷ Bush, R.C. *Making Peace in the Taiwan Strait*, The Brookings Institution, Washington DC (2005).

⁶³⁸ Hara, K. *Cold War Frontiers in the Asia-Pacific: Divided Territories in the San Francisco System*, Routledge, Abingdon (2007).

⁶³⁹ Crocombe, R., *Asia in the Pacific Islands Replacing the West*, IPS Publications, University of the South Pacific, Suva (2007).

and national levels. Poverty, poor governance and corruption have exacerbated these problems.

The United Nations' specialized agencies and other international bodies have played an important role in the region's fisheries cooperation and plans for environmental conservation. For example, the United Nations Environmental Programme (UNEP) has made a major contribution to the region's environmental programme, although its originally forecast enforcement effectiveness has yet to materialize.⁶⁴⁰

The purpose of Pacific regional cooperation for the conservation and management of the region's fisheries resources is essentially political and economic. Political advantages derive from the unified stance taken over important issues. This reflects common regional interests, in particular entitlements under international law to exert national jurisdiction over EEZs. However, the Pacific Island States have also had some different and at times hidden political agendas reflecting opportunistic national attitudes. This has been increasingly evident in Pacific Island States' politics. Cultural differences and contrasting political arrangements with current or former colonial powers have also played a fundamental role. What a Pacific Island State decides is to its immediate national advantage can often override the wider collective interest.⁶⁴¹ Fiji gained more from direct US bilateral aid and technical assistance than it received through the Treaty.⁶⁴²

While Australia and New Zealand have played an important role in the region's political and economic development, they cannot compete with other interested foreign powers particularly China, Japan and Taiwan. Pacific Island States in the Forum have some political advantages because they are unified over peace and security issues within the region. The ideal of regional cooperation bringing economic independence to the region has yet to emerge and could prove a difficult mission to achieve. This is due to several factors: a lack of natural resources, restricted access to foreign markets and no subsidies on shipping and freight rates to overseas destinations.

---

⁶⁴⁰ <http://www.unep.org/>; Kimball, L.A. *International Ocean Governance: Using International Law and Organizations to Manage Marine Resources Sustainably*, International Union for Conservation of Nature and Natural Resources, Gland (Switzerland) (2001).

⁶⁴¹ For instance, Tonga did not sign the South Pacific Nuclear Weapon Free Zone Treaty (Treaty of Rarotonga), because Australia was still exporting uranium while at the same maintaining good diplomatic relationships with Paris as well as other powers.

Environmental and conservation programmes funded by international and regional agencies have not brought about substantial differences and they lack direct and active political arrangements with foreign governments (direct bilateral and government-based funding programmes providing needed infrastructure). That option seems more effective than assistance received through multilateral agencies. The Treaty demonstrated the effectiveness of the Forum-US arrangement in terms of a political and environmental conservation arrangement.

The ineffective enforcement and implementation of environmental and conservation measures generally resulted from the mixed economic circumstances of Pacific Island States, including their contrasting demographic, trade, natural resources, land and EEZ profiles.⁶⁴³ Land and marine resources vary from country to country, as do individual economic circumstances. This makes it difficult to devise environmental programmes that suit all Forum members. While Australia and New Zealand have the capacity to implement effective regional environmental programmes, this is beyond most other Pacific Islands States.

Relations between Pacific Island States and Australia and New Zealand have not always run smoothly. Some suspicion and distrust persists due to the fact that both countries have placed the interests of their Western allies and partners (especially the US) ahead of Forum country interests. This was an issue at the Forum meeting in Niue, where Fiji threatened to withdraw from the proposed regional fisheries organization if the US became a member.⁶⁴⁴ Forum member countries were spilt over US membership.

Here, two issues were at stake: Australia and New Zealand were supportive of US membership but not necessarily for the sake of the Forum. More important were the economic advantages of access to US markets and the opportunistic attitude of those Pacific Island States seeking to secure US foreign aid and other financial and technical assistance. This created quite complicated and sophisticated political calculations.

---

⁶⁴² Dearden, S “EU Aid Policy Towards the Pacific ACPs With Special Reference to Fiji and the Cook Islands”, www.edpsg.org/Documents/DP31.doc.

⁶⁴³ Agüero, M. and Gonzalez, E. “Managing Transboundary Stocks of Small Pelagic Fish: Problems and Options, World Bank Discussion Paper No. 329, Fisheries Series, <http://www.fao.org/docrep/007/y5438e/y5438e0b.htm>.

⁶⁴⁴ Woodworth, D.C. “U.S. Tuna: A Proposal for Resources Management in the American Pacific Islands”, *University of Hawaii Law Review* 10, Honolulu (1988).

In retrospect, it appeared that the Forum needed to revisit its objectives in order to accommodate recent political changes in both a regional and global context. An effective environmental framework is needed to ensure the sustainable exploitation of the region's tuna resources before they are further depleted. While political considerations slow the process, tuna resources could disappear without an urgently needed action plan for sustainability being effectively implemented.

Pacific Island States lack choice due to economic desperation and their political vulnerability to the manipulation of powerful foreign countries. In a sovereign State world, bilateral aid is donor self-interested—something Pacific recipients cannot ignore. They are very much focused on aid; less attention paid to the social, political and economic consequences of any assistance. Generally, foreign aid can be seen as a form of political and diplomatic influence exerted over Pacific Island States for the benefit of the foreign donor.

Yet collective co-operation among Pacific Island States also has positive political advantage in terms of helping to highlight vital issues. The Treaty demonstrated the benefits of collectivism in dealing with the US.

The FFA has no management responsibilities as such, but it does facilitate and collate the decisions made by Forum members. It also assists in the conservation and management of the region's fisheries resources. Foreign fishing vessels are allowed to carry out fishing activities in the region under any legal and valid fishing arrangement that is registered in the Regional Register and has good standing.⁶⁴⁵ This scheme is designed to deter foreign vessels from violating fishing terms and conditions and to avoid bans from operating in the region. The FFA must reinforce fishing agreements so that terms and conditions of access remain within an environmental conservation and management framework and promote the sustainable development of fisheries resources in the Pacific.⁶⁴⁶

---

⁶⁴⁵ Regional Compendium of Fisheries Legislation (Western Pacific Region), Volume II, Food and Agriculture Organization of the United Nations, prepared by Legislation Branch Legal Office, In cooperation with, The South Pacific Forum Fisheries Agency, Rome (1984); Franckx, E. *Fisheries Enforcement Related Legal and Institutional Issues: National, Subregional or Regional Perspectives*, FAO Legislative Study 71 (2001).

⁶⁴⁶ Report of the Workshop on the Implementation of the 1995 FAO Code of Conduct for Responsible Fisheries in the Pacific Islands: A Call to Action (Nadi, Fiji, 27-31 2003), FAO Fisheries Report No. 731, Rome (2004);

What of agreements relevant to the Treaty that followed its inception? One of significance was the United Nations Conference on Straddling Fish Stocks and Highly Migratory Fish Stocks (1995 Agreement).⁶⁴⁷ This provided important environmental conservation and management measures helping to secure the sustainable development of the region's tuna resources. It generally encourages Parties to the 1995 Agreement to take up other regional and international environmental conservation and management instruments to assist in the sustainable development of tuna fisheries in the region. This sustainable development should be qualified by economic and environmental factors, including special requirements of developing States.

At the Preamble of the 1995 Agreement, parties pledged to:

... ensure the long-term conservation and sustainable use of straddling fish stocks and highly migratory fish stocks ... improve cooperation between States ... provide more effective enforcement by flag States, port States of the conservation and management measures ... ensure the need to avoid adverse impacts on the marine environment ... ensure the need for specific assistance, including financial, scientific and technological assistance, in order that developing States can participate effectively in the conservation, management sustainable use of straddling fish stocks and highly migratory fish stocks ...

Article 7 of the 1995 Agreement outlines the conservation and management measures to be observed by fishermen operating in national waters and in the high seas. This reflects the highly mobile nature of tuna. States (either local or foreign) fishing in the high seas have responsibilities, as indicated in Article 7(8). They:

... shall regularly inform other interested States, either directly or through other subregional or regional fisheries management organizations or arrangements, or the other appropriate means, of the measures they have adopted for regulating the activities of vessels flying their flag which fish for such stocks on the high seas.

This obligation is needed to closely monitor all fishing activities carried out in the high seas—to provide and gather data to assist in the scientific assessment of the tuna in the region. It is a responsibility of the flag State to ensure that its fishing vessels comply with the agreed upon terms and conditions. These are a collective and cooperative effort on behalf of

---

Report of and Papers presented at the Expert Consultation on Illegal, Unreported and Unregulated Fishing (Sydney, Australia, 15-19 May 2000), FAO Fisheries Report No. 666 (Rome 2001).

nations and their nationals engaged in the fishing of highly migratory tuna to ensure the long-term sustainable development of tuna. As stated in Article 7(2):

Conservation and management measures established for the high seas and those adopted for the areas under national jurisdiction shall be compatible in order to ensure conservation and management of the straddling fish stocks and highly migratory stocks in their entirety. To this end, coastal States and States fishing on the high seas have a duty to cooperate for the purpose of achieving compatible measures in respect of such stocks.

These measures must remain compatible with Article 61 of the United Nations Convention on the Law of the Sea (1982 Convention), specifically outlined in Article 7(2)(d)&(e), which instructs them to:

... take into account the biological unity and other biological characteristics of the stocks and relationships between the distribution of the stocks, the fisheries and geographical particularity of the region concerned, including the extent to which the stocks occur and are fished in areas under national jurisdiction ... take into account the respective dependence of the coastal States and the States fishing on the high seas on the stock concerned ...

States interested in the high seas are required to cooperate (through appropriate fisheries management organizations in the region) in order to ensure effective conservation and management.⁶⁴⁸ Such cooperation shall include States that enter into consultation in good faith with evidence that stocks are threatened⁶⁴⁹ and able to establish organizational means “in such an arrangement, which agree to apply the conservation and management measures established by such organization or arrangement, shall have access to the fishery resources to which those measures apply.”⁶⁵⁰ If there is no such organization or arrangement, then the coastal States and States fishing in the high seas are required to establish such an organization or appropriate arrangement to ensure the conservation and management of HMS in the high seas.

Article 19 of the 1995 Agreement outlined compliance and enforcement mechanisms in order to ensure that a flag State’s fishing vessels are obliged to comply with the agreed upon terms and conditions. In the event of an alleged violation, an immediate investigation and a prompt

---

⁶⁴⁷ A/CONF.164/37; www.fao.org/docrep/007/y5438e0b.htm.

⁶⁴⁸ Article 8(1) of 1995 Agreement.

⁶⁴⁹ Article 8(2) of 1995 Agreement.

report must be sent to the organization and State concerned. It is expected that the vessels concerned will fully cooperate with the investigation by providing information. Penalties included detention or sanctions being imposed on a flag State preventing them from fishing in the high seas. The master and crew can be suspended from that vessel. An indefinite ban of masters and crew who have committed serious violations of fishing agreements operating in the region was considered as a form of deterrence for potential violators.

The UN Fish Stocks Agreement provides a useful start in dealing with the problem stipulating that only those States which are members of an organization ... The fact that article 11 of the UN Fish Stocks Agreement allows international fisheries organizations to determine the nature and extent of the participatory rights of new members would suggest that it is not possible to completely deny access to vessels which fish on the high seas.⁶⁵¹

Article 20 of the 1995 Agreement states international cooperation in enforcement of the terms and conditions of the Agreement. State parties to the Agreement shall cooperate with fisheries management organizations in order to ensure compliance and the enforcement of conservation and management measures for tuna. The flag State was given responsibility for directly investigating alleged infringements of the Agreement with other interested parties, the outcome of the investigation being provided to parties concerned.

Such co-operation to cover management of the HMS in the high seas was also indicated in Article 64(1) of the 1982 Convention, which stated that coastal States and States whose nationals fish for tuna in the region shall:

... co-operate directly or through appropriate international organizations with a view to ensuring conservation and promoting the objective of optimum utilization of such species throughout the region, both within and beyond the exclusive economic zone.

This provision supports efforts to conserve and manage the exploitation of HMS in general and beyond national jurisdictional waters. It also demonstrates that the conservation of HMS must be a priority of all parties involved in fishing within a particular area or region.

---

⁶⁵⁰ Article 8(4) of 1995 Agreement.

⁶⁵¹ Aqorau, T. "Cooperative Management of Shared Fish Stocks in South Pacific", in FAO, Papers Presented at the Norway-FAO Expert Consultation on the Management of Shared Fish Stocks, Bergen, Norway, 7-10 October 2002, FAO Fisheries Report No. 695 Supplement, Rome (p.7).

Article 61 of the 1982 Convention deals generally with conservation and management measures designed to prevent marine resources within EEZ being overexploited. It encourages coastal States and competent international or regional organizations to co-operate in enforcing and implementing those measures while securing the maximum sustainable yield. To be effective, these measures rely on the availability of relevant and reliable scientific information and data.

Article III(2) of the FFA Convention stipulates the conservation and management efforts required of the Forum countries in dealing with HMS, stating that:

... the coastal state has sovereign rights, for the purpose of exploring and exploiting, conserving and managing the living marine resources, including highly migratory species, within its exclusive economic zone or fishing zone which may extend 200 nautical miles from the baseline from which the breadth of its territorial sea is measured.

Pacific Island States have sovereign rights to not only explore and exploit, but also to conserve and manage, living marine resources in general and HMS within and outside their national jurisdictions. The inclusion of the high seas in the conservation and management effort is a significant contribution to the sustainable development of the HMS in the region as whole.

Gathering and collecting all relevant information possible regarding HMS within or outside the EEZ is of great significance from a conservation and management point of view. Future strategies for fishing quota are determined by the accuracy and sufficiency of data collected and gathered. Data requirements are clearly outlined in Annex IV of the HMS Convention.

Article 2(2.1) of the Treaty states that the US government shall co-operate by providing technical and economic support to the Pacific Island States to help them get the maximum benefit from the development of their fisheries resources. In the event of an alleged violation of the terms and conditions of the Treaty, and upon request by the Pacific Island States, the US is to fully investigate an alleged infringement and report back with an outcome—an action that has either already been taken or will be taken within a two month time frame.⁶⁵²

---

⁶⁵² Article 4(4.4) of the Treaty.

The DWFN and the Pacific Island States hold different views about the sustainable management of the HMS in the region. The Pacific Island States view the international and regional conservationism of HMS in terms of the legal instruments that suit or serve the interest of the DWFN, whether in terms of the availability of scientific information and marine technologies. Yet, they also see this as a further economic constraint burdening already poor economies.

Pacific Island States need fresh initiatives they can incorporate into existing frameworks to provide better conservation and management measures that encourage the sustainable development of the HMS and that economically benefit both Forum countries and DWFN. Currently, the latter comes first. The economic benefits for Pacific Island States and the DWFN of the over-exploitation of tuna resources could be short term, but the environmental effect on the HMS could last much longer. The FFA needs to come up with new conservation and management strategies that primarily focus on the conservation and management of HMS.

High priorities are assigned by governments to policies aimed at institutional strengthening and capacity building because of the importance of fisheries among these countries ... Regional fisheries cooperation in the South Pacific is well-established, successful and, in many cases, a cornerstone of national foreign policy.⁶⁵³

The Pacific Island States realize they are individually weak in almost all respects and therefore are vulnerable to the manipulation of powerful DWFN when it comes to fisheries-related issues. A regional collective approach has more political and democratic weight in dealings with foreign powers, in fisheries and other matters. When established in 1979, the FFA was mandated to assist the Pacific Island States by coordinating fisheries policies and activities.

Generally, three institutions are significant when it comes to the conservation and management of the region's fisheries resources. The first of these is the South Pacific Forum Fisheries Agency (FFA), which is responsible for the assistance of the Pacific Island States' fisheries policies.⁶⁵⁴ The second, the South Pacific Regional Environmental Programme (SPREP), assists Pacific Island States regarding the adverse effects of human activities on

---

⁶⁵³ The South Pacific Commission, Noumea (1996:4).

⁶⁵⁴ <http://wwwffa.int/about>.

fisheries,⁶⁵⁵ while the third, the Secretariat of the Pacific Community (SPC) with its Coastal Fisheries Programme (CFP), aims to manage and develop fisheries resources in a sustainable manner.⁶⁵⁶

After the United Nations Conference on the Law of the Sea III (UNCLOS III), the Pacific Island States regionalized their tuna management approach to a greater extent than any other region⁶⁵⁷ because tuna resources are the only viable economic assets in the entire region. Good management of these resources would secure the future economic independence of the region. It would be ideal if the Pacific Island States consistently agreed on environmental issues, however this is often not the case.

Differences of opinions and policies between the South Pacific countries have not resulted in conflict. Often disagreements are discussed openly and settled through a process of consensus commonly referred to as the “Pacific Way” The process of consultations, however, which the South Pacific countries have developed is unique and reflect the cultural and traditional values of Pacific Islanders. These values inculcate in them a sense of consensus and consultations, which ultimately enable differences between to be discussed amiably and resolved amicably.⁶⁵⁸

Regional cooperation among Pacific Island States and DWFN, as demonstrated in the Treaty, would help in the conservation, management and exploitation of the region’s fisheries resources. Regional co-operation is essential due to the high migratory nature of tuna and proper regulatory frameworks and proper infrastructure must be put in place to attract private investors to local processing plants for the locally-based fishing fleets.⁶⁵⁹

During the 1980s, the US rejected the Pacific Island States’ sovereign rights claim over their EEZs and argued that Pacific Island States were not willing to negotiate management of tuna within their EEZs. In the early stages of the Treaty negotiation, the US reversed its position.

---

⁶⁵⁵ <http://www.sprep.org/sprep/about.htm>.

⁶⁵⁶ <http://www.spc.int/coastfish/>.

⁶⁵⁷ The South Pacific Commission, Noumea (1996:4).

⁶⁵⁸ Aqorau, T. “Cooperative Management of Shared Fish Stocks in the South Pacific”, Forum Fisheries Agency (FFA), Honiara, Solomon Island (p.2).

⁶⁵⁹ Fisheries in the Pacific: Coherence Between Development and Commercial Objectives, prepared by DG DEV/AIDCO Fisheries Task Force (include B. Van Helden/D. Friedrichs, T. Schmale, H. Pilgaard (DEV/C/4); J.Prade, J. Favre (DEV/B/4); F.Affinito/V.Dowd (DEV/C/I) & R.Noë (AIDCO C/5), Pacific Issues Paper No. 1, I:\fed\gener\fish9.doc, Brussels, 18 February (2002:5).

As a result, through the Treaty the Pacific Island States greatly benefitted from the establishment of very generous access fees.⁶⁶⁰

From the fisheries management point of view, two main features of the HMS tuna are overwhelming significant from a conservation and management point of view—the regional nature of the stocks and their high mobility. These characteristics mean that regional management approach is way to go.⁶⁶¹ The FFA, WCPFC and SPC are the three principal agencies responsible for the region’s fisheries conservation and management.

South Pacific countries have been able to harmonize their policies with respect to a number of measures that aim to control and monitor the activities of fishing vessels that target the tuna resource.⁶⁶²

Inaccurate information and misreporting on fishing efforts have serious implications for fisheries management.⁶⁶³ The FFA has a clear function in assisting Pacific Island States in all fisheries issues including monitoring and policing. The Niue Treaty on Fisheries Surveillance and Law Enforcement (Niue Treaty) provides a framework for enforcement.⁶⁶⁴

Regional cooperation among Pacific Island States was important until they became independent and the UNCLOS III was negotiated. The FFA is leading the charge for the cooperative management for the region’s HMS stocks and this has been a successful exercise due to common issues among member States, for instance, similar political system; EEZ would bring economic independent and fisheries resources was means to an end.⁶⁶⁵

The Agency was able to work successfully because there were no competing interests amongst the South Pacific countries. They had a common adversary, namely the distant water fishing nations (DWFNs), and therefore it was easy for them to define their interests vis-à-vis the goals of the DWFNs.⁶⁶⁶

---

⁶⁶⁰ Hanich, Q. And Tsamenyi, M. Exclusive Economic Zones, Distant Water Fishing Nations and Pacific Small Island Developing States: Who Really Gets All the Fish?” (2006:6), [Http://www.fishwa.gov.au/docs/events/shareFish/papers/QuentinHanich.pdf](http://www.fishwa.gov.au/docs/events/shareFish/papers/QuentinHanich.pdf).

⁶⁶¹ Hunt, C. “Management of the South Pacific Fishery”, *Marine Policy*, Vol. 21, No. 2 (1997:163).

⁶⁶² Aqorau, T. “Cooperative Management of Shared Fish Stocks in the South Pacific”, Forum Fisheries Agency (FFA), Honiara, Solomon Island (p.5).

⁶⁶³ Aqorau, T. “Cooperative Management of Shared Fish Stocks in the South Pacific”, Forum Fisheries Agency (FFA), Honiara, Solomon Island (p.5).

⁶⁶⁴ Aqorau, T. “Cooperative Management of Shared Fish Stocks in the South Pacific”, Forum Fisheries Agency (FFA), Honiara, Solomon Island (pp.9).

⁶⁶⁵ Aqorau, T. “Cooperative Management of Shared Fish Stocks in the South Pacific”, Forum Fisheries Agency (FFA), Honiara, Solomon Island (p.9).

⁶⁶⁶ Aqorau, T. “Cooperative Management of Shared Fish Stocks in the South Pacific”, Forum Fisheries Agency (FFA), Honiara, Solomon Island (p.9).

The conservation and management of tuna resources in the region has always been challenging due to the fact that countries' limited capacity and resources. The detection and investigation of fishing violations is insufficient.⁶⁶⁷

The Pacific Island States' paradox rests on their individual differences and circumstances, ranging from relying on aid and remittances to self-reliance. The sustainable conservation and management of the region's tuna stocks is fundamental to the long-term economic development of the Pacific Island States and is sustainable if the stocks are effectively managed in order to prevent over-fishing.⁶⁶⁸

Cooperative management of shared fish stocks in the South Pacific provides an interesting backdrop for any analysis of regional fisheries cooperation because the countries involved are so diverse with varying degrees of dependency on the shared fish stocks.⁶⁶⁹

Newly adopted fisheries management regimes were also part of international and regional efforts to ensure HMS are not endangered. The biggest achievement in recent years for the conservation and management of the region's tuna resources seems to be the adoption of the Convention for the Conservation and Management of Highly Migratory Fish Stocks in the Pacific (Fish Stocks Convention).⁶⁷⁰ Parties were FFA member States and DWFN fleets fishing in the region's EEZ and high seas,⁶⁷¹ and its aim to achieve sustainable development of the tuna resources in the long term. It is also significant because the Pacific Island States and the DWFN have to come together to manage and develop tuna resources of the region.

The region needs a credible surveillance and enforcement capability to effectively back up demands for reasonable access fees. Australia provides significant surveillance assistance to the region, including through Royal Australian Air Force (RAAF) fisheries surveillance patrols (500 hours per annum).⁶⁷²

The tension between the coastal States and the DWFN over rights to manage and exploit over HMS impacts their cooperation. Attempts to undermine coastal States' management of their

---

⁶⁶⁷ Aqorau, T. "Cooperative Management of Shared Fish Stocks in the South Pacific", Forum Fisheries Agency (FFA), Honiara, Solomon Island (p.11).

⁶⁶⁸ Manoa, P., Apps, L. and Hanich, Q. *Development Without Destruction Towards Sustainable Pacific Fisheries*, Grenpeace, February (2004).

⁶⁶⁹ Aqorau, T. "Cooperative Management of Shared Fish Stocks in the South Pacific", Forum Fisheries Agency (FFA), Honiara, Solomon Island (p.11).

⁶⁷⁰ It was signed on 4 September 2000.

⁶⁷¹ <http://www.mfat.govt.nz/Treaties-and-International-Law/01-Treaties-for-which-NZ-is-Depositary/o-Kigratory-Fish-Stocks.php>.

⁶⁷² FFA Report 92/88, Forum Fisheries Agency, Honiara, Solomon Islands, 1992.

EEZ and historical opposition to the introduction of various measures for foreign fishing vessels foster antagonism for both parties.⁶⁷³ The unequal power relationships between Pacific Island States and the DWFN undermined regional attempts at effective management by pressuring individual Pacific Island States not to impose regional measures such as minimum access terms and conditions for DWFN vessels.⁶⁷⁴

The whole exercise of managing tuna purse seine fishing capacity, becomes more complicated because of the multispecific composition of the catch. There are two major species that dominate the purse seine catch: skipjack (*Katsuwonus pelamis*) and yellowfin (*Thunnus albacares*). The third species caught in the purse seine fishery is bigeye (*Thunnus obesus*), with a significantly lower proportion of the purse seine catch.⁶⁷⁵

The fast paced exploitation of tuna resources in the western central Pacific was the major reason for the adoption of the Palau Arrangement for the Management of the Western Pacific Purse Seine Fishery (Palau Arrangement),⁶⁷⁶ designed to enhance the sustainable development of their fisheries resources.⁶⁷⁷

Unless there are strong flag State controls over vessels that fish on the high seas and regionally agreed measures to curtail effort, overfishing on the high seas could result in the dislocation of an industry dependent on those stocks... The lack of information on vessels operating in the high seas areas thus leaves a gap.⁶⁷⁸

The Pacific Island States' harmonizing terms and conditions of access include regional registering of DWFN, port state enforcement, effective flag state responsibility, a violations and prosecutions database, cooperation in fisheries surveillance and law enforcement and a

---

⁶⁷³ Hanich, Q. And Tsamenyi, M. Exclusive Economic Zones, Distant Water Fishing Nations and Pacific Small Island Developing States: Who Really Gets All the Fish?" (2006:12), [Http://www.fishwa.gov.au/docs/events/shareFish/papers/QuentinHanich.pdf](http://www.fishwa.gov.au/docs/events/shareFish/papers/QuentinHanich.pdf).

⁶⁷⁴ Hanich, Q. And Tsamenyi, M. Exclusive Economic Zones, Distant Water Fishing Nations and Pacific Small Island Developing States: Who Really Gets All the Fish?" (2006:12), [Http://www.fishwa.gov.au/docs/events/shareFish/papers/QuentinHanich.pdf](http://www.fishwa.gov.au/docs/events/shareFish/papers/QuentinHanich.pdf).

⁶⁷⁵ Moron, J. "Tuna Fishing Capacity: Perspective of Purse Seine Fishing Industry on Factors Affecting It and Its Management", in *Methodological Workshop on the Management of Tuna Fishing Capacity: Stock Status, Data Development Analysis, Industrial Survey and Management Options*, La Jolla (California), 8-12 May 2006, (p.4).

⁶⁷⁶ Came into force in 1994.

⁶⁷⁷ Moron, J. "Tuna Fishing Capacity: Perspective of Purse Seine Fishing Industry on Factors Affecting It and Its Management", in *Methodological Workshop on the Management of Tuna Fishing Capacity: Stock Status, Data Development Analysis, Industrial Survey and Management Options*, La Jolla (California), 8-12 May 2006, (pp.6-7); Scott, B. "Palau Arrangement", <http://www.faa.int/mcs/node/542>.

⁶⁷⁸ Aqorau, T. "Cooperative Management of Shared Fish Stocks in South Pacific", in FAO, Papers Presented at the Norway-FAO Expert Consultation on the Management of Shared Fish Stocks, Bergen, Norway, 7-10 October 2002, FAO Fisheries Report No. 695 Supplement, Rome (p.7).

satellite-based vessel monitoring system.⁶⁷⁹ Regional cooperation among Pacific Island States under these measures brought effective fisheries management on tuna resources, especially in fisheries arrangement, for instance, state responsibility under the Treaty.

The United Nations Conference on Straddling Fish Stocks and Highly Migratory Fish Stocks (1995 Agreement) recognizes the special requirements required by developing States for the purpose of conservation and management of their fisheries resources; it also requires the cooperation and assistance of developing countries in monitoring, control, surveillance, compliance and enforcement (including training and capacity-building, development and funding of observer programmes).⁶⁸⁰

The FAO Code of Conduct for Responsible Fishing (FAO Code) recognizes developing countries' need for special assistance for the management their fisheries resources and also the cooperation among organizations and institutions' financial and technical assistance and training.⁶⁸¹ Illegal, unregulated and unreported (IUU) fishing activities are among the major threats to fisheries management for developing countries, mainly due to the high mobility of DWFN fleets and lack of resources and expertise to adequately address the issue of IUU.⁶⁸²

Misinformation and incorrect data have become common, with fishing vessels reporting catches as being from the high seas when they are actually from national jurisdiction.⁶⁸³ Under the Treaty, this is a serious issue, because Pacific Island States would lose out on their access fee (85% component).

Port State enforcement is regarded as being an effective tool in terms of compliance with conservation and management measures and in terms of the legislation banning the importation of fish caught illegally from somewhere else; however, the effectiveness of these

---

⁶⁷⁹ Note [ ] was added.

⁶⁸⁰ Aqorau, T. Illegal, Unreported and Unregulated Fishing: Considerations for Developing Countries", South Pacific Forum Fisheries Agency, Honiara, Solomon Islands (p.6); <http://www.daff.gov.au/fisheries/legal-arrangements/un-fishstocks>.

⁶⁸¹ Aqorau, T. Illegal, Unreported and Unregulated Fishing: Considerations for Developing Countries", South Pacific Forum Fisheries Agency, Honiara, Solomon Islands (p.6); Code of Conduct for Responsible Fisheries, FAO, Rome 1995, http://www.nts.gov/Events/forum_fishing_vessel_safety/Background/FAO%20CodeConductResponsibleFisheries.pdf.

⁶⁸² Aqorau, T. Illegal, Unreported and Unregulated Fishing: Considerations for Developing Countries", South Pacific Forum Fisheries Agency, Honiara, Solomon Islands (p.6); Palma, M.A., Tsamenyi, M. And Edeson, W. *Promoting Sustainable Fisheries: The International Legal and Policy Framework to Combat Illegal, Unreported and Unregulated Fishing*, Martinus Hijhoff Publishers, The Netherlands (2010).

⁶⁸³ Aqorau, T. "Illegal, Unreported and Unregulated Fishing: Considerations for Developing Countries", South Pacific Forum Fisheries Agency, Honiara, Solomon Islands (p.6); Hanich, Q., Teo, Feleti and Tsamenyi, M. "A Collective Approach to Pacific Islands Fisheries Management: Moving Beyond Regional Agreements", *Marine Policy*, Volume 34, Issue 1, January (2010:85-91).

measures is based on the close cooperation of the Pacific Island States.⁶⁸⁴ Lack of background information about fishing vessels' compliance records and regions previously fished is among the major problems of dealing with IUU fishing, and the FFA developed a Violations and Prosecutions (VAP) Database that contains information on vessels that have violated Pacific Island States' national fisheries laws.⁶⁸⁵

Surveillance & Enforcement:

The Niue Treaty promotes effective regional surveillance and enforcement through cooperation and coordination between parties. They allow one party to extend its fisheries surveillance and law enforcement activities to the territorial seas and archipelagic waters of another party.⁶⁸⁶

Traditional Fisheries Conservation Practice: An Alternative Option

Current conservation measures imposed on Pacific Island States' environmental programmes are based on Western principles that have proven ineffective for the purposes of implementation and enforcement. The reasons for this have already been discussed—namely economic circumstances, lack of technical expertise and cultural diversity. The two former issues are commonly acknowledged problems in the South Pacific, but the last has received inadequate consideration under the terms of the current regional and international environmental conservation regimes. Consequently traditional environmental conservation mechanisms deserve attention, with a view to possibly integrating them into the current Western-based Convention. This would represent a challenge to existing arrangements, but still warrants consideration as an alternative framework in that it would provide for the effective conservation and management of the region's fisheries resources.

Notwithstanding the difficulties in creating a single environmental conservation strategy from the multitude of cultural diversity that exists in the Pacific, some common indigenous

---

⁶⁸⁴ Aqorau, T. "Illegal, Unreported and Unregulated Fishing: Considerations for Developing Countries", Sotuh Pacific Forum Fisheries Agency, Honiara, Solomon Islands; Palma, M.A., Tsamenyi, M. And Edeson, W. *Promoting Sustainable Fisheries: The International Legal and Policy Framework to Combat Illegal, Unreported and Unregulated Fishing*, Martinus Hijhoff Publishers, The Netherlands (2010).

⁶⁸⁵ Aqorau, T. "Illegal, Unreported and Unregulated Fishing: Considerations for Developing Countries", Sotuh Pacific Forum Fisheries Agency, Honiara, Solomon Islands (p.16).

⁶⁸⁶ http://www3.pacii.org/pits/en/treaty_database/1992/7.html.

environmental conservation principles are discernible. The indigenous people of the Pacific have practised traditional conservation measures effectively for centuries. Indigenous people can be distinguished as those who may possess a particular spiritual relationship with some distinctive natural environment over time and place. These principles are founded on traditional religious beliefs that may embrace special relationships with the natural environment and that are comprehensive, indivisible and indispensable. People belong to their environment in a spiritual as well as a physical sense.

This traditional environment concept is based on a belief that the welfare and livelihood of people has been determined supernaturally. These forces have earthly representatives, including chiefly elites, claiming divine origin. Deities determined agricultural harvest and fishing yields, but this was based on how people treated the environment in which they lived. Although these values have eroded, they retain some support in daily practice.

Fisheries species often require long-term periods of recovery, although certain types are seasonal, meaning they have ample time to recover. Locals recognized that different species have different rates of recovery, which are needed to prevent adverse environmental impacts. Key decision-making processes, at least in Polynesia, were restricted to the chiefly classes, not the majority of the population. The current depletion of the South Pacific's fisheries resources began with an asymmetrical exchange between populations and marine resources, where people extracted too much from and returned too little to the natural environment. The need to restore a balance of exchange between populations and the natural marine environment grew increasingly urgent.

Introduced exploitation had a huge impact upon the socio-political and economic settings of Pacific Island States.⁶⁸⁷ It rewarded the maximum exploitation of fishing resources with minimum effort made in terms of sustainability—contrary to the principles practised by traditional subsistence systems. As a result, for the first time the Pacific Island States' fishing resources faced a growing threat of over-exploitation.⁶⁸⁸

---

⁶⁸⁷ Gillett, R. *Fisheries in the Economies of the Pacific Island Countries and Territories*, Asian Development Bank, Manila (2009)

⁶⁸⁸ Kofana, G. "Tuna Species Under Threat: Greenpeace", Solomon Times Online, 24 April 2008, <http://www.solomontimes.com/news.aspx?nwID=1677>.

The international community's introduced environmental conservation and management measures, designed to control and regulate regional exploitation of tuna resources, sent mixed messages. Although they established some controls over tuna exploitation, they did so while the world market in the West experienced the heaviest demand for this species. Conservation of tuna resources through these controls risked being seen as a political façade that appeared to formally regulate a pre-existing over-exploitation process.

The disregard for traditional conservation principles under current international and regional environmental frameworks may be a result of the perceived ineffectiveness of those principles. Traditional conservation principles, however, deserve serious consideration along with social political and economic factors. A balanced framework of traditional mechanisms and modern practices is needed.

... the social and economic costs of stock collapses as a result of overfishing are catastrophic for coastal States, in terms of their impacts on the local economy as well as political and social stability and food security. This is especially so in many ACP countries where the overwhelming majority of the coastal population relies on subsistence fishing as a dominant source of food. In most cases the importance of subsistence fishing is not fully appreciated ...⁶⁸⁹

Fisheries access agreements present huge food security and other socio-economic risks for coastal States and these risks need to be significantly reduced to safeguard sustainability and mutual reinforcement; DWFN (US in particular) should take flag State responsibility and for the Pacific Island States to stick for multilateral access arrangement as the best so far.⁶⁹⁰

International Regional Fisheries Conservation Measures

Existing international and regional fisheries environmental conservation and management measures were introduced to the Pacific Island States through international and regional organizations and institutions.⁶⁹¹ These measures are believed to have originated in part from

---

⁶⁸⁹ "Taking Tuna Out of the Can: Rescue Plan for the World's Favorite Fish", Greenpeace International, Amsterdams (2007:18).

⁶⁹⁰ "Taking Tuna Out of the Can: Rescue Plan for the World's Favorite Fish", Greenpeace International, Amsterdams (2007).

⁶⁹¹ Trzyna, T (ed.) *World Directory of Environmental Organizations* (Sixth Edition), A Handbook of National and International Organizations and Programs – Governmental and Non-Governmental – Concerned with

pressure exerted by environmental lobbying groups in countries with fishing fleets operating in the Pacific. This created a conflict of interest for DWFN signatories to international and regional fisheries conservation and management conventions who had operating fishing fleets with a potential capacity to over-exploit the region's tuna resources. In order for the region's tuna resources to be maintained in a sustainable manner, the DWFN need to maintain close relationships with their fishing fleets. Currently, however, it is up to Pacific Island State parties to monitor the operation of foreign vessels—the DWFN play virtually no role in this. Having the DWFN equally involved in the monitoring process could make the system more effective, as they would ensure their fishing vessels are fully compliant with existing fishing arrangements.⁶⁹² It has been proven that the implementation and enforcement of conservation and management measures by the Pacific Island States on foreign fishing fleets is not as effective as was expected.⁶⁹³

Sustainable development means that economic development is possible without compromising the natural environment—in this instance, tuna resources. It is possible to exploit such resources without harming tuna stocks. In actual practice however, this concept may be flawed. The exploitation of tuna resources in the region is a constant process; it is a seven days a week operation, which gives tuna stocks little chance to recover. Sustainable development may be a contradictory concept in that any form of substantial development, including the exploitation of tuna does, has an adverse impact upon the natural environment. This serves primarily the interests of those involved in the fishing industry, not necessarily the tuna stocks. The case for preservation of these tuna resources for future generations is irrefutable.

The conservation, management and development of the Pacific's tuna resources are shared responsibilities among Pacific Island States, international environmental organizations (including relevant United Nations specialized agencies) and tuna fishing countries. Pacific

---

Protecting the Earth's Resources, International Center for the Environment and Public Policy, California Institute of Public Affairs, Sacramento (2002).

⁶⁹² Report of the Expert Consultation on Fishing Vessels Operating Under Open Register and their Impact on Illegal, Unreported and Unregulated Fishing, Miami, Florida, US (23-25 September 2003), FAO Fisheries Report No. 722, Rome (2004); International Fisheries Instruments with Index, Food and Agriculture Organization of the United Nations, Division for Ocean Affairs and the Law of the sea, Office of Legal Affairs, United Nations (1998).

⁶⁹³ Report of the Workshop on the Implementation of the 1995 FAO Code of Conduct for Responsible Fisheries in the Pacific Islands: A Call to Action, Nadi, Fiji (27-31 October 2003), FAO Fisheries Report No. 731, FAO, Roma (2004).

Island States cannot carry the sole responsibility for implementing effective environmental conservation in the region due to lack of funds and the unavailability of relevant expertise.⁶⁹⁴ International financial and technical assistance is core to such an effort.

Thus, the dilemma facing Pacific Island States is economic privation on the one hand and the need to enforce environmental conservation standards on the other. However, the full, practical enforcement of such instruments is a totally different issue altogether and, in most cases, impossible. For centuries, people's livelihoods and welfare has predominantly been based on the marine economy; to strictly regulate the only affordable source of food by imposing imported conservation measures would be near impossible.

It is important to acknowledge that Pacific Island States' economic circumstances have varied both in terms of their political association with foreign countries, and in their renewable and non-renewable resources.⁶⁹⁵ These are issues that have an impact on the effectiveness of the environmental conservation of the region. Some Pacific Island States have historical associations and political relations with certain foreign powerful countries and are at an advantage compared to others.⁶⁹⁶ Natural resource endowments vary, including fisheries resources. The availability of quality tuna specified under the Treaty varies among countries in the region and this signifies an unequal distribution of marine and other natural resources.

Fisheries conservation and management is seen by Pacific Island States as an economic constraint on their pursuit of sound economic development. Further, the limitations imposed on Pacific Island States selling fishing licences to foreign fishing vessels have had a significant economic impact, while at the same time providing environmental conservation and management safeguards for the region's fisheries resources.⁶⁹⁷

---

⁶⁹⁴ Report of the FAO/FFA Regional Workshop to Promote the Full and Effective Implementation of Port State Measures to Combat Illegal, Unreported and Unregulated Fishing, Nadi, Fiji, 28 August – 1 September 2006, FAO Fisheries Report No. 810, FAO, Rome (2007).

⁶⁹⁵ Cohen, P., Valemei, A.D. and Govan, H. *Annotated Bibliography on Socio-economic and Ecological Impacts of Marine Protected Areas in Pacific Island Countries*, Worldfish Bibliography No. 1870, The Worldfish Center, Penang (2008).

⁶⁹⁶ Molnar, H. and Meadows, M. *Songlines to Satellites: Indigenous Communication in Australia, The South Pacific and Canada*, Huia Publishers, Wellington (2001).

⁶⁹⁷ Gillett, R., McCoy, M., Rodwell, L. and Tamate, J. *Tuna : A Key Economic Resources in the Pacific Islands*, A Report prepared for the Asian Development Bank and Forum Fisheries Agency, FFA, Honiara (2001).

The full enforcement of a regional and international environmental mechanism is still a challenge that Pacific Island States have yet to achieve.⁶⁹⁸ Some implementation has occurred through the incorporation of these instruments into national fisheries and conservation legislation. It is suspected that this has been done primarily to please foreign aid donors and to avoid any awkward political and economic fallout from them through failure to legislate. To a certain extent, environmental measures may be seen as a strategic move designed to attract financial and technical assistance. In general, becoming a signatory to certain international or regional agreements, and subsequently incorporating those instruments into domestic legislation, can help to guarantee foreign aid.

Cultural development is here considered to be a form of sound economic development encompassed by traditional values and beliefs. In the Pacific, different cultures co-exist yet share common cultural principles based on a collective orientation model with both social and natural dimensions. This would comprise a form of economic development that is based on traditional frameworks, minimizing environmentally adverse effects through forms of sustainable economic development.

The environmental conservation of fisheries resources in the region is difficult given the different levels and processes of enforcement and implementation of environmental conservation measures.⁶⁹⁹ These may operate under contrasting socio-political and economic arrangements that are at times complicated and sophisticated. At a national level, this may comprise districts that are either land or coastal based, and where approaches to environmental conservation are different. Coastal areas are marine-orientated, while those that are land based have an emphasis on conservation that is of a different nature, making it difficult to synthesize measures suitable for both.

At the regional level, Pacific Island States have formulated regional environmental conservation measures through organizations based on directives from the international

---

⁶⁹⁸ Report of the Workshop on the Implementation of the 1995 FAO Code of Conduct for Responsible Fisheries in the Pacific Islands: A Call to Action, Nadi, Fiji (27-31 October 2003), FAO Fisheries Report No. 731, FAO, Roma (2004).

⁶⁹⁹ Report of the Workshop on the Implementation of the 1995 FAO Code of Conduct for Responsible Fisheries in the Pacific Islands: A Call to Action, Nadi, Fiji (27-31 October 2003), FAO Fisheries Report No. 731, FAO, Roma (2004).

environmental organizations.⁷⁰⁰ Although Pacific Island States have formulated an environmental framework largely based on their own interests, these measures have been derived and/or borrowed from international environmental systems, the conservation mechanism viewed in some quarters as a potential economic threat to the region.

It is vital that fisheries conservation and management is active at a local level, where a sound government-community partnership is needed in order to implement and enforce conservation measures effectively. Relevant government departments have lobbied for the significance of the management of tuna resources at present and the future, but getting this endorsed by their governments is another matter.⁷⁰¹ International and regional research centres need to get involved in this dialogue on conservation issues. Local communities can be supportive and active in conservation efforts, provided they are given clear responsibilities that make them feel they are playing a crucial role in the conservation process.

Other factors seen as obstructing environmental conservation include increasing unemployment, rapid population growth and poor governance. Restricting the sale of fishing licences for foreign fishing fleets authorized by international organizations would worsen the situation. Fisheries resources seem the only viable resources in the region. Agricultural exports were dominant revenue earners decades ago, but protectionism and overseas market restrictions have forced Pacific Island States to rely heavily on fisheries.

The question of whether Pacific Island States receive a fair price for their tuna is debatable. Obviously, countries that are desperate to survive financially may not always get the best price—they will take whatever offer is put forward. Part of the problem involves the foreign fishing nations putting pressure on Pacific Island States or relevant regional agencies for fishing access.

Educating people about the environmental conservation of fisheries resources is another possible means of preventing environmentally adverse effects upon fisheries resources. A

---

⁷⁰⁰ Report of the Workshop on the Implementation of the 1995 FAO Code of Conduct for Responsible Fisheries in the Pacific Islands: A Call to Action, Nadi, Fiji (27-31 October 2003), FAO Fisheries Report No. 731, FAO, Roma (2004).

⁷⁰¹ Report of the FAO/FFA Regional Workshop to Promote the Full and Effective Implementation of Port State Measures to Combat Illegal, Unreported and Unregulated Fishing, Nadi, Fiji, 28 August – 1 September 2006, FAO Fisheries Report No. 810, FAO, Rome (2007).

programme like this could operate in schools and in the community, which would help over the longer term.

International and regional environmental institutions do not guarantee the effective management of tuna resources, and it is the sole responsibility of the Pacific Island States to implement, monitor and enforce such management. This responsibility is yet to be fully implemented. Resources in terms of human expertise and technical and financial assistance are means that would make such a programme work in the region.

The conservation effort for the management of tuna resources—in the South Pacific in particular and in the world at large—should be a global one, made through processes ranging from sustainable tuna exploitation, to orderly world markets and consumption levels. In this way, all parties involved in these industries would contribute to the conservation and management of the region's tuna stock. This would curtail regional and global cooperation among countries concerned through financial and technical assistance packages, and an exchange of relevant technologies.

Tuna management institutions in the region should be prioritized as policy development issues, including effective and realistic guidelines aligned with international environmental requirements. Collecting accurate data and information on tuna fishing activities in the region would help formulate an exploitation framework to conserve and manage tuna resources more sustainable.

The environmental consequences for the region's tuna resources in both the short and long term are enormous if direct action is not taken urgently. This threat is not restricted to any particular country but applies to the region as a whole. Other environmental problems include the destruction of coastal habitat, land pollution by agricultural chemicals and fertilizers and the lack of expertise and appropriate equipment available for the disposal of toxic substances.⁷⁰²

The South Pacific Forum Fisheries Agency (FFA) provides some support in preparing conservation and management policies by gathering relevant information regarding the

---

⁷⁰² Boer, B., Ramsay, R. and Rothwell, D. *International Environmental Law in the Asia Pacific*, Kluwer Law International Law, The Netherlands (1998).

fisheries resources of the region. The main task of the FFA, however, is to seek a better price for tuna through negotiation.

The key idea in setting up the FFA was to assist the Pacific Island States in the management and development of fisheries resources, especially the HMS. The FFA was a response to the United Nations Conferences on the Law of the Sea III (UNCLOS III), which recognized the coastal States' sovereign rights over resources within 200 nautical miles of their coasts.⁷⁰³

From the Pacific Island States' perspective, the FFA was seen as a mechanism that would constantly and permanently manage the economic benefits flowing from fisheries resources. As signs of overfishing in the region started to become visible, the FFA was confronted by the need to control the exploitation of the region's fisheries resources, particularly the DWFN illegal fishing activities in the region; this was for the sustainable economic benefit of the region.⁷⁰⁴ The aims of the FFA were helped by not having membership allocated to DWFN.

The FFA was established in 1979 with 16 members; it had a Secretariat, the Forum Fisheries Committee was the governing body and an International Convention was adopted in that year.⁷⁰⁵ However, the mission of the Agency was to manage the region's fisheries resources, in particular the vast tuna stocks in the western and central Pacific Ocean, in a sustainable manner.⁷⁰⁶ This was due to the rapid increase of foreign fishing vessels roaming the region fishing grounds for tuna to satisfy the enormous global demand for tuna.

The Tuna Commission was established under the requirements provided by the Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (Fish Stocks Convention).⁷⁰⁷ The Tuna Commission was established

---

⁷⁰³ Report of the Ad Hoc Consultation on the Role of Regional Fishery Agencies in Relation to the High Seas Fishery Statistics, La Jolla, California, US, 13-16 December 1993, FAO Fisheries Report No. 500, FAO, Rome (1994).

⁷⁰⁴ Report of the FAO/FFA Regional Workshop to Promote the Full and Effective Implementation of Port State Measures to Combat Illegal, Unreported and Unregulated Fishing, Nadi, Fiji, 28 August – 1 September 2006, FAO Fisheries Report No. 810, FAO, Rome (2007).

⁷⁰⁵ Australia, Cooks, Federated States of Micronesia, Fiji, Kiribati, Marshalls, New Zealand, Niue, Papua New Guinea, Samoa, Solomon, Tokelau, Tonga, Tuvalu, Vanuatu

⁷⁰⁶ <http://www.ffa.int/www/index.cfm?itemID=2>.

⁷⁰⁷ Agorau, T. "Obligation to Protect Marine Ecosystems under International Conventions and Other Legal Instruments", in Sinclair, M. and Valdimarsson, G. (eds.) *Responsible Fisheries in the Marine Ecosystem*, FAO, CABI Publishing, Wallingford (2003:25-40).

by the FFA with the aim of providing a means for the sustainable development of region's tuna resources.

The South Pacific Regional Environment Programme (SPREP)⁷⁰⁸ is a regional organization that was established by the Pacific Forum States to protect the region's natural environment, including its fisheries resources. SPREP has made an international commitment to the conservation of the natural environment and its resources at the regional level. It promotes sustainable development in the region.

SPREP provides programmes to support member States in planning and managing their environmental programmes as a whole region. The SPREP's mandate:

... is to promote cooperation in the Pacific islands region and to provide assistance in order to protect and improve the environment and to ensure sustainable development for present and future generations.⁷⁰⁹

The assumption here "is that people of the Pacific islands are better able to plan, protect, manage and use their environment for sustainable development". SPREP's focus "is to sustain the integrity of the ecosystems of the Pacific islands region to support life and livelihoods today and tomorrow."

SPREP has two main programmes: Islands Ecosystem Programme (IEP) and Pacific Future Programme (PFP). Under the IEP, there is a programme that directly deals with fisheries resources including tuna; this states that:

... coastal and marine environments will be the focus of considerable attention throughout the life of the plan. As a principal support for life and livelihoods throughout the region, community-based initiatives will continue to be the basis for much of SPREP's Programme in coastal and marine ecosystems. Understanding social and economic driving factors in community decision making in relation to resources use and conservation, and empowering local communities through co-management of projects will be critical elements of the programme.⁷¹⁰

---

⁷⁰⁸ SPREP members – American Samoa, Australia, Cook Islands, Federated States of Micronesia, Fiji, France, French Polynesia, Guam, Kiribati, Marshall Islands, Nauru, New Caledonia, New Zealand, Niue, Northern Mariana Islands, Papua New Guinea, Samoa, Solomon Islands, Tokelau, Tonga, Tuvalu, United States of America, Vanuatu and Wallis & Futuna.

⁷⁰⁹ <http://www.sprep.org/sprep/about.htm>.

⁷¹⁰ http://www.sprep.org/programme/island_eco.htm.

The United Nations Convention on the Law of the Sea 1982 (1982 Convention) gave coastal States the responsibility to conserve and manage their HMS resources, but failed to provide significant mechanisms for implementation. This was an example of ineffective international delivery for practical and needed forms of application. It resulted from the unfair trade-offs between powerful and weak countries and complex diplomatic and political negotiations within the international community. The 1982 Convention was intended to be a regime that encouraged coastal States (often poor) and powerful DWFN to cooperate for the conservation and management of the HMS. But the Convention did not explicitly specify how coastal States were meant to cooperate.

To conserve and manage HMS in the Pacific region, there is a serious need for both Pacific Island States and DWFN to cooperate for the conservation and management of the HMS both within an EEZ and the high seas. The high seas should be treated through a legal mechanism that provides for the constant management and exploitation of tuna throughout their migratory routes. Non-regulated HMS fishing activities in the high seas would provide a greater threat to tuna sustainability than anything else.

Susskind argues that the most obvious approach to sustainable development is to ensure that the renewable resources are exploited in a sustainable manner and can be determined based on profit maximization or biological sustainability.⁷¹¹

The Brundtland Report (which popularized the idea of sustainable development and postulated the need to link economic development and environmental protection) assumes that effective responses to global environmental threats can be found within the key actors would accept the importance of sustainability.⁷¹²

The concept of sustainable development is defined and interpreted in many ways depending on the disciplines concerned.⁷¹³ The basic implication of the concept of sustainable development is that present generations should leave the future generation with a stock of quality of life assets no less than what we have inherited.⁷¹⁴ The concept also covers human-

---

⁷¹¹ Susskind, L.E. *Environmental Diplomacy*, Oxford University Press, New York (1994:58-59).

⁷¹² Susskind, L.E. *Environmental Diplomacy*, Oxford University Press, New York (1994:19); the concept of sustainable development came to life when World Commission on Environmental and Development (WCED – also known as Brundtland Commission) reported in 1987.

⁷¹³ <http://www.gdrc.org/sustdev/definitions.html>.

⁷¹⁴ Pearce, D., Markandya, A. and Barbier, E.B. *Blueprint for a Green Economy*, Earthscan, London (1989); <http://www.un-documents.net/ocf-02.htm>; .

made assets, human capital and natural environment⁷¹⁵ (the whole environment surrounding human beings regardless of their geographical location). Sharp argues that:

The concept of sustainable development embodies a belief that people should be able to alter and improve their live in accordance with criteria which take account of the needs of others and which protect the planet and future generations. Thus people's rights and responsibilities form the crux of any discussion of any discussion of sustainability.⁷¹⁶

The Treaty provided a sustainable development approach for the economic development and conservation and management of the region's fisheries resources. The approach consists of measures acceptable to both parties and serves their interests, regardless of their wide ranges of differences.

The sustainable development of the region's fisheries resources would be a challenge, especially from the Pacific Island States' perspective. This is due basically to the rate of exploitation and the fishing technologies methods employed had an impact on the fisheries resources and a great challenge to sustain such resources.⁷¹⁷

Harley and Maunder argue that there are numerous problems with Maximized Sustainable Yield (MSY), such as the uncertain biological processes and the impossibility of maximizing all species independently.⁷¹⁸ That is, if maximizing the yield of a target species caused the population of a by-catch species to collapse, then a trade-off between yield and maintaining the by-catch species must be considered. Such a trade-off is encapsulated in the conservation and management objectives through modifying factors and the precautionary strategic approach.⁷¹⁹

---

⁷¹⁵ Holmberg, J. And Sandbrook, R. "Sustainable Development: What Is to be Done?", Holmberg, J. (ed.) *Making Development Sustainable: Redefining Institutions, Policy and Economics*, International Institute for Environment and Development, Washington DC (1992:19-38).

⁷¹⁶ Sharp, R. "Organizing for Change: People-Power and the Role of Institutions", Holmberg, J. (ed.) *Making Development Sustainable: Redefining Institutions, Policy and Economic*, International Institute for Environment and Development, Washington DC (1992:39-64).

⁷¹⁷ Review of the State of World Marine Fishery Resources, FAO Fisheries Technical Paper 457, FAO, Rome (2005).

⁷¹⁸ Harley, S.J. and Maunder, M.N. "Status of Bigeye Tuna in the Eastern Pacific Ocean, in *Stock Assessment Report 4, Inter-American Tropical Tuna Commission*, La Jolla (2005); Larkin, P.A. "An Epitaph for the Concept of Maximum Sustainable Yield", *Trans. Amer. Fish. Soc.* 106 (1977:1-11).

⁷¹⁹ Harley, S.J. and Maunder, M.N. "Status of Bigeye Tuna in the Eastern Pacific Ocean, in *Stock Assessment Report 4, Inter-American Tropical Tuna Commission*, La Jolla (2005:120-286); Krebs, C. *The Ecological World View*, University of California Press, Berkeley (2008).

Fisheries catches consisting of other species are among the major criticisms of the concept of MSY.⁷²⁰ The recommendation was to reduce fishing efforts based on an assessment of the species overexploited.⁷²¹

MSY is typically defined on the basis of a given age-specific fishing mortality. For any given fishery this mortality is achieved through gear selectivity (or age-specific availability). In a multigear fishery it results from a combination of the selectivity of each gear and the relative efforts allotted to gears; different gears may produce different levels of MSY.⁷²²

Game theory is concerned with the strategic actions of different actors—how their interests are intertwined and how the outcome is processed throughout the negotiation.⁷²³ Pacific Island States chose their sustainable development strategies and at the same time tried to understand the US position on the issue. From the outset of the Treaty negotiation, both parties fully understood each other's positions; the issue was how far each could go. Ultimately, however, the Pacific Island States had clearly stated their position and US could not do anything about it. The US found itself under pressure and surrounded by the terms and conditions of the Treaty as well as other regional and international obligations regarding the conservation and management of fisheries resources. Froyn argues that:

In development of such international institutions, countries are like game players that must choose their strategies based on their beliefs about the likely choices of others. The existence of international regimes will, thus, not ensure optimal levels of cooperation. Failure to solve the problem of providing international public goods is well known, and an institution's level of success will depend on the different country's response to the agreed-upon set of rules (design).⁷²⁴

---

⁷²⁰ Harley, S.J. and Maunder, M.N. "Status of Bigeye Tuna in the Eastern Pacific Ocean, in *Stock Assessment Report 4, Inter-American Tropical Tuna Commission*, La Jolla (2005:120-286); Bell, S. and Morse, S. *Sustainability Indicators: Measuring the Immeasurable?*, Earthscan, London (2008).

⁷²¹ Harley, S.J. and Maunder, M.N. "Status of Bigeye Tuna in the Eastern Pacific Ocean, in *Stock Assessment Report 4, Inter-American Tropical Tuna Commission*, La Jolla (2005:120-286).

⁷²² Maunder, M.N. "The Relationships Between Fishing Methods, Fisheries and the Estimation of Maximum Sustainable Yield", *Fish and Fisheries* 3 (2002:251-260).

⁷²³ Fudenberg, D. And Tirole, J. *Game Theory*, Massachusetts Institute of Technology, United States of America (1991); Binmore, K. *Game Theory: A Very Short Introduction*, Oxford University Press, New York (2007); Gibbons, R. *A Primer in Game Theory*, Harvester Wheatsheaf, New York (1992).

⁷²⁴ Froyn, C.B. "International Environmental Cooperation: The Tole of Political Feasibility", in Atkinson, G., Dietz, S. And Neumayer, E. (eds.) *Handbook of Sustinable Development*, MPG Books, Cornwell (2007:295-412).

There are several significant areas in which Pacific Island States have not achieved cooperation in fisheries; most notably, they have not shared economic information about tuna industries or aid, or negotiated access/licensing arrangements collaboratively, despite the US multilateral Treaty providing evidence that regional negotiation could yield substantial benefits.⁷²⁵ Underdal argues that:

Where international management can be established only through agreement among all significant parties involved, and where such a regulation is considered only on its own merits, collective action will be limited to those measures acceptable to the least enthusiastic party.⁷²⁶

The process of making an international treaty is a complex one and requires an outcome that serves all parties. And international and regional cooperation among States due to how their interests are considered in the negotiation process of the institutions concerned. In the Pacific, there is no acceptance at all, and therefore all parties' interests must be taken into serious consideration.

With the establishment of the Convention for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (Fish Stocks Convention), the Pacific Island States also have to work with distant water fishing countries, some of whom oppose Pacific Island States on key issues.⁷²⁷

Japan was a difficult opponent for the Pacific Island States in the negotiations leading up to the establishment of the Fish Stocks Convention.⁷²⁸ Japan promises to continue to be a strong opponent of Pacific Island States wishing to be allocated the tuna resources in their EEZs, arguing that fishing states have at least equal rights to the resources and that highly migratory

---

⁷²⁵ Duncan, R. and Nakagawa, H. "Obstacles to Economic Growth in Six Pacific Island Countries", <http://siteresources.worldbank.org/INTDBTDEPT/Resources/468980-1206974166266/4833916-1206989877225/DuncanNakagawaObstacles.pdf>.

⁷²⁶ Underdal, A. *The Politics of International Fisheries Management: The Case of the North-East Atlantic*, Scandinavian University Press, Oslo (1980:36).

⁷²⁷ Tarte, S. "The Convention for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean: Implementation Challenges from a Historical Perspective", http://www.ancors.uow.edu.au/images/publications/Navigating%20Pacific%20Fisheries%20Ebook/Chapter_9_Navigating_Pacific_Fisheries.pdf.

⁷²⁸ Tarte, S. "The Convention for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean: Implementation Challenges from a Historical Perspective", http://www.ancors.uow.edu.au/images/publications/Navigating%20Pacific%20Fisheries%20Ebook/Chapter_9_Navigating_Pacific_Fisheries.pdf; Barclay, K. "Ocean, Empire and Nation: Japanese Fisheries Politics", in Ghosh, D., Goodall, H. and Donald, S.H. *Water, Sovereignty and Borders in Asia and Ocean*, Routledge, New York (2009:38-49).

resources do not ‘belong’ to the zone in which they are caught.⁷²⁹ The fact that Japan has fishing relationships with some Pacific Island States (mostly PNA states) has tended to create divisions in regional cooperation to achieve recognition for issues such as allocation by fishing zones. Other DWFN in the Fish Stocks Convention include the United States, Korea, China, Taiwan and the European Union, who are all highly industrialized, with considerable wealth and other resources at their disposal to underpin negotiating strategies.⁷³⁰

The Fish Stocks Convention provides new opportunities for the Pacific Island States to secure better benefits from their tuna resources and takes a holistic approach towards fisheries management. It requires parties to the Western and Central Pacific Fisheries Commission (Commission) to include a precautionary approach in the long term.⁷³¹ The Fish Stocks Convention’s objectives over HMS are consistent with the 1982 Convention and the 1995 Agreement.

The Fish Stocks Convention intends to establish a Tuna Commission⁷³² that can determine conservation and management measures for highly migratory fish stocks throughout the Convention area, with input from a scientific committee and a technical and compliance committee. The Fish Stocks Convention will also establish a secretariat that will operate according to the principle of cost effectiveness and will be appointed on the basis of their scientific and technical qualifications.

The Commission is not given any specific role in allocating participatory rights. Instead it is to develop criteria for the allocation of total allowable catch, taking into account a number of different factors (such as catch history and the needs of small island developing states).⁷³³

---

⁷²⁹ Tarte, S. “The Convention for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean: Implementation Challenges from a Historical Perspective”, http://www.ancors.uow.edu.au/images/publications/Navigating%20Pacific%20Fisheries%20Ebook/Chapter_9_Navigating_Pacific_Fisheries.pdf. Tarte, S. “The Convention for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean: Implementation Challenges from a Historical Perspective”, http://www.ancors.uow.edu.au/images/publications/Navigating%20Pacific%20Fisheries%20Ebook/Chapter_9_Navigating_Pacific_Fisheries.pdf.

⁷³⁰ <http://www.wcpfc.int/>.

⁷³¹ <http://www.wcpfc.int/>, the Western and Central Pacific Fisheries Commission (Commission) was established under the Convention for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (Fish Stocks Convention).

⁷³² The Commission’s functions include the determining of total allowable catch, level of fishing effort in the Convention Area, collect and exchange of data on fishing within the Convention Area, ensure conservation and management measures between high seas and EEZs are consistent, and establish compliance and enforcement mechanisms. <http://www.wcpfc.int/>

⁷³³ <http://www.wcpfc.int/about-wcpfc>.

However, the establishment of the Commission is a starting point and its relationship with the FFA is yet to be seen.⁷³⁴

SPREP is the South Pacific component of the United Nations Environment Program (UNEP) Regional Seas Program. SPREP has many programs in the area of marine and coastal environment, including an environmental impact assessment program and a marine pollution assessment program aimed, *inter alia*, to develop monitoring capabilities throughout the region and identify marine pollution types and sources.⁷³⁵

Under the fishing agreement, there are terms and conditions of the access regarding catch data for high seas operations and onboard observers' duties and functions, and if data are suspected than, terms and conditions changed, for instance, in mid-1993, Pacific Island States changed from at-sea transshipment to transshipment in-port.⁷³⁶

The 1982 Convention really pushed the DWFN fleets out from the Pacific Island States respective EEZs to the high seas and the adoption of the Fish Stock Agreement⁷³⁷ adopted in 1995.⁷³⁸ However, both instruments provide conservation and management measures for HMS in EEZs and the high seas as well.

The FAO Compliance Agreement⁷³⁹ was designed to address issues such over-capitalization, larger fishing boats, flags of convenience and other deficiencies that contributed to illegal, unregulated and unreported (IUU) fishing; its purpose was to establish flag State responsibility for fishing fleets on the high seas and to deter vessels from seeking registry in countries with lax enforcement capacity in order to avoid having to comply international conservation and management measures in general.

---

⁷³⁴ Fisheries in the Pacific: Coherence Between Development and Commercial Objectives, prepared by DG DEV/AIDCO Fisheries Task Force (include B. Van Helden/D. Friedrichs, T. Schmale, H. Pilgaard (DEV/C/4); J.Prade, J. Favre (DEV/B/4); F.Affinito/V.Dowd (DEV/C/I) & R.Noë (AIDCO C/5), Pacific Issues Paper No. 1, I:\fed\gener\fish9.doc, Brussels, 18 February (2002:6-7).

⁷³⁵ Bergin, A. and Michaelis, F.B. "Australia and the South Pacific: Implementing the UNCED Oceans Agenda", *Marine Policy*, Vol.20, No.1 (1996:47).

⁷³⁶ Bergin, A. and Michaelis, F.B. "Australia and the South Pacific: Implementing the UNCED Oceans Agenda", *Marine Policy*, Vol.20, No.1 (1996).

⁷³⁷ Came into force in December 2001.

⁷³⁸ The International Legal Regime of the High Seas and the Seabed Beyond the Limits of National Jurisdiction and Options for Cooperation for the Establishment of Marine Protected Areas (MPAS) in Marine Areas Beyond the Limits of National Jurisdiction, Secretariat of the Convention on Biological Diversity, CBD Technical Series No.19, November 2005, <http://www.cbd.int/doc/publications/cbd-ts-19.pdf>.

⁷³⁹ FAO Compliance Agreement adopted in 1993 and came into force November 2007.

The FAO Code of Conduct for Responsible Fisheries (FAO Code) recognizes the protection of the marine environment including all critical fishery habitats, artisanal and small-scale fisheries and a participatory approach of industry, fish workers and environmental organizations in decision-making processes.⁷⁴⁰

The very objective of the Fish Stocks Convention is to ensure the tuna stocks of the region are conserved and managed in a sustainable manner. Deciding the total allowable catches (TAC) was a significant landmark in light of previous practices.⁷⁴¹ Apart from the TAC, the Fish Stocks Convention's text demonstrated that it was not well equipped to deal with other economic issues, let alone significant institutional 'gaps' in the conservation and management framework.⁷⁴²

Among the key principles of the 1995 Agreement were the precautionary approach, cooperation amongst stakeholders and consistency in management across national and international boundaries, and the Fish Stocks Convention (the regional operational framework corresponded to the 1995 Agreement).⁷⁴³

Domestic and International Interactions

Throughout the negotiation process of the Treaty, there were no major public reactions throughout the South Pacific on the part of any major environmental groups, government affiliated bodies or NGO- sponsored organizations.⁷⁴⁴ In part, this reflected the role of culture in the region's politics, and the historical and political relationships among Pacific Island

---

⁷⁴⁰ "Taking Tuna Out of the Can: Rescue Plan World's Favourite Fish: Defending Our Oceans", Greenpeace International, Amsterdam (2007:6-7); Code of Conduct for Responsible Fisheries, FAO, Rome (1995).

⁷⁴¹ Pariss, H. And Grafton, R.Q. "Tuna-Led Sustainable Development in the Pacific", Asia Pacific School of Economics and Government, Australian National University, Canberra, June (2005:5); Petersen, E.H. *Institutional Economics and Fisheries Management: The Case of Pacific Tuna*, Edward Elgar Publishing Limited, Northampton (2006).

⁷⁴² Pariss, H. And Grafton, R.Q. "Tuna-Led Sustainable Development in the Pacific", Asia Pacific School of Economics and Government, Australian National University, Canberra, June (2005:6).

⁷⁴³ Parris, H. And Grafton, R.Q. "Tuna-Led Sustainable Development in the Pacific", Asia Pacific School of Economics and Government, Australian National University, Canberra, June (2005:6-7).

⁷⁴⁴ Hey, A. *The Regime for the Exploitation of Transboundary Marine Fisheries Resources*, Martinus Nijhoff Publishers, The Netherlands (1989); Ridgell, R. *Pacific Nations and Territories: The Islands of Micronesia, Melanesia and Polynesia*, Third Edition Revised, Bess Press Inc., Honolulu (1982).

States themselves and the region as a whole with the US.⁷⁴⁵ That is, the US remains the main superpower in the region, and although not openly condemning French nuclear weapons testing in the region, it has generally maintained good relationships in the region.

A similar situation occurred at the international level—that is, no major protests emerged during the negotiations, even at the actual signing of the Treaty. This may highlight the role played by the US in the world and its allies, particularly Australia (but to a lesser degree, also New Zealand), in the Pacific. Also demonstrated was the well-established position of the US in global economics and politics, it being rare for any country to openly criticize the US. This limited interest in Pacific tuna may be seen as advantageous to the US. However, an open protest from the international community in relation to the fairness of the Treaty would assist the Pacific Island States politically and economically.

For the Pacific Island States the treaty was, first and foremost, political and economic in nature; they wanted to ensure that tuna resources within the region were managed and developed in a sustainable way. At a local level, most populations were not really interested in political or diplomatic arrangements with foreign countries—this Treaty included. Governments, business communities and investors were those most interested in the Treaty, mainly for economic reasons.

The domestic politics of international relations are varied as far as commitment to international agreements is concerned. This applies to the Pacific, where governments have taken holistic approaches to conservation in order to be seen to be marginally fulfilling international commitments. In the Pacific, governments face varied economic circumstances, which have impacted on conservation commitments. Within Pacific Island States, conditions may vary markedly from district to district, which can further complicate the implementation of the international commitments made by their governments.

However some local environmental groups have been established to educate the community in the conservation, management and development of fisheries resources. Local communities have, however, also remained suspicious of such working relationships; sometimes see them as maintaining links with former colonial powers that have previously subdued the growth

---

⁷⁴⁵ Buckley, R. *The United States in the Asia-Pacific Since 1945*, Cambridge University Press, Cambridge (2002).

and independence of local populations. Most Pacific populations do not understand the meaning of conservation of tuna resources and of conservation more generally. Generally, conservation is best achieved under sound economic conditions; if the Pacific is unhealthy economically then the imposition of further environmental restrictions will leave entire populations struggling to survive.

In 1993, the total market value of tuna taken from Pacific Island States' EEZ was estimated to be around US\$1.4 billion and 80% of this total catch was taken by purse seine vessel and main DWFN active operators are Japan, US, Taiwan and South Korea.⁷⁴⁶

The US is the only DWFN party to a regional multilateral fisheries access arrangement, with a total annual fee of US\$18 million paid regardless of the amount of tuna caught. The total fee paid by the US represents roughly 10% of the value of the fish taken by the US fleet ... The US has now become the most responsible operator in the region and sets the benchmark for compliance and payment of reasonable access fees.⁷⁴⁷

Trade-offs in the Treaty

One of the major trade-offs under the Treaty was the issue of sovereign right, where the US does not recognize any form jurisdiction over tuna in any EEZ. Unlike the Pacific Island States, the US does not claim national jurisdiction over tuna within its EEZ. However, under the Treaty, the issue of sovereignty was acknowledged in the Preamble.

The rationale behind this refusal to recognize maritime claims beyond the 12-mile territorial water limit was based on political and economic considerations. The US realized that it would make future tuna exploitation in the Pacific—and any exploration and exploitation of sea bed mineral resources outside territorial waters—difficult for them.⁷⁴⁸

---

⁷⁴⁶ Bergin, A. and Haward, M. "The Last Jewel in a Disintegrating Crown: the Case of Japanese Distant Water Tuna Fisheries", *Ocean Development and International Law*, Vol 25 (1994:187-215); Tarte, S. "Managing Tuna Fisheries in the Pacific: A Regional Success Story?", Bryant-Tokalau, J. and Frazer, I. (eds.) *Redefining the Pacific? Regionalism Past, Present and Future*, Ashgate Publishing Limited, Hampshire (2006).

⁷⁴⁷ Bergin, A. and Haward, M. "The Last Jewel in a Disintegrating Crown: the Case of Japanese Distant Water Tuna Fisheries", *Ocean Development and International Law*, Vol 25 (1994: 187-215).

⁷⁴⁸ Copes, P. "Access and Management in the Tuna Fisheries of the Pacific Islands Region", in Marsh, J.B. (ed.) *Resources and Environment in Asia's Marine Sector*, Taylor & Francis, New York (1992:59-86); Munro, G., Houtte, A.V. and Willmann, R. *The Conservation and Management of Shared Fish Stocks: Legal and Economic Aspects*, FAO Fisheries Technical Paper 465, FAO, Rome (2004).

The exclusion of sovereign rights over tuna within the Pacific Island States' EEZs from the Treaty was a victory for the US, but at the same time a failure for the Forum States. Interestingly, it is rare for Australia and New Zealand not to defend their sovereign rights over tuna in this regard. Australia and New Zealand may support US interests in the region in the hope of securing access to US markets, and world markets in general, where the US is the major player. To achieve this, Australia and New Zealand have to carefully put themselves in a diplomatic position.

The Treaty reflected something of the political and diplomatic complications of international treaty processes and related economic and trading interests. It may also seem that Pacific Island States were somehow persuaded by Australia and New Zealand with similar fashion through foreign aid, and with other financial and technical assistance. Apart from foreign aid, some of the Pacific Island States had special political and diplomatic associations and arrangements with New Zealand in particular. This exercise may demonstrate that the ANZUS treaty is still alive and well.

The Forum States have different degrees of historical, cultural and political relations that further complicated their close ties, creating some suspicion and distrust among members. The Forum is a kind of ideal regional body that attempts to bring countries together for a better future as a region, but beyond the surface there are political tensions.

The Treaty also demonstrated that international politics involves dealing what best for individual country's interests over collective cooperation in regional level. In the South Pacific, close cooperation among Pacific Island States depends on the particular countries involved. In dealing with the US, a totally different approach and shared new positions were devised to suit both parties. This is common practice in the region.

Forum countries politically and historically influenced by the United Kingdom share similar political systems based on the Westminster system of government.⁷⁴⁹ This influence has been reaffirmed by Australia, New Zealand and Western democratic countries, particularly during

---

⁷⁴⁹ Lansdown, R. (ed.) *Strangers in the South Seas: The Idea of the Pacific in Western Thought*, University of Hawaii, Honolulu (2006); Oliver, D.L. *The Pacific Islands*, Third Edition, University of Hawaii Press, Honolulu (1989).

the Cold War. Even though Pacific Island States have similar political systems, they are culturally different.

There is thus a constant struggle among Forum countries to develop political systems that are totally different from traditional systems. However, while foreign ideologies sound exciting to Pacific Island States, they are ultimately colonizing tools.

Asian countries, namely China, Japan and Taiwan, have shown a growing interest in the region but for different purposes.⁷⁵⁰ China is very much interested in pushing its 'One China' policy, seeking acknowledgement from Forum States that Taiwan is part of China.⁷⁵¹ At the same time, Taiwan is very active in pumping aid into the region to seek support as an independent country. The rivalry between Taipei and Beijing could potentially cause problems in the Pacific political landscape due to both countries providing support to governments and their opposition throughout the region.⁷⁵²

The US has been very supportive of Taiwan and there are economic reasons for this: Taiwan is a major buyer of US military hardware and advanced weapon systems.⁷⁵³ This has caused a rift between the US and China. Other issues of rivalry between Taiwan and China can act as advantages for the region in terms of foreign aid competition.⁷⁵⁴

On the other hand, Japan's interest in the region is more specific to fishing and, recently, lobbying in opposition to the idea of a Pacific Whale Sanctuary.⁷⁵⁵ Japan is a major aid donor to the South Pacific in all areas, through direct financial assistance and technical and economic development projects. Japan has pushed its interests through development

---

⁷⁵⁰ Lal, B.V. and Fortune, K. (eds.) *The Pacific Islands: An Encyclopedia*, University of Hawaii, Honolulu (2000).

⁷⁵¹ Tubilewicz, C. *Taiwan and Post-Communist Europe: Shopping for Allies*, Routledge, New York (2007).

⁷⁵² Kabutaulaka, T.T. "Milking the dragon in Solomon Islands, in Wesley-Smith, T. and Porter, E.A. (eds.) *China in Oceania: Reshaping the Pacific*, Vol. Foundation in Asia Pacific Studies, Berghahn Books, United States (2010).

⁷⁵³ Baldwin, R.E., Chen, T. and Nelson, D. *Political Economy of U.S.-Taiwan Trade*, University of Michigan Press, Michigan (1995); Yang, C. "The Evolution and Adaptation of Taiwan's Military Strategy", in Edmonds, M. and Tsai, M.M. (eds.) *Defending Taiwan: The Future Vision of Taiwan's Defence Policy and Military strategy*, Rouldege Curson, London (2003:51-66).

⁷⁵⁴ Chen, J. "Expectation Meets Reality in Social Change: China's Reforms and U.S.-china Relations", in Li, H. and Hong, Z (eds.) *Image, Perception, and the Making of U.S.-China Relations*, University Press of America, Lanham (1998).

⁷⁵⁵ Nagtzaam, G. *The Making of International Environmental Treaties: Neoliberal and Constructivist Analyses of Normative Evolution*, Edward Elgar Publishing, Inc., Northampton (2009).

assistance to the region. All forms of foreign aid are welcome by Pacific Island States, however they should be mindful of the hidden agendas of donor countries.

During the negotiation of the Treaty, the US indicated that it wanted a multilateral fishing agreement—the first of its kind (fishery agreement) in the world.⁷⁵⁶ The Treaty demonstrated to a certain extent that Pacific Island States are weak parties, in that they were forced into a position where they could not bargain effectively, especially when dealing with the US. This was evident during negotiation processes where the US, with the help of Australia and New Zealand, made things proceed smoothly. The US did not alter its foreign policy (for instance, its position on the EEZ regime) when dealing with Pacific Island States. In dealing with the US, there was little room to manoeuvre.

One of the reasons for the US not recognizing claims of full sovereign rights over the EEZ was simply to protect its fishers from prosecution for illegal fishing and to secure a constant flow of tuna resources to its cannery plants. However, the benefit received by the Pacific Island States as a trade-off was a financial package under the Treaty and other forms of technical and financial assistance.

Asian countries, particularly Japan, China and Taiwan, replaced British and, to a certain extent, Australian, New Zealand and US aid. Japan is the leading aid donor for the region.⁷⁵⁷ Japan's foreign aid appears designed to gain the Pacific Island States' votes in the international forum.⁷⁵⁸ Their primary short-term motivation was likely to be votes on international forum issues directly affecting them.⁷⁵⁹ China 'bought' relationships with 14 Pacific Islands with her 'smile diplomacy' and got a lot of attention.⁷⁶⁰ Both China and Taiwan accused each other of bribing Pacific Island State politicians and officials.⁷⁶¹

---

⁷⁵⁶ Hey, E. *The Regime for the Exploitation of Transboundary Marine Fisheries Resources*, Martinus Nijhoff Publishers, The Netherlands (1989).

⁷⁵⁷ Lal, B.V. and Fortune, K. (ed.) *The Pacific Islands: An Encyclopedia*, University of Hawaii Press, Honolulu (2000); Tarte, S. *Japan's Aid Diplomacy & the Pacific Islands*, Australian National University, Canberra (1998).

⁷⁵⁸ Tarte, S. *Japan's Aid Diplomacy & the Pacific Islands*, University of South Pacific, Suva (2007).

⁷⁵⁹ Crocombe, R., *Asia in the Pacific Islands Replacing the West*, IPS Publications, University of the South Pacific, Suva (2007:227-228).

⁷⁶⁰ Dobell, G. Correspondent's Report, ABC On-Line, 29 August (2004:2)

⁷⁶¹ Atkinson, J. "China-Taiwan Diplomatic Competition and the Pacific Islands", *The Pacific Review*, Vol. 23 No. 4, September(2010:407-427).

China's courtship of the Pacific Island States took place at all levels, through invitations to people ranging from national leaders to local influential individuals. At the same time, Chinese officials were also visiting the Pacific Island States more frequently.⁷⁶² There were more Pacific Island States prime ministers, presidents, ministers and senior officials invited to China, Japan and Taiwan than any other country in the world; both China and Taiwan emphasized bilateral relations and contributed to intergovernmental regional organizations (in 1996 China made its first contribution to the Forum).⁷⁶³

The competition between China and Taiwan was ongoing on all fronts and lobbying and threats were part of the whole process. China was the first and only Asian country to become a full member of the South Pacific Tourism Organization (SPTO) in 2004, after Australia and New Zealand lobbied for China and China threatened for Pacific Island States would vote for Taiwan membership would not allow Chinese tourists to visit.⁷⁶⁴

The One China policy became a big issue in terms of Pacific Island States-China relations.⁷⁶⁵ The Pacific Island States were also aware of how to play the diplomatic card against China and Taiwan. Nauru recognized Taiwan in 1980 and in 1999, with Nauru confirming an unwavering friendship with Taiwan; China tried unsuccessfully to block Nauru's entry to the United Nations as a form of punishment.⁷⁶⁶

As Pacific peoples become aware of China's practices, more Islanders become concerned about being targeted by Chinese expansion. Many leaders privately support Taiwan's independent and its bid for UN membership but, under pressure from China, and from Australia and New Zealand that support China in return for concessions to them,

---

⁷⁶² Atkinson, J. "China-Taiwan Diplomatic Competition and the Pacific Islands", *The Pacific Review*, Vol. 23 No. 4, September(2010).

⁷⁶³ Crocombe, R., *Asia in the Pacific Islands Replacing the West*, IPS Publications, University of the South Pacific, Suva (2007); Zhu, Z. *China's New Diplomacy: Rationale, Strategies and Significance*, Ashgate Publishing Limited, Surrey (2010).

⁷⁶⁴ Crocombe, R., *Asia in the Pacific Islands Replacing the West*, IPS Publications, University of the South Pacific, Suva (2007); Wesley-Smith, T. "China's Pacific Engagement", in Wesley-Smith, T. and Porter, E.A. (eds.) *China in Oceania: Reshaping the Pacific?*, Berghahn Books, United States (2010) .

⁷⁶⁵ Crocombe, R., *Asia in the Pacific Islands Replacing the West*, IPS Publications, University of the South Pacific, Suva (2007); Wang, C. (ed.) *One China, Many Paths*, Versco, London (2003); Kan, S.A. "China/Taiwan: Evolution of the "One China" Policy – Key Statements from Washington, Beijing, and Taipei", in Clarke, A.W. *Taiwan-China" A Most Ticklish Standoff*, Novinka Books, New York (2001:55-116).

⁷⁶⁶ Crocombe, R., *Asia in the Pacific Islands Replacing the West*, IPS Publications, University of the South Pacific, Suva (2007); Hsu, C. and Chao, C. "China Isolates Taiwan", in Friedman, E. (ed.) *China's Rise, Taiwan's Dilemmas and International Peace*, Routledge, New York (2006:41-67).

most governments in the Islands (and the world) profess the 'One China Policy'.⁷⁶⁷

Conclusions

The major shortcoming of the Treaty was its exclusion of Pacific Island States' national jurisdictions over their 200 n.m. EEZ. This demonstrated the influence of US foreign policy in the region and elsewhere in the world. It also indicated the fact that US political and economic interests can override bilateral or multilateral negotiations and treaties—the Treaty revealed their firm stance.

Conservation and management politics of fisheries resources in the Pacific region desperately need to be revisited; policies need to explicitly define their objectives in order to give those resources a chance to survive. The current rate of catch of Pacific Island States' fisheries resources HMS is growing ever closer to overexploitation and possible depletion. One of the reasons for this is the fact that powerful DWFN fishing in the Pacific has not been effectively challenged at international levels.

Pacific Island States are not regarded as significant actors at the highest levels of international politics and diplomacy for obvious reasons; outside of the tuna arena, they have little capacity to command political influence internationally. Although Pacific Island States have good quality tuna and raw materials, these are sold to big trans-national fishing processors owned by the US and other powerful countries and do not benefit the region.

There was speculation in various quarters about the possibility of setting up a regional cannery processor in the Pacific region for tuna.⁷⁶⁸ This initiative never materialized and it suspected that the Pacific Island States were discouraged from pursuing such a project by big transnational cannery corporations. This was in order to avoid the competition of cheap labour, attractive tax incentives and flexible regulation and legislation and, most importantly, to avoid any disruption to their access to the region's tuna resources. It is also suspected that

---

⁷⁶⁷ Crocombe, R., *Asia in the Pacific Islands Replacing the West*, IPS Publications, University of the South Pacific, Suva (2007).

⁷⁶⁸ Hunt, C. *Pacific Development Sustained: Policy for Pacific Environments*, Australian National University, Canberra (1998).

foreign investors were discouraged from getting involved. Foreign aid to the region was restricted to the conservation, management and development of tuna and was not ever used to create finished products for sale in world markets.

The Pacific Island States are not powerful actors in the international scene politically or economically, therefore they can be manipulated by major powers regardless of international law. That is, in most cases, the foreign policy of powerful countries is always a priority. The Treaty demonstrated just this—the US acting contrary to the Law of the Sea Convention is the case in point. A region that is desperate for an economic miracle and is fully dependent on foreign aid cannot afford to challenge foreign donors. The Pacific Island States play down any major differences to avoid jeopardizing the flow of aid to the region.

Similar scenarios apply to the enforcement and implementation of international and regional conservation and management measures in the region. The Pacific Island States played a diplomatic role in this context by integrating international and regional conservation conventions into their national legislation as part of their international commitments. International instruments were integrated into relevant regional bodies and then into national law and policy.

Regional bodies are predominantly (if not entirely) funded by foreign donors and related financial packages in the form of technical expertise.⁷⁶⁹ Some Pacific Island States have reluctantly implemented international environmental measures in order to avoid economic consequences of foreign aid. This is common in the region.

According to the Treaty and other fishing arrangements, the main task data collected is related to the amount fish taken, rather than to fish quotas. This poses immediate threats to the region's tuna resources, as catch reports are often misleading.⁷⁷⁰ It may advantage foreign fishing vessels, because there are no limitations imposed on catch quota.

The Agreed Statement within the Observer Programme (Observer Programme) is a statement agreed upon both parties (Forum States and the US) to the Treaty regarding provisions for

---

⁷⁶⁹ Crocombe, R.G. *Asia in the Pacific Islands: Replace the West*, University of the South Pacific, Suva (2007).

⁷⁷⁰ Gryberg, R. (ed.) *Fisheries Issues in WTO and ACP-EU Trade Negotiation*, Economic Paper 56, Commonwealth Secretariat, London (2003).

Pacific Island State observers aboard American fishing vessels in accordance with the Treaty. This project wanted to allow those on board these vessels to observe that vessels crew were complying with the Treaty. Observers also had power:

... to stop, to move to a specified location, and to facilitate safe boarding and inspection of the vessel, its licence, gear, equipment, records, facilities, fish and fish products.⁷⁷¹

It was further stated that the Master and the crew of American vessels were not to obstruct or interfere with any observer duty specified under the Treaty. This provision may be seen as an advantage to the Pacific Island States, in that it gives them the authority to board and inspect fishing vessels. The system was regarded as impartial and non-discriminatory in order to verify and comply with Treaty provisions. These provisions provided useful and important sources of data and information on catch, vessels, species and size as well as the location of vessels, which indicated the location of certain species and their quantity. Port inspection and fish sampling also assisted data collection and information gathering for conservation and management analysis purposes.

The Observer Programme also required the US to notify an Observer Coordinator of any difficulties regarding observers on board a fishing vessel.⁷⁷² In the event that an observer had to use equipment, the crew of the vessel were expected to help the observer.

Aligned with the Article 61 of the 1982 Convention regarding Coastal States responsibilities, this programme was to take:

... into account the best scientific evidence available ... shall ensure through proper conservation and management measures that of the living resources in the exclusive economic zone is not and angered by over-exploitation ... the coastal State and competent international organizations, whether sub-regional, regional or global, shall co-operate ...

Under the Treaty, the Observer Programme would attempt to prevent tuna resources in the region being over-exploitation. It is a 'joint venture' between the Pacific Island States and the US to prevent over-exploitation of the tuna resources in the region and was intended to benefit both parties in the short and long term.

---

⁷⁷¹ Part 6 (17) of Annex I, Treaty.

⁷⁷² Part 7 of Annex I of the Treaty.

Tuna should be harvested to ‘optimum utilization’ yet not compromised in terms of the conservation and management measures outlined. This is clearly stated in Article 62 of 1982 Convention regarding the right of the coastal state to determine the harvesting capacity of its EEZ. In the Treaty, there is no clear indication of the arrangement needed to harvest tuna resources in the Treaty area. In other words, the American fishing vessels under the Treaty could have unlimited access to the tuna (and other species) resources and areas allowed under the Treaty. This could be a drawback of the Treaty from a conservation and management perspective. Here there is no measure or formula of allowable catch, although data have been collected for decades regarding tuna resources in the region through relevant government departments (Pacific governments), parties of fishing arrangements (under SPC, FFA, other regional organizations) and of FAO (and other international organizations). The Treaty does emphasize the conservation and management of tuna resources, as well as the importance of maximizing the economic benefits for the people of the region.

The 1982 Convention (subsequent regional instruments) provided Pacific countries (coastal states) with substantial conservation and management measures to prevent HMS from being exploited both within and outside the EEZ of coastal States.⁷⁷³ These measures would undoubtedly safeguard the sustainable development of the HMS not only in the Pacific but also worldwide. However, this is reliant on the enforcement and implementation of those measures by coastal States (including Pacific Island States).

The conservation and management of the region’s marine resources, including HMS, will continue to be among the most challenging ongoing issue for governments in the Pacific.⁷⁷⁴ The different socio-economic circumstances of the Pacific Island States are an added complication to the formulation, implementation and enforcement of environmental conservation and management measures. The sustainable development of the HMS in the region will be determined by all parties to the Treaty and DWFN other than the US. But the Forum is the primary body needed to realistically sustain HMS on a fair and sound economic basis.

---

⁷⁷³ Munro, G., Houtte, A.V. and Willmann, R. *The Conservation and Management of Shared Fish Stocks: Legal and Economic Aspects*, FAO Fisheries Technical Paper 465, FAO, Rome (2004).

⁷⁷⁴ Sutherland, W.M. “Management, Conservation and Cooperation in EEZ Fishing: The Law of the Sea Convention and the South Pacific Forum Fisheries Agency”, *Ocean Development & International Law*, 1521-0642, Volume 18, Issue 6, (1987:613-640).

Overall, the Treaty can be considered a relative success because it has achieved its expected outcome by consistently aligning itself with existing regional and international environmental instruments. Despite its shortcomings, it nevertheless represents an achievement for the Pacific from a fishery conservation perspective and as a safeguard for the future.

Since UNCED the concept of sustainable development has taken on increasing international importance. Over the past decade the small island states of the Pacific have achieved only slow growth in real per capita incomes. Real GNP in the PICs grew at an average of only about 0.1% annually from 1983 to 1993. The lack of economic development, when combined with high population growth rates and unsustainable exploitation of natural resources, has led to significant social and economic problems in the Pacific islands, including permanent environmental damage.

Some suggestions have been made to assist the conservation and management of the Pacific Island States' fisheries resources and optimize productivity and profitability at the same time.⁷⁷⁵ Fisheries management measures consider economic factors, fishing gear used and tuna species target and specify EEZs or high seas. A detailed understanding of these issues is important because they are core to any management process and progress; they determine effectiveness. Also, carefully considering social, cultural and political issues can help a management approach to be more effective. The education and training of not only environment professionals but also local communities is important so people can make sense of why the measures have been put in place and why they are significant. Fisheries management should a combination of western and Pacific traditional principles.

Part of the problem with the region's fisheries management is communities' ignorance, the lack of information available and the failure to find a balance between economic benefits on one hand and environmental conservation on the other. Close cooperation among Pacific Island States remains the most positive and effective way of managing fisheries negotiation and management issues in the region. Access fees can only be increased through collective cooperation among the Pacific Islands States and with the support of other regional organizations. Establishing networks with relevant international organizations and institutions would be an effective approach to the conservation and management of the region's fisheries resources.

---

⁷⁷⁵ Sutherland, W.M. "Policy, Law and Management in Pacific Island Fisheries", in Couper, A.D. (ed.) *Development and Social Change in the Pacific Islands*, Ocean Management and Policy Series, Routledge, New York (1989).

Chapter Seven

Conclusion

This thesis has examined the international treaty negotiations between Pacific Island nations and the United States of America that led to the conclusion of an important resource sharing agreement in detail. It has also explored the wider legal, political and economic implications of that agreement. The topic was chosen not just for its intrinsic interest, but for the insight it offers into how the Cold War impacted the South Pacific and how small, weak nations can maximize their leverage when dealing with powerful states. I have argued that the development of the Treaty in Fisheries Between Governments of Certain Pacific Island States and the United States of America was not simply a resource sharing arrangement. It was also tool for stabilizing US relations with Pacific states and for keeping the Soviet Union out of the region.

The thesis began by describing the environment in which a multilateral fisheries agreement became a necessity. In the Pre-Treaty era, the Pacific Island States were deeply concerned about the American tuna fishing fleet's refusal to recognize their sovereign rights over resources within their respective EEZs. As was discussed in chapter two, this culminated in the seizure of the *Danica* and the *Jeannette Diana*. These disputes were the catalyst for the Pacific Island States beginning access negotiations with the USSR. These disputes not only demonstrated the strong opposition of the US to Pacific Island States' claim of sovereign rights over their marine resources, but they also had a major impact on US industry, particularly American tuna processors and canneries. Therefore from Washington's perspective, the Treaty was a means to secure the US purse seine fleet full access to the Central and Western Pacific's rich tuna stocks and to revive the US tuna industry.

The Pacific Island States and the US each brought a complex range of multi-dimensional interests and preferences to the negotiation table. The Treaty negotiations contained strong strategic and diplomatic dimensions. The fact that the State Department quickly became involved in negotiations indicated the level of US concerns about Soviet actions in the region. Unable to wield material power, the Pacific states were forced to play the Soviet card and to seek media coverage to highlight their plight. They were successful in gaining some

support through news media reporting of their concerns within and beyond the region. This increased the pressure on the US to reach an agreement.

The thesis also reveals how Pacific Island States engaged the US throughout the negotiation process in a way that helped to establish some new patterns of bilateral diplomatic relations among the Pacific Island States themselves. Pacific Island leaders agreed collectively that, notwithstanding their own socio-political, economic and cultural differences, they could cooperate effectively within this political and diplomatic process.

The Treaty that resulted provided a fair access fee for the US purse seine fleet to have fishing access to Pacific Island States' EEZs and also stabilized the relations between the Pacific Island States and the US. It taught the Pacific Island States the great lesson that multilateral cooperation was the most advantageous approach when addressing fishing resource issues. Previous bilateral fishing arrangements had proven disappointing; negotiations had been secretive and access fees had been low as DWFN used a 'divide and conquer' approach. In contrast, the Treaty demonstrated the power of a collective approach, giving Pacific states control over access to their fishing grounds and maximizing their leverage. Negotiations were open and transparent among all the parties involved.

Could the success of the fisheries treaty be learnt from? Certainly, the multilateral approach employed in this case would be valuable in other negotiations, particularly in dealing with the region's resources. Given that island states have the disadvantage of being small and scattered across an enormous area of ocean, negotiating costs are always high. They will always struggle to enforce their maritime boundaries. Regional cooperation remains the key to maximizing the benefits of the region's resources. Regional cooperation on maritime issues in the Pacific surged during the 1980s and 90s and the Treaty was one of the highpoints. Other achievements include the Convention for the Prohibition of Fishing with long Driftnets in the South Pacific Driftnet 1989 (the Driftnet Convention), South Pacific Nuclear-Free Zone Treaty 1986, and the Niue Treaty on Cooperation in Fisheries Surveillance and Law Enforcement in the South Pacific Region 1992 (the Niue Treaty).

The case examined here also points to the important role of institutions. The Treaty can be seen as a classic example of how a regional institution—in this case the FFA—spearheaded negotiations from the beginning through to a satisfactory outcome. The role of the South

Pacific Forum is another success story for the Pacific Island States; this providing a means to openly discuss and address regional issues internally and also with Australia and New Zealand. Looking to the future, the Western and Central Pacific Fisheries Commission provides Pacific Island States with the opportunity to protect the long term sustainable development of their fishery and to ensure economic returns. Through the Commission, the Pacific Island nations and the DWFN need to cooperate in terms of sustainable development and economic optimization of the region's fisheries resources. Pacific Island States should look into long term strategies for the conservation and management of their tuna resources.

This thesis also outlines some of the issues around sustainability raised by the agreement. The analysis in Chapter Six shows there has been very active work done by the Pacific Island States through the FFA in regards to the conservation and management of the region's fisheries resources.

That notwithstanding, the Pacific Island States continue to face formidable challenges in promoting the region's development and sustaining its fisheries. Exploiting these resources provides development for some Pacific countries. At the same time, issues such as corruption and government ineffectiveness pose real risks to fish stocks in threatening careful management and long-term economic benefits.⁷⁷⁶ As Greenpeace observed recently:

There is overwhelming evidence that fisheries access agreements, as they have been implemented over the last 30 years, are by and large unsustainable. The results of independent evaluations of tuna agreements, while less damning than the mixed-species agreements, also show that they are negotiated and executed with a complete disregard for responsible fishing practices. Access agreements respond primarily to industrial fishing country interests and needs, leaving coastal States to assume all of the long-term risks associated with resource depletion, and undermining regional fisheries agreements aimed at achieving sustainability.⁷⁷⁷

The global demand for tuna products remains a constant threat to the conservation and management of the Pacific Island States' tuna resources. The harvesting and development of

---

⁷⁷⁶ Parris, H. And Grafton, R.Q. "Tuna-Led Sustainable Development in the Pacific", Asia Pacific School of Economics and Government, Australian National University, Canberra, June (2005:9-10).

⁷⁷⁷ "Taking Tuna Out of the Can: Rescue Plan World's Favorite Fish: Defending Our Dreams", Greenpeace International, Amsterdam (2007:11).

these stocks must be done in a sustainable manner that benefits both Pacific Island States and the DWFN.⁷⁷⁸

The Regional Register of Foreign Fishing Vessels (Regional Register) is one key mechanism for regional enforcement purposes. This collects data from foreign fishing vessels, and decides when vessels have violated the terms of fishing agreements. The Regional Register was adopted as a key aspect of the enforcement procedures under the Treaty, as was discussed in Chapter Three.

The Treaty should not be seen in utopian terms. It did not bring a complete end to continuing tensions between Pacific Island nations and the American registered fishing fleet. Indeed, not long after the Treaty was signed, unlicensed American fishing vessels were again identified fishing in the region. This shows that the issue of illegal fishing persisted in the region as a major problem. However the Treaty and US commitment to it did directly contribute to greater control over the American registered fishing fleet in the Pacific. The US also assisted the region in the conservation, management and development of the region's fisheries.

Finally, the Treaty also played a part in reviving political and diplomatic relations between the Pacific Island States and the US by affirming the US's leading role in the region. This was vitally important to Washington in the Cold War context and, as was discussed in Chapter Six, remains relevant as newer Asian players (particularly China, Japan and Taiwan) play an increasingly important role in the region's maritime affairs.

The Future of the Treaty

Where to from here? The future of the Treaty is difficult to forecast, and its eventual utility may well be determined by the viability of the region's tuna resources. One possibility raised in the closing stages of the thesis is that, in addition to securing a regular flow of tuna into American markets, the Treaty could also serve as a template for future exploration and exploitation of the region's potential mineral resources. The Treaty could therefore be

---

⁷⁷⁸ "Taking Tuna Out of the Can: Rescue Plan World's Favorite Fish: Defending Our Dreams", Greenpeace

advantageous for the US into the longer term should this region's sea bed mineral resources prove worth extracting. If that does eventuate, then Pacific Island nations will face the huge challenge of having to go through some kind of similar treaty formulation process with the US.

In the South Pacific, there has been an increase in joint ventures over recent years, although experience to date has been disappointing. Few have met the expectations of their Pacific Island partners in terms of generating profits and employment, or providing the level of training required for countries to allow them to play a larger role in the fishing operations or management. Investment in a domestic fleet has been an option taken up, at one time or another, by most Pacific Island countries, with pole-and-line vessels being the usual form of participation.

Finally, any future review of the Treaty will need to look at the science of the region's tuna stocks and the challenge of sustainable development. The very best scientific research on tuna stocks needs to be reflected in the ongoing development of legal and policy frameworks. Unless that knowledge is taken into account, the rate of exploitation of the region's fish resources may ultimately come to threaten the economic benefits for the Pacific Island States that were so hard-won in the negotiations that led to the 1987 Treaty.

References

Articles

"A Flush Home for the Forum", *Pacific Islands Monthly*, December (1976).

Aguero, M. and Gonzalez, E. "Managing Transboundary Stocks of Small Pelagic Fish: Problems and Options, World Bank Discussion Paper No. 329, Fisheries Series,

Aikman, C.C. "The South Pacific Forum Fisheries Agency", *Essays in International Law, Twenty-fifth Anniversary Commemorative Volume, Asian-African Legal Consultative Committee* Tara Art Press, New Delhi (1981:86-103).

_____. "Island Nations of the South Pacific and Jurisdiction over Highly Migratory Species", *Victoria University of Wellington Law Review*, 17(1), February (1987:101-124).

Alexander, L.M. "Regionalism and the Law of the Sea: The Case of Semi-enclosed Seas", *Ocean Development and International Law* 2(2) (1974:151-186).

"American Ocean Policy Adrift An Exclusive Economic Zone as an Alternative to the Law of the Sea Treaty", *University of Florida Law Review* 35 (1983).

"American Tuna Crew Arrested", *West Hawaii Today*, May 5 (1987:5).

Anand, R.P. "The Politics of a New Legal Order for Fisheries", *Ocean Development and International Law* (1982).

Anderson, D. "Developing Islands States move to Protect Tuna", *Papua New Guinea Foreign Affairs Review* 2 (1) April (1982:13-17).

Anderson, D.H. "Legal Implications of the Entry into Force of the UN Convention on the Law of the Sea", *International and Comparative Law Quarterly* 44 (1995:313-326).

Anderson, L. "US in Port Moresby Talks", *Pacific Island Monthly* 17 May (1985:17).

Aqorau, T. "Cooperative Management of Shared Fish Stocks in South Pacific", in FAO, *Papers Presented at the Norway-FAO Expert Consultation on the Management of Shared Fish Stocks*, Bergen, Norway, 7-10 October 2002, FAO Fisheries Report No. 695 Supplement, Rome.

Aqorau, T. "Illegal, Unreported and Unregulated Fishing: Considerations for Developing Countries", <http://www.fao.org/DOCREP/005/Y3274E/y3274eok.htm> (pp. 294-306).

Aqorau, T. "Obligation to Protect Marine Ecosystems under International Conventions and Other Legal Instruments", in Sinclair, M. and Valdimarsson, G. (eds.) *Responsible Fisheries in the Marine Ecosystem*, FAO, CABI Publishing, Wallingford (2003:25-40).

Ashton, C. "Fraser Fishes in Troubled South Pacific Waters", *The Bulletin*, October 3 (1978).

Atkinson, J. "China-Taiwan Diplomatic Competition and the Pacific Islands", *The Pacific Review*, Vol. 23 No. 4, September (2010:407-427).

Azizian, R. "Russia and the Asia-Pacific: Trends, Threats and Common Threads", www.apcss.org/.../RussiaAmSec/Russia-America-Security.pdf.

Balton, D. "Strengthen the Law of the Sea: The New Agreement", *Ocean Development and International Law* 27 (1996:125-151).

Barbier, E.B. "The Concept of Sustainable Economic Development", *Environmental Conservation* 14(2) (1987:101-110).

Barclay, K. "Ocean, Empire and Nation: Japanese Fisheries Politics", in Ghosh, D., Goodall, H. and Donald, S.H. *Water, Sovereignty and Borders in Asia and Ocean*, Routledge, New York (2009:38-49).

Barston, R. "United Nations Conference on Straddling and Highly Migratory Fish Stocks", *Marine Policy* 19(2) (1995:159-166).

Bataua, B.T. "Kiribati's Biggest Catch", *Pacific Islands Monthly* 58(7), July (1987:23).

Bergin, A. "Fisheries and the South Pacific", *Asian Pacific Community* (1983).

____ "Policing the Fishing Grounds" *Pacific Islands Monthly*, June (1988).

____ "Ownership and Control over Marine Living Resources", paper presented to PIPSA Conference, December 1993, Cook Islands (1993).

Bergin, A. and Howard, M. "Japanese Tuna Fisheries: Future Trends," *Marine Policy*, May (1992:147-166).

____ "The Last Jewel in a Disintegrating Crown – The Case of Japanese Distant Water Tuna Fisheries", *Ocean Development and International Law* 25 (1994:187-215).

Bergin, A. and Michaelis, F.B. "Australia and the South Pacific: Implementing the UNCED Oceans Agenda", *Marine Policy*, Vol. 20, No. 1 (1996:47-62).

Bertram, G. "Sustainability, Aid and Material Welfare in small South Pacific Island Economic 1990-1990", *World Development* 21(2) (1993:247-258).

Black, C.E. "Soviet Fishing Agreement with Developing Countries: Benefit or Burden?", *Marine Policy* 163 June (1983:163-174).

Boer, B. "Environmental Law and the South Pacific Law: Law of the Seas Issues", in Crawford, J. and Rothwell, D.R. (eds.) *The Law of the Sea in the Asian Pacific Region*, Martinus Nijhoff Publishers, The Netherlands (1995:67-92).

Boobbyer, P.C. "Soviet Perceptions of the South Pacific in the 1980s", *Asian Survey*, viii, No.5, May (1988:573-593).

Bray, K. A "Global Review of Illegal, Unreported and Unregulated (IUU)", Expert Consultation on Illegal, Unreported and Unregulated Fishing, Sydney, Australia, 15-19 May 2000.

Breshauer, G.W. "Ideology and Learning in Soviet Third World Policy", *World Politics*, vol. XXXVI, No.5, April (1987:429-448).

Broder, S. and Van Dyke, J. "Ocean Boundaries in the South Pacific", *University of Hawaii Law Review* 4(1) (1982:1-59).

Bugota, F. "A Review of the Achievements of the Forum Fisheries Agency in its First Decade of Operations", Herr, R (ed.) *The Forum Fisheries Agency: Achievements, Challenges and Prospects* (1990).

Burke, W.T. "National Legislation on Ocean Authority Zones and the Contemporary Law of the Sea", *Ocean Development and International Law* 9 (1981:289).

_____"U.S. Fishery Management and the New Law of the Sea", *The American Journal of International Law* 76(1982:24-55).

_____"Extended Fisheries Jurisdiction and the New Law of the Sea", Rothschild, B (ed.) *Global Fisheries Perspectives for the 1980s* (1983).

_____"The Law of the Sea Convention Provisions on Conditions of Access to Fisheries Subject to National Jurisdiction", *Oregon Law Review* 63 (1984:73-119).

_____"Highly Migratory Species in the New Law of the Sea", *Ocean Development and International Law* 14 (1984:273-314).

_____"The Law of Sea Convention and Fishing Practices of Non-signatories with Special Reference to the United States", Van Dyke, JM (ed.) *Consensus and Confrontation: The United States and the Law of the Sea Convention* (1985:314-337).

Burt, B. and Clerk, C. "Environment and Development in the Pacific Islands: Introduction", in Burt, B and Clerk, C *Environment and Development in the Pacific Islands* (1997:1-21).

.....
Carew-Reid, J. "Conservation and Protected Areas on South Pacific Islands: The Importance of Tradition", *Environmental Conservation* 17(1)(29) (1990).

Caron, D.D. "Reconciling Domestic Principles and International Cooperation", in Oxman, B.H., Caron, D.D. and Buder, C.O. (eds.), *Law of the Sea: U.S. Policy Dilemma*, Institute for Contemporary Studies, California (1983).

Carter, J. "The Forum Speaks, and Faraway Countries Listen - and Worry", *Pacific Islands Monthly*, October (1977:8-9).

Carroz, J.E. "Institutional Aspects of Fishery Management Under the New Regime of the Oceans", *San Diego Law Review* 21(3) (1984:513-531).

Carroz, J.E. and Savini, M.J. "The New International Law of Fisheries Emerging from Bilateral Agreements", *Marine Policy* 4 (1979:19-98).

Castaneda, J. "Negotiations on the EEZ at the Third United Nations Conference on the Law of the Sea", *Essays* (1984:605-623).

Chand, G. "The United States and South Pacific Regionalism: Participation or Subversion", *Bulletin of Concerned Asian Scholars*, Vol. 24 (1992).

Charney, J.I. "The United States and the Law of the Sea after UNCLOS III - the Impact of General International Law", *Library Chronicle, University of Pennsylvania* 46 (1983:37-54).

_____. "The Exclusive Economic Zone and Public International Law", *Ocean Development and International Law* 5 (1985:233-288).

_____. "Progress in International Maritime Boundary Delimitation Law", *American Journal of International Law* 88 (1994:227-256).

Chen, J. "Expectation Meets Reality in Social Change: China's Reforms and U.S.-China Relations", in Li, H. and Hong, Z (eds.) *Image, Perception, and the Making of U.S.-China Relations*, University Press of America, Lanham (1998).

Christy, L.C. and Moore, G.K. "Forms of Foreign Participation in Fisheries: Coastal State Practice", UN Doc. FAO Fisheries Report 193 (1983).

Cicin-Sain, B. and Knecht, R.W. "The Emergence of a Regional New Ocean Regime in the South Pacific", *Ecology Law Quarterly* 16(1) (1989:179).

Clark, L. "UNCLOS and the Pacific Island States", *The Courier Africa-Caribbean-Pacific-European Community* 85 May-June (1984:96-97).

Clark, L.G. *South Pacific Ocean Fisheries*, FFA Report 85/2, January, Honiara (1985).

Clement, M.O. "The Economic Milieu of the Ocean", Hangrove, J.L. (ed.), *Who Protects the Ocean* (1975:123-150).

Clements, K.P. "New Zealand's Antinuclear Stand", *Bulletin of Atomic Scientists*, Vol.43, No.2, Chicago, March (1987:32-35).

Coffey, J.W. "New Thinking or New Tactics in Soviet Foreign Policy", in Fleron, F.J.jr., Hoffmann, E.P. and Laird, R.R. (eds.) *Soviet Foreign Policy, 1917-1991: Classic and Contemporary Issues*, Transaction Publishers, New Brunswick/New Jersey (1991).

Cole, R.V. "Economic Constraints and Prospects: The Role of Regional Cooperation", in Henningham, S. (ed.) *South Pacific Security: Issues and Perspectives* (1991).

Comitini, S. "Japanese Trading Companies: Their Possible Role in Pacific Tuna Fisheries Development," in Doulman, D.J. (ed.) *The Development of the Tuna Industries in the Pacific Islands Region: An analysis of Options* (1987:255-269).

Connell, J. "Island Microstate: The Mirage of Development," *The Contemporary Pacific* 32 (1991:251- 287).

"Contempt for Tuna Accord", *Pacific Islands Monthly* 58(8) August (1987:5).

Copes, P. "Access and Management in the Tuna Fisheries of the Pacific Islands Region", in Marsh, J.B. (ed.) *Resources and Environment in Asia's Marine Sector*, Taylor & Francis, New York (1992:59-86).

Copes, P. "Factor Rents, Sale Ownership and the Optimum Level of Fisheries Exploitation", The Manchester School of Economics and Social Studies, No. 2, June (1972).

_____"Tuna Fisheries Management in the Pacific Islands Region", Doulman, D.J. (ed.) *Tuna Issues and Perspectives in the Pacific Islands Region* (1987:3-25).

_____"The Impacts of UNCLOS III on Management of the World's Fisheries", *Marine Policy* 5 (1981:229-239).

"Court Settles Tuna Case", *Pacific Daily News*, June 12 (1987:3).

Cross, M.L. "The Behavior of Licensed Fishing Firms: A Contrast with Sole Ownership", *Ocean Development and International Law* 8 (3) (1980:201-222).

Crossette, B. "U.S. Fishing Pact With Pacific Islands Praised", The New York Times, Tuesday, January 7, (1987:1), <http://query.nytimes.com/gst/fullpage.html?res=9B0BEE3DF1630F934A35752C0A96>.

Crump, L. and Zartman, W.T. "Multilateral Negotiation and the Management of Complexity", *International Negotiation* 8 (2003:1-5).

Cycon, D. "Managing Fisheries in Developing Nations: A Plea for Appropriate Development", *Natural Resources Journal*, Vol.26, No.1 (1986).

Dabb, G. "The Law of the Sea in the South Pacific", Carter, J (ed.) *Pacific Islands Yearbook* 21 (1981).

"Danica's Incident", *Pacific Islands Monthly*, May (1982).

Davenport, E. "CID Study of NGO Capacity Building Issues for Donors in the Pacific", <http://www.devnet.org.nz/conf/Papers/webster.pdf>.

Dearden, S. "EU Aid Policy Towards the Pacific ACPs With Special Reference to Fiji and the Cook Islands", www.edpsg.org/Documents/DP31.doc.

Dibb, P. "Soviet Strategy towards Australia and New Zealand and the South-West Pacific", *Australian Outlook*, August (1985).

Dobell, G. Correspondent's Report, ABC On-Line, 29 August (2004:2).

Doulman, D.J. "Tuna Fleet Rides Out Recession", *Pacific Islands Monthly* 57(4) (1986).

Doulman, D.J. "Fisheries Management in the South Pacific: The Role of the Forum Fisheries Agency", Thakur, R (ed.) *The South Pacific* (1991).

_____"The Kiribati-Soviet Union Fishing Agreement", *Pacific Viewpoint* 28(1) May (1987).

_____"Distant-water Fleet Operations and Regional Fisheries Cooperation", in Doulman, DJ (ed.) *The Development of the Tuna Industries in the Pacific Islands Region: An Analysis of Options*, East-West Center, Honolulu (1987:33-52).

_____. “Fisheries Cooperation: The Case of the Nauru Group”, in Doulman, DJ (ed.) *Tuna Issues and Perspectives in the Pacific Island Region*, East-West Center, Honolulu (1987:257-277).

_____. “Prospects and Directions in the Tuna Fishery”, in Doulman, DJ (ed.) *Tuna Issues and Perspectives in the Pacific Islands Region*, East-West Center, Honolulu (1987).

_____. “In Pursuit of Fisheries Cooperation: The South Pacific Forum Fisheries Agency”, *University of Hawaii Law Review* 10 (1988).

_____. “Fisheries Management and Co-operation in the South Pacific Region”, *South Pacific Forum Fisheries Agency Report* 88/13, Honiara (1988).

_____. “A Critical Review of Some Aspects of Fisheries Joint Ventures”, Campbell, H, Menz, K and Waugh, G *Economics of Fishery Management in the Pacific Islands Region*, ACIAR Proc, 26 (1989:29-36).

Doulman. D.J. and Terawasi, P. “The Regional Registered of Foreign Fishing Vessels: A Cost Effective Compliance Tool in the South Pacific”, *FFA Report* No.89/56, Honiara (1989).

_____. “The South Pacific Regional Register of Foreign Fishing Vessels”, *Marine Policy*, Vol.14, No.4, July (1990:324-332).

Doulman, D.J. and Wright, A. “Recent Developments in Papua New Guinea”, *Marine Fisheries Review* 45(10) (1983:47-59).

Dorrance, J.C. “Coping with the Soviet Pacific Threat”, *Pacific Defence Reports*, July (1983).

Dorrance, J.C., et al. “The Soviet Union and the Pacific Islands”, *Asian Survey* 30(9), September (1990)

Downie, C. “Managing Complexity in International Negotiations: Is there a role for treaty secretariats”, Regulatory Institutions Network, Australian National University (n.d).

Druckman, D. “Social Psychology and International Negotiations: Processes and Influences”, in Kidd, R.F. and Saks, M.J. (eds.) *Advances in Applied Social Psychology*, Vol.2, Lawrence Erlbaun Associates, Inc., Hillsdale (1983:).

Duncan, R. and Nakagawa, H. “Obstacles to Economic Growth in Six Pacific Island Countries”, [http://siteresources.worldbank.org/INTDBTDEPT/Resources/468980-1206974166266/4833916-12069898_77225/](http://siteresources.worldbank.org/INTDBTDEPT/Resources/468980-1206974166266/4833916-12069898_77225/DuncanNakagawaObstacles.pdf) DuncanNakagawaObstacles.pdf.

Fabian, L.L. “The Ocean, the United States, and the Poor Countries”, in Hunter, R.E. *The United States and the Developing World Agenda for Action* (1973).

Fisher, R. “What is a ‘Good’ U.S.-Soviet Relationship – And Do We Build One”, *Negotiation Journal* 3, no. 4, October (1987:319).

“Fisheries: Not the Russian Alone”. *Pacific Islands Monthly* 16 May (1985).

Fishing for Future, the Advantages and Drawbacks of a Comprehensive Fisheries Agreement Between the Pacific and European Union, Oxfam New Zealand, [http://www.oxfam.org.nz/imgs/pdf/oxfam %20 nz%20fisheries%20final%2019%20oct.pdf](http://www.oxfam.org.nz/imgs/pdf/oxfam%20nz%20fisheries%20final%2019%20oct.pdf).

Fisk, E.R. “Development and Aid in the South Pacific in the 1980s”, *Australian Outlook* 36(2) August (1982).

Fleischer, C.A. “The Rights to a 200-mile Exclusive Economic Zone or a Special Fishery Zone”, *San Diego Law Review* 14 (1977:175-251).

_____. “The Exclusive Economic Zone under the Convention Regime and State Practice”, *Proceedings of the Seventeenth Law of the Sea Institute Conference 1983* (1984:241-285).

Flendo, A. “US Tuna Fleet Ventures in the Pacific Islands”, in Doulman, D.J. (ed.) *Tuna Issues and Perspectives in the South Pacific Region*, East-West Center, Honolulu (1987:93-104).

Floyd, J.M. “US Tuna Import Regulations”, Doulman, D.J. (ed.) *The Development of the Tuna Industries in the Pacific Islands Region: An Analysis of Options*, East-West Center, Honolulu (1987).

“Forum Changes Tack on Fishing Talks”, *Pacific Island Monthly* 53 September (1986:21,35).

“Forum-US Tuna Deal in Sight”, *Pacific Islands Monthly*, May (1987:7)

“Food Security and Climate Change in the South Pacific”, *Pacific Ecologist*, Writer – 36 (2007), www.pacificecologist.org/archive/.../food-security-climate-change.pdf.

Franchx, E. “New Soviet Fishery Regulations Concerning the EEZ” (An Appraisal), Butterworth & Co. (publishers) Ltd, London (1987:126).

Frazer, I. and Bryant-Tokalau, J. “Introduction: The Uncertain Future of Pacific Regionalism”, in Bryant-Tokalau, J. and Frazer, I. (ed.) *Redefining the Pacific? Regionalism Past, Present and Future*, Ashgate Publishing Limited, England (2006:1-24).

Friedman, E. “The Prospects of a Larger War: Chinese Nationalism and the Taiwan Strait Conflict”, in Zhao, S. (ed.) *Across the Taiwan Strait: Mainland, China, Taiwan and the 1995-1996 Crisis*, Routledge, New York (1999:243-276).

From 24 February until 29 April 1958 (Burke, W.T. “Some Elements on the 1958 Conventions”, *Proceedings of the American Society of International Law* (1959:197-206).

Froyn, C.B. “International Environmental Cooperation: The Tole of Political Feasibility”, in Atkinson, G., Dietz, S. And Neumayer, E. (eds.) *Handbook of Sustainable Development*, MPG Books, Cornwell (2007:295-412).

Fry, G.E. "International Cooperation in the Pacific: From Regional Integration to Collective Diplomacy", in Axline, W.A. (ed.) *The Political Economy of Regional Cooperation: Comparative Case Studies* (1994:136-177).

Fry, G.E. "Regionalism and International Politics of the South Pacific", *Pacific Affairs* 54 (1981:455-484).

_____. "The Politics of South Pacific Regional Cooperation", in Thakur, R (ed.) *The South Pacific: Problems and Prospects*, University of Otago, Dunedin (1991).

Fukuama, F. "Patterns of Soviet Third World Policy", *Problems of Communism*, Volume xxxvi, No. 5, September-October (1987).

Gaither, N. and Strand, I. "The Fishing Conservation and Management Act of 1976: Economic Issues and Associated with Foreign Fishing Fees and Foreign Allocations", *Ocean Development and International Law* 5(2)(3) (1978:135-151).

Gardner, P. "Tuna Poaching and Nuclear Testing in the South Pacific", *Orbis*, Spring (1988).

Gault, I.T. "Compliance with the United Nations Convention on the Law of the Sea in the Asia-Pacific Region", *University of British Columbia Law Review* 33(1) (1999:227-241).

Gibson, J., Boe-Gibson, G., Rohorua, H. and McKenzie, D. "Efficient Remittance Services for Development in the Pacific", <http://wms-soros.mngt.waikato.ac.nz/NR/rdonlyres/eiaj746lubo17blws...JRvisedEfficientRemittanceServiceforDevelopment.pdf>.

Gill, G. "Soviet Interests in the Pacific", in Ravehill, J. (ed.) *No Longer an American Lake?* University of California, Berkeley (1989:76-105).

Gilligan, M.J. and Simonelli, N. "International Multilateral Agreement Negotiations", paper prepared for the 2006 Shambaugh Conference, "Building Synergies: Institutions and Cooperation in World Politics", October 12-14, University of Iowa (2006:4).

Gillet, R., McCoy, A. and Itano, D.G. "Status of the United States Western Pacific Tuna Purse Seine Fleet and Factors Affecting Its Future", http://www.soet.hawaii.edu/pfrp/soetjimar_rpts/gpa_amer_samoa.pdf.

Gillett, R., McCoy, M., Rodwell, L. and Tamate, J. "Tuna: A key Economic Resource in the Pacific Islands", <http://www.adb.org/documents/reports/tuna/tuna.pdf>.

Gomez, G. "Tuna Linkages and Areas for Cooperation in Tuna Management and Development Between Latin America Coastal States and Island Nations of the Pacific", in Munaylla, U. and Dulanto de Soldi, L. (eds.) *Pacific Latin American-Pacific Island Nations International Fisheries Conference: Summary Report and Papers* (1989).

Goodman, C. "The Regime for Flag State Responsibility in International Fisheries Law – Effective Fact, Creative Fiction, or Further Work Required?", 23 A & NA Mar LJ (2009: 157-169), <https://maritimejournal.nurdoch.edu.au/index.php/maritimejournal/article/viewFile/115153>.

Gordon, H.S. "The Economic Theory of a Common-Property Resources: The Fishery", *Journal of Political Economy* 62(2) (2000:178-203)

Gordon, W. "Management of Living Marine Resources: Challenge of the Future", in Tippie, V.K. (ed.), *Centre for Ocean Management Studies, Comparative Marine Policy*, Praeger, New York (1981:145-167).

Greig, D.W. "Reciprocity, Proportionality, and the Law of Treaties", *Virginia Journal of International Law* 34 (1994:295-344).

Grolin, J. "The Future of the Law of the Sea: Consequences of a Non-treaty or Non-universal Treaty Situation", *Ocean Development and International Law* 13 (1983:1-31).

Grynberg, R. "WTO Fisheries Subsidies Negotiations: Implications for Fisheries Access Arrangements and Sustainable Management", Commonwealth Secretariat, Economic Affairs Division, London (2003:9-10).

Gubon, F. "Some Problems of the Management of Shared Stocks", FAO Fisheries Technical Paper No.206, UN Doc. FIRM/T206 (En) (1980).

_____"History and Role of the Forum Fisheries Agency", in Doulman, DJ (ed.) *Tuna Issues and Perspectives in the Pacific Island Region*, East-West Center, Honolulu 245 (1987:245-256).

_____"The South Pacific Multilateral Fisheries Treaty: Some Possible Implications for Fisheries Development, Management and Conservation in the Pacific Islands Region", *Melanesian Law Journal* 22 (1994).

Gulland, J. "Some Problems of the Management of Shared Stocks", FAO Fisheries Technical Paper No. 206, UN. Doc. FIRM/T206 (En), Rome (1980).

Haas, P.M. "Introduction: Epistemic Communities and International Policy Coordination", *International Organization* 46, No.1, Winter (1992).

"Haggling fish deal unique, says U.S.", *The Dominion* October 24 (1986).

"Haggling over the Price of Fish", *Islands Business* August 12 (1986:10-15).

Hallux, A.C. and Osgood, RE "New Era of Ocean Politics", *Studies in International Affairs* 22 (1974).

Hamnete, M., Surber, R., Surber, D. and Denoncour, M. "The Economic Vulnerability of the Pacific", Carter, J. (ed.) *Pacific Yearbook* (1984).

Hanich, Q. And Tsamenyi, M. "Exclusive Economic Zones, Distant Water Fishing Nations and Pacific Small Island Developing States: Who Really Gets All the Fish?" (2006:12), [Http://www.fishwa.gov.au/docs/events/shareFish/papers/QuentinHanich.pdf](http://www.fishwa.gov.au/docs/events/shareFish/papers/QuentinHanich.pdf).

Harley, S.J. and Maunder, M.N. "Status of Bigeye Tuna in the Eastern Pacific Ocean, in *Stock Assessment Report 4, Inter-American Tropical Tuna Commission*, La Jolla (2005:120-286).

Harrison, C. "Cost to the United States in Fisheries by not Joining the Law of the Sea Convention", in Van Dyke, J.M. (ed.) *Consensus and Confrontation: The United States and the Law of the Sea Convention* (1985).

____ "The United States as a third Party to the LOS Convention: Costs in Fisheries, Environmental Protection and Research", paper presented at conference - Customary International Law Governing Pacific Ocean Activities After the Law of the Sea Convention - held East-West Center, January 9-14 (1984)

Havice, E. "The Structure of Tuna Access Agreements in the Western and Central Pacific Ocean: Lessons for Vessel Day Scheme Planning", *Marine Policy* 34 (2010:979-987).

Hawkins, B. "Fisheries: One for the Forum - One for Everybody", *Pacific Island Monthly*, July (1979).

Haynes, J. and Brown, D. "An Economic Perspective on Fisheries Levies", *Quarterly Review of the Rural Economy*, Volume 7(4) November (1985).

Healey, C. "United States Tuna Management Policy", *American Society of International Law* 5 (1981).

Hegarty, D. "The Soviet Union in the South Pacific in the 1990s", Babbage, R. *The Soviet Union in the South Pacific in the 1990s*, Pergamon Press, Oxford (1989:124-125).

Herr, R. "South Pacific islanders question US friendship", *Far Eastern Economic Review*, January 16 (1986).

____ "Regional Cooperation in the 1990s: An Assessment", in Herr, R. (ed.) *The Forum Fisheries Agency: Achievements, Challenges and Prospects*, University of the South Pacific, Suva (1990).

____ "Future Roles of Regional Organizations – Regionalism and Sub-regional Groupings", in Mediansky, F.A. (ed.) *Strategic Cooperation and Competition in the Pacific Islands*, University of New South Wales, NSW (1991).

____ "Preventing a South Pacific Cuba", *New Zealand International Review*, March-April (1982).

____ "The Soviet Union in the South Pacific", in Thakur, R. and Thagur, C.A. (eds.) *The Soviet Union as an Asian Pacific Power* (1987).

Herrick, S.F. and Koplin, S. "US Tuna Trade Summary", *Marine Fisheries Review*, Vol. 46 No.14 (1984:28-37).

Herrick, S.F.jr. Rader, B. and Squaeres, D. "Access Fees and Economic Benefits in the Western Pacific United State Purse Seine Tuna Fishery", *Marine Policy*, Volume 21, Issue 1, January (1997:83-96).

Hilborn, R. and Sibert, J. "Is International Management of Tuna Necessary", *Marine Policy* 12 (1988:31-39).

Hoel, A.H. "Political Uncertainty in International Fisheries Management", *Fisheries Research* 37, Norway (1998:239-250).

Hollick, A.L. "U.S Oceans Policy: The Truman Proclamations", *Virginia Journal of International Law* 17 (1976:23-55).

_____"The Origins of 200 Mile Offshore Zones", *American Journal of International Law* (1977:494-500).

_____"The Roots of U.S. Fisheries Policy", *Ocean Development and International Law* 5 (1978:8-19).

Hollick, A.L. and Robert E.O. "New Era of Ocean Politics", *Studies in International Affairs*, No. 22 (1974).

Holmberg, J. And Sandbrook, R. "Sustainable Development: What Is to be Done?", in Holmberg, J. (ed.) *Making Development Sustainable: Redefining Institutions, Policy and Economics*, International Institute for Environment and Development, Washington DC (1992:19-38).

"How embarrassing", *Islands Business* December (1985:25)

Howard, M.C. "Myth of the Soviet Menace in the South Pacific", *Economic and Political Weekly* 21(7) (1986:308-315).

Hsu, C. and Chao, C. "China Isolates Taiwan", in Friedman, E. (ed.) *China's Rise, Taiwan's Dilemmas and International Peace*, Routledge, New York (2006:41-67).

Hsu, R.J. "A Rational Approach to Maritime Boundary Delimitation", *Ocean Development and International Law* 13 (1983-84)

Hunt, C. "Management of the South Pacific Fishery", *Marine Policy*, Vol. 21, No. 2 (1997:162).

Hviding, E. "Fisheries and Coastal Resources: Knowledge and Development", in Burt, B. and Clerk, C. (eds.) *Environment and Development in the Pacific Islands*, The Australian National University, Canberra (1997).

Inder, S. "US Takes a New Look at South Pacific Policies", *The Bulletin*, December 10 (1985).

_____"South Pacific: The US Has Second Thoughts About its Low Profile Approach", *The Sunday Honolulu Star-Bulletin and Advertiser*, Section B, December 8 (1985:1).

“International Agreements - Treaty on Fishing Between Governments of Certain Pacific Island States and the Government of the United States of America”, *Harvard International Law Journal* 29(192) (1988).

Inversen, R.T.B. “U.S. Tuna Processors”, in Doulman, D.J. (ed.) *The Development of the Tuna Industry in the Pacific Islands Region: An Analysis of Options*, East-West Center, Honolulu (1987).

“Islands State their Claim to the Sea’s Riches”, *Pacific Islands Monthly*, December (1976).

“It’s Everyone’s Tuna, Says Uncle Sam”, *Asiaweek*, January 19 (1979).

Janah, M. “US Disappoints Pacific Nations”, *The Wall Street Journal*, August (1991).

Jones, B. “Confrontation Threat in Pacific”, *Canberra Times*, October 8 (1978).

Joseph, J. “The Management of Highly Migratory Species: Some Important Concepts”, *Marine Policy* 1(4) (1977).

Joseph, J. and Klawe, W.L. “The Living Pelagic Resources of the Americas”, *Ocean Development and International Law* 2(1) (1974).

Jones, W.B. “The International Sea-Bed Authority without U.S. Participation”, *Ocean Development and International Law Journal* 12(3) (1983:151-171).

Juda, L. “The Law of the Sea Convention Provision on Conditions of Access to Fisheries Subject to National Jurisdiction”, *Oregon Law Review* 63 (1984).

Kabutaulaka, T.T. “Milking the Dragon in Solomon Islands”, in Wesley-Smith, T. and Porter, E.A. (eds.) *China in Oceania: Reshaping the Pacific*, Foundation in Asia Pacific Studies, Berghahn Books, United States (2010).

Kan, S.A. “China/Taiwan: Evolution of the “One China” Policy – Key Statements from Washington, Beijing, and Taipei”, in Clarke, A.W. *Taiwan-China” A Most Ticklish Standoff*, Novinka Books, New York (2001:55-116).

Kavoyor, F. “Exclusive Zone and Its Legal Status”, *International Affairs* (1979).

Kearney, B. “The Tuna Resources Base in the Pacific”, in Campbell, H., Menz, K. and waughm G. (eds.) *Economics of Fishery Management in the Pacific Islands Region*, University of Tasmania (1989:37-40).

Kearney, R.E. “The Law of the Sea and Regional Fisheries Policy”, *Ocean Development and International Law Journal* 5 (2)(3) (1978).

____ “Fishery Potential in the Tropical, Central and Western Pacific: Environment and Resources in the Pacific”, UNEP Regional Seas Reports and Studies 69 (1985).

_____. "The Tuna Resource Base of the Pacific", in Campbell, H., Menz, K. and Waugh, G. (eds.) *Economics of Fishery Management in the Pacific Islands Region*, Proceedings of an international conference held at Hobart, Tasmania, 20-22 March (1989).

Keen, E.A. "Common Property in Fisheries: Is Sole Ownership an Option?", *Marine Policy* 7 (1983:197-211).

Keith-Reid, R. "The Talks Shuffle on", *Islands Business* 11, January 30 (1985).

_____. "War on Tuna Pirates", *Islands Business*, August (1984).

Kelly, C.R. "Law of the Sea: The Jurisdictional Dispute over Highly Migratory Species of Tuna", *Columbia Journal of Transnational Law*, Vol. 26 (1988:475).

Kempster, N. "Shultz Shows the Flag on small, Vital Pacific Isles", *Los Angeles Times*, Los Angeles, 29 June (1986).

Kent, G. "Fisheries Politics in the South Pacific", *Ocean Yearbook* 2, University of Chicago Press (1980:346-381).

_____. "South Pacific Fisheries Diplomacy", *The New Pacific*, January-February, (1980)

Kimura, H. "Russian Way of Negotiation", in Berton, P., Kimura, H. and Zartman, I.W. (eds.) *International Negotiation*, St. Martin's Press, New York (1999:63-89).

Kindleberger, C.P. "Dominance and Leadership in the International Economy: Exploitation, Public Goods and Free Rides", *International Studies Quarterly* 25(3) (1981:242-254).

King, D.M. "The U.S. Tuna Market: A Pacific Islands Perspective", in Doulman, D.J. (ed.) *The Development of the Tuna Industries in the Pacific Islands Region: An Analysis of Options*, East-West Center, Honolulu (1987:63-79).

_____. "Global Tuna Markets: A Pacific Island Perspective", in Doulman, D.J. (ed.) *Tuna Issues and Perspectives in the Pacific Island Region*, East-West Center, Honolulu (1987).

King, J. "Prescilla M Freed After Settlement", *Sunday News*, Guam, September (1986:3).

King, M., Cartwright, I. and Carver, A. "Fisheries Development in Pacific Islands: Some Problems in Paradise", in Couper, A.D. (ed.) *Development and Social Change in the Pacific Islands*, Routledge, London (1989:47-62).

"Kiribati's Biggest Catch", *Pacific Islands Monthly* 58(7), July (1987:23).

"Kiribati Captures US Tuna Boat", *Pacific Islands Monthly* 58 April 6 (1987:46)

"Kiribati Seizes U.S. Tuna Boat", *Pacific Daily News*, May 6 (1987:3)

Kiste, R.C. "Economic Security Issues in the South Pacific", *Economics & Pacific Security*, The 1986 Pacific Symposium (1987).

Kiste, R.C. and Herr, R.A. "The Potential for Soviet Penetration of the South Pacific Islands: An Assessment", research paper for United States Department of State, December 1984.

Knibb, D.G. "Pacific Islands are Drifting Away from West", *The Wall Street Journal*, December 30 (1985).

____ "Nothing Fishy about New The Treaty", *Oceans* 20, July-August (1987).

____ "The Soviet Big Fish", *The Wall Street Journal*, January 26 (1987).

Kofana, G. "Tuna Species Under Threat: Greenpeace", Solomon Times Online, 24 April 2008, <http://www.solomontimes.com/news.aspx?nwID=1677>.

Kolb, K.H. "Congress and the Ocean Policy Process", *Ocean Development and International Law* (1976:261-286).

Kulagin, V. "Russia and Cooperation in the Asia-Pacific", *Australian Journal of International Affairs*, 14-65-332X, Volume 48, issue 1, Canberra (1994:75-86).

Kury, C.R. "The Application of a Market Theory to the Regulation of International Fisheries", *Ocean Development and International Law* 1 (1973/74:355-369).

Kwiatkowska, B. "Exclusive Economic Zone – General Evaluation", *Essays* (1984)

Larson, D.L. "The Reagan Administration and the Law of the Sea", *Ocean Development and International Law* 11 (1982:265-295).

____ "Reagan Rejection of the U.N Convention", *Ocean Development and International Law* 14(1) (1985:337-361).

____ "Security Issues and the Law of the Sea: A General Framework", *American Journal of International Law* 15 (1985:116).

Larkin, P.A. "An Epitaph for the Concept of Maximum Sustainable Yield", *Transcripts of the American Fisheries Society* 106 (1977:1-11).

Lawson, R. "Fisheries Economics in the South Pacific Region", Herr, R. (ed.) *The Forum Fisheries Agency: Achievements, Challenges and Prospects*, University of the South Pacific, Suva (1990).

Lee, R.S. "The New Law of the Sea and the Pacific Basin", *Ocean Development and International Law Journal* (1982:247-264).

Lenhart, B.M. "International Agreements", *Harvard International Law Journal* 29 (1988).

Letter of Transmittal.

Levy, J.P. "Towards an Integrated Marine Policy in Developing Countries", *Marine Policy* 12 (1988:326-342).

Lewis, A.D. "Fisheries Research in the South Pacific: Overview", Herr, R. (ed.) *The Forum Fisheries Agency: Achievements, Challenges and Prospects*, University of the South Pacific, Suva (1990).

Lieberman, W.H. "Towards Improving Fishery Management Systems", *Marine Policy* 10 (1986:42-50).

Lodge, M. "Minimum Terms and Conditions of Access: Responsible Fisheries Management Measures in the South Pacific Region", *Marine Policy* 16 July (1992:277-305).

Lodge, M.W. "The Development of the Palau Arrangement for the Management of the Western Pacific Purse Seine Fishery", *Marine Policy*, Vol. 22, No. 1 (1998:1-28).

Lowe, A.V. "Reflections on the Waters Changing Conceptions of Property Rights in the Law of the Sea", *International Journal of Estuarine and Coastal Law* 1 (1986:1-14).

Loftas, T. "FAO's EEZ Programme – Assisting a New Era in Fisheries", *Marine Policy* 5 (1981).

McConnell, M. "Ocean Politics: Regionalism and the South Pacific Island States", paper presented at the annual meeting of the International Studies Association, Le Centre Sheraton Hotel, Montreal, Quebec, Canada (17 March 2004), <http://www.allacademic.com/metal/p72566index.html>.

Mackenzie, T. "Fish Talks Deadlock", *Islands Business*, December 10 (1984).

MacRae, L.M. "Customary International Law and the United Nations Law of the Sea Treaty", *California Western International Law Journal* 4 (1986:181).

McRae, D.M. and Munro, G.R. "Coastal State Rights Within the 200-mile Exclusive Economic Zone", in Neher, P., Arnason, R. and Mollet, N. (eds.) *Rights Based Fishing*, NATO ASI Series (Series E: Applied Sciences – Vol.169), Kluwer Academic Publisher, The Netherlands (1989:97-112).

McLean, W.O. and Sucharitkul, S. "Fishes Management and Development in the EEZ: The North, South, and the Southwest Pacific Experience", *Notre Dame Law Review* 63:492 (1988).

Malawer, S.S. "Reagan's Law and Foreign Policy, 1981-1987: The 'Reagan Corollary' of international Law", *Harvard International Law Journal* 29 (1988).

Marcus, G.E. "Preemption in the Fisheries and the UN Law of the Sea Treaty", *Dickinson Journal of International Law* 4 (1986).

Marshall, C.L. "Regional Implementation of Alternative Entry Control Policies and their Role in Fisheries Management", *Ocean Development and International Law* 5(2/) (1978:345-381).

Massing, M. "America's Top Messenger Boy", *New Republic*, September 16 (1985).

Maunder, M.N. "The Relationships Between Fishing Methods, Fisheries and the Estimation of Maximum Sustainable Yield", *Fish and Fisheries* 3 (2002:251-260).

Maunder, M.N. and Harley, S.J. "Evaluating Tuna Management in the Eastern Pacific Ocean", *Bulletin of Marine Science*, 78(3) (2006:593-606).

Mediansky, F.A. "The South Pacific Nuclear Free Zone", *Asia-Pacific Defence Forum*, Winter (1986).

Meron, T. "The Fishermen's Protective Act: A Case Study in Contemporary Legal Strategy of the United States", *The American Journal of International Law* 69, Issues 1-2 (1975:290-309).

Merrills, J.G. "Morality and the International Legal Order", *Modern Law Review* 31 (1968).

Miller, G. and Hundloe, T.J. "Environmental Impact Assessment: Its Role and Processes", in Doulman, D.J. (ed.) *The Development of Tuna Industries in the Pacific Islands Region: An Analysis of Options*, East-West Center, Honolulu (1987:98).

Mizukami, C. "Management of Highly Migratory Species and Fisheries Relations Between Japan and South Pacific States", *University of British Columbia Law Review* 24(1)(1990:127-140)

Molenaar, E. "The Concept of 'Real Interest' and Other Aspects of Co-operation through Regional Fisheries Management Mechanisms", *International Journal of Marine and Coastal Law* 15(4) (2000:475-631).

Morehouse, W. "Loopholes in 200-mile Limit", *Honolulu Advertiser*, June 11 (1977:A-12).

Moron, J. "Tuna Fishing Capacity: Perspective of Purse Seine Fishing Industry on Factors Affecting It and Its Management", in Methodological Workshop on the Management of Tuna Fishing Capacity: Stock Status, Data Development Analysis, Industrial Survey and Management Options, La Jolla (California), 8-12 May 2006.

Morris, M.A. "Have U.S. Security Interests Really Been Scarified?: A Reply to Admiral Hill", *Ocean Development and International Law* 4(4) (1977).

McRae, D.M. and Munro, G.R. "Coastal State Rights within the 200-Mile Exclusive Economic Zone", Neher, P., Arnason, R. and Mollet, N. (eds.) *Rights Based Fishing* (1989).

Munro, G.R. "Extended Jurisdiction and the Management of Pacific Highly Migratory Species", *Ocean Development and International Law* 21 (1990).

Munro, G.R. "Cooperative Fisheries Arrangements Between Pacific Coastal States and Distant Water Fishing Nations", in English, H.E. and Scott, A.D. (eds.) *Renewable Resources in the Pacific: Proceedings of the 12th Pacific Trade and Development Conference*, Ottawa, 1982.

____ “Extended Jurisdiction and the Management of Pacific Highly Migratory Species”, *Ocean Development and international Law* 21 (1990:289-307).

____ “The Management of Shared Fishery Resources Under Extended Jurisdiction”, *Marine Resource Economic* 3 (1987:271-296).

____ “Environmental Cooperation Among Pacific Developing Coastal States: A Fisheries Case Study”, *University of British Columbia Law Review* 27(1) (1993:201-212).

Munro, G.R. “The Pacific Islands, the Law of the Sea and Pacific Tropical Tuna”, in Campbell, H., Menz, K. and Waugh, G. (eds.) *Economics of Fishery Management in the Pacific Islands Region: Proceedings of the International Conference, Tasmania, Australia, March 20-22, 1989*.

Munro G.R. and Scott, A.D. “The Economics of Fisheries Management”, in Knees, A.V. and Sweeney, J.L. (eds.) *Handbook of Natural Resources and Energy Economics*, Amsterdam (1985).

Musket, R. “International Environmental Law and the Asia Pacific Region: Recent Developments”, *California Western International Law Journal* 20 (21) (1989).

Nahlik, S.E. “The Grounds of Invalidity and Termination of Treaties”, *American Journal of International Law* 65 (1971:736-756).

Nambiar, K.P.P. and Pawiro, S. (eds.) *Papers of the 5th World Tuna Conference* (25-27 October 1997, Bangkok, Thailand), Tuna 97 Bangkok, INFOFISH, Bangkok (1997).

Narasaki, O. “Structure of DWFNs' Purse Seiner Fleets and their Production Volumes”, in Herr, R. (ed.) *The Forum Fisheries Agency: Achievements, Challenges and Prospects*, University of the South Pacific, Suva (1990).

Narokobi, C.S.N. “The Law of the Sea and the South Pacific”, *Ambio*, Vol. 13, No. 5/6, The South Pacific (1984:372-376).

Nelson, L.D.M “The Emerging New Law of the Sea”, *Marine Law Review* 42 (1979:42-65).

Ness, P.V. and Stephenson, C.M. “A Nuclear-free South Pacific”, *The Nations*, November 23 (1985).

Nette, A. “Japan Tries to Sink Whale Sanctuary Plan”, *Monitor*, <http://www.albionmonitor.com/9901b/copyright/whalesanctuary.html>.

Noonan, D.S. “International Fisheries Management Institutions: Europe and the South Pacific”, in Baden, J.A. and Noonan, D.S. (eds.) *Managing the Commons*, Second Edition, Indiana University Press, Bloomington (1998:165-180).

North, D.S. “Pacific Vulnerable to Soviets, but only if US errs”, *Pacific Islands Monthly*, February (1986).

____ “US Reaction to Seizure”, *Pacific Islands Monthly* 58(7) July (1987).

_____ “Contempt for Tuna Accord”, *Pacific Islands Monthly*, August (1987).

_____ “Treaty Snagged”, *Pacific Islands Monthly* 59(6) June (1988).

_____ “Tuna Bill Passed: The Controversial US Fishing Treaty gets the Go-ahead”, *Pacific Islands Monthly*, July (1988).

Oda, S. “Fisheries Under the United Nations Conference on the Law of the Sea”, *American Journal of International Law* 72 (1978:742-751).

Odell, J. “Introduction”, In Odell, J. (ed.) *Negotiating Trade: Developing Countries in the WTO and NAFTA*, Cambridge University Press, Cambridge (2006).

Oxman, P. and Grant, C. “The Third United Nations Conference on the Law of the Sea: The 1977 New York Sessions”, *American Journal of International Law* 72 (1978).

Oxon, B.H. “The Two Conferences”, in Oxman, B.H., Caron, D.D. and Buder, C.L.O. (eds.) *The Two Conferences in Law of the Sea: US Policy Dilemma*, Institute for Contemporary Studies, San Francisco (1983).

“Pacific Fish Deal Unique, Says US”, *The Dominion*, October 24 (1986).

Paisley, R.K. “Pacific Fisheries and the Emerging International Law of the Sea”, *University of British Columbia Law Review* 24(1) (1990:105-108).

Paisley, R.K. “Sustainable Development, The Environment and the Pacific Rim: Looking Ahead to the 21st Century”, *University of British Columbia Law Review* 27(2) (1993:19-22).

Pardo, A. “An Opportunity Lost”, in Oxman, B.H., Caron, D.D. and Buder, C.O. (eds.), *Law of the Sea: U.S. Policy Dilemma*, Institute for Contemporary Studies, California (1983:30).

Parris, H. and Grafton, R.Q. “Tuna-Led Sustainable Development in the Pacific”, Asia Pacific School of Economics and Governments, Australian National University, Canberra (2005:2-3).

Petersen, E. “The Catch in Trading Fishing Access for Foreign Aid”, *Marine Policy* 27 (2003:219-228).

Phillips, J.C. “The Exclusive Economic Zone as a Concept in International Law”, *International and Comparative Law Quarterly* 26 (1977:585-618).

Pierce, G.A.B. “Selective Adoption of the New Law of the Sea: The United States Proclaims its Exclusive Economic Zone”, *Virginia Journal of International Law* 23 (1983:586-601).

“Piracy Feared as American Fail to Put Up Tuna Cash”, *New Zealand Herald*, April 12 (1984).

Pollanac, R.B. and Littlefield, S.J. “Sociocultural Aspects of Fisheries Management”, *Ocean Development and International Law* 12(3-4) (1989).

Pollard, D.E. "The Exclusive Economic Zone: The Elusive Consensus", *San Diego Law Review* 12 (1975:600-623).

Power, P.F. "The South Pacific Nuclear-Weapon-Free Zone", *Pacific Affairs* 2 (1986).

Pugh, M.C. and Williams, P. "Introduction – The Debate on Decline", in Pugh, M.C. and Williams, P. (eds.) *Superpower Politics: Change in the United States and the Soviet Union*, Manchester University Press, Manchester (1909).

Rasmussen, P. "The Tuna War: Fishery Jurisdiction in International Law", *University of Illinois Law Review* 3 (1981:7578).

Rawa, P. "Legal Regime of Marine Fisheries", *Indian Journal of International Law* 22 (1982)

Raz, J. "Legal Rights", *Oxford Journal of Legal Studies* 4 (1984).

Redclift, M. "The Meaning of Sustainable Development", *Geoforum* 23(395) (1992).

Richardson, E.L. "The Politics of the Law of the Sea", *Ocean Development and International Law* 11 (1982:9-23).

Richardson, J. "End of the Tuna War", *Island Business*, February (1985:39).

_____ "Why that Ban was Lifted", *Island Business*, April (1985:39).

Robb, D.H. "Foreign Fishing Access Regimes in the Pacific Basin", in Gopalakrishnan, G. *The Emerging Marine Economy of the Pacific* (1984).

Robertson, D. "The Impact of GATT and the WTO on the Marine Projects of Forum Fisheries Agency Members", FFA Report No. 95/70, Honiara (1995).

Roe, R. "Some Thoughts on the Management of Inter-jurisdiction Fisheries", in Gerard, J.M. (ed.) *Coastal States are Ocean States* (1987:33-40).

Sachs, W. "Environment and Development: The Story of a Dangerous Liaison", *Ecologists* 21(252) (1991).

Sactersdal, G. "Problems of Managing and Sharing Living Resources Under the New Ocean Regime", *Ocean Yearbook* 4 (1983).

Salmon, M. "Surveillance - A View from the Islands", *Pacific Island Monthly*, December (1978:15-19).

Schreiber, A.A. "The Exclusive Economic Zone: Its Legal Nature and the Problem of Military Uses", in Vicuna, FO (ed.) *The Exclusive Economic Zone A Latin American Perspective*, Boulder, New York (1984:123-142).

Scorazzi, T. "Coastal State Practice in the Exclusive Economic Zone: The Right of Foreign States to Use This Zone", Smith, RW *State Responsibility and the Marine Environment* (1988).

Scully, G.W. "The Institutional Framework and Economic Development", *Journal of Political Economy* 96(3) (1988:652-662).

Segal G. "The Soviet Union and the Pacific", in Drysdale, P. *The Soviets and the Pacific Challenge*, Allen & Unwin, North Sydney (1991).

Sem, G.S. "Cooperation Management of Fisheries and Regionalism", *South Pacific Forum* 3(2) (1986).

"Sharks Among the Tuna", *Pacific Island Monthly*, June (1988).

Sharp, R. "Organizing for Change: People-Power and the Role of Institutions", in Holmberg, J. (ed.) *Making Development Sustainable: Redefining Institutions, Policy and Economic*, International Institute for Environment and Development, Washington DC (1992:39-64).

Shepard, M.P. and Clark, L.G. "South Pacific Fisheries Development Assistance Needs", A Consultancy report prepared on behalf of FAO and UNDP), Volumes 1, 5-6, 24, March (1984).

Shyam, M.R. "The New International Economic Order and the New Regime for Fisheries Management", *Ocean Management* 8(1) (1982:51-64).

Silva, M. and Westermeyer, W. "The Law of the Sea and the U.S. Exclusive Economic Zone: Perspective on Marine Transportation and Fisheries", *Ocean Development and International Law* 15(321) (1985:183-209).

Simmonds, K.R. "The Law of the Sea", *The International Lawyer* 24 (1990).

Singh, J.P. "The Evolution of National Interests: New Issues and North-South Negotiations During the Uruguay Round", in Odell, J. (ed.) *Negotiating Trade: Developing Countries in the WTO and NAFTA*, Cambridge University Press, Cambridge (2006:177-196).

Slade, N. "Forum Fisheries Agency and the Next Decade: The Legal Aspects", in Herr, R (ed.) *The Forum Fisheries Agency: Achievements, Challenges and Prospects*, University of the South Pacific, Suva (1990:245-256).

Slatyer, T. "Tuna and the Impact of the Law of the Sea", in Doulman, D.J. (ed.) *Tuna Issues and Perspectives in the Pacific Islands Region* (1987).

"Small Island Taken Centre Stage", *Network* 25, April (1993).

Smith, R.W. "The Maritime Boundaries of the United States", *Geographical Review* 71, No.4, October (1981)

Snidal, D. "The Limits of Hegemonic Stability Theory", *International Organization* 39 (1985:579-614).

Sohn, LB "The Law of the Sea: Customary International Law Developments", *American University Law Review* 34 (1985).

South Pacific Forum: Prime Minister's Report to Cabinet on 7th South Pacific Forum, Nauru, 26-28 July, (Muldoon) (1976).

"*Soviet Union in the South Pacific*", paper by Ministry of Foreign Affairs, Wellington, 19 July (1976).

"Soviets Hook a Deal", *Island Business* January 13 (1987).

"SPF: Fiji Threats to Pull Out", *Papua New Guinea Post Courier*, September 29 (1978:3).

Stevens, R. "Solomons Opposed to US in Fisheries Agency", *The New Pacific* 4 (2), March-April (1979).

"Stirring up the Pacific", *Asiaweek*, January 19 (1979).

Summary of Proceedings of the Seventh Meeting of the South Pacific Forum (1976).

"Summit over Tuna", *The New Zealand Herald*, March 14 (1997:B2).

"Sustainable Tuna Fishing in the South Pacific", http://www.globaleducation.edu.au/archives/secondary/casestud/south_pacific/2tuna.html.

Sutherland, W.M. "Fisheries Management and Coastal States Jurisdiction in the South Pacific", *International Journal of Coastal and Estuarine Law* 1 (1986).

____ "Management, Conservation and Cooperation in EEZ Fishing: The Law of the Sea Convention and the South Pacific Forum Fisheries Agency", *International Journal of Estuarine and Coastal Law* 18(6) (1987:613-640).

____ "Coastal State Co-operation in Fisheries: Emerge Regional Custom in the South Pacific", *International Journal of Estuarine and Coastal Law* 1(1) (1986:15-28).

____ "Policy, Law and Management in Pacific Island Fisheries", in Couper, A.D. (ed.) *Development and Social Change in the Pacific Islands* (1989:33-46).

Swan, J. "Tuna Management in the South Pacific", in Clingan, T.A. (ed.) *The Law of the Sea: What Lies Ahead?* (1988:177-183).

____ "Foreign Fishing: The Legal Regime in Small Jurisdictions", Record of the Meeting of the Law Officers of Small Commonwealth Jurisdictions, Bermuda (1988)

"Taking Tuna Out of the Can: Rescue Plan for the World's Favorite Fish", Greenpeace International, Amsterdams (2007:2-3).

Tarte, S. "Managing Tuna Fisheries in the Pacific: A Regional Success Story?", in Bryant-Tokalau, J. and Frazer, I. (eds.) *Redefining the Pacific? Regionalism Past, Present and Future*, Ashgate Publishing Limited, Hampshire (2006).

Tarte, S. "The Convention for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean: Implementation Challenges from a Historical Perspective", http://www.ancors.uow.edu.au/images/publications/Navigating%20Pacific%20Fisheries%20Ebook/Chapter_9_Navigating_Pacific_Fisheries.pdf.

Teiwaki, Roniti "Access Agreements in the South Pacific: Kiribati and the Distant Water Fishing Nations 1979-1986", 1987 Butterworth & Co. (publisher) Ltd, London (1987:280).

"The Islands State their Claim to the Sea's Riches", *Pacific Islands Monthly*, December (1976).

"The Question of Sovereign Rights Relative to Tuna", *Ocean Science News* 25, No.23, June 13 (1983).

"The Soviet Deal folds" *Island Business* 12, November (1986).

"The Tuna War: Fishery Jurisdiction in International Law", *University of Illinois Law Review* 16 (1981).

Tsamenyi, B.M. "The South Pacific States, the U.S.A and Sovereignty over Highly Migratory Species", *Marine Policy* 10(1) (1986:129).

____ "The Treaty on Fisheries Between the Governments of Certain Pacific Island States and the Government of the United States of America: The Final Chapter in United States Tuna Policy", *Brooklyn Journal of International Law* 15 (1989:67-96).

____ "The Jeannette Diana Dispute", *Ocean Development and International Law* 16 (4) (1986:613-640).

____ "The Exercise of Coastal State Jurisdiction over EEZ Fisheries Resources: The South Pacific", *Ambio* 17(4) (1988:255-258).

Tsamenyi, M. and Blay, S.K.N. "Extended Zones of Jurisdiction over Marine Resources: State Practice in the South Pacific Region", in Campbell, H., Menz, K. and Waugh, G. (eds.) *Economics of Fishery Management in the Pacific Islands Region* (1989).

Tumarkin, D. "USSR: The Unknown Northern Neighbour", in Crocombe, R.G. and Ali, A. (eds.) *Foreign Forces in Pacific Politics*, University of the South Pacific, Suva (1983).

"Tuna: A Key Economic Resource in the Pacific Island", <http://www.adb.org/documents/reports/tuna/tuna.pdf>, "Technical Assistance for Alternative Negotiation Arrangements to Increase Revenues in the Pacific", http://www.adb.org/Documents/TARs/OTH/tar_oth_36669.pdf. Western Pacific Regional Fishery Management Council, July (1999).

"Tuna Bill Passed", *Pacific Islands Monthly*, July (1988:22).

“Tuna Deal pay out may be Higher than Expected” *Pacific Island Monthly* 58, February (1987).

“Tuna Flat rides out Recession”, *Pacific Islands Monthly*, April 11-13 (1986:47).

“Tuna: Pacific’s Most Valuable Asset”, <http://www.greenpeace.org/raw/content/australia/resources/reports/overfish/tuna-pacific-s-most-valuable-a.pdf>.

“Uproar Over Soviet”, *Islands Business*, Volume II, No.9 (1985:19).

“US Chorus Grows from New Policy”, *Pacific Islands Monthly*, March 27 (1986).

“US Close Deal on Islands’ Rights”, *Pacific Islands Monthly* 57, January 19 (1986).

“US eyes Soviet’s Pacific Role”, *The Evening Post*, March 27 (1986).

“US Hints at Separate Tuna Deal”, *Pacific Islands Monthly*, July 25-26 (1986).

“US is offering 11 Pacific Nations 5.5 Million for Tuna Fishing Rights”, *International Herald Tribune* 28-29 June (1986).

“US-Pacific Fishing Pact Heralds Change”, *The Dominion*, April 9 (1987).

“US Policy Sailing Turbulent Waters”, *Papua New Guinea Foreign Affairs Report* 2(1), April (1982:9-13).

“US Report Blames France, US for South Pacific Unrest”, *Canberra Times* November 12 (1985:1).

“US Rethinks on Fish Agency”, *Papua New Guinea Post Courier*, October 13 (1979:4).

“U.S. to Hold Up Cash”, *Papua New Guinea Post Courier*, October 13 (1979:4).

“USSR Discovers Strategic Value of Pacific Islands”, *UISIS Wireless File* EPS 140910, September 10 (1986).

Van Dyke, J.M. and Brooks, R.A. “Uninhabited Islands: Their Impact on the Ownership of the Ocean Resources”, *Ocean Development and International Law* 12(2-3) (1983:280:265-284).

Van Dyke, J.M. and Heftel, S. “Tuna Management in the Pacific: An Analysis of the South Pacific Forum Fisheries Agency”, *University of Hawaii Law Review* 3(1)(6) (1981:1-65).

Van Dyke, J.M. and Nicol, C. “U.S. Tuna Policy: A Reluctant Acceptance of the International Norm”, in Doullman, D.J. (ed.) *Tuna Issues and Perspectives in the Pacific Island Region*, East-West Center, Honolulu (1987).

“Vanuatu Opens port to Soviets in \$2 M tuna Deal”, *The Canberra Age* January 28 (1987).

Veitayaki, J. "The Peaceful Management of Transboundary Resources in the South Pacific", in Blake, G.H. et al. (eds.) *The Peaceful Management of Transboundary Resources*, Graham Trotman, London (1995:491-506).

Wade, S.O. "A Proposal to Include Tuna in US Fishery Jurisdiction", *Ocean Development and International Law* 16 (1986).

"Wake Up! Our Fish is Being Stolen," Scoop Independent New (New Zealand) (24/04/2006), http://www.ellegal-fishing.info/item_single.php?item=news&item_id=257&approach_id=16.

Waugh, G. "Tuna wars", *Pacific Island Monthly* 46, June (1988).

_____. "World Trend in the Demand and Supply of Tuna", Summary Paper, South Pacific Forum Fisheries Agency, FFA Report No.88/28, Honiara (1988).

Wesley-Smith, T. "China's Pacific Engagement", in Wesley-Smith, T. and Porter, E.A. (eds.) *China in Oceania: Reshaping the Pacific?*, Berghahn Books, United States (2010).

Wilson-Roberts, G. (ed.), "Maritime Surveillance, Centre for Strategic Studies, Victoria University of Wellington, Wellington, Strategic Briefing Papers, Volume 4, Part 4, November 2000.

Wolfers, E.P. "Maritime Cooperation in the South Pacific", *Maritime Studies* 57 (7) (1991).

_____. "The Law of the Sea in the South Pacific", Crawford, J. and Rothwell, D.R. (eds.) *The Law of the Sea in the Asia Pacific Region*, Martinus Nijhoff Publishers, The Netherlands (1995:41-50).

Woodworth, D.C. "U.S. Tuna: A Proposal for Resources Management in the American Pacific Islands", *University of Hawaii Law Review* 10, Honolulu (1988).

Wooster, W.S. "Scientific Aspects of Maritime Sovereignty Claims", *Ocean Development and International Law* 1(1) (1973:13-20).

Yang, C. "The Evolution and Adaptation of Taiwan's Military Strategy", in Edmonds, M. and Tsai, M.M. (eds.) *Defending Taiwan: The Future Vision of Taiwan's Defence Policy and Military strategy*, Routledge Curson, London (2003:51-66).

Young, O.R. "The Political Economy of Fish: The Fishery Conservation and Management Act of 1976", *Ocean Development and International Law* 10 (1982:199-273).

_____. "Fishing by Permit: Restricted Common Property in Practice", *Ocean Development and International Law* 13 (1982-83:121-170).

Young, P.Y. "Gorbachev's Pacific Ambitions: The Soviets are Here to Stay" *Pacific Islands Monthly* 58(11), November (1987).

Zagoria, D.S. "The Changing Role of the Soviet Union in the Pacific", in Fleron, F.J.jr., Hoffmann, E.D. and Laird, R.F. (eds.) *Contemporary Issues in Soviet Foreign Policy: From Brezhnev to Gorbacher*, Transactional Publishers, New Jersey (2009).

Zamostry, T.S. "Moscow and the Third World: Recent Trends in Soviet Thinking", *Soviet Studies* Volume xxxvi, No. 2, April (1984).

Zartman, I. W. "Conclusions: Importance of North-South Negotiations", in Zartman, I.W. (ed.), *Positive Sum: Improving North-South Negotiations*, Transaction Book, New Jersey (1987).

Zartman, I.W. "Introduction: Toward the Resolution of International Conflicts", in Zartman, I.W. (ed.) *Peacemaking in International Conflict: Methods and Techniques*, United States Institute of Peace, Washington DC (2007).

Zartman, I.W. "Negotiation: Theory and Reality", in Bendahmane, D.B. and McDonald, J.W. jr. *International Negotiation: Art and Science*, Report of a Conference on International Negotiation, Center for the Study of Foreign Affairs, Washington, June 9-10 (1983).

Reports

Annual Report 2007, Pacific Islands Forum Fisheries Agency, Honiara, Solomon Islands (2007: 26).

Carroz, J.E. "The Practice of Coastal States Regarding Foreign Access to Fishery Resources," UN Doc. FAO Fisheries Report 293 (1983).

Distant Water Tuna Fleet (aka U.S. Purse Seine Fleet), Annual Report to Congress, April 30, 2010, Home Security, United States Coast Guard, National Marine Fisheries Service, http://www.nts.gov/Events/forum_fishing_vessel_safety/Background/2010%200%2030%20Distant%20Water%20Tuna%20Fleet%20Report.pdf.

Draft Agreement of Fisheries Between Pacific Island States and the United States of America, Composite Draft Agreement Text, as at 21 June 1985.

Eighteenth South Pacific Forum, Apia, Western Samoa, 29-30 May 1987, SPEC (87)-OR.10.

Estimated Per Capita Fish Consumption in the United States, United States Environmental Protection Agency, Washington DC, August (2002).

FFA Report 92/88, Forum Fisheries Agency, Honiara, Solomon Islands, 1992.

Fifteenth South Pacific Forum Meeting, Funafuti, Tuvalu, 27-28 August (1984).

Fisheries in the Pacific: Coherence Between Development and Commercial Objectives, prepared by DG DEV/AIDCO Fisheries Task Force (include B. Van Helden/D. Friedrichs, T. Schmale, H. Pilgaard (DEV/C/4); J.Prade, J. Favre (DEV/B/4); F.Affinito/V.Dowd (DEV/C/I) & R.Noë (AIDCO C/5), Pacific Issues Paper No. 1, I:\fed\gener\fish9.doc, Brussels, 18 February (2002:4-5).

Fisheries Technologies for Developing Countries, Report of an Ad Hoc Panel of the Board on Science and Technology for International Development, National Academy Press, Washington DC (1988).

Fishing for a Future, The Advantages and Drawbacks of a Comprehensive Fisheries Agreement between the Pacific and European Union, Oxfam New Zealand (p.3). (<http://www.oxfam.org.nz/imgs/pdf/oxfam%20nz%20fisheries%20final%2019%20oct.pdf>).

Gillett, R.D., McCoy, M., Rodwell, L. and Tamate, J. *Tuna : A Key Economic Resources in the Pacific Islands*, A Report prepared for the Asian Development Bank and Forum Fisheries Agency, FFA, Honiara (2001).

Kearney, R.E. *A Regional Approach to Fisheries Management in the South Pacific Commission Area*, paper presented to the South Pacific Forum meeting on the Law of the Sea, Suva (13 & 14 October 1976).

Letter of Submittal, Department of States, Washington, 27 May (1987).

Memorandum for Cabinet by Prime Minister, Office of the Prime Minister, Wellington, 15 October (1976).

Ministry of Foreign Affairs- Brief on Prime minister on South Pacific Forum, 26-28 July 1976, Nauru (Wellington, 19 July:1).

Ministry of Foreign Affairs, Paper by Cabinet Economic Committee, 13 July (1976:6). Opening speech by David McDowell, Assistant Secretary of the New Zealand Ministry of Foreign Affairs, Seventh Meeting of Member States to Consider a Fisheries Treaty with the United States, 10-21 June 1985, Wellington, New Zealand.

Ministry of Foreign Affairs, Wellington, 7 October 1976, A Brief written for New Zealand Delegations by Ministry of Foreign Affairs, for the Forum meeting on the Law of the Sea meeting in Suva, 12-14 October (1976:4).

Mr. McDowell's opening speech, Seventh Meeting of Member States to Consider a Fisheries Treaty with the United States, 10-21 June 1985, Wellington, New Zealand.

"New Pacific Fisheries Chief Strengthens Nauru Group", <http://www.radioaustralia.net.au/pacbeat/stories/201002/s2809875.htm>.

New Zealand Foreign Affairs Review 34(3), New Zealand Ministry of Foreign Affairs, July-September (1984:38).

New Zealand Foreign Affairs Review Volume 5, New Zealand Ministry of Foreign Affairs (1985).

Notes of Division Heads Meeting, 3 April, Ministry of Foreign Affairs, Wellington (1976)

Official Records of the Third United Nations Conference on the Law of the Sea, Volumes IXVII, 1974-1982.

Pacific Ocean, Department of Agriculture, Fisheries and Forestry, Australian Government, <http://www.daff.gov.au/fisheries/international/multilateral/pacific-ocean-fora>; Ratification of Amendments to the US Treaty, Department of Agriculture, Fisheries and Forestry, <http://www.daff.gov.au/fisheries/interantional/multilateral/ustreaty>.

Record of Discussions of Fourth Round of Negotiations Between the Government of the United States and the Governments of the Forum Fisheries Agency States, Held in Wellington, New Zealand, From 17 to 21 June 1985.

Regional Compendium of Fisheries Legislation (Western Pacific Region), Volume II, Food and Agriculture Organization of the United Nations, prepared by Legislation Branch Legal Office, In cooperation with, The South Pacific Forum Fisheries Agency, Rome (1984)

Report of the Ad Hoc Consultation on the Role of Regional Fishery Agencies in Relation to the High Seas Fishery Statistics, La Jolla, California, US, 13-16 December 1993, FAO Fisheries Report No. 500, FAO, Rome (1994).

Report of the Eighth Meeting of the South Pacific Forum (1977).

Report of and Papers presented at the Expert Consultation on Illegal, Unreported and Unregulated Fishing (Sydney, Australia, 15-19 May 2000), FAO Fisheries Report No. 666, FIPL/R666(En), Rome (2001).

Report of the Expert Consultation on Fishing Vessels Operating Under Open Register and their Impact on Illegal, Unreported and Unregulated Fishing, Miami, Florida, US (23-25 September 2003), FAO Fisheries Report No. 722, Rome (2004); International Fisheries Instruments with Index, Food and Agriculture Organization of the United Nations, Division for Ocean Affairs and the Law of the sea, Office of Legal Affairs, United Nations (1998).

Report of the FAO/FFA Regional Workshop to Promote the Full and Effective Implementation of Port State Measures to Combat Illegal, Unreported and Unregulated Fishing, Nadi, Fiji, 28 August – 1 September 2006, FAO Fisheries Report No. 810, FAO, Rome (2007).

Report of and Papers presented at the Expert Consultation on Illegal, Unreported and Unregulated Fishing (Sydney, Australia, 15-19 May 2000), FAO Fisheries Report No. 666 (Rome 2001).

Report of the Workshop on the Implementation of the 1995 FAO Code of Conduct for Responsible Fisheries in the Pacific Islands: A Call to Action (Nadi, Fiji, 27-31 2003), FAO Fisheries Report No. 731, Rome (2004).

Review of the State of World Marine Fishery Resources, FAO Fisheries Technical Paper 457, FAO, Rome (2005).

Shepard, M. and Clark, L. *South Pacific Fisheries Development Assistance Needs*, Consultancy Report prepared for FAO and UNDP (1984).

Smith, A.R. and Valdenmarsen, J.W. *Papers presented at the Expert Consultation on Sustainable Fishing*, FAO Fisheries Report No. 588, Supplement, FAO, Rome (2000).

South Pacific Forum Fisheries Agency, Seventh Meeting of Member States to Consider a Fisheries Treaty with the United States, 10-21 June 1985, Wellington, New Zealand, Attachment B (p.2).

South Pacific Forum Meeting, 13-14, October, Suva, New Zealand Foreign Affairs Review (1977).

South Pacific Forum, New Zealand Prime Minister's Report to Cabinet on 7th South Pacific Forum, Nauru, 26-28 July (1976:3).

Soviet and Chinese Activities in the South Pacific Island Area Report, External Intelligence Bureau, Wellington, 16 July (1976).

Swan, J. *Fishing Vessels Operating Under Open Registers and the Exercise of Flag State Responsibilities: Information and Options*, FAO Fisheries Circular 980, FAO, Rome (2002).

The Convention on South Pacific Forum Fisheries Agency 1979.

The International Legal Regime of the High Seas and the Seabed Beyond the Limits of National Jurisdiction and Options for Cooperation for the Establishment of Marine Protected Areas (MPAS) in Marine Areas Beyond the Limits of National Jurisdiction, Secretariat of the Convention on Biological Diversity, CBD Technical Series No.19, November 2005, <http://www.cbd.int/doc/publications/cbd-ts-19.pdf>.

The State of World Fisheries and Aquaculture, FAO Fisheries Department, Food and Agriculture Organization of the United Nations, Rome (2000).

The Washington Pacific Report, Volume 3, No. 18, June 15, Washington (1983).

Theodore G. Kronmiller's Statement on the American tuna Act, s.1564, at Hearing before the National Ocean Policy Study of the Committee on Commerce, Science, and Transportation, December 8. U.S. Senate 97th Congress, 1st Session. CIS 1982 s.261-25 Serial no. 97-85 (1981).

Thirteenth Meeting of Member States to Consider a Fisheries Treaty with the United States, Nuku'alofa, Kingdom of Tonga (9-22 October 1986), Briefing Notes, South Pacific Forum Fisheries Agency, Honiara, Solomon Islands, FFA 86/42.

Waugh, G. "World Trend in the Demand and Supply of Tuna", Summary Paper, South Pacific Forum Fisheries Report No. 88/28, Honiara (1988).

Western Pacific Regional Fishery Management Council, July (1999).

Books

Akehurst, M.A. *Modern Introduction to International Law*, Allen & Urwin, London (1988).

Alves, D. *South Pacific Islands: New Focus Needed for US Policy*, Georgetown University Press, Georgetown (1985).

d'Amato, A.A. *The Concept of Custom in International Law*, Cornell University Press, New York (1971).

Andrews, R.N.L. *Managing the Environment, Managing Ourselves: A History of American Environmental Policy*, Yale University Press, London (1989).

Attard, D.J. *The Exclusive Economic Zone in International Law*, Oxford University Press, Oxford (1987).

Ayubi, S., et al. *Economic Sanctions in US Foreign Policy*, Foreign Policy Research Institute, Philadelphia (1982).

Axline, W.A. (ed.) *The Political Economy of Regional Cooperation: A Comparative Case Studies*, Printer Publishers, New York (1994).

Babkina, A.M. (ed.) *Trade in the Asian Pacific Region*, Nova Science Publishers, Inc., New York (1996).

Baldwin, R.E., Chen, T. and Nelson, D. *Political Economy of U.S-Taiwan Trade*, University of Michigan Press, Michigan (1995).

Barclay, K. and Cartwright, I. *Capturing Wealth from Tuna: Case Studies from the Pacific*, Asia Pacific Press, Canberra (2007).

Bell, S. and Morse, S. *Sustainability Indicators: Measuring the Immeasurable?*, Earthscan, London (2008).

Bello, W.F. *People and Power in the Pacific: The Struggle for the Post-cold War Order*, Pluto Press, USA (1992).

Ben, B., Ramsay, R. and Rothwell, D. *International Environmental Law in the Asia Pacific*, Kluwer Law International Limited, London (1998).

Bertram, G. *Sustainable Development in Pacific Micro-economies*, Department of Economics, Victoria University of Wellington, Wellington (1985).

Bilder, R.B. *Managing the Risks of International Agreement*, University of Wisconsin Press, Wisconsin (1981).

Binmore, K. *Game Theory: A Very Short Introduction*, Oxford University Press, New York (2007).

Black, C.E. and Falk, R.A. (eds.) *The Future of the International Legal Order*, Princeton University Press, Princeton (1972).

Blake, G.H. (ed.) *Maritime Boundaries and Ocean Resources*, Barnes & Noble Books, New Jersey (1987).

Blake, G.H., et al. *The Peaceful Management of Trans-boundary Resources*, Kluwer Law International, The Netherlands (1995).

Blix, H. *Treaty-making Power*, Stevens, London (1960).

Boer, B., Ramsay, R. and Rothwell, D. *Environmental Law in the Asia Pacific*, Kluwer Law International Ltd, London (1998).

Bour, W. and Galenon, P. *The Development of Tuna Fisheries in the Western Pacific*, South Pacific Commission, New Caledonia (1979).

Bowett, D.W. *The Legal Regime of Islands in International Law*, Ocean Publication, New York (1979).

Breslin, J.W. and Rubin, J.Z. *Negotiation Theory and Practice*, Harvard Law School, Harvard (1991).

Brown, E.D. *The International Law of the Sea*, Dartmouth, New York (1994).

Brown, G. *The ANZUS Alliance: The Case Against*, Australian National University, Canberra (1987).

Brown, M.L. *Developing Countries and Regional Economic Cooperation*, Praeger, Westport (1994).

Brown-John, C.L. *Multilateral Sanctions in International Law: A Comparative Analysis*, Praeger, New York (1975).

Browne, C. *Economic Development of the Pacific Basin: Growth Dynamics, Trade Relations, and Energy Cooperation*, St. Martin's Press, New York (1986).

Brownlie, I. *System of the Law of Nations: State Responsibility*, Oxford University Press, Oxford (1983).

Bryant-Takelau, J. and Fraser, I. *Redefining the Pacific*, A World Bank Country Study, Pacific Island Economies: Building a Resilient Economic Base for the Twenty-First Century, The World Bank, Washington DC (1996).

Buchholz, H.J. *Law of the Sea Zones in the Pacific Ocean*, Institute of Southeast Asian Studies, Singapore (1987).

_____. *New Approaches to Development Cooperation with South Pacific Countries*, Breitenbach, Fort Lauderdale (1987).

Buckley, R. *The United States in the Asia-Pacific Since 1945*, Cambridge University Press, Cambridge (2002).

Burke, W.T., Legatski, R. and Woodhead, W.W. *National and International Law Enforcement in the Ocean*, University of Washington Press, Washington DC (1975).

Burt, B. and Clerk, C. (eds.) *Environment and Development in the Pacific Islands*, Australian National University, Canberra (1997).

Bush, R.C. *Making Peace in the Taiwan Strait*, The Brookings Institution, Washington DC (2005).

Cahn, E. *The Moral Decision: Right and Wrong in the Light of American Law*, University of Indiana University Press, Indiana (1981).

Campbell, H., Menz, K. and Waught, G. (eds.) *Economics of Fishery Management in the Pacific Islands Region*, University of Tasmania, Hobart (1989).

Campling, L., Havice, E. and Ram-Bidesi, V. *Pacific Island Countries, the Global Tuna Industry and the International Trade Regime – A Guidebook* (April 2007:79).

Carew-Reid, J. *Environment, Aid and Regionalism in the South Pacific*, Australian National University, Canberra (1989).

_____. *Strategies for National Sustainable Development: A Handbook for their Planning and Implementation*, Earthscan Publications, London (1994).

Carpenter, T.G. (ed.) *Collective Defense or Strategic Independence: Alternative Strategies for the Future*, Cato Institute, Canada (1989).

Cary, H.F. *American Tunaboat Association*, Department of Interior, Washington DC (1957).

Charney, J.I. and Lewis, M.A. (eds.) *International Maritime Boundaries*, M.Nijhoff, Boston (1993).

Churchill, R.R. and Lowe, A.W. *The Law of the Sea*, Manchester University Press, Manchester (1988).

Clark, L.G. *South Pacific Ocean Fisheries*, FFA Report 85/2, January, Honiara (1985).

Clement-Jones, R. *Public Investment and Taxation: Approaches to Investment*, East-West Center, Honolulu (1987).

Clingan, T. (ed.) *The Law of the Sea: What Lies Ahead?*, University of Hawaii Press, Honolulu (1988).

Coase, R.A. *Statement of Facts Concerning F.F.V [Foreign Fishing Vessel] Danica* presented to Rabaul District Court, Papua New Guinea, February 18 (1982).

Codippily, H.M.A. *Pacific Island Economies: Building a Resilient Economic Base for the Twenty-First Century*, The World Bank, Washington DC (1996).

Cohen, P., Valemei, A.D. and Govan, H. *Annotated Bibliography on Socio-economic and Ecological Impacts of Marine Protected Areas in Pacific Island Countries*, Worldfish Bibliography No. 1870, The Worldfish Center, Penang (2008).

Copes, P. *Factor Rents, Sole Ownership, and the Optimum Level of Fisheries Exploitation*, Simon Fraser University, British Columbia (1972).

Craven, J.P. *The Management of Pacific Marine Resources: Present Problems and Future Trends*, Westview Press, Colorado (1982).

Crawford, J. (ed.) *The Law of the Sea in the Asia Pacific Region: Developments and Prospects*, Martinus Nijhoff Publishers, The Netherlands (1995).

Crawford, J. and Rothwell, D.R. (eds.) *The Law of the in the Asian Pacific Region: Developments and Prospects*, Martinus Nijhoff Publishers, The Netherlands (1995).

Crocombe, R., *Asia in the Pacific Islands Replacing the West*, IPS Publications, University of the South Pacific, Suva (2007).

Dahmani, M. *The Fisheries Regime of the Exclusive Economic Zone*, Martinus Nijhoff Publishers, The Netherlands (1987).

Dallek, R. *The American Style of Foreign Policy: Cultural Politics and Foreign Affairs*, Alfred & Kempt, New York (2008).

Deere, C. *Net Gains: Linking Fisheries Management, International Trade and Sustainable Development*, International Union doe Conservation of Nature and Natural Resources, Washington DC (2000).

Deese, D.A. *The New Politics of American Foreign Policy*, St. Martin's Press, New York (1994)

Degan, V.D. *Sources of International Law*, Kluwer Law International, The Netherlands (1997)

Denron, D., Meleisea, M., Firth, S., Linnekin, J. and Nero, K. *The Cambridge History of the Pacific Islanders*, Cambridge University Press, Cambridge (1997).

Dent, D.W. *U.S-Latin American Policymaking: A Reference Handbook*, Greenwood Press, Westport (1995).

Dixon, M. *Textbook in International Law*, Oxford University Press, Oxford, 6th edition (2007).

Donnini, Lt. col., F.P. *ANZUS in Revision: Changing Degree Features of Australia and New Zealand in the Mid-1980s*, Air University Press, Washington DC (1991).

Dorrance, J.C., et al. *The South Pacific: emerging Security Issues and US Policy*, Brasseys, Washington DC (1990).

Dorrance, J.C. *The United States and the Pacific Islands*, Praeger, New York (1992).

Doulman, D.J. *The Tuna Industry in the Pacific Island Region: Opportunities for Foreign Investment*, East-West Center, Honolulu (1985).

_____*Fishing for Tuna: The Operation of Distance Water Fleets in the Pacific Islands Region*, East-West Center, Honolulu (1986).

_____*Round Six of the Pacific Tuna Treaty Talks: Issues and Development*, East-West Center, Honolulu (1986).

_____*Some Aspects and Issues Concerning the Kiribati/Soviet Union Fishing Agreement*, East-West Center, Honolulu (1986).

_____(ed.) *Tuna Issues and Perspectives in the Pacific Island Region*, East-West Center, Honolulu (1987).

_____(ed.) *The Development of the Tuna Industry in the Pacific Islands Region: An Analysis of Options*, East-West Center, Honolulu (1987).

Doulman, D.J. and Kearney, R.E. *The Domestic Tuna Industry in the Pacific Islands Region*, East-West Center, Honolulu (1986).

Doumenge, F. *The Social and Economic Effects of Tuna Fishing in the South Pacific: Report on a Investigation*, South Pacific Commissions Technical Paper, No. 149, Noumea (1966).

Drahos, Peter, *When the Weak Bargain with the Strong: Negotiations in the WTO*, Australian National University, Canberra (2004).

Drysdale, P. (ed.) *The Soviets and the Pacific Challenge*, Australian National University, Canberra (1991).

Dyke, J.M. (ed.) *Consensus and Confrontation: The United States and the Law of the Sea*, University of Hawaii Press, Honolulu (1985).

Extavour, W.C. *The Exclusive Economic Zone: A Study of Evolution and Progressive Development of the International Law of the Sea*, Institut universitaire de hautes etudes internationales, Geneva (1979).

Fisher, G. and Ury, W. *Getting to Yes: Negotiating Agreement Without Giving-In*, 2nd edition, Penguin, New York (1991).

Fisheries in the Pacific: Coherence Between Development and Commercial Objectives, prepared by DG DEV/AIDCO Fisheries Task Force (include B. Van Helden/D. Friedrichs, T. Schmale, H. Pilgaard (DEV/C/4); J.Prade, J. Favre (DEV/B/4); F.Affinito/V.Dowd (DEV/C/I) & R.Noë (AIDCO C/5), Pacific Issues Paper No. 1, I:\fed\gener\fish9.doc, Brussels, 18 February (2002:5).

Fletcher, M. *Your Passport to a Polynesian Paradise*, Lonely Planet Publications Pty Ltd, Fortscray, Victoria (1990).

Floyd, JM *Import Regulations in the United States: A Focus on Tuna Commodities From the Pacific Islands Region*, East-West Center, Honolulu (1985).

Franckx, E. *Fisheries Enforcement Related Legal and Institutional Issues: National, Subregional or Regional Perspectives*, FAO Legislative Study 71 (2001).

Franklin, M.I. *Postcolonial Politics, the Internet, and Everyday life: Pacific Traversals Online*, Routledge, New York (2004).

Friedman, H.M. *Creating an American Lake: United States Imperialism and Strategic Security in the Pacific Basin 1945-1947*, Greenwood Press, Westport (2001).

Fortaubert, A.C. de, Downes, D.R. and Agardy, J.S. *Biodiversity in the Seas: Implementing the Convention on Biodiversity in Marine and Coastal Habitats, International View for Conservation of Nature and Natural Resources and Center for International Environmental Law*, Washington DC (1996).

Fudenberg, D. And Tirole, J. *Game Theory*, Massachusetts Institute of Technology, Massachusetts (1991).

Gibbons, R. *A Primer in Game Theory*, Harvester Wheatsheaf, New York (1992).

Gillett, R. *Fisheries in the Economies of the Pacific Island Countries and Territories*, Asian Development Bank, Manila (2009).

Gilpin, R. *War and Change in World Politics*, New York: Cambridge University Press, Cambridge (1981).

Gryberg, R. (ed.) *Fisheries Issues in WTO and ACP-EU Trade Negotiation*, Economic Paper 56, Commonwealth Secretariat, London (2003).

Guzzine, S. *Realism in international Relations and International Political Economy: The Continuing Story of a Death Foretold*, Routledge, London (1998).

Haas, M. *The Pacific Way: Regional Cooperation in the South Pacific*, Praeger, New York (1989).

Hara, K. *Cold War Frontiers in the Asia-Pacific: Divided Territories in the San Francisco System*, Routledge, Abingdon (2007).

Hayes, P. et al. *An American Lake: Nuclear Peril in the Pacific*, Penguin Book, New York (1986).

Henningham, S. and Ball, D. (eds.) *South Pacific Security: Issues and Perspectives*, Australian National University, Canberra (1991).

Herr, R. (ed.) *The Forum Fisheries Agency: Achievements, Challenges and Prospects*, University of the South Pacific, Suva (1990).

Hey, E. *The Regime for the Exploitation of Transboundary Marine Fisheries Resources: The United Nations Law of the Sea Convention Cooperation Between States*, M.Nijhoff, Boston (1989).

Hey, E. *The Regime for the Exploitation of Transboundary Marine Fisheries Resources*, Martinus Nijhoff Publishers, The Netherlands (1989).

Hobbs, J.M. *The Wealth of States: A Comparative Sociology of International Economic and Political Change*, University of Cambridge Press, Cambridge (1997).

Hodder, B.W. *Economic Development in the Tropics*, Methuen, London (1968).

Hodge, W.C. (ed.) *Fisheries Cases Studies & Materials*, South Pacific Forum Fisheries Agency, Honiara (1996).

Hollick, A.L. *US Foreign Policy and the Law of the Sea*, Princeton University Press, Princeton (1981).

Hopmann, P.T. *The Negotiation Process and the Resolution of International Conflicts*, University of South Carolina Press, Columbia (1996).

Howard, M.C. *The Political Economy of the South Pacific: An Introduction*, James Cook University of North Queensland, Queensland (1983).

_____. *Transnational Corporations and the Island Nations of the South Pacific*, The University of Sydney, Sydney (1986).

_____. *The Cold War and Political Alignment in the South Pacific*, Simon Fraser University, British Columbia (1991).

Hudgins, L.L. and Fernandez, L. *International business Operations in Global Tuna Markets*, East West Center, Honolulu (1987).

Hull, E.W. *The International Law of the Sea: A Case for a Customary Approach*, University of Rhode Island, Rhode Island (1978).

Hunt, C. *Pacific Development Sustained: Policy for Pacific Environments*, Australian National University, Canberra (1998).

Hyde, C.C. *International Law Chiefly as Interpreted and Applied by the United States*, Volume II, Little Brown, Boston (1947).

Hyde-Price, A. *The USSR and the West: A Medium-term Strategy*, Fabian Society, London (1991).

Ikle, F.C. *How Nations Negotiate*, Harper & Row Publishers, New York (1964).

Janis, M.W. *An Introduction to International Law*, Aspen Publishers, New York (1993).

_____. *Sea Power and the Law of the Sea*, Lexington Book, Manchester (1976).

Jayaraman, T.K. *Private Investment and Macroeconomic Environment in the South Island Countries: A Crosscountry Analysis*, Asian Development Bank, Manila (1996).

Johnson, D.M. and Valencia, M.J. *Pacific Ocean Boundary Problems: Status and Solutions*, Martinus Nijhoff Publishers, The Netherlands (1994).

Jones, P. *The Growing Political, Economic and Strategic Significance of the Pacific Ocean*, Peace Office, Christchurch (1979).

Katzenstein, P.J. and Shiraishi, T. (eds.) *Network Power Japan and Asia*, Cornell University Press, London (n.d.), www.artscornell.edu/.../NETWORK%20POWER%20JAPAN%20AND%20ASIA.doc.

Kearney, R. *The Law of the Sea and Regional Fisheries Policy*, Taylor & Francis, London (1977).

Kengalu, A.M. *Embargo: The Jeannette Diana Affair*, Robert Brown & Associates, New South Wales (1988).

Kent, G. *The Politics of the Pacific Island Fisheries*, Westview Press, New York (1980).

Kim, B. K. *Moscow's South Pacific Fishing Fleet Is Much More Than It Seems*, The Heritage Foundation, Washington DC (1988).

Kimball, L.A. *International Ocean Governance: Using International Law and Organizations to Manage Marine Resources Sustainably*, International Union for Conservation of Nature and Natural Resources, Gland (Switzerland) (2001).

King M.G. *Fisheries in the Economy of the South Pacific*, University of the South Pacific, Suva (1991).

Knapman, B. *The Growth of Pacific Island Economies in the Late Twentieth Century*, Institut für Weltwirtschaft und Internationales Management (1995)

Knight, G. and Chiu, H. *The International Law of the Sea: Cases, Documents, and Readings*, Elsevier Applied Science, London (1991).

Keohane, R.O. and Malner, H.V. (eds.) *Internationalization and Domestic Politics*, University of Cambridge, Cambridge (1996).

Keohane, R.O. and Nye, Joseph S. *Power and Interdependence: World Politics and Transition*, Little Brown, Boston (1977).

Krebs, C. *The Ecological World View*, University of California Press, Berkeley (2008).

Kwiakowska, B. *International Organizations and the Law of the Sea: Documentary Yearbook 1996*, Netherlands Institute for the Law of the Sea, The Netherlands (1996).

Lal, B. K. and Fortune, K. (eds.) *The Pacific Islands: An Encyclopedia*, University of Hawaii, Honolulu Press (2000).

Lansdown, R. (ed.) *Strangers in the South Seas: The Idea of the Pacific in Western Thought*, University of Hawaii, Honolulu (2006).

Lawson R. *Economics of Fisheries Development*, Frances Printer, London (1984).

Lay, S., Churchill, R. and Nordquist, M. *New Directions in the Law of the Sea: Documents*, Ocean Publications, New York (1973).

London, K. (ed.) *The Soviet Union World Politics*, Westview Press, Inc., Colorado (1980).

McDowell, E.C. (ed.) *Digest of United States Practice in International Law*, Department of State, United States Government (1974).

McGregor, A. *Private Sector Development: Policies and Programs for the Pacific Islands*, East-West Center, Honolulu (1992).

McIntosh, M. *Arms Across Pacific Security and Trade Issues Across the Pacific*, Printer, London (1987).

Manoa, P., Apps, L. and Hanich, Q. *Development Without Destruction Towards Sustainable Pacific Fisheries*, Greenpeace, February (2004).

Mara, The Right Honorable Ratu Sir Kamasese, *The Pacific Way: Memoir*, University of Hawaii Press, Honolulu (1997).

Mediansky, F.A. (ed.) *Strategic Cooperation and Competition in the Pacific Islands*, Pennsylvania State University, Pennsylvania (1995).

Millar, T.B. (ed.) *International Security in the Southeast Asian and Southwest Pacific Region*, University of Queensland Press, Brisbane (1983).

Milner, H.V. *Interests, Institutions and Information: Domestic Politics and International Relations*, Princeton University Press, New Jersey (1997).

Molnar, H. and Meadows, M. *Songlines to Satellites: Indigenous Communication in Australia, The South Pacific and Canada*, Huia Publishers, Wellington (2001).

Moore, G. *Coastal State Requirements for Foreign Fishing*, Food and Agriculture Organization of the United Nations, Rome (1985).

Morell, J.B. *The Law of the Sea: An Historical Analysis of the 1982 Treaty and Its Rejection by the United States*, McFarland, North Carolina (1992).

Munro, G., Houtte, A.V. and Willmann, R. *The Conservation and Management of Shared Fish Stocks: Legal and Economic Aspects*, FAO Fisheries Technical Paper 465, FAO, Rome (2004).

Munro, R.D. and Lammers, J.G. *Environmental Protection and Sustainable Development: Legal Principles and Recommendations*, Graham & Trotman, Boston (1987).

Nagtzaam, G. *The Making of International Environmental Treaties: Neoliberal and Constructivist Analyses of Normative Evolution*, Edward Elgar Publishing, Inc., Northampton (2009).

Navidson, S. "The Law of the Sea and Freedom of Navigation in Asia Pacific", in Leane, G. and Tigerstrom, B.V. (eds.) *International Law Issues in the South Pacific*, Ashgate Publishing Limited, England (2005:127-160).

Neemia, U. *Cooperation and Conflict: Costs, Benefits and National Interests in Pacific Regional Cooperation*, University of the South Pacific, Suva (1986).

Neher, P.A., Arnason, R. and Mollett, N. (eds.) *Rights Based Fishing*, NATO ASI Series, Kluwer Academic Publishers, The Netherlands (1989).

O'Connell, D. *International Law of Resources of the Sea*, Clarendon Press, New York (1979).

Oda, S. *International Law of the Resources of the Sea*, Sijthoff & Noordhoff, The Netherlands (1979).

Odell, J. and Mena, A.O. *How to Negotiate Over Trade: A Summary of New Research for Developing Countries*, Geneva International Academic Network, Geneva (2004).

O'Halloran, S. *Politics, Process and American Trade Policy*, University of Michigan Press, Michigan (1994).

Oliver, D.L. *The Pacific Islands*, Third Edition, University of Hawaii Press, Honolulu (1989).

Orrego-Vicina, F. *The Exclusive Economic Zone: Regime and Legal Nature under International Law*, Cambridge University Press, Cambridge (1989).

Oxman, B.H., Caron, D.C. and Buder, C.L.O. (eds.) *Law of the Sea: U.S. Policy Dilemma*, Institute for Contemporary Studies, San Francisco (1983).

Paasivirta, E.J. *Participation of States in International Contracts*, Lakimiesliiton kustannus, Helsinki (1990).

Padelford, N.J. *Public Policy for the Seas*, M.I.T Press, Cambridge (1970).

Palma, M.A., Tsamenyi, M. And Edeson, W. *Promoting Sustainable Fisheries: The International Legal and Policy Framework to Combat Illegal, Unreported and Unregulated Fishing*, Martinus Nijhoff Publishers, The Netherlands (2010).

Palmer, N.D. *Westward Watch: The United States and the Changing Western Pacific*, International Defense Publishers, New York (1987), <http://www.spc.int/coastfish/countries/fiji/fiji.cffa.html>.

Park, C. (ed.) *Law of the Sea in 1980s: Proceedings*, Law of the Sea Institute, Honolulu (1980).

Pearce, D., Markandya, A. and Barbier, E.B. *Blueprint for a Green Economy*, Earthscan, London (1989).

Petersen, E.H. *Institutional Economics and Fisheries Management: The Case of Pacific Tuna*, Edward Elgar Publishing Limited, Cheltenham (2006).

Pitt, D. and Thomson, G. (eds.) *Nuclear-Free Zones*, Groom Helm, New York (1987).

Prechel, H. *Politics and Globalization*, The Boulevard, Oxford (2007).

Pugh, M. *The ANZUS Crisis: Nuclear Visiting and Deterrence*, Cambridge University Press, Cambridge (1989).

Raiffa, H. *The Art and Science of Negotiation: How to Resolve Conflicts and Get the Best out of Bargaining*, President and Fellows of Harvard College, Harvard (1982).

Rao, P.K. *International Environmental Law and Economics*, Blackwell Publishers Inc., Massachusetts (2002).

Ridgell, R. *Pacific Nations and Territories: The Islands of Micronesia, Melanesia and Polynesia*, Third Edition Revised, Bess Pres Inc., Honolulu (1982).

Robertson, D. *The Impact of GATT and the WTO on the Marine Products of Forum Fishery Agency Members*, South Pacific Forum Fishery Agency Report No. 95/70, South Pacific Forum Fishery Agency, Honiara (1995).

Rosenne, S. *Breach of Treaty*, Grotius Publications, Cambridge (1985).

Rothschild, B. (ed.) *Global Fisheries Perspectives for the 1980s*, Springer-Verlag, Berlin (1983).

Rovine, A.W. *Digest of United States Practice in International Law 1974*, Department of States, Washington DC (1975).

Ruble, B. *Soviet Trade Unions: Their Development in the 1970s*, Cambridge University Press, Cambridge (1981).

Samples, K.C. and Rolseth, E.B. *The Marketing Role of International Joint Ventures in the Development of Pacific Island Industrial Tuna Fisheries*, University of Hawaii Press, Honolulu (1985).

Scarr, D. *A History of the Pacific Islands: Passage Through Tropical Time*, Curzon Press, Surrey (2001).

Seabury, P. *America's Stake in the Pacific*, Routledge, Washington DC (1981).

Segal, G. *The Soviet Union and the Pacific*, Unwin Hyman, London (1990).

Sheeran, P. *Literature and International Relations: Stories in the Art of Diplomacy*, Ashgate Publishing Limited, Hampshire (2007).

Shepard, M. and Clark, L. *South Pacific Fisheries Development Assistance Needs*, Consultancy Report prepared for FAO and UNDP (1984).

Sinclair, I. *The Vienna Convention on the Law of the Treaties*, Manchester University Press, Manchester (1984).

Skapin, B. and Pintz, W.S. *Financing a Tuna Project*, East-West Center, Honolulu (1987).

Smith, B.D. *State Responsibility and the Marine Environment: The Rules of Decision*, Clarendon Press, Oxford (1988).

Smith, J.C. *Legal Obligation*, University of Toronto Press, Toronto (1976).

Smith, R.H. *The Nuclear Free and Independent Pacific Movement After Murruroa*, I.B. Tauria & Co Ltd, London (1997).

Smith, R.W. *Exclusive Economic Zone Claims: An Analysis and Primary Documents*, Martinus Nijhoff Publishers, The Netherlands (1986).

Spange, M.L. and Isenhardt, M.W. *Negotiation: Communication for Diverse Settings*, Sage Publications, Inc., London (2003).

Spoelstra, M. and Pienaar, W. *Theories, Strategies & Skills*, 2nd ed., Juda & Co, Ltd, Lansdown (1996).

Starke, J.G. *The ANZUS Treaty Alliance*, Melbourne University Press, Melbourne (1965).

Starky, B. Boyer, M.A. and Wilkenfield, J. *Negotiation a Complex World: An Introduction*, Rowman & Littlefield Publishers, INC., Lanham (2005).

Stephen, J.J. and Chichkanov, V.P. (eds.) *Soviet-American Horizons on the Pacific*, University of Hawaii Press, Honolulu (1986).

Stopford, M. *Maritime Economics*, Allen & Unwin, Oxon, 3rd Edition (1997).

Sullivan, J.J. *Pacific Basin Enterprise and the Changing Law of the Sea*, Lexington Books: Massachusetts (1977).

Susskind, L.E. *Environmental Diplomacy*, Oxford University Press, New York (1994:58-59).

Sutherland, W. and Tsamenyi, B.M. *Law and Politics in Regional Co-operation: A Case Study of Fisheries Co-operation in the South Pacific*, Pacific Law Press, Hobart (1992).

Symmons, C.R. *The Maritime Zones of Islands in International Law*, Martinus Nijhoff Publishers, The Netherlands (1979).

Taking the Tuna Out of the Can: Rescue Plan for the World's Favorite Fish, Greenpeace International, Amsterdam (2007).

Tarte, S. *Japan's Aid Diplomacy & the Pacific Islands*, University of South Pacific, Suva (2007).

Teiwaki, R. *Management of Marine Resources in Kiribati*, Star Printery Ltd, Suva (1988).

Thakur, R. and Thakur, C.A. (eds.) *The Soviet Union as an Asian Pacific Power: Implications of Gorbachev's 1986 Vladivostok Initiative*, Macmillan Australia, Sydney (1987).

The South Pacific Commission, Noumea (1996).

Thucydides, *The Peloponnesian War*, Random House, New York (1951).

Trzyna, T (ed.) *World Directory of Environmental Organizations* (Sixth Edition), A Handbook of National and International Organizations and Programs – Governmental and Non-Governmental – Concerned with Protecting the Earth's Resources, International Center for the Environment and Public Policy, California Institute of Public Affairs, Sacramento (2002).

Tubilewicz, C. *Taiwan and Post-Communist Europe: Shopping for Allies*, Routledge, New York (2007).

Underdal, A. *The Politics of International Fisheries Management: The Case of the North-East Atlantic*, Scandinavian University Press, Oslo (1980:36).

U.S. Policy Toward South Pacific Island Nations, Including Australia and New Zealand, Committee on Foreign Affairs, U.S. Government Printing Office, Washington (2007).

Van Dyke, J.M. (ed.) *Consensus and Confrontation: The United States and the Law of the Sea Convention*, University of Hawaii Press, Honolulu (1985).

Van Hoff, G.J.H. *Rethinking the Sources of International Law*, Kluwer Law and Taxation Publishers, The Netherlands (1983).

Walford, L.A. *Fishery Resources of the United States*, U.S. Fish and Wildlife Service, Public Affairs Office, Washington DC (1947).

Walter, R.J. *Peru and the United States, 1960-1975: How their Ambassadors Managed Relationships in a Turbulent Era*, The Pennsylvania States University Press, Pennsylvania (2010).

Wang, C. (ed.) *One China, Many Paths*, Versco, London (2003).

Wang, J.C.F. *Handbook on Ocean Politics and Law*, Greenwood Press, Westport (1992).

Warmer, R.F. *Protection the Ocean Beyond National Jurisdiction: Strengthening the International Law Framework*, Martinus Nijhoff Publishers, The Netherlands (2009).

Waugh, G. *The Development of Fisheries in the South Pacific Region with Reference to Fiji, Solomon Islands, Vanuatu, Western Samoa and Tonga*, Australian National University, Canberra (1986).

_____. *The Collection of Rent in the South Pacific Tuna Fishery*, Australian National University, Canberra (1987).

Woods, L.T. *Asia-Pacific Diplomacy: Nongovernmental Organizations and International Relations*, University of British Columbia, British Columbia (1993).

Wright-Neville, D.P. *The Evolution of Japanese Foreign Aid, 1955-1990: The Impact of Culture, Politics, and the International System on the Policy Formation Process*, Monash University, Melbourne (1991).

Zang, M. *Major Powers at a Crossroads: Economic Interdependence and an Asia Pacific Security Community*, Lynne Rienner Publishers, New York (1995).

Zartman, I.W. *The 50% Solution*, Double Day, New York (1976).

Zhu, Z. *China's New Diplomacy: Rationale, Strategies and Significance*, Ashgate Publishing Limited, Surrey (2010).

Websites

A/CONF.164/37; www.fao.org/docrep/007/y5438e0b.htm.

File://AISOPACCommunityLifelines.htm

<http://www.america.gov/st/washfile-english/2002/July/20020724124720morse@pd.state.gov0.8919794.html#ixzz0we6SQyQ1>.

<http://classshares.student.usp.fj/MS205/MS205.Part3-Application-MLR.ppt>

<http://www.daff.gov.au/fisheries/international/multilateral/pacific-ocean-fora>.

<http://www.fao.org/docrep/007/y5438e/y543e0b.htm>.

<http://www.ffa.int/about>.

<http://www.ffa.int/www/index.cfm?itemID=2>.

<http://www.gdrc.org/sustdev/definitions.html>.

<http://www.greenpeace.org/raw/content/australia/resources/reports/overfishing/tuna-pacific-s-most-valuable-a.pdf>.

<http://www.iaea.org/Publications/Documents/Infocircs/Others/inf331a1.shtml>

<http://www.mfat.govt.nz/Treaties-and-International-Law/01-Treaties-for-which-NZ-is-Depositary/o-Kigatory-Fish-Stocks.php>.

<http://query.nytimes.com/gst/fullpage.html?res=9B0BEE3DF1630F934A35752C0A96...>

<http://www.oxfam.org.nz/imgs/pdf/oxfam%20nz%20fisheries%20final%2019%20oct.pdf>.

<http://www.sprep.org/sprep/about.htm>.

http://www.sprep.or/programme/island_eco.htm.

<http://www.spc.int/coastfish/>.

http://www.tradingmarkets.com/news/stock-alert/epfif_international-fisheries-pacific-tuna-fisheries-vessels-capacity-limit-in-the-purse-seine-fishery-in-1149614.html.

<http://www.un-documents.net/ocf-02.htm> .

<http://www.unep.org/>.

<http://www.wcpfc.int/>.

<http://www.wcpfc.int/about-wcpfc>.

http://www3.pacii.org/pits/en/treaty_database/1992/7.html.